



**Federal R&D Tax Credit Overview  
Cybersecurity Maturity Model Certification (CMMC) Update**

December 9, 2021

# UHY EXECUTIVE BRIEFING: *Exploring The Misunderstood R&D Tax Credit*

**AUGUST 18, 2021**



# TODAY'S PRESENTER

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**Todd Sutherland**  
Director of R&D Tax Credits

- 25 years experience in Research Tax Credit program
- Publications and Speaking Engagements
  - Texas Society of CPAs (TSCPA)
  - Tax Executives Institute (TEI) - National Conference
  - Tax Executive Institute (TEI) – New Jersey Chapter
  - Tax Executives Institute (TEI) - Connecticut Chapter
  - Tax Executives Institute (TEI) - Houston Chapter
  - Society of Petroleum Engineers
- Education
  - B.S. – Accounting, Millsaps College
  - J.D. – Mississippi College School of Law
  - LL.M. in Taxation – University of Miami School of Law

# AGENDA

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- Overview of RTC program
- State of IRS Examinations
- How to identify RTC opportunities
- Fixed Asset Case Study
- The UHY Approach
- Food Manufacturer Case Study

# RESEARCH TAX CREDIT (RTC)- OVERVIEW

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- IRC Section 41 outlines Credit for Increasing Research Activity (RTC)
  - The credit is a dollar-for-dollar reduction of federal tax liability (and majority of states)
  - The Section 41 credit was made permanent under the PATH Act (December 2015)
    - Was in existence as temporary legislation since 1980s
  - Claimants may amend for RTC on all open tax years (generally the three prior tax years)

# RESEARCH TAX CREDIT (RTC)- OVERVIEW

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- IRC Section 41 outlines Credit for Increasing Research Activity (RTC)
  - The RTC is in addition to R&D expenditures
  - The credit is an “after tax” benefit; a tax rate is applied to credit amount
  - Unused credits may be carried forward 20 years
  - US Treasury budgets \$13 billion annually to fund the RTC program
  - 3 year statute of limitations may not apply to taxpayers in historical NOLs
  - RTCs are tax assets, impact effective tax rate & EPS

# HOW TO IDENTIFY AN R&D TAX CREDIT OPPORTUNITY

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## Common “Misconceptions”

- Traditional use of term “Research & Development”
- We don’t have an R&D department
- We are not innovative
- We just improve our products
- Our customers design and we fabricate; our customers own the tool
- The technology already exists in the industry, but it new to us

# HOW TO IDENTIFY AN R&D TAX CREDIT OPPORTUNITY

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## 1. What is a Qualified Activity as Defined by Tax Code?

- Congressional Intent
- Treasury & IRS Regulations - Statutory 4-Part Test
- Regulatory Examples
- Case Law



# HOW TO IDENTIFY AN R&D TAX CREDIT OPPORTUNITY

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Qualified Research Activities (QRAs) must meet the following statutory 4 Part Test

1. IRC Section 174 Test
2. Business Purpose Test
3. Process of Experimentation Test
4. Hard Science Test

# HOW TO IDENTIFY AN R&D TAX CREDIT OPPORTUNITY – 174 TEST

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- Congress enacted section 174 in 1954, **it left it to Treasury and the IRS to define** the term “research or experimental expenditures” in the regulations.
- The current section 174 regulations define R&E costs **in the experimental or laboratory sense**
  - Information available to the taxpayer does not establish the capability, methodology or appropriate design associated with developing or improving a product or process; and

Query - How does a taxpayer determine or establish this uncertainty?

# HOW TO IDENTIFY AN R&D TAX CREDIT OPPORTUNITY – 174 TEST

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- Determining uncertainty is **based on the taxpayer's facts and circumstances**
- No bright-line standard is not appropriate under section 174.
- The Treasury Department and the IRS agree that a **taxpayer's knowledge that a product development project will be successful does not preclude the process of determining the appropriate design of the product from qualifying research**

# HOW TO IDENTIFY AN R&D TAX CREDIT OPPORTUNITY – 174 TEST

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## Indications of Uncertainty

- Confidence in the product development but uncertain as to the product design
- Depends on the nature of the activity NOT the level of technological advancement
- No requirement for technological revolutionary
- No requirement of significant advancement

