

2010

Instructions for Form 3800



Department of the Treasury
Internal Revenue Service

General Business Credit

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

What's New

The Small Business Jobs Act of 2010 allows general business credits of eligible small businesses to offset both regular tax and alternative minimum tax (AMT) for tax years beginning in 2010. Such eligible small business credits (ESBCs) determined in the first tax year in 2010 are carried back five years. For more information, see *Special Rules for Eligible Small Business Credits (ESBCs)*.

The following new general business credits are added:

- Line 1aa - New hire retention credit (Form 5884-B).
- Line 29h - Credit for small employer health insurance premiums (Form 8941).

The following general business credits are no longer applicable and removed from line 1:

- Welfare-to-work credit (Form 8861).
- Credit for contributions to selected community development corporations (Form 8847).

General Instructions

Who Must File

You must file Form 3800 to claim any of the general business credits.

If your only source of credits listed on Form 3800, Part I, is from pass-through entities, you may not be required to complete the source credit form. Instead, you may be able to report the credit directly on Form 3800. For more details, see *Part I. Current Year Credit* on page 3.

Special Rules for Eligible Small Business Credits (ESBCs)

ESBCs. For tax years beginning in 2010, ESBCs offset both regular tax and AMT. Any unused ESBCs from 2010 are carried back five years and are used to offset regular tax and AMT in the carryback years. Generally, ESBCs mean the sum of the general business credits determined for the tax year with respect

to an eligible small business. However, see *Credits that are not ESBCs* below.

Credits that are not ESBCs. The employer housing credit (reported on line 1t) and the new hire retention credit (reported on line 1aa) are not ESBCs.

Eligible small business defined. For purposes of the Small Business Jobs Act of 2010, an eligible small business is:

- A corporation whose stock is not publicly traded,
- A partnership, or
- A sole proprietorship.

The average annual gross receipts of the corporation, partnership, or sole proprietorship for the 3-tax-year period preceding the tax year of the credits cannot exceed \$50 million. Gross receipts for any tax year must be reduced by returns and allowances made during the year. Any reference to your business also includes a reference to any predecessor of your business.

If your business was not in existence for the entire 3-year period, base your average annual gross receipts on the period your business existed. Also, if your business had a tax year of less than 12 months, your gross receipts must be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period.

Member of controlled group, business under common control, or affiliated group. For purposes of the gross receipts test, all members of a controlled group of corporations (as defined in section 52(a)) and all members of a group of businesses under common control (as defined in section 52(b)), are treated as a single person; and all employees of the members of an affiliated service group (as defined in sections 414(m) and (o)) shall be treated as employed by a single person.

Treatment of partners and S corporation shareholders. General business credits determined for a partnership or S corporation cannot be treated as ESBCs unless both the partnership or corporation and partner or shareholder meet the gross receipts test as discussed under *Eligible small business defined* above for the tax year that the credits are treated as current year general business credits.

Carryback and Carryforward of Unused Credit

If you cannot use part or all of your general business credit because of the tax liability limit (line 32 is less than the sum of lines 8, 24, and 30), carry the unused credit back one year (see Special 5-year carryback rule for ESBCs below). To carry back an unused credit, file an amended return (Form 1040X, Amended U.S. Individual Income Tax Return, 1120X, Amended U.S. Corporation Income Tax Return, or other amended return) for the prior tax year or an application for tentative refund (Form 1045, Application for Tentative Refund, or Form 1139, Corporation Application for Tentative Refund). Generally, if you file an application for a tentative refund, it must be filed by the end of the tax year following the tax year in which the credit arose.

Special 5-year carryback rule for ESBCs. To carry back unused ESBCs determined in the first tax year beginning in 2010, file an amended return (Form 1040X, Form 1120X, or other amended return) for the prior tax year or an application for tentative refund (Form 1045 or Form 1139). Write "SBJA 2012" at the top of the form you use to file the amended return.

Carry back any unused ESBC by reporting it on the 2005 Form 6478, Credit for Alcohol Used as a Fuel, line 9. Any carryback of the ESBC not used in 2005 can be carried to 2006 (the next earliest carryback year), and so on, by including any remaining unused ESBC on the following forms.

1. 2006 Form 6478, line 10.
2. 2007 Form 6478, line 10.
3. 2008 Form 6478, line 14.
4. 2009 Form 6478, line 13.

Enter "SBJA 2012" to the left of the entry space used to include the unused ESBC on each Form 6478.

Note. Except for ESBCs, no part of the unused credit for any year attributable to any credit can be carried back to any tax year before the first tax year for which that credit was first allowable. See *Credit Ordering Rule*, later, to determine which credits are allowed first.

