NEW GUIDANCE FOR NON-CERTIFIED PEO PAYROLL CREDIT CLAIMS

Under the Protecting Americans from Tax Hikes ("PATH") Act of 2015, eligible small businesses may elect to utilize up to $250,000 of the Research Tax Credits they generate under Internal Revenue Code section 41 after 2015 ("RTCs") against their portion of payroll taxes, i.e., Federal Insurance Contributions Act ("FICA") taxes. The Internal Revenue Service ("IRS") has recently provided further guidance for non-certified PEO claims.

DETAILS

The IRS recently confirmed that a non-certified Professional Employer Organization ("PEO") that pays wages to employees on behalf of a taxpayer pursuant to a service agreement may claim the RTC against the taxpayer's payroll tax on the taxpayer's behalf.

In order for the Non-Certified PEO to claim the credit on behalf of a client, the client must be a qualified small business and must elect to apply the RTC against payroll tax liability by attaching Form 6765 to its timely-filed business income tax return.

THREE STEPS FOR PEOS TO CLAIM RTCS

To claim the RTC on behalf of a taxpayer, PEOs must:

- Step 1: Claim the Qualified Small Business Payroll Tax Credit for Increasing Research Activities on a Form 941 filed under PEO's EIN.
- Step 2:
  - Complete and attach Schedule R (Form 941) listing its clients for whom it is electing to claim the RTC against payroll tax.
  - Report the corresponding credits and all other amounts allocated to the listed clients.
  - Do not check either box for "Type of filer" at the top of the Schedule R.
  - Enter the total wages and taxes paid for all other clients not separately listed on Schedule R and for the PEO's own employees on line 13 of Schedule R, so that the totals shown on line 14 match the amounts reported on the corresponding lines on Form 941.
- Step 3: The PEO must complete and attach a separate Form 8974 for each client listed on Schedule R (Form 941).

INSIGHTS

With the new guidance, taxpayers and non-certified PEOs now have clearer guidance for how to utilize RTCs to offset payroll tax. Allowing small businesses and startups to benefit from the RTC regardless of whether they are currently paying regular income taxes, frees up private capital and enables investment in resources to facilitate new or improved technologies.

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