# HOW TO IDENTIFY AN R&D TAX CREDIT OPPORTUNITY – 174 TEST

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- AEROSPACE OPPORTUNITIES
  - Technical bidding/feasibility studies
  - Design responsible or collaboration
  - Build to Print process development (APQP)
  - 1<sup>st</sup> article costs/Custom Engineered COGS
  - Continuous Improvement Activities
  - Capex for improvements to production capabilities

# HOW TO IDENTIFY AN R&D TAX CREDIT OPPORTUNITY – 174 TEST

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## 3. Process of Experimentation (PoE) Test

- Statements made by IRS & Treasury (preamble to 2003 final regulations)
  - Experimentation takes many different forms in commercial and industrial settings.
  - Experimentation cannot be defined in advance through regulatory standards.
  - The application of the PoE test will depend heavily on each taxpayer's particular facts and circumstances.

# HOW TO IDENTIFY AN RTC OPPORTUNITY – COMPANY PROFILE

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- 1. Look for the involvement of a science**
  - Common – engineering (mechanical, electrical), computer science, biology, chemistry, electronics
  - Uncommon – fabrication, welding, automation, process control systems
  
- 2. Look for certain job titles (in-house or outsourced)**
  - Degreed - Engineer, Scientist, PhD
  - Experienced – Welder, Drafter, Machinist, CNC Operator, CAD Designer
  - Uncommon – Industrial Engineering (continuous improvements, study of man vs. machine interaction)
  
- 3. Look for operational diversity**
  - Attempting to become bigger, faster, stronger, cash savings
  - Driven by changes in regulatory, feedstock, materials, machinery, lean initiatives
  - New product codes or SKUs
  - “Job shop” companies – unique configuration for each job

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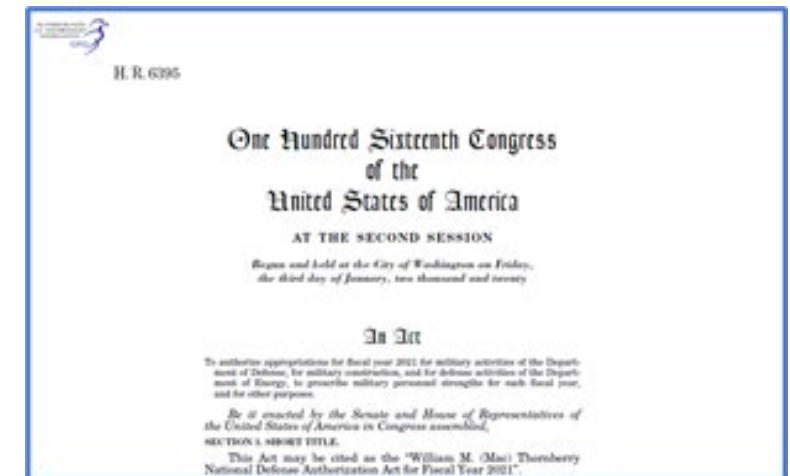


# CMMC: Supply Base Impacts – Perspective

Nicole D. Young  
Vice President IT – Industrial Sector

# Cybersecurity Maturity Model Certification (CMMC 2.0)

- What is it?
  - US Department of Defense (DoD) framework to **assess and enhance** cybersecurity posture of the Defense Industrial Base (DIB) ensuring implementation of appropriate **cybersecurity** practices and **processes** in unclassified networks for Federal Contract Information (FCI) & Controlled Unclassified Information (CUI)
  - Largely derived from **NIST 800-171** requirements incorporated under DFARS cybersecurity clause 252.204-7012 from December 31, 2017, CMMC 1.0 was included in the 2021 National Defense Authorization Act (NDAA) and passed by Congress on December 15, 2020
  - Evolved from CMMC 1.0 to more stream-lined CMMC 2.0 on November 4, 2021
- Who does it impact in the DIB?
  - Affects Prime contractors and **ALL subcontractors** in a multi-tier supply chain and their **solutions that contain & transmit CUI**
- When will it happen?
  - ~~FY October 2025~~; now in rule-making and **could be 9 – 24 months** for all new or CMMC Level will be specified
- Why do we need this?
  - Cybercrime is rising globally each year with losses estimated from \$600B to \$1T



