



Tax Reduction Letter

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Internal Revenue Code Section 50(b)(2)(C)

Other special rules.

(a) Recapture in case of dispositions, etc. Under regulations prescribed by the Secretary—

(1) Early disposition, etc.

(A) General rule. If, during any taxable year, investment credit property is disposed of, or otherwise ceases to be investment credit property with respect to the taxpayer, before the close of the recapture period, then the tax under this chapter for such taxable year shall be increased by the recapture percentage of the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero any credit determined under this subpart with respect to such property.

(B) Recapture percentage. For purposes of subparagraph (A), the recapture percentage shall be determined in accordance with the following table:

If the property ceases to be investment credit property within—	The recapture percentage is:
(i) One full year after placed in service.	100
(ii) One full year after the close of the period described in clause (i).	80
(iii) One full year after the close of the period described in clause (ii).	60
(iv) One full year after the close of the period described in clause (iii).	40
(v) One full year after the close of the period described in clause (iv).	20

(2) Property ceases to qualify for progress expenditures.

(A) In general. If during any taxable year any building to which section 47(d) applied ceases (by reason of sale or other disposition, cancellation or abandonment of contract, or otherwise) to be, with respect to the taxpayer, property which, when

- placed in service, will be a qualified rehabilitated building, then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero the credit determined under this subpart with respect to such building.
- (B) Certain excess credit recaptured. Any amount which would have been applied as a reduction under paragraph (2) of section 47(b) but for the fact that a reduction under such paragraph cannot reduce the amount taken into account under section 47(b)(1) below zero shall be treated as an amount required to be recaptured under subparagraph (A) for the taxable year during which the building is placed in service.
 - (C) Certain sales and leasebacks. Under regulations prescribed by the Secretary, a sale by, and leaseback to, a taxpayer who, when the property is placed in service, will be a lessee to whom the rules referred to in subsection (d)(5) apply shall not be treated as a cessation described in subparagraph (A) to the extent that the amount which will be passed through to the lessee under such rules with respect to such property is not less than the qualified rehabilitation expenditures properly taken into account by the lessee under section 47(d) with respect to such property.
 - (D) Coordination with paragraph (1). If, after property is placed in service, there is a disposition or other cessation described in paragraph (1), then paragraph (1) shall be applied as if any credit which was allowable by reason of section 47(d) and which has not been required to be recaptured before such disposition, cessation, or change in use were allowable for the taxable year the property was placed in service.
 - (E) Special rules. Rules similar to the rules of this paragraph shall apply in cases where qualified progress expenditures were taken into account under the rules referred to in section 48(b).
- (3) Carrybacks and carryovers adjusted. In the case of any cessation described in paragraph (1) or (2), the carrybacks and carryovers under section 39 shall be adjusted by reason of such cessation.
 - (4) Subsection not to apply in certain cases. Paragraphs (1) and (2) shall not apply to—
 - (A) a transfer by reason of death, or
 - (B) a transaction to which section 381(a) applies.
- For purposes of this subsection, property shall not be treated as ceasing to be investment credit property with respect to the taxpayer by reason of a mere change in the form of conducting the trade or business so long as the property is retained in such trade or business as investment credit property and the taxpayer retains a substantial interest in such trade or business.
- (5) Definitions and special rules.

(A) Investment credit property. For purposes of this subsection, the term "investment credit property" means any property eligible for a credit determined under this subpart.

(B) Transfer between spouses or incident to divorce. In the case of any transfer described in subsection (a) of section 1041—

(i) the foregoing provisions of this subsection shall not apply, and

(ii) the same tax treatment under this subsection with respect to the transferred property shall apply to the transferee as would have applied to the transferor.

(C) Special rule. Any increase in tax under paragraph (1) or (2) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit allowable under this chapter.

(b) Certain property not eligible. No credit shall be determined under this subpart with respect to—

(1) Property used outside United States.

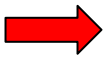
(A) In general. Except as provided in subparagraph (B), no credit shall be determined under this subpart with respect to any property which is used predominantly outside the United States.

(B) Exceptions. Subparagraph (A) shall not apply to any property described in section 168(g)(4).

(2) Property used for lodging. No credit shall be determined under this subpart with respect to any property which is used predominantly to furnish lodging or in connection with the furnishing of lodging. The preceding sentence shall not apply to—

(A) nonlodging commercial facilities which are available to persons not using the lodging facilities on the same basis as they are available to persons using the lodging facilities.

(B) property used by a hotel or motel in connection with the trade or business of furnishing lodging where the predominant portion of the accommodations is used by transients;



(C) a certified historic structure to the extent of that portion of the basis which is attributable to qualified rehabilitation expenditures; and

(D) any energy property.

(3) Property used by certain tax-exempt organization. No credit shall be determined under this subpart with respect to any property used by an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter unless such property is used predominantly in an unrelated trade or business the

income of which is subject to tax under section 511. If the property is debt-financed property (as defined in section 514(b)), the amount taken into account for purposes of determining the amount of the credit under this subpart with respect to such property shall be that percentage of the amount (which but for this paragraph would be so taken into account) which is the same percentage as is used under section 514(a), for the year the property is placed in service, in computing the amount of gross income to be taken into account during such taxable year with respect to such property. If any qualified rehabilitated building is used by the tax-exempt organization pursuant to a lease, this paragraph shall not apply for purposes of determining the amount of the rehabilitation credit.

(4) Property used by governmental units or foreign persons or entities.

(A) In general. No credit shall be determined under this subpart with respect to any property used—

(i) by the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing, or

(ii) by any foreign person or entity (as defined in section 168(h)(2)(C)), but only with respect to property to which section 168(h)(2)(A)(iii) applies (determined after the application of section 168(h)(2)(B)).

(B) Exception for short-term leases. This paragraph and paragraph (3) shall not apply to any property by reason of use under a lease with a term of less than 6 months (determined under section 168(i)(3)).

(C) Exception for qualified rehabilitated buildings leased to governments, etc. If any qualified rehabilitated building is leased to a governmental unit (or a foreign person or entity) this paragraph shall not apply for purposes of determining the rehabilitation credit with respect to such building.

(D) Special rules for partnerships, etc. For purposes of this paragraph and paragraph (3), rules similar to the rules of paragraphs (5) and (6) of section 168(h) shall apply.

(E) Cross reference. For special rules for the application of this paragraph and paragraph (3), see section 168(h).

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