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# QUARTERLY INSIGHTS

## Research & Development Tax Credit Made Permanent

On December 18, 2015, President Obama signed the Protecting Americans from Tax Hikes ("PATH") Act of 2015, which includes a provision making permanent the Research & Development ("R&D") tax credit under Section 41. This is a very significant development, as the R&D credit generally has required annual legislative renewal. A permanent R&D credit will provide businesses and investors the stability needed to enhance long term planning and decision making.

### Added Benefits

In addition to being made permanent, for tax years beginning after December 31, 2015, the R&D tax credit will have two added benefits. First, eligible small businesses (those that are privately held and with $50 million or less in average gross receipts for the three preceding tax years) may utilize the R&D tax credit against their Alternative Minimum Tax ("AMT"). Historically, businesses could only use the R&D tax credit to offset ordinary tax liability and only to the extent this liability exceeded their AMT, with one exception to this rule in 2010.

Additionally, startup companies (those with gross receipts of less than $5 million for the current tax year and no gross receipts for any tax year before the five tax years ending with the current tax year) may utilize the R&D tax credit against employer's payroll tax (i.e., FICA) up to $250,000. This is an important added benefit, as startup companies investing in new technologies often do not pay income taxes.

### Conclusion

With a permanent R&D tax credit, businesses now face a more reliable and predictable future. Moreover, the extension of the credit to small businesses and startups broadens its availability to taxpayers. The PATH Act now provides economic stability that can help spur long-term innovation and investment in new and improved ideas.

## Don't Get Caught by Phishing Schemes

*By Nidhi Rao*

These deceptivemessages can take the form of emails, phone calls or websites, and are designed to steal funds from an organization by tricking an employee into divulging

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confidential personal or business information such as a user name, password, bank account number, Social Security number or Employer Identification Number (EIN).

Phishing attacks most often appear as emails, but can also be conducted via instant messages or over the phone. While most organizations' email services and firewalls are equipped with spam filters, cyber criminals can craft messages that appear trustworthy or impart a sense of urgency, and can sometimes penetrate security filters.

To give a sense of how innocuous phishing emails can appear, we've included an example chain here. Characteristics of a typical phishing email include:

- Slight variations on an email address of the sender;
- Misspellings and grammar mistakes; and/or
- An urgent request to complete the task, i.e., "I need you to do this ASAP."

Cyber criminals are persistent when devising new ways to capture sensitive information from unsuspecting individuals, and spam filters and firewalls are only the first line of protection against phishing schemes. To proactively mitigate these risks, organizations can take the following steps to protect themselves:

**Educate employees** – Provide training on the risks associated with phishing schemes and caution employees away from offering confidential information, such as user names and passwords, over email or executing banking transactions based on instructions received via email. Employees should be advised to follow internal company policies and procedures when executing transactions or sharing confidential information.

**Institute two-party authentication controls** – Electronic security and authentication controls are now offered within online banking systems, making it so that an individual initiating a wire transfer cannot also authorize the transfer. If these systems are in place, a wire transfer initiated by an unknowing victim of a phishing scheme cannot be executed until a second individual authorizes the transaction, thereby increasing the chance an error will be discovered.

**Require verbal confirmation** – Organizations can protect themselves by instructing employees to obtain verbal authorization, no matter how urgent the request might seem, from the sender of an email prior to processing a transaction such as a wire transfer.

**Use a code word** – If an organization regularly communicates requests to process transactions via email, a "secret word" can be established internally to include in all email transaction requests in order to differentiate a valid email from a phishing email. This should be a unique word or phrase agreed upon by the financial executive department and known only internally.

Additionally, it's important to note that information technology (IT) staff should be notified if employees receive phishing emails, so that spam filters and firewall settings can be adjusted to mitigate the risk of future messages bypassing these defenses. If an organization does fall victim to a phishing scheme, it's important to quickly investigate the source of the email. Given the ever-changing cyber landscape and the speed at which digital attack tactics evolve, utilizing approaches to mitigate risk from both an IT and a personnel perspective is an organization's best line of defense.