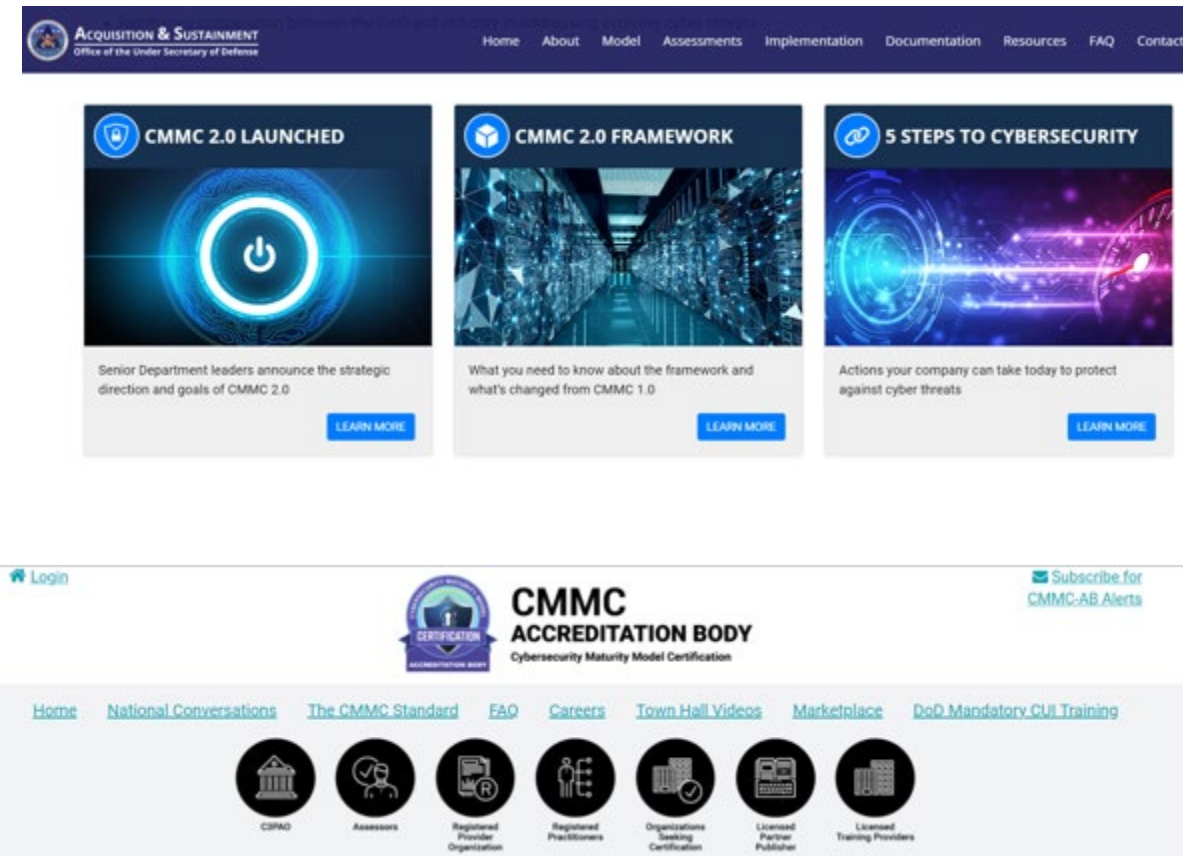
# CMMC 2.0 | New Guidance (4 Nov 2021)

- CMMC 2.0 requirement is now following normal rule making process which typically takes 9 – 24 months
  - Implementation timing may be earlier than initially planned in CMMC 1.0
  - After publication CMMC assessment and certification will become an award criteria
    - Contracts will specify certification level required
    - Subcontractors may need equal or lesser certification; depends on CUI flow-down
- Undefined limited conditions may allow companies to an enforceable Plan of Action & Milestones achieve certification if contract not sensitive; bound

| CMMC Model 2.0                 |   |  |
|--------------------------------|---|--|
|                                | Model   | Assessment   |
| <b>LEVEL 3</b><br>Expert       | <b>110+</b><br>practices based on<br>NIST SP 800-172    | Triannual government-led assessments   |
| <b>LEVEL 2</b><br>Advanced     | <b>110</b><br>practices aligned with<br>NIST SP 800-171 | Triannual third-party assessments for critical national security information; Annual self-assessment for select programs |
| <b>LEVEL 1</b><br>Foundational | <b>17</b><br>practices                                  | Annual self-assessment   |

