SUBJECT
RESEARCH & DEVELOPMENT TAX CREDIT
MADE PERMANENT

SUMMARY
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.

DETAILS

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.