

Recapture of Investment Credit

OMB No. 1545-0166

► Attach to your income tax return.

Attachment
Sequence No. **172**

Name(s) as shown on return

Identifying number

| Properties | Type of property—State whether rehabilitation, energy, reforestation, qualifying advanced coal project, qualifying gasification project, qualifying advanced energy project, or qualifying therapeutic discovery project property. (See the Instructions for Form 3468 for the year the investment credit property was placed in service for definitions.) If rehabilitation property, also show type of building. If energy property, show type. |
|------------|---|
| A | |
| B | |
| C | |
| D | |

Original Investment Credit

| Computation Steps: (see Specific Instructions) | | Properties | | | |
|--|---|------------|---|---|---|
| | | A | B | C | D |
| 1 Original rate of credit | 1 | | | | |
| 2 Cost or other basis | 2 | | | | |
| 3 Original credit (see instructions) | 3 | | | | |
| 4 Date property was placed in service | 4 | | | | |
| 5 Date property ceased to be qualified investment credit property | 5 | | | | |
| 6 Number of full years between the date on line 4 and the date on line 5 | 6 | | | | |

Recapture Tax

| | | | | | |
|---|---|--|--|----|--|
| 7 Recapture percentage (see instructions) | 7 | | | | |
| 8 Tentative recapture tax. Multiply line 3 by the percentage on line 7 | 8 | | | | |
| 9 Add all the amounts on line 8 | | | | 9 | |
| 10 Enter the tentative recapture tax from property for which there was an increase in nonqualified nonrecourse financing. Attach a separate schedule (see instructions) | | | | 10 | |
| 11 Add lines 9 and 10 | | | | 11 | |
| 12 Unused credits (see instructions) | | | | 12 | |
| 13 Subtract line 12 from line 11. See section 45K(b)(4) if you claim the nonconventional source fuel credit. Electing large partnerships, see instructions | | | | 13 | |
| 14 Recapture of qualifying therapeutic discovery project grant. Attach statement (see instructions) | | | | 14 | |
| 15 Total increase in tax. Add lines 13 and 14. Enter here and on the appropriate line of your tax return | | | | 15 | |

What's New

- The types of property subject to recapture now include qualified investments under the qualifying therapeutic discovery project program.
- If you received a qualifying therapeutic discovery project grant under section 9023 of the Affordable Care Act (ACA), and must recapture any part of that grant, use Form 4255 to report the increase in tax.
- The qualifying therapeutic discovery project credit was added as an investment credit.

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

Use Form 4255 to figure the increase in tax for the recapture of investment credit

claimed and for the recapture of a qualifying therapeutic discovery project grant.

Credit Recapture Requirements and Special Rules

Generally, you must refigure the investment credit and may have to recapture all or part of it if any of the following apply.

- You disposed of investment credit property before the end of 5 full years after the property was placed in service (recapture period).
- You changed the use of the property before the end of the recapture period so that it no longer qualifies as investment credit property.
- The business use of the property decreased before the end of the recapture period so that it no longer qualifies (in

whole or in part) as investment credit property.

- Any building to which section 47(d) applies will no longer be a qualified rehabilitated building when placed in service.
- Any property to which section 48(b) applies will no longer qualify as investment credit property when placed in service.
- Before the end of the recapture period, your proportionate interest was reduced by more than one-third in a partnership (other than an electing large partnership), S corporation, estate, or trust that allocated the cost or other basis of property to you for which you claimed a credit.
- You received a grant under section 1603 of the American Recovery and Reinvestment Tax Act of 2009 for investment credit property for which you figured a credit for any prior year.

- A net increase in the amount of nonqualified nonrecourse financing occurred for any property to which section 49(a)(1) applied. For more details, see the instructions for line 10.
- You returned leased property (on which you claimed a credit) to the lessor before the end of the recapture period.
- In the case of a project under the Phase II gasification program, failure at any time during the applicable recovery period (as defined in section 168(c)) to attain and maintain the separation and sequestration requirements in section 48B(d)(1)(B). For more information, see Notice 2009-23, 2009-16 I.R.B. 802.
- In the case of a project under the Phase II qualifying advanced coal project program, failure during the applicable recovery period (as defined in section 168(c)) to attain and maintain the separation and sequestration requirements in section 48A(e)(1)(G). For more information, see Notice 2009-24, 2009-16 I.R.B. 817.

Exceptions to recapture. Recapture of the investment credit does not apply to the following.

- A transfer because of the death of the taxpayer.
- A transfer between spouses or incident to divorce under section 1041. However, a later disposition by the transferee is subject to recapture to the same extent as if the transferor had disposed of the property at the later date.
- A transfer of an interest in an electing large partnership.
- A transaction to which section 381(a) applies (relating to certain acquisitions of the assets of one corporation by another corporation).
- A mere change in the form of conducting a trade or business if:
 1. The property is retained as investment credit property in that trade or business, **and**
 2. The taxpayer retains a substantial interest in that trade or business.

A mere change in the form of conducting a trade or business includes a corporation that elects to be an S corporation and a corporation whose S election is revoked or terminated.