# CMMC 2.0 – helpful information

- Bookmark these! They are updated as information changes:
- Office of the Under Secretary of Defense: Acquisition & Sustainment
  - [OUSD A&S - Cybersecurity Maturity Model Certification \(CMMC\) \(osd.mil\)](https://osd.mil)
- CMMC Accreditation Body
  - [CMMC-AB | \(cmmcab.org\)](https://cmmcab.org)







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**Vicki Selva**

*Executive Director*

## The Michigan Defense Center

*Where the Arsenal of Democracy,  
Meets the Arsenal of Innovation™*

# The Michigan Defense Center is the State of Michigan's strategic and coordinating body for the national security industry, missions and facilities.



The MDC is the state's lead voice on Michigan's Defense, Defense Aerospace and Homeland Security economy, and is a liaison between the state and defense interests in the government, industry, academia and the defense community.



- ✓ Promote Michigan's defense assets and industry to the state and the nation
- ✓ Protect and grow missions, industry, community
- ✓ Coordinate national and statewide resources and organizations to create a growth environment for Michigan companies and employment
- ✓ Building a successful defense and homeland security eco-system



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## DoD Cybersecurity Compliance Grant



### Michigan Defense CyberSmart Program

for Michigan Companies



#### Michigan Defense CyberSmart Grant Program

The Michigan Defense Center is offering Michigan's small and medium-sized defense contractors a comprehensive one-stop shop to DoD cybersecurity compliance to save this nation's federal supply chain—and your business.

Reduced pricing on your Gap Analysis along with grants to get you to the appropriate level of the Cybersecurity Maturity Model Certification (CMMC) makes this a unique program and is only offered to Michigan companies!

Direct contractor or sub, small, medium or large, every company is required to meet these mandates to continue current or bid on new contracts. There are no waivers. Get started now.

**\$1,500**

Start the CMMC Process Receive a Complete On-site Standardized Gap Analysis Report From a Pre approved Cybersecurity Vendor

Up to  
**\$15,000**

Grant Funding Available to Pursue DoD Cybersecurity Compliance

**Application**  
**HERE**

#### Overview of CyberSmart Program

The Michigan Defense Center (MDC/MEDC) has pre-qualified Michigan contractors to provide cybersecurity technical services to assist with the implementation of the requirements in National Institute of Standards and Technology Special Publication (NIST SP) 800-171 required for meeting DFARS 252.204-7012 requirements, and direction on CMMC compliance for all United States Departments of Defense (DoD) and Homeland Security (DHS) contracts and work in the federal supply chain.

CyberSmart Phase 1: Michigan small and medium-sized businesses can contract with the pre-approved vendor list to develop gap analysis report at a pre-negotiated discounted cost of \$1,500 as the first step toward compliance and Cybersecurity Maturity Model Certification (CMMC). The gap analysis allows companies to submit to SPRS and other requirements.

CyberSmart Phase 2: After completing Phase 1 by completing a Gap Analysis with a pre-approved vendor, up to \$15,000 in grant funding is available to address any deficiencies in their IT infrastructure, and become fully compliant with DoD cybersecurity requirements for all contractors.

#### Get Smart Start

##### Educational Resources

- Bid Targeting System (BTS) Self Assessment Tool
- Defense Cybersecurity Assistance Program (DCAP)
- Michigan Manufacturing Technology Center (MMTC)
- Procurement Technical Assistance Center (PTAC)



- Cybersecurity Vendor Referral List
- Standardized NIST 800-171 Gap Analysis - \$1,500 maximum
- The standardized Gap Analysis will provide the information to complete your POA/IT as a SIF, as well as get registered in SPRS if needed.

- CMMC Levels 1, 2, 3 Resources
- Companies are connected to service providers for POA/IT and other consultation services

- Michigan Defense Remediation Grant
- SPR matches up to \$15,000 in remediation and consulting fees
- Must meet all eligibility requirements

- MDC Promotes Compliance/Certified Michigan Companies
- Bid Targeting System (BTS) records compliance and certification in active DoD programs. Partners and companies identify potential suppliers in BTS.