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## IRS Extends Deadlines for ACA Reporting – Forms 1094 and 1095

The Internal Revenue Service (IRS) released Notice 2016-4 on December 28, 2015, granting an automatic extension of the due dates for the distribution and filing deadlines for the 2015 Forms 1094 and 1095 for all those required to file under the Affordable Care Act (ACA).

The extended due dates are:

- **Forms 1095-B/1095-C** that must be provided to individuals is extended from February 1, 2016, to March 31, 2016
- **Forms 1094-B** with copies of Forms 1095-B; and 1094-C with copies of Forms 1095-C that must be provided to the IRS is extended as follows
    - from February 29, 2016, to March 31, 2016, if not electronically filed from March 31, 2016, to June 30, 2016, if electronically filed

Notice 2016-4 also provides guidance to individuals who might not receive a Form 1095-B or Form 1095-C by the time they file their 2015 tax returns.

**Extension of Reporting Requirements**

Under Internal Revenue Code (IRC) Section 6055, health coverage providers are required to file with the IRS and distribute to covered individuals, forms showing the months in which the individuals were covered by "minimum essential coverage." Under IRC Section 6056, applicable large employers (generally, those with 50 or more full-time employees and equivalents) are required to file with the IRS and distribute to employees, forms containing detailed information regarding offers of, and enrollment in, health coverage.

Further, the IRS informed that, due to the new extended deadlines, no additional automatic or permissive extensions will be granted.

While the Notice states that IRS is ready to receive the forms, IRS understands that some employers, insurers, and other providers of the minimum essential coverage will need additional time to gather, analyze and report the required information. Employers and other coverage providers are encouraged to furnish statements and file the information returns as soon as they are ready.

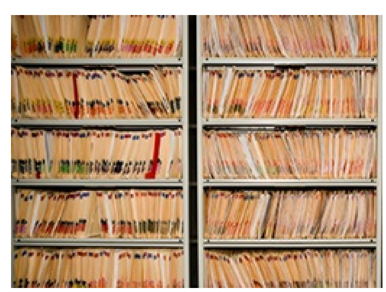
**Guidance to Individuals**

Notice 2016-4 also provides guidance to individuals who might not receive a Form 1095-B or Form 1095-C by the time they file their 2015 tax returns.

For 2015 only, individuals who rely upon other information received from employers about their offers of coverage for purposes of determining eligibility for the premium tax credit when filing their income tax returns need not amend their returns once they receive their Forms 1095-C or any corrected Forms 1095-C. Individuals need not send this information to IRS when filing their returns but should keep it with their tax records.

Similarly, some individual taxpayers may be affected by the extension of the due date for providers of minimum essential coverage to furnish information under IRC Section 6055 on either Form 1095-B or Form 1095-C. Because, as a result of the extension, individuals may not have received this information before they file their income tax returns, for 2015 only, individuals who rely upon other information received from their coverage providers about their coverage for purposes of filing their returns need not amend their returns once they receive the Form 1095-B or Form 1095-C or any corrections. Individuals need not send this information to the Service when filing their returns but should keep it with their tax records.

The Notice also discusses the procedures that can be used by individual taxpayers who may need the information to claim certain tax credits.



# 3 New Year's Resolutions for Manufacturing & Distribution Businesses

*By Mike Metz*

*Should auld tax rulings be forgot,
and new ones take their place,
We'll give a cup of good advice,
to help our clients keep pace.*

In the spirit of the New Year, here are three tax resolutions to help manufacturing and distribution (M&D) businesses enhance their performance and maximize tax savings.

**Resolution #1: Comply With New Affordable Care Act Reporting Requirements and Avoid Penalties**

The Affordable Care Act (ACA), also referred to as ObamaCare, mandates comprehensive health insurance reforms and has been one of the more challenging business developments impacting M&D companies in recent years. Under the Employer Shared Responsibility payment and reporting rules, businesses that fail to offer their employees coverage meeting the affordability and minimum value standards must make shared responsibility payments and may be obligated to disclose this liability on their financial statements. In order to collect the data necessary to enforce compliance, new tax information reporting is required for businesses with 50 or more full-time or full-time-equivalent employees, with reporting duties starting in early 2016 for the 2015 calendar year.