If you have an unused credit after carrying it back 1 year (to each of the 5 preceding tax years, beginning with the earliest, for ESBCs), carry it forward to each of the 20 tax years after the year of the credit. Any qualified business credits (as defined in section 196(c)) that are unused after the last tax year of the 20-year carryforward period (or at the time an individual taxpayer dies or other taxpayer, such as a corporation or partnership, ceases to exist) may be taken as a deduction in the earlier of:

- The tax year following the last tax year of the 20-year carryforward period, or
- The tax year in which the individual taxpayer dies or other taxpayer ceases to exist.

Carryforward of the energy credit and the renewable electricity credit. If a grant is paid under Public Law 111-5, section 1603, for investment in energy property or renewable electricity property, any carryforward of the energy credit or renewable electricity credit related to that property is reduced to recapture the unused portion of the credit.

Change in Filing or Marital Status

Your general business credit is limited to your tax liability. Therefore, if you filed a joint return in a carryback or carryforward year and your marital status or filing status has changed, you may need to figure your separate tax liability in that carryback or carryforward year. This would apply if:

- You filed as single in the credit year, but filed a joint return in the carryback or carryforward year;
- You filed a joint return in the credit year, but filed a joint return with a different spouse in the carryback or carryforward year; or
- You were married and filed a separate return in the credit year, but filed a joint return with the same or a different spouse in the carryback or carryforward year.

Determine your separate tax liability in the carryback or carryforward year as follows.

1. Figure your tax for the carryback or carryforward year as though you were married filing a separate return.
2. Figure your spouse's tax in that year as though he or she was married filing a separate return.
3. Add the amounts in steps (1) and (2).
4. Divide the amount in step (1) by the amount in step (3). The result should be rounded to at least three decimal places.
5. Multiply the decimal in step (4) by the total tax shown on your joint return for the carryback or carryforward year. The result is your separate tax liability and a

carryback or carryforward credit is applied against this amount only.

Although your carryback or carryforward of the credit is limited to your separate tax liability, the amount of your refund resulting from the carryback or carryforward is further limited to your share of the joint overpayment. This is found by subtracting your separate tax liability (as determined above) from your contribution toward the payment.

Unless you have an agreement or clear evidence of each spouse's contribution toward the payment of the joint liability, your contribution includes the tax withheld on your wages and your share of the joint estimated tax or tax paid with the return. Your share of these payments is found by using the same formula used in determining your separate tax liability. Substitute the joint estimated tax, or tax paid with the return, for the tax in step (5). If the original return for the carryback year resulted in an overpayment, reduce your contribution by your share of the refund.

Attach a copy of the computation to your amended return or application for tentative refund.

Credit Ordering Rule

General business credits reported on Form 3800 are treated as used on a first-in, first-out basis by offsetting the earliest-earned credits first. Therefore, the order in which the credits are used in any tax year is:

- Carryforwards to that year, the earliest ones first,
- The general business credit earned in that year, and
- The carryback to that year.

If your general business credits exceed your tax liability limit, the credits are used in the following order and based on the order shown under *Order in which credits are used* below.

- Credits reported on line 8 (no ESBCs should be reported on this line).
- Credits reported on line 24 (the ESBC amount is not reported on this line).
- Non-ESBC credits reported on line 30.
- ESBC credits reported on line 30.

Order in which credits are used. When relevant, the components of the general business credit reported on Form 3800 arising in a single tax year are used in the following order.

- Investment credit (in the following order—rehabilitation credit, energy credit, qualifying advanced coal project credit, qualifying gasification project credit, qualifying advanced energy project credit, and qualifying therapeutic discovery project credit) (Form 3468).
- Work opportunity credit (Form 5884).

- Alcohol and cellulosic biofuel fuels credit (Form 6478).
- Credit for increasing research activities (Form 6765).
- Low-income housing credit (Form 8586, Part I only).
- Disabled access credit (Form 8826).
- Renewable electricity, refined coal, and Indian coal production credit (Form 8835).
- Empowerment zone and renewal community employment credit (Form 8844).
- Indian employment credit (Form 8845).
- Employer social security and Medicare taxes paid on certain employee tips (Form 8846).
- Orphan drug credit (Form 8820).
- New markets credit (Form 8874).
- Credit for small employer pension plan startup costs (Form 8881).
- Credit for employer-provided child care facilities and services (Form 8882).
- Qualified railroad track maintenance credit (Form 8900).
- Biodiesel and renewable diesel fuels credit (Form 8864).
- Low sulfur diesel fuel production credit (Form 8896).
- Distilled spirits credit (Form 8906).
- Nonconventional source fuel credit (Form 8907).
- Energy efficient home credit (Form 8908).
- Energy efficient appliance credit (Form 8909).
- Alternative motor vehicle credit (Form 8910).
- Alternative fuel vehicle refueling property credit (Form 8911).
- Employer housing credit (Form 5884-A, Section B only).
- Mine rescue team training credit (Form 8923).
- Agricultural chemicals security credit (Form 8931).
- Credit for employer differential wage payments (Form 8932).
- Carbon dioxide sequestration credit (Form 8933).
- Qualified plug-in electric drive motor vehicle credit (Form 8936).
- Qualified plug-in electric vehicle credit (Form 8834, Part I only).
- Credit for small employer health insurance premiums (Form 8941).
- New hire retention credit (Form 5884-B).
- General credits from an electing large partnership (Schedule K-1 (Form 1065-B)).