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Resources



### [The BidTarget® System Program](#)


[Register for a FREE Account](#)

[Register your firm, then BTS helps find federal contracts for your firm's expertise. If the firm is in System for Award Management \(SAM\), get auto matches from NAICS codes and set-asides, to pinpoint the best fit opportunities. You have the best chance of winning what BTS uncovers. Start now.](#)




### [Proposal Writing Services Grant Program](#)

[Improve your chances of winning a federal contract with our grant program. The Michigan Defense Center \(MDC\) offers it to assist Michigan firms in writing a winning bid response. Grant funds subsidize up to 50% \(max \\$10K\) of the cost of proposal writing services contracted through one of the MEDC pre-qualified bid-writing firms.](#)




### [CyberSmart Defense Cybersecurity Grant Program](#)

[Offers Michigan's small to medium defense contractors a broad one-stop shop to federal cybersecurity compliance to save our nation's federal supply chain and your business. This program, one of the first in the U.S., provides a solution to the federal mandate, driving standardization, accountability and cost-effectiveness.](#)



### [MDC Resource Guide for Federal Contracting](#)

[Explore ways to expand your portfolio, protect your firm from cyclical downturns and grow your bottom line. Defense/Defense Aerospace/Homeland Security contracting isn't easy, but it is lucrative. Michigan's defense ecosystem and resources can position your Michigan firm to take advantage of this market.](#)



### [Procurement Technical Assistance Center \(PTAC\)](#)

[The mission of the Procurement Technical Assistance Center \(PTAC\) is to enhance the national defense and economic development of the State of Michigan by helping area businesses secure local, state, and federal contracts. PTACS provide information on how to register for federal work, matching services for state and federal contracts as well as other information on federal compliance issues and educational resources.](#)

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# Michigan Defense Resiliency Program

## Defense Cybersecurity Assurance Projects (DCAP)

- CMMC 2.0 level 2 + preparation
- Compliance Support Projects
- Cost Share Funding

## Defense Succession Assurance Projects

- Succession Planning Assistance
  - Valuation Assessment
  - Succession Assessment
  - Development of Opportunity Plan
- Technical Assistance Projects (cost share up to \$30,000)

## Eligibility Requirements:

- Company operations in Michigan
- At least 10% annually of business revenues from DoD-derived contracts currently or within the past 5 years
  - Or demonstrates critical potential to address a particular need in the defense supply chain
- Company has less than 500 employees

### Contact Information:

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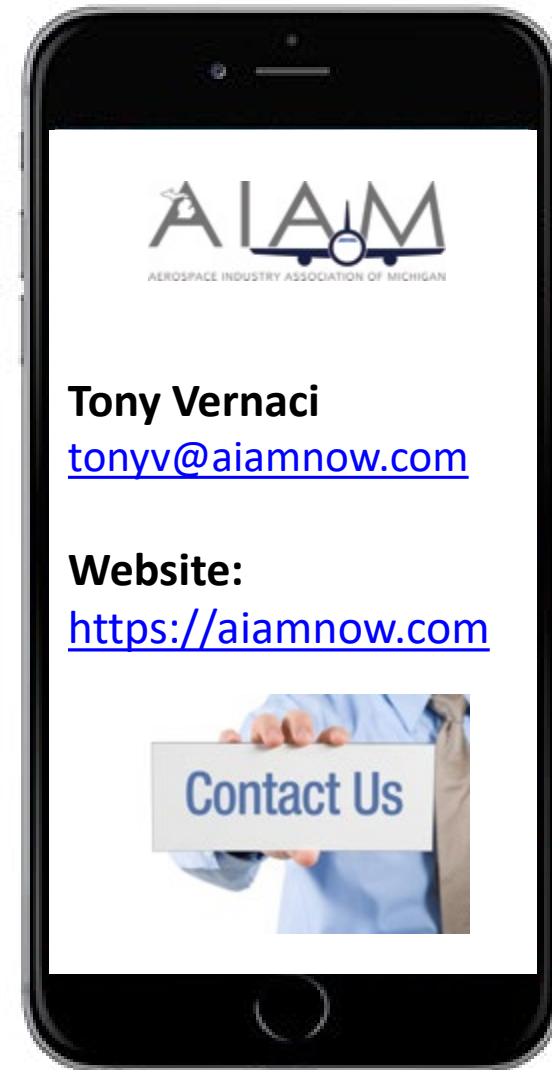
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