



**D SQUARED Tax Strategies**  
*Exponentially Creative Policy Services*

alliantgroup  
5400 Westheimer Court, Suite 800  
Houston, TX  
(713) 877 9600

**Allowance of ASC on R&D Credit for Taxpayers on Amended Tax Returns**

We are writing to you about a matter of great interest to us – the Research and Development (R&D) tax credit and ensuring that the credit provides real benefit to the thousands of eligible small and medium businesses in this country – engaged in everything from the latest computer software to adopting new manufacturing techniques to green technology by architects and engineers. As we look to encouraging economic and job growth for our nation – it is clear that greater innovation, applied research and improved productivity are keys to accomplishing these goals.

However, when it comes to supporting innovation at small and medium businesses through the R&D tax credit we are unfortunately falling far short. A July 23, 2012 article in the Wall Street Journal cited experts as stating that only 1 out of 20 small and medium of eligible businesses takes advantage of credits and incentives such as the R&D tax credit. This finding is echoed by the November 2009 GAO report on the R&D tax credit which highlighted that the vast majority of the credit was going to larger businesses.

From discussions with small and medium business owners and their tax advisors, it is clear that a significant roadblock to these companies taking the R&D tax credit is the fact that the Alternative Simplified Credit (ASC) is only available on original returns. We were proud to be the champions of the ASC in 2006 that expanded the availability of the R&D tax credit for businesses – making it easier for businesses, especially small and medium businesses to determine their eligibility for the credit. However, the Treasury and IRS through regulation in 2008 – without any support in the statute – greatly limited the benefits of the ASC by not allowing it for an amended return. This action by Treasury and IRS has significantly hamstrung the ability of small and medium businesses to take full advantage of the R&D credit.

The 2009 GAO report on the R&D tax credit found that IRS officials they interviewed saw “no problem” with allowing the ASC on amended returns. GAO further determined that there was no reason for preventing a business from selecting an ASC on amended return and

recommended that the regulations be changed to allow an ASC election on amended return. We agree.

Allowing small and medium businesses to make an ASC election return is a quick, easy and commonsense policy that will reap immediate benefits in supporting our nation's most innovative businesses and fostering innovation. We ask that the ASC regulations be reviewed accordingly and that you provide the Committee your determination within 30 days.

In addition to the much-needed changes to the regulations to allow for an ASC election on an amended return, we ask that you please inform us of what steps the IRS and Treasury are taking in general to encourage small and medium companies to take the R&D tax credit. Further, we would ask that you please inform us of what roadblocks you see in practice (including in statute) that limit the ability of small and medium businesses from taking the R&D tax credit.

We are also concerned that the IRS and Treasury have the proper point between service and enforcement when it comes to the R&D tax credit and small and medium businesses. The Congressional policy of the R&D tax credit is undermined when the IRS imposes a heavy hand in examining small and medium businesses. Unlike a large business, an audit of a small or medium business can often involve substantial time and energy of the owners and managers of the company – significantly impacting on the performance of company and greatly discouraging the business (and other small and medium businesses) from taking the R&D credit. The IRS needs to show balance in its enforcement of the R&D tax credit for small and medium businesses.

Congress has long had a concern of the IRS overreaching and imposing too heavy a requirement on business owners when it comes to the R&D tax credit. The 1999 conference report for the Ticket to Work and Work Incentives Act of 1999 that included an extension of the R&D tax credit stated: "The conferees also are concerned about unnecessary and costly taxpayer record keeping burdens and reaffirm that eligibility for the [R&D] credit is not intended to be contingent on meeting unreasonable record keeping requirements." These concerns remain true today -- especially as it relates to small and medium businesses. The IRS needs to recognize small and medium businesses (especially those taking the credit for the first time) simply do not have the recordkeeping and capacity of a Fortune 500 company. Please tell us what steps the IRS and Treasury are taking to find reasonable accommodations for small and medium businesses for recordkeeping and to work with them when they do not have perfect records – such as allowing the use of estimates which has been approved by the courts -- and how those efforts are being translated to the field at the IRS.

Thank you for your time and consideration. As we all seek to improve our economy and create greater job growth, ensuring the effectiveness of one of our key policy tools for accomplishing those goals – the R&D tax credit – is vital to success.