Anchin Alert

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Permanent R&D Tax Credit - A Game Changer for U.S. Businesses in the Food and Beverage Industry

On December 18, 2015, President Obama signed into law *The Protecting Americans from Tax Hikes Act (PATH) of 2015*. This legislation retroactively renews and makes permanent a collection of expired tax provisions for both businesses and individuals, commonly referred to as “tax extenders.” The tax credits and deductions made permanent by the legislation include the Research and Experimentation (R&E) tax credit, the Child Tax Credit, the American Opportunity Tax Credit, the Earned Income Tax Credit, the above-the-line deduction for teachers who buy school supplies, and the Section 179 deduction.

The R&E tax credit, also known as the Research and Development (R&D) tax credit is the largest single item in the package, with an estimated cost of $113 billion over 10 years. Many of these taxpayers can be found in the food and beverage industry, which is more fragmented than most other industries with many entrepreneurial startups and relatively high product to market costs. The two changes, both effective for tax years beginning after December 31, 2015, are as follows:

1. PATH allows small businesses to take the R&D tax credit against their alternative minimum tax (AMT). The AMT restriction has long prevented qualified companies from utilizing the research credit, so this new legislation will remove that hurdle for any qualified company with less than $50 million in gross receipts.

2. PATH allows startup businesses with gross receipts of less than $5,000,000 to take the R&D tax credit against their payroll taxes (essentially making it a refundable credit capped at $250,000 for up to 5 years).

The R&D tax credit benefits U.S. food and beverage companies who develop new or improved products or processes through technical activities that lead to an elimination of design or development uncertainty. It particularly applies to the development of products that are healthier, more nutritious, have longer shelf life, have better consistency and/or improved taste. This credit is applicable not only to revolutionary innovations but also to evolutionary advances or improvements for an individual company’s products and processes. Examples of these advances might include improving manufacturing or production processes to increase yield, reduce waste and byproducts, and enhance safety or to comply with new stringent FDA requirements. Developing new packaging designs for better performance, durability, stability or product integrity may also qualify.

In addition to employee time performing, supporting, or supervising these types of qualifying initiatives, allowable expenses may also include supplies associated with making experimental batches or trial runs for new product candidates. Increasingly, business management teams are recognizing the importance of taking advantage of this generous incentive as a powerful weapon for remaining competitive, refueling their critical innovation engines and for creating free cash flow.

Correctly identifying qualifying projects, along with properly calculating and documenting expenses is critical to both maximizing the financial benefit and ensuring the sustainability of every R&D tax credit claim. Anchin’s R&D tax credits team is particularly skilled and experienced at identifying such qualifying projects and initiatives in the food and beverage industry and at examining and capturing all allowable expenses.

For more information, please contact Yair Holtzman, Partner and Practice Leader of Anchin’s Research and Development Tax Credits Group at 914.860.5599 or via email at yair.holtzman@anchin.com.