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Guidelines for Claiming and Defending Research and Development Tax Credits

Joshua Smeltzer and Anthony (“Tony”) Box



BASICS OF R&D TAX CREDIT QUALIFICATION

- Qualified Research Expenses (QREs)
- Base Amount
- Specific Exemptions
- Four Part Test

THE AUDITS ARE COMING, THE AUDITS ARE COMING, THE AUDITS ARE COMING

- Documenting the Base Period Calculation
- Substantiation of the QREs
- Substantiation of the Process of Experimentation
- Specific Exemptions
- Overinclusion of alleged QREs





MCFERRIN V. UNITED STATES, 570
F.3D 672 (5TH CIR. 2009)

- Important Facts
- Important Holdings
- Practical Implications

SHAMI V. COMM’R, 741 F.3D 560
(5TH CIR. 2014) – *COHAN* RULE HAS
LIMITS.

- Important Facts
- Important Holdings
- Practical Implications



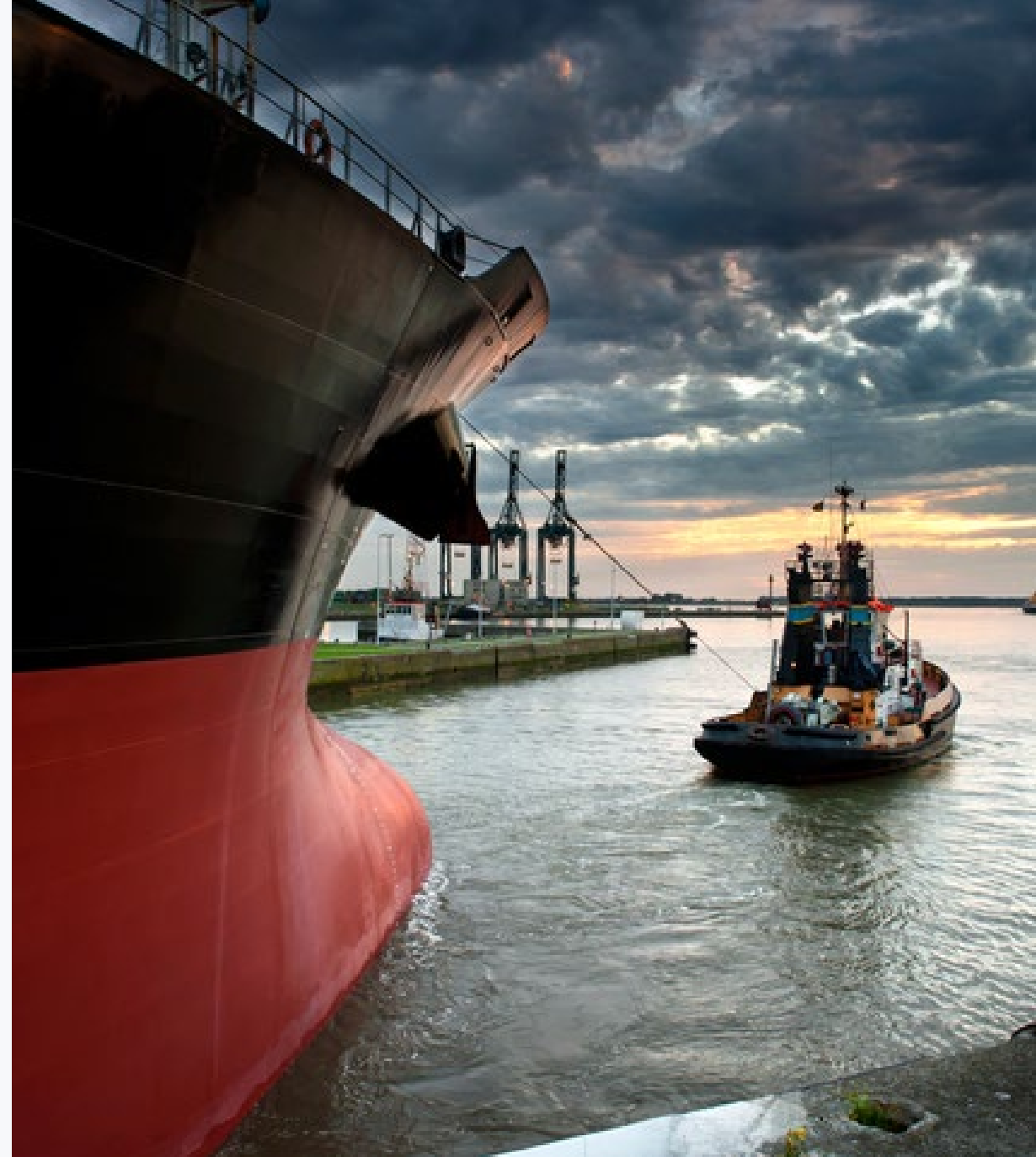


UNION CARBIDE V. COMM'R, TC
MEMO 2009-50

- Important Facts
- Important Holdings
- Practical Implications

TRINITY INDUSTRIES V. US, 691 F.
SUPP. 2D 688 (N.D. TEX. 2010),
AFFIRMED IN PART, 757 F.3D 400
(5TH CIR. 2014)

