

2009 Form 4255, Recapture of Investment Credit

Purpose: This is the first circulated draft of the 2009 Form 4255 for your review and comments. See below for a discussion of the major changes.

TPCC Meeting: None, one but may be arranged if requested.

Prior Version: The December 2006 Form 4255 is available at:
<http://www.irs.gov/pub/irs-pdf/f4255.pdf>

Other Products: Circulations of draft tax forms, instructions, notices, and publications are posted at:
<http://taxforms.web.irs.gov/Circulations/index.htm>

Comments: Please email, fax, call, or mail any comments to me and e-mail the reviewer at daniel.v.brooks@irs.gov by **July 24, 2009**.

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Major Changes to the 2009 Form 4255

Pub. L. 111-5 section 1302, adds new section 48C, a new Qualifying Advanced Energy Project Credit within the investment tax credit. Qualifying Advanced Energy Project Credit property is therefore subject to recapture under section 50 and on Form 4255.

Properties: Types of properties includes qualifying advanced energy project credit property.

Form **4255**
(Rev. February 2006)
Department of the Treasury
Internal Revenue Service

Recapture of Investment Credit

OMB No. 1545-0166

Attachment
Sequence No. **65**

▶ Attach to your income tax return.

Name(s) as shown on return	Identifying number
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Properties	Type of property—State whether rehabilitation, energy, reforestation, qualifying advanced coal project, or qualifying gasification 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. Multiply line 2 by the percentage on line 1	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 recapture tax from property for which there was an increase in nonqualified nonrecourse financing (attach separate computation)			10	
11 Add lines 9 and 10			11	
12 Portion of original credit (line 3) not used to offset tax in any year, plus any carryback and carryforward of credits you now can apply to the original credit year because you have freed up tax liability in the amount of the tax recaptured. Do not enter more than line 11—see instructions			12	
13 Total increase in tax. Subtract line 12 from line 11. Enter here and on the appropriate line of your tax return. See section 45K(b)(4) if you claim the nonconventional source fuel credit. Electing large partnerships, see instructions			13	

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.

Who Must Refigure the Investment Credit

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, S corporation, estate, or trust that allocated

- the cost or other basis of property to you for which you claimed a credit.
- You returned leased property (on which you claimed a credit) to the lessor before the end of the recapture period.
 - 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.
- 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.

Basis Adjustment on Recapture

For property subject to investment credit recapture, increase the property's basis as follows.

- For qualified rehabilitation expenditures, increase the basis by 100% of the recapture tax (or adjustment to carrybacks and carryovers).
- For energy property or qualified timber property, increase the basis by 50% of the recapture tax (or adjustment to carrybacks and carryovers).

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.

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 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 (other than an electing large 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, 1.47-5, and 1.47-6. For an electing large partnership, the recapture tax is paid by the partnership.

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.

Line 4. Enter the month, day, and year that the property was available for service.

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.

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 year end. The basis or cost must be reduced by the amount of any "nonqualified nonrecourse financing" related to the property at year end. If there is an increase in nonqualified nonrecourse financing, recapture may be required. See section 49(b) for details. Attach a separate schedule to figure the recapture tax and enter the total tax on line 10.

Line 12. 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 3 (or 1) tax years 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.

Special rule for electing large partnerships. Enter zero on line 12. An electing large partnership is treated as having used all prior year credits.

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.

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.

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 and on the tax line of Form 1065-B.

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** 6 hr., 27 min.
- Learning about the law or the form** 1 hr., 35 min.
- Preparing, copying, assembling, and sending the form to the IRS** 1 hr., 46 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.

Inset on page 1:

What's New

The types of properties subject to recapture now include qualifying advanced energy project property.