



TaxNewsFlash

United States

No. 2024-173
May 6, 2024

Eighth Circuit: Taxpayer's research was "funded" and thus ineligible for research tax credits under section 41; Tax Court affirmed

The U.S. Court of Appeals for the Eighth Circuit affirmed a decision of the Tax Court that the taxpayer was not entitled to research tax credits because the taxpayer's research was "funded" within the meaning of section 41(d)(4)(H).

The case is: *Meyer, Borgman & Johnson, Inc. v. Commissioner*, No. 23-1523 (8th Cir. May 6, 2024). Read the Eighth Circuit's [decision](#)

Summary

The taxpayer, a structural engineering firm, created construction documents of the structural design for building projects and claimed approximately \$190,000 in research tax credits for its expenses in creating the designs, which the IRS denied.

The Tax Court ruled in the IRS' favor on summary judgment that the taxpayer's research was "funded by [a] grant, contract, or otherwise by another person (or governmental entity)" within the meaning of section 41(d)(4)(H) and thus the taxpayer did not qualify for the credits. The Tax Court rejected the taxpayer's argument that its right to payment for its research was not funded because it was "contingent on the success of the research" within the meaning of Treas. Reg. § 1.41-4A(d)(1). In particular, the taxpayer claimed that its payments were contingent on the success of its research because "under each of its contracts, [the taxpayer] was required to create a design that included all of the items the owner required, complied with all of the pertinent codes and regulations, would result in a structurally sound building without being so over-engineered as to compromise the construction budget, and was sufficiently detailed that a contractor could follow it and successfully construct it."

The Eighth Circuit agreed with the Tax Court, finding that the taxpayer's contracts had the general economic risk of investing resources without a commitment to be paid, but that the risk was not contingent on the success of the research itself. As stated by the Tax Court, none of the contracts expressly or by clear implication made payment contingent on the success of the taxpayer's research. The taxpayer's clients contracted for design services, and the taxpayer agreed to adhere to professional standards. Requirements to comply with pertinent codes and regulations or to perform pursuant to a general standard of care does "not mandate success" (citing *Geosyntec Consultants, Inc. v. United States*, 776 F.3d 1330, 1341 (11th Cir. 2015)).

The Eight Circuit also rejected the taxpayer's arguments that the inspection, acceptance, and quality assurance provisions under its contracts and the fact that the taxpayer's projects had multiple phases, with the client approving the design documents before the project proceeds to the next phase, meant that the taxpayer's payments under the contracts were contingent on the success of its research. As the Tax Court explained, while the taxpayer's contracts provided a method of acceptance, the provisions lacked the specificity of those in *Fairchild Industries, Inc. v. United States*, 71 F.3d 868 (Fed. Cir. 1996), in which the taxpayer successfully claimed research tax credit because it "had to succeed at each step" of its research to be paid (citing *Geosyntec Consultants, Inc. v. United States*, 776 F.3d 1330, 1340 (11th Cir. 2015)).

kpmg.com/socialmedia



The information contained in TaxNewsFlash is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230, as the content of this document is issued for general informational purposes only, is intended to enhance the reader's knowledge on the matters addressed therein, and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

KPMG International Limited is a private English company limited by guarantee and does not provide services to clients. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm.

Direct comments, including requests for subscriptions, to [Washington National Tax](https://www.washingtonnationaltax.com). For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at +1 202.533 3712, 1801 K Street NW, Washington, DC 20006-1301.

To unsubscribe from TaxNewsFlash, reply to [Washington National Tax](https://www.washingtonnationaltax.com).

[Privacy](#) | [Legal](#)