- Important Facts
- Important Holdings
- Practical Implications



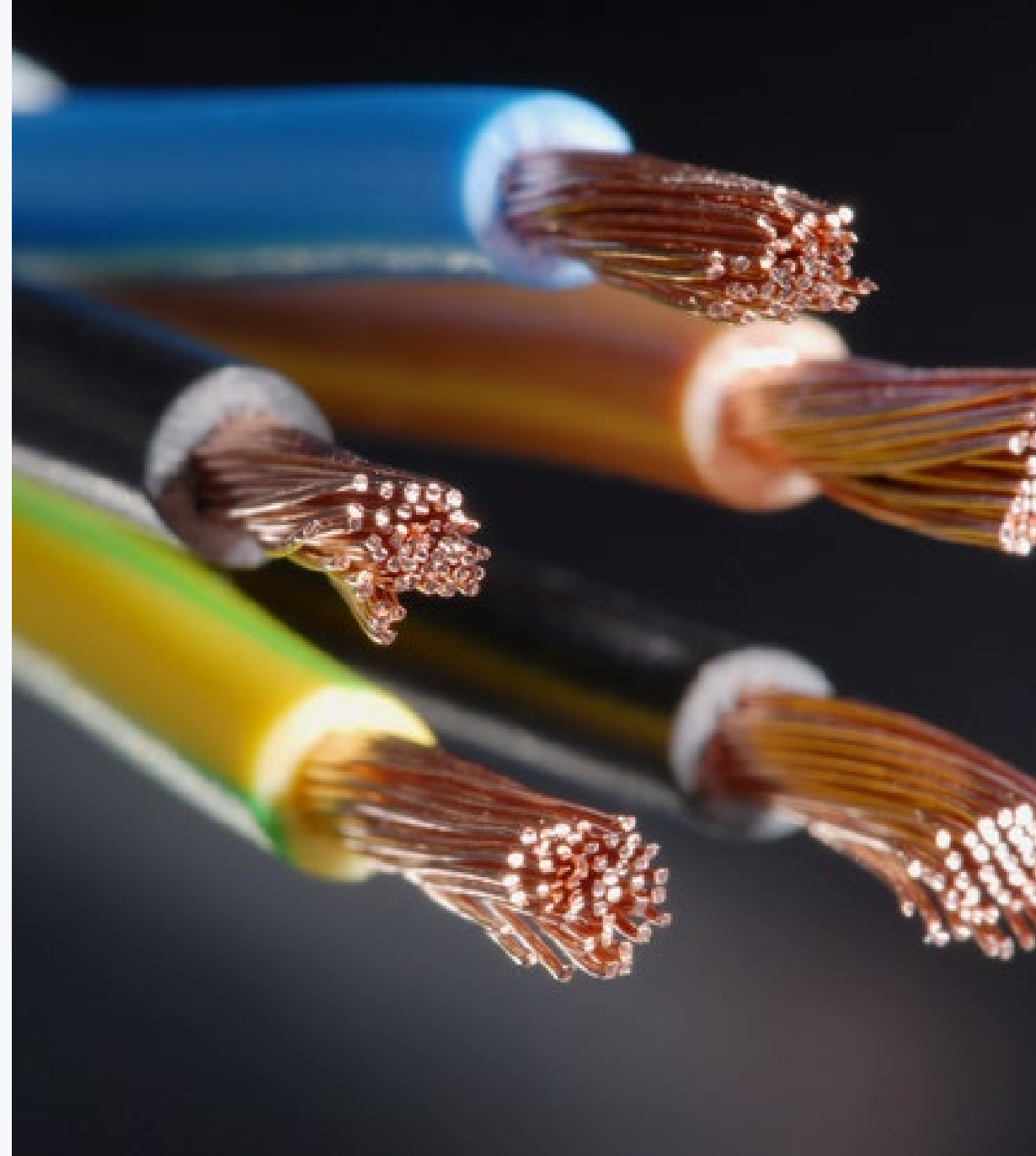


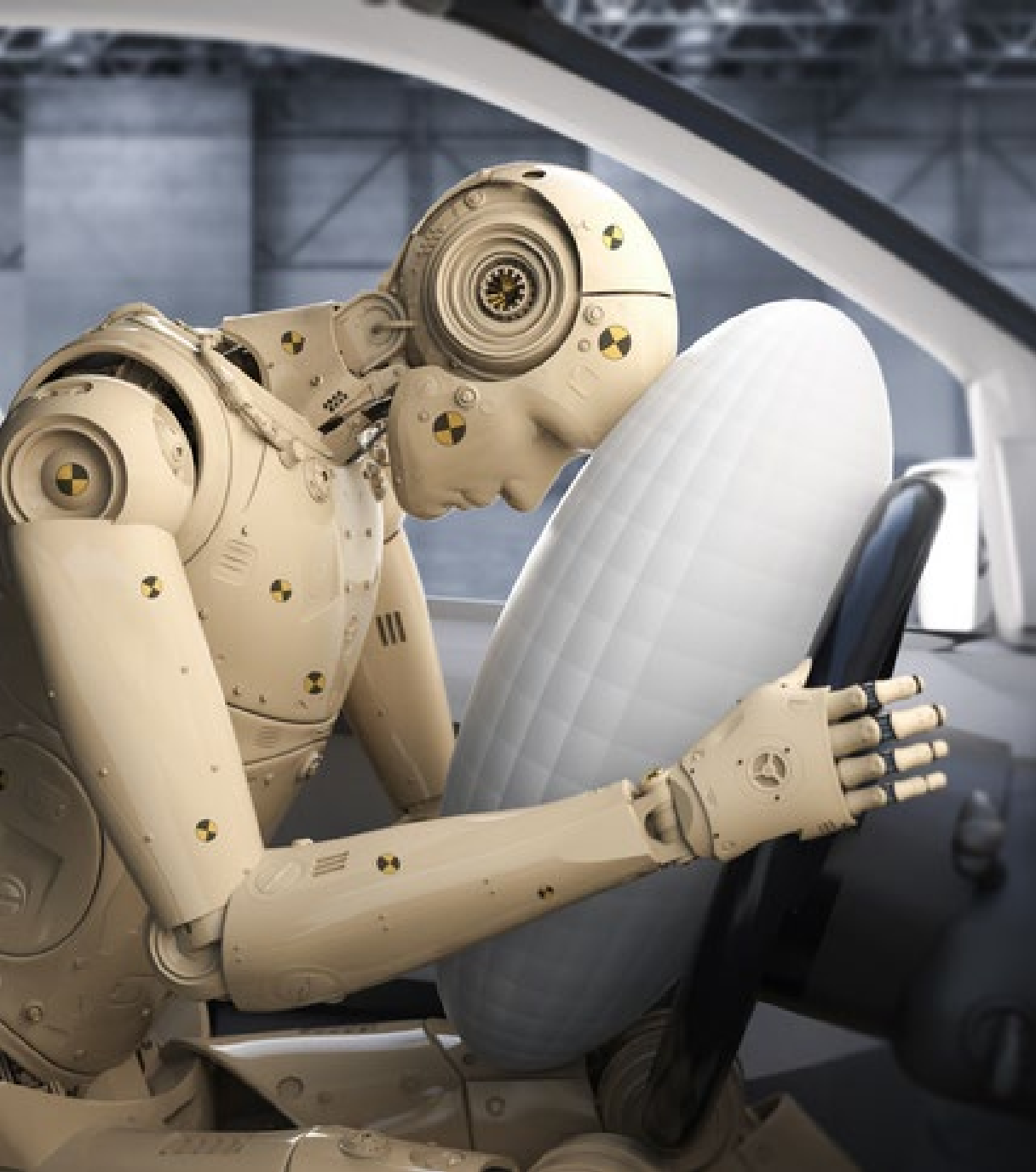
SUDER V. COMM’R, TC MEMO
2014-201

- Important Facts
- Important Holdings
- Practical Implications

US V. QUEBE, 2017 WL 279539 (S.D.
OHIO 2017)

