

IPB and the Research Credit

Since the inception of the research credit in the 1980s, IPB has specialized in representing large, high-tech clients claiming the credit. Jeff Moeller, one of the leading practitioners on the research credit issue, heads up IPB's IRS appellate and litigation practice in this area. Jeff's experience goes back to his representation of the Aerospace Industries Association of America, Amicus Curiae in the seminal 1996 case, *Fairchild Industries v. US*, 71 F.3d 868 (Fed. Cir. 1995), for which he authored an influential brief that helped establish the contours of today's research credit law.

Since that time, Jeff has represented major defense contractors, computer software companies, pharmaceutical companies, and oil and gas companies before the IRS and has negotiated IRS settlements in excess of a billion dollars in credits. He speaks frequently on complex issues involving the credit, and, along with BNA and Morgan Lewis, runs an annual day-long seminar in Washington DC. In 2007, he was asked by the IRS to join a research credit task force advising on coordinated issues for which it was seeking solutions, again helping to establish the contours of the law today.

In 2009, Jeff filed what is still the largest docketed research credit case in US history, *Bayer Corp v. US*, Case no. 09-cv-351 (U.S. District Court, W.D. Pa. - pending). It involved \$6 billion in claimed research expenditures and almost \$200 million in credit. The case required coordination of dozens of advisors, hundreds of experts, tens of thousands of research projects, and trillions of bytes of data on multiple old and decommissioned mainframes. The litigation hold order spanned twenty years.

The government sought to swamp the taxpayer, taking advantage of the size of the case and requiring Bayer to "prove every dollar." However, IPB devised and won a ground-breaking motion allowing a taxpayer to proceed with proving its case using unilateral statistical sampling. Sampling methodology is always a key and complicated issue in large research credit controversies. Without the government's consent, an important taxpayer victory, which as the government argued, had no precedent. The pro-taxpayer ruling prompted the government to enter into settlement negotiations, and IPB negotiated a highly-favorable settlement.