

## Exam: New Documentation "Requirements" for R&D Refund Claims Raises Concerns

***JOURNAL OF TAX PRACTICE & PROCEDURE***

**01.11.2022**

In 1981, Congress enacted the research and development tax credit (R&D Credit) to encourage private investment in research and experimentation activities and since then, the R&D Credit has become an important benefit for many taxpayers. In this article, George Hani and Samuel Lapin write that determining whether and in what amount a taxpayer is eligible for the R&D Credit can be a complex and fact-dependent process for both taxpayers and the IRS. As a result, some taxpayers hire advisors to assist with the determination and many taxpayers file refund claims for the R&D Credit on an amended return.

Because of the fact-intensive nature of the R&D Credit, audits of R&D Credit claims can be long and costly for both the IRS and taxpayers. Hani and Lapin note that in an apparent effort to reduce the number of R&D Credit refund claims under audit and in litigation, IRS issued a Chief Counsel Advice Memorandum (the IRS Memo) to examiners that reinterprets the specific requirement with respect to refund claims for the R&D Credit such that the amount of information required for a valid R&D Credit refund claim is drastically increased. Neither the Internal Revenue Code (Code) nor the Treasury regulations impose a higher burden on R&D Credit claims as compared to other claims. The IRS memo nevertheless imposes a huge administrative burden on the taxpayer to provide with any R&D Credit refund claim filed on an amended return much of the information it would provide during an audit.

Hani and Lapin outline their concerns with the IRS memo for taxpayers, scheduled to go into effect January 10, 2022.