Don't procrastinate when it comes to ACA reporting! Now is the time for businesses to determine which of the information reporting forms (Forms 1094-B, 1095-B, 1094-C and/or 1095-C) are required and get a jump start on gathering the necessary data in order to ensure accurate filing of the forms with the IRS by the February 28, 2016, deadline (or March 31, if filing electronically).

The new health insurance reporting requires businesses to provide a summary statement to their employees, in addition to sending a copy to the IRS. This reporting, similar in some ways to a W-2 or 1099, details the specific coverage periods and the amount of health insurance premiums paid on an employee's behalf. Employees then use this information to support their individual responsibility payment claims on their personal tax returns.

**Resolution #2: Review Accounting Methods for Tax Savings Opportunities and Simplification**

Accounting methods affect when various items of income and expense are recognized for tax purposes. The manufacturing and distribution industry has changed significantly over the years, but some companies in the sector have been stagnant with tax accounting methods for many aspects of their evolving businesses.

To start 2016 on the right foot, take a fresh look at how your business and your accounting methods match up. Appropriate choices among permissible accounting methods can reduce current taxes and increase cash flow. Sometimes businesses are using an improper method of accounting and a voluntary change to a proper method is a better result than having the issue discovered during an IRS audit.

Ask yourself this: Is the UNICAP method we adopted many years ago still optimal? Does the calculation still reflect our current business model?

While optimal accounting methods tend to be company-specific, areas for manufacturers to consider reevaluating include revenue recognition, uniform capitalization and accounting for inventories, fixed assets and cost recovery, and the timing of tax deductions, including bad debts, prepaid expenses, repairs and software development costs.

Now is the time to kick off a phased approach to your tax accounting methods. Begin by reviewing the substantial list of opportunities endorsed by the IRS and assessing the feasibility of those possibilities to help you achieve your business objectives. Next, prepare comparisons of your current methods to the optimal methods and estimate the tax savings. Lastly, prepare the calculations and forms required for a change in accounting method and file them with the IRS.

**Resolution #3: Review State and Local Tax Filing Requirements**

As your business grows and expands, your tax filing requirements may likewise be expanding. A sound business practice and great resolution is to make an annual determination of the jurisdictions where you need to file tax returns for each type of tax (sales, income, franchise, etc.) With state audit activity on the rise, manufacturers would be wise to be proactive now, rather than risk facing repercussions later.

Businesses are required to file in states where they have sufficient business activity to create “nexus” with the state. States are increasingly applying an economic nexus test under the theory that the use of a state’s resources by a business creates nexus -- even if the business in question doesn’t have a physical presence in the area. Manufacturers frequently trip up on nexus issues related to out-of-state inventory storage, product delivery or on-site installation and repair services.

Public Law 86-272, also known as the Federal Interstate Income Tax Law, prohibits states from levying income taxes on interstate commerce activity if companies meet certain criteria. While P.L. 86-272 provides a welcome safe harbor, it is limited in that it applies only to income tax and, more specifically, income from the sale of tangible personal property. Some states have a gross receipts tax or franchise taxes that fall outside of the safe harbor. Also, certain activities in a state beyond the narrowly protected activities, such as installation or repairs, could void the safe harbor protection.

On audit, most states require prior year returns and taxes if there was nexus in those years. Often, penalties are assessed for delinquent years. While most states have a statute of limitations on prior year assessments, it doesn’t start running until a return is filed. Should you belatedly determine your company has nexus exposure, some states offer voluntary disclosure and amnesty programs that limit the number of prior year returns required and reduce penalties.

As you gear up for 2016, review your business operations and transactions to assess state tax exposure and filing requirements for recent changes to laws or business activities that might give rise to nexus. Also, if delinquent filing requirements exist, this is your opportunity to get your business back in compliance.

Failure to comply with new reporting and regulatory requirements and utilizing improper accounting methods can lead to significant monetary penalties. The start of a new year is the perfect inspiration for manufacturers to embrace tax planning resolutions-—and stick to them.

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