For more details on the recapture rules, see section 50(a).

Caution. See section 46(g)(4) (as in effect on November 4, 1990) to figure the recapture tax if you made a withdrawal from a capital construction fund set up under the Merchant Marine Act of 1936 to pay the principal of any debt incurred in connection with a vessel on which you claimed investment credit.

Recapture of Qualifying Therapeutic Discovery Project Grant

You may have to recapture all or part of a qualifying therapeutic discovery project grant paid under section 9023 of the ACA. If you received a qualifying therapeutic discovery project grant and the amount of the grant is more than the amount of the allowable grant, you must include the difference as an increase in tax as if the investment to which the excess portion of the grant relates had ceased to be a qualified investment immediately after the grant was made. The increase in tax for any recapture of a qualifying therapeutic discovery project grant is imposed on the person to whom the grant was made. In the case of pass-through entities (including partnerships, S corporations, estates, and trusts), the tax is imposed at the entity level.

Basis Adjustment on Recapture

For property subject to investment credit or qualifying therapeutic discovery project grant recapture, increase the property's basis as follows.

- For rehabilitation credit property, qualifying advanced coal project property, qualifying gasification project property, qualifying advanced energy project property, or depreciable qualifying therapeutic discovery project property, increase the basis by 100% of the amount, attributable to each such property, of the recapture tax, adjustments to carrybacks and carryforwards under section 39, or adjustments to disallowed passive activity credits.
- For energy property or qualified timber property, increase the basis by 50% of the amount, attributable to each such property, of the recapture tax, adjustments to carrybacks and carryforwards under section 39, or adjustments to disallowed passive activity credits.

If you are a partner or S corporation shareholder, the adjusted basis of your interest in the partnership or stock in the S corporation is adjusted to take into account the adjustment made to the basis of property held by the partnership or S corporation.

For more information, see section 50(c) and Regulations section 1.469-3(f).

Specific Instructions

Note. Do not figure the recapture tax on lines 1 through 9 if there is an increase in nonqualified nonrecourse financing related to certain at-risk property. Figure the tentative recapture tax for these properties on separate schedules and enter the recapture tax on line 10. Include any unused credit for these properties on line 12.

Partnerships, S corporations, estates, and trusts. For a partnership, S corporation, estate, or trust that allocated any or all of the investment credit to its partners, shareholders, or beneficiaries, provide the information they need to refigure the credit. See Regulations sections 1.47-4(a) and (c), 1.47-5, and 1.47-6. See the instructions for Form 1065-B for information on recapture of the investment credit by electing large partnerships.

For a partnership, S corporation, estate, or trust that must recapture any part of a qualifying therapeutic discovery project grant, figure the increase in tax at the entity level. Do not complete lines 1 through 13 to figure this increase in tax. Figure the increase in tax on a separate statement and enter the result on line 14. See the instructions for line 14.

Partners, shareholders, and beneficiaries. If your Schedule K-1 shows recapture of investment credit claimed in an earlier year, you will need your copy of the original Form 3468 to complete lines 1 through 6 of this Form 4255.

Lines A through D. Describe the property for which you must refigure the credit.

Complete lines 1 through 8 for each property on which you are refiguring the credit. Use a separate column for each item. If you need more columns, use additional Forms 4255 or other schedules that include all the information shown on Form 4255. Enter the total from all the separate sheets on line 9.

Line 1. Enter the rate you used to figure the original credit from the Form 3468 that you filed.

Line 2. Enter the cost or other basis that you used to figure the original credit. If there has been a net increase in nonqualified nonrecourse financing with respect to the property that you have disposed of or that has otherwise ceased to be investment credit property, enter the cost or other basis you used to figure the original credit reduced by the amount of that net increase. If there has been a net decrease in nonqualified nonrecourse financing with respect to the property, enter the cost or other basis you used to figure the original credit plus the amount of that net decrease. For more details, see section 49(b).

Line 3. Enter the amount of the credit determined under section 46. If the credit determined for the property for which you must refigure the credit was limited (for example, by the kilowatt limit in section 48(c)(1)(B)), do not enter on line 3 more than the amount of the applicable limit.

Line 4. Enter the date (month/day/year) on which the property was placed in service, using the first day of the month in which the property is placed in service. For example, if the property was placed in service on February 20, 2008, enter 02/01/2008 on line 4. See Regulations section 1.47-1(c) for more information.

Line 5. Generally, this will be the date you disposed of the property. For more details, see Regulations section 1.47-1(c).

Line 6. Do not enter partial years. If the property was held less than 12 months, enter zero. In case of failure to attain or maintain the separation and sequestration requirements applicable to a Phase II gasification program or a Phase II advanced coal program, enter zero. For more information, see Notice 2009-23, 2009-16 I.R.B. 802, and Notice 2009-24, 2009-16 I.R.B. 817.