- Important Facts
- Important Holdings
- Practical Implications



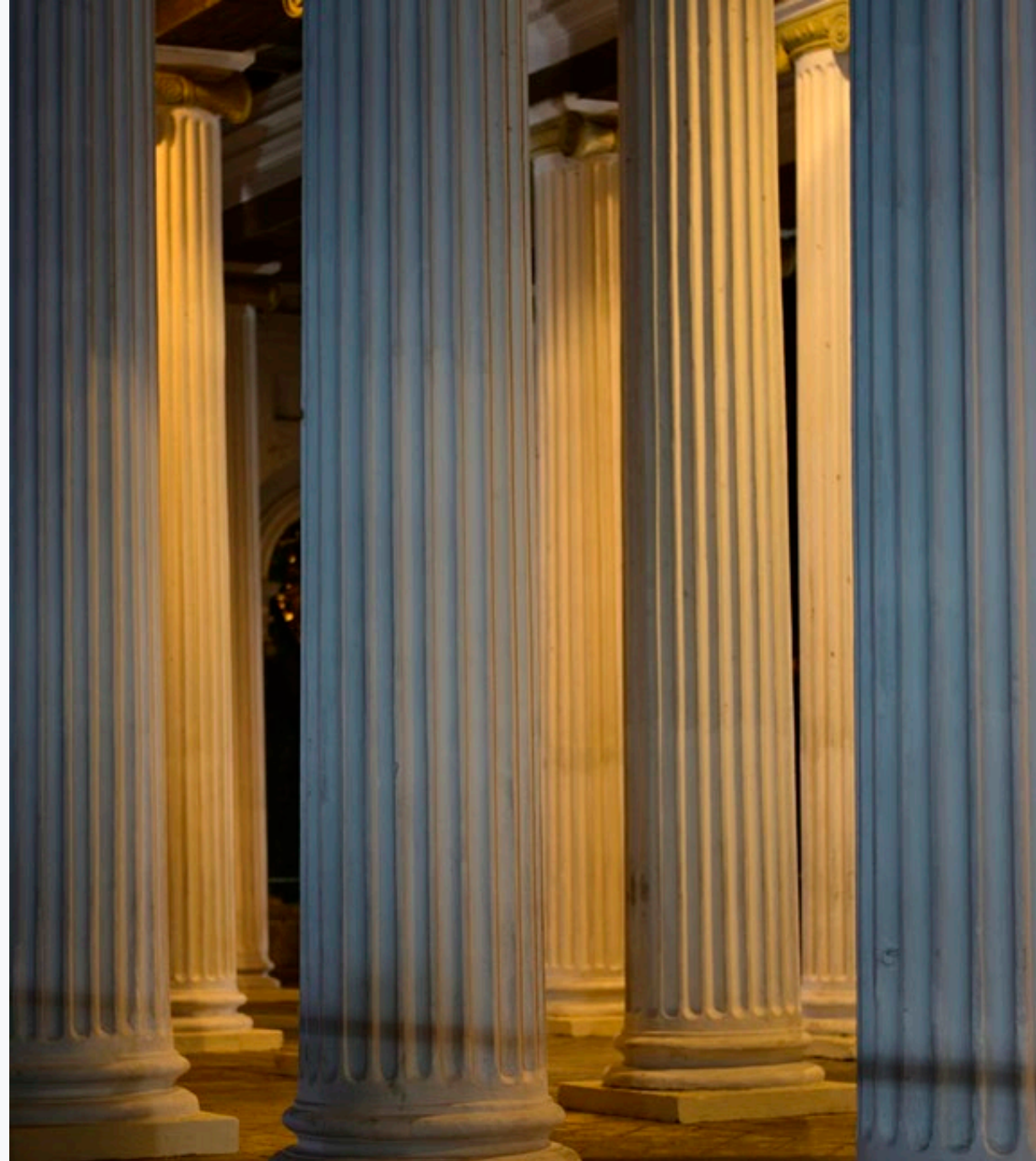


TG MISSOURI CORP. V. COMM’R,
133 T.C. 278 (2009)

