

Special 2010 R&D Credits NOW Usable to Reduce AMT!

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Holy cow...I never thought I'd see the day that:

- the Cubs would be going to the World Series, and
- the R&D credit could be used to reduce the AMT

Well, one out of two ain't bad.

The Small Business Jobs Act that had been long delayed in Congress for months finally got through. Buried in all the detail are some amazing changes in the world of R&D credits.

For 2010, if a company is considered to be an eligible small business, these R&D credits turn into something like a "super" R&D credit. These credits are Extra, they're Special, they're Better. Got that...Extra, Special, Better...Extra, Special, Better...

That's right, you've just learned the new acronym that us tax people have come to love and enjoy in our profession. Congress gave birth to the new ESB credit, otherwise known as the Eligible Small Business credit.

These R&D/ESB credits are amazing for two main reasons:

1. AMT - They can be used to reduce both the AMT (alternative minimum tax) and regular tax, and
2. 5 Year C/B - They can be carried back for five years.

Eligible Small Business Defined - You want to make sure you can meet this definition. ESBs are businesses that a) are corporations the stock of which isn't publicly traded, partnerships or sole proprietorships and b) have average annual gross receipts, for the three-tax-year period preceding the tax year, of no more than \$50 million.

The traditional R&D credit cannot be used against AMT. Thus, if the person is in the AMT situation, the use of these credits is zero. Also, if they are not in the AMT situation, the use of the traditional R&D credit is basically limited to the spread between the regular tax and the tentative minimum tax.

The traditional R&D credit, if it cannot be used in the current year, must be carried back one year. The same rules apply in that prior year. If the person cannot use the credit due to AMT, the credits then carry forward for 20 years. If the person was not in AMT in the prior year, the use of these credits again is

limited to the spread between regular tax and tentative minimum tax. Unused credits then would carry forward for 20 years.

These new 2010 R&D/ESB credits now could be used in the current year, even if the person is in AMT. Plus, if there is any unused piece, you can carry them back five years and use them even if the person was in AMT in that year. Wow...that's why they're Extra, Special, and Better!

Many people have asked about prior year, pre-2010 R&D credits that are being carried forward into 2010. Can these older traditional R&D credits be used against AMT in 2010?

The answer is no. These are just the traditional R&D credits and have no other special powers. The R&D/ESB credit was born in 2010 and it is only these special credits that have these special powers.

So what does this mean for the tax practitioner and/or the CFO?

It means that it's NOW time to revisit. With year end tax planning upon us, you need to go back and re-think about the R&D credit and ask:

- Does it now make economic sense to claim these credits in 2010? That's because you or your client might have immediate utilization since you may be an ESB.
- With the newer and possibly soon to be stronger R&D ASC (alternative simplified credit), it's like a double-bonus to re-consider R&D now.
- If I don't bring this up with my client, or owner, will someone else?

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