Line 7. Enter the recapture percentage from the following table.

| IF the number of full years on line 6 of Form 4255 is . . . | THEN the recapture percentage is . . . |
|---|--|
| 0 | 100 |
| 1 | 80 |
| 2 | 60 |
| 3 | 40 |
| 4 | 20 |
| 5 or more | 0 |

Line 9. If you have used more than one Form 4255, or separate sheets to list additional items on which you figured an increase in tax, write to the left of the entry space "Tax from attached" and the total tax from the separate sheets. Include the amount in the total for line 9.

Line 10. For certain taxpayers, the basis or cost of property is limited to the amount the taxpayer is at risk for the property at the end of the tax year. The basis or cost must be reduced by the amount of any "nonqualified nonrecourse financing" related to the property at the end of the tax year. If there is an increase in nonqualified nonrecourse financing, recapture may be required. See section 49(b) for details. For each property for which there is a net increase in nonqualified nonrecourse financing, figure the tentative recapture tax by multiplying the net increase by the percentage originally used to figure the credit. Enter the total tentative recapture tax for all such properties on line 10.

Line 12. Generally, enter the amount of unused credits from line 3 plus the amount of any other general business credit carrybacks and carryforwards that would have been allowed instead of the refigured credit. If you did not use all the credit you originally figured, either in the year you figured it or in a carryback or carryforward year, you do not have to recapture the amount of the credit you did not use. In refiguring the credit for the original credit year, be sure to include any carryforwards from previous years, plus any carrybacks arising within the first tax year (5 years for eligible small business credits (ESBCs) as defined in section 38(c)(5)(B)) after the original credit year that are now allowed because the recapture and recomputation of the original credit made available some additional tax liability in that year. See Regulations section 1.47-1(d) and Rev. Rul. 72-221, 1972-1 C.B. 15, for details.

Figure the unused portion on a separate sheet and enter it on this line. Do not enter more than the recapture tax on line 11.

Example 1. In 2007, Maayan earned a rehabilitation credit of \$100,000 from property A. Maayan used all of the credit to offset \$100,000 of tax in 2007. In 2008, Maayan earned a rehabilitation credit of \$75,000 from property B and used none of the credit to offset tax. In 2009, property A ceased to be investment credit property and Maayan must refigure the credit from property A. Her recapture percentage is 60%. She enters \$60,000 on lines 9 and 11. Because unused investment credits can be carried back one year (5 years for ESBC's), Maayan could have carried the rehabilitation credit from property B back to the original credit year for property A, 2007, and she may include \$60,000 of the \$75,000 carryforward from property B on line 12. Maayan's total increase in tax (line 13) for 2009 is \$0.

Example 2. In 2007, Ian earned a rehabilitation credit of \$100,000 from property A. Ian used \$1,000 of the credit to offset tax in 2007 and used \$99,000 as a carryforward to offset tax in 2008. In 2009, Ian earned a rehabilitation credit of \$75,000 from property B and used none to offset tax. On February 1, 2009, property A ceased to be investment credit property and Ian must refigure the credit from property A. His recapture percentage is 80%. He enters \$80,000 on lines 9 and 11. The unused credit for property B (\$75,000) cannot be entered on line 12 because that credit was earned in 2009 and cannot be carried back two years to 2007, the original credit year for property A. Unused investment credits can be carried back only one year (5 years for ESBC's) and any remaining unused credit must be carried forward. Ian's total increase in tax (line 13) for 2009 is \$80,000.

Caution. *Disallowed passive activity credits (as defined in section 469(d)(2)) can be used on line 12 only to the extent that credits from passive activities are included on line 11. Unused credits other than "specified credits" (as defined in section 38(c)(4)(B)) and ESBCs can be used on line 12 only to the extent that credits other than specified credits and ESBCs are included on line 11.*

Note. Be sure to adjust your current unused credit to reflect any unused portion of the original credit that was entered on line 12 of this form.

Special rule for electing large partnerships. Electing large partnerships must enter zero on line 12. These partnerships are required to determine the amount of investment credit recapture as if the credit subject to recapture had been fully used to reduce tax.

Line 13. Special rule for electing large partnerships. Subtract the current year credit, if any, shown on Form 3468, from the amount on line 11. Enter the result (but not less than zero) on line 13.

Line 14. Recapture of qualifying therapeutic discovery project grant.

Enter the amount of any qualifying therapeutic discovery project grant required to be recaptured under section 9023(e) of the ACA. Do not complete lines 1 through 13 to figure this increase in tax. Attach a statement showing how you figured the increase in tax. Do not adjust the increase in tax for any unused investment credit. Partnerships, S corporations, estates, and trusts, figure the increase in tax at the entity level.

Line 15. Enter the line 15 amount on the appropriate line of your tax return (for example, 2010 Form 1120, Schedule J, line 10, or 2010 Form 1120S, line 22c). Partnerships (other than electing large partnerships), enter the amount from line 15 in the margin of the line for Ordinary business income (loss) on Form 1065, U.S. Return of Partnership Income, (for example, 2010 Form 1065, line 22) and identify the entry as "QTDP grant."

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is approved under the OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is shown below.

Recordkeeping 4 hr., 4 min.

Learning about the law or the form 4 hr., 6 min.

Preparing, copying, assembling, and sending the form to the IRS 6 hr., 45 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.