- Important Facts
- Important Holdings
- Practical Implications

*LOCKHEED MARTIN V. US, 210 F.3D
1366 (FED. CIR. 2000)*

- Important Facts
- Important Holding
- Practical Implications



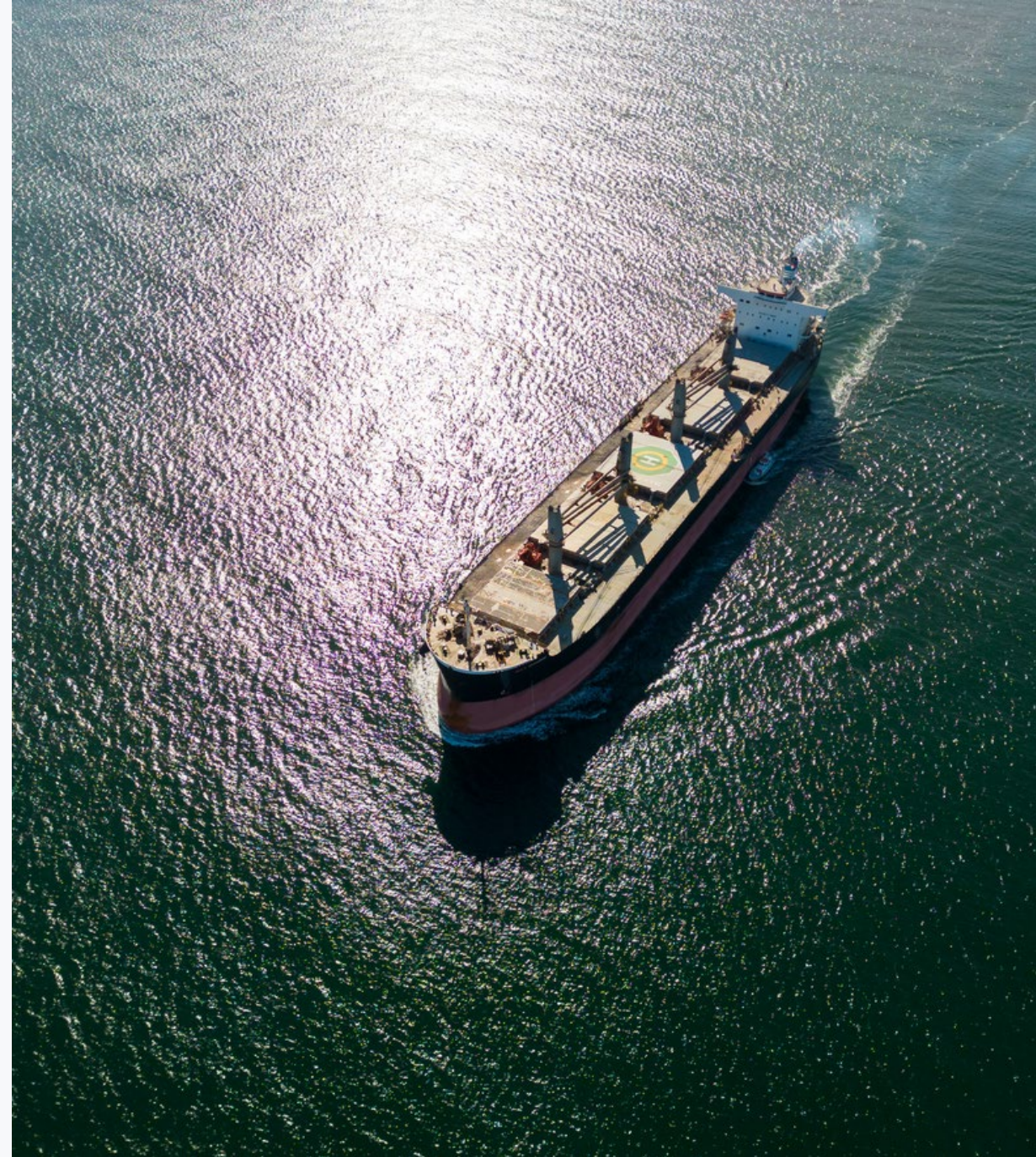


TANGEL V. COMM'R, TC MEMO 2021-1

- Important Facts
- Important Holdings
- Practical Implications

LITTLE SANDY COAL CO. V. COMM’R
62 F.4TH 287 (7TH CIR. 2023)

- Important Facts
- Important Holdings
- Practical Implications





IRS LISTS DIRTY DOZEN TAX SCAMS

Improper claims of business credits

Problematic claims for the research and experimentation often involve failures to participate in, or substantiate, qualified research activities and/or satisfy the requirements related to qualified research expenses.

TAX CREDIT CLAIMS

- In 2017, the Treasury Office of the Inspector General reviewed \$53.8 million worth of R&D tax credit claims. They found that \$11.8 million of them were potentially erroneous.





ACCOUNTANTS AND R&D TAX CREDIT ADVISORS

Snake Oil Salesmen
or
Trusted Advisor

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

Number: **20214101F**
Release Date: 10/15/2021

CC:LB:3:CH:3:MYCHOU:
POSTS-104459-20

UILC: 6402.04-00, 6402.04-02, 41.00-00

date: September 17, 2021

to: Cheryl Teifer
Director, Field Operations Engineering
(Large Business & International)

Lois Deitrich
Director, Southwest Examination
(Small Business/Self-Employed)

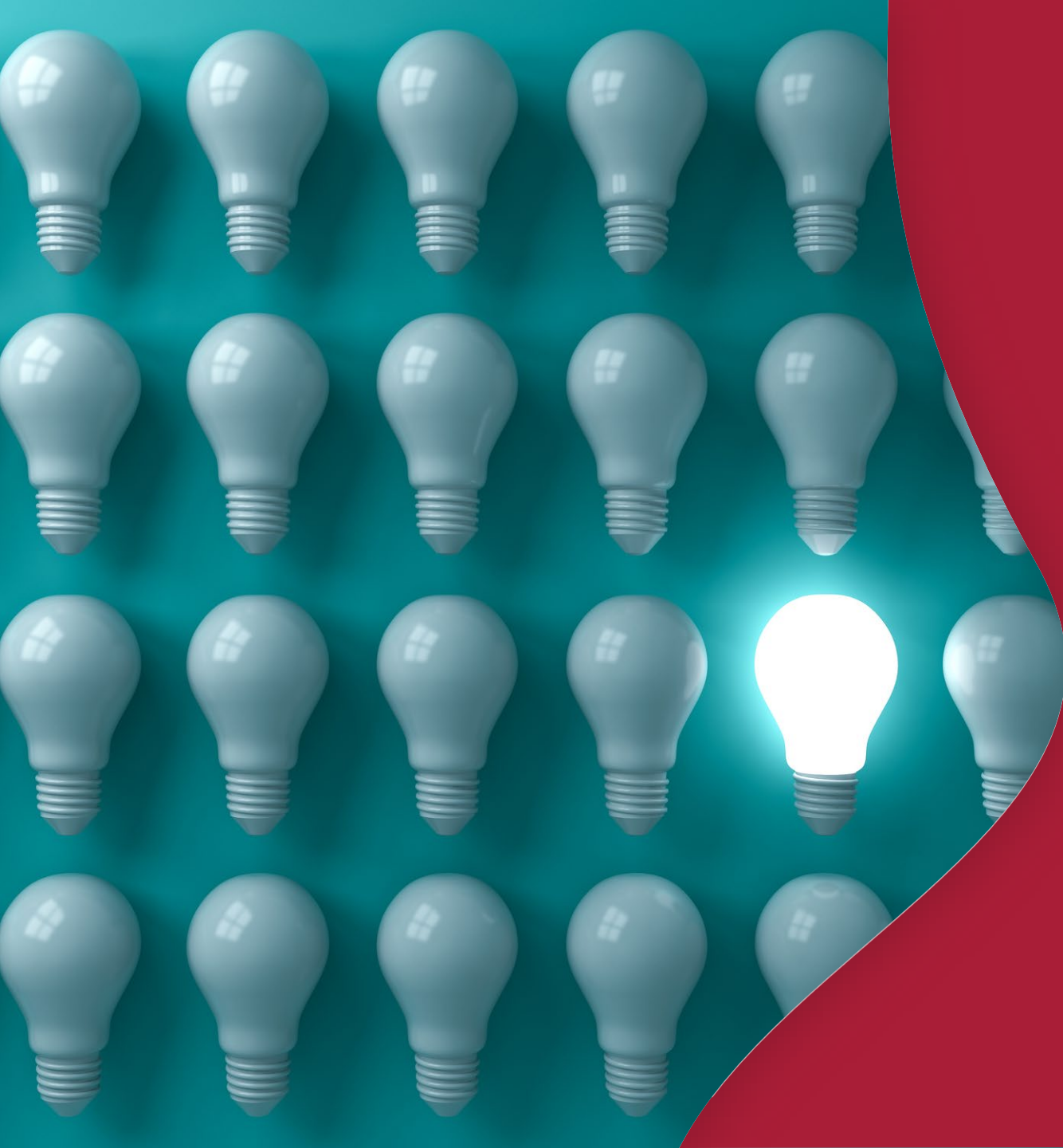
from: Kathryn A. Meyer
Area Counsel
(Small Business/Self-Employed)

Patricia P. Davis
Acting Area Counsel
(Large Business & International)

subject: I.R.C. § 41 Research Credit Refund Claims

Questions Presented

1. In an administrative claim for refund or credit ("refund claim") for the I.R.C. § 41 research credit, what information must a taxpayer include at the time the refund claim is filed with the Internal Revenue Service (the "Service") for the refund claim to be valid under Treas. Reg. § 301.6402-2(b)(1)?
2. What format must a taxpayer use when providing the information referenced above to the Service?



Final Things to Consider

QUESTIONS?



CONTACT ME



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Blockchain and Digital Assets

Joshua Smeltzer represents individuals, corporations, partnerships, and estates in a variety of tax issues involving tax reporting for cryptocurrency and foreign bank accounts, captive insurance arrangements, investments in conservation easements, charitable donations, a variety of tax deduction and tax credit disputes, as well as various transactions involving cryptocurrency and blockchain technology.

FORMER EXPERIENCE:

- Litigator, U.S. Department of Justice – Tax Division

EDUCATION:

- J.D., American University Washington College of Law
- B.S., University of Utah

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TAX LAW



CONTACT ME



TONY BOX

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*Tax Controversy
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Tony Box represents businesses and high-net-worth individuals in all types of civil and criminal tax controversies, white-collar defense cases, regulatory investigations and enforcement actions, and compliance matters focused on preventing government inquiries and minimizing business disruptions. He protects U.S. and international clients spanning several industries, including healthcare, technology, energy, real estate, construction, manufacturing and many more.

PREVIOUS EXPERIENCE:

- Federal prosecutor responsible for leading federal tax investigations and prosecutions in the Eastern District of Missouri
- FBI special agent – computer forensics and financial crimes
- CPA at a Big Four accounting firm
- Tank commander & JAG Officer, US Army

EDUCATION:

- LL.M., Taxation, Washington University in St. Louis
- M.P.A., Harvard Kennedy School
- J.D., Saint Louis University School of Law
- B.A., Accounting, Morehouse College

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