TIP Although these credits are aggregated on Form 3800, keep a separate record of each credit, including whether the credit was an eligible small business credit, to ensure proper accounting of the credits.

Line 8

Eligible small businesses claiming ESBCs. Use the following steps to complete line 8 if you are an eligible small business claiming ESBCs.

Step 1. Add lines 4 through 7.

Step 2. Add **only** eligible small business credits (see *Special Rules for Eligible Small Business Credits (ESBCs)*, earlier) reported on lines 1a through 1bb. Subtract any passive ESBCs from that total. Then, add the passive activity ESBCs allowed for 2010. This is the total ESBCs for Part I. Do not enter this total on line 8. Instead, in the bottom left margin of page 1, write "SBC" and the amount of ESBCs figured for Part I. Also add this amount to the line 30 total.

Figure the current year passive activity credit allowed by taking into account only current year ESBCs. Prior year unallowed passive activity credits are not allowed when figuring the passive activity ESBCs allowed for 2010.

Step 3. Subtract the amount in step (2) from the amount in step (1) and enter the result on line 8.

Part II. Allowable Credit

Line 12b

Enter the total credit, if any, from Form 1040, lines 48 through 52 (or Form 1040NR, lines 46 through 49); Form 8396, line 9; Form 8834, lines 22 and 29; Form 8859, line 3; Form 8910, line 21;

Form 8911, line 23; Form 8936, line 14; and Schedule R (Form 1040), line 22.

Line 15

See section 38(c)(6) for special rules that apply to married couples filing separate returns, controlled corporate groups, regulated investment companies, real estate investment trusts, estates, and trusts.

Line 16

Although you may not owe AMT, you may still have to compute the tentative minimum tax (TMT) to figure your credit.

Enter zero on line 16 if:

- You are a small corporation exempt from the AMT under section 55(e),
- The only general business credit you are claiming is on line 29, or
- The only general business credits you are claiming are ESBCs.

Otherwise, complete and attach the appropriate AMT form or schedule and enter the TMT on line 16.

Line 18b

Section 168(k)(4) allows a corporation to elect to claim a refundable credit for certain unused research credits in lieu of the special depreciation allowance for eligible qualified property.

If the corporation made an election to increase the research credit or minimum tax credit limitations for its first tax year ending after March 31, 2008, it can choose not to have the election apply to extension property (defined below). Otherwise, the original election continues to apply to both eligible qualified property and extension property. However, in this case, separate bonus depreciation amounts, maximum increase amounts, and maximum amounts are computed for eligible qualified property and for extension property. If the corporation did not make the election for its first tax year ending after March 31, 2008, it can make the election only for extension property for its first tax year ending after December 31, 2008. For tax year 2010, the election applies to extension property only.

S corporations that make the election to accelerate the credit can use the credit only against the built-in gains tax. See the Instructions for Schedule D (Form 1120S), line 20. Corporations that file Form 1120-REIT or Form 1120-RIC must apply the credit first against the built-in gains tax, if any, and reduce the refundable credit by the amount so applied. See the instructions for line h of the Built-in Gains Tax Worksheet in the separate instructions for those forms.

Extension property. Generally, extension property is:

- Qualified property under section 168(k)(2) that is acquired after March 31,

Worksheet for Calculating the Refundable Minimum Tax Credit and Research Credit Amounts

Keep for Your Records

This worksheet is for extension property only. See the Instructions for Form 8827 for round 2 extension property.

	Extension property
1. Enter depreciation (including the special depreciation allowance) that would have been allowed for extension property placed in service during the tax year if section 168(k)(1) had applied to such property.	1. _____
2. Enter depreciation for extension property placed in service during the tax year and figured without regard to section 168(k)(1). . . .	2. _____
3. Subtract line 2 from line 1.	3. _____
4. Multiply line 3 by 20%.	4. _____
5. Enter any unused research credit carryforward from tax years beginning before 2006.	5. _____
6. Enter any unused minimum tax credit carryforward from tax years beginning before 2006.	6. _____
7. Add line 5 and line 6.	7. _____
8. Multiply line 7 by 6%.	8. _____
9. Enter the smaller of line 8 or \$30,000,000.	9. _____
10. Enter any bonus depreciation amounts determined under section 168(k)(4)(C) attributable to extension property for all preceding tax years ending after March 31, 2008.	10. _____
11. Subtract line 10 from line 9. If zero or less, enter -0-.	11. _____
12. Bonus depreciation amount. Enter the smaller of line 4 or line 11. Note: If you do not have a research credit carryforward, or if you choose not to allocate bonus depreciation amounts to research credit carryforwards, skip lines 13 and 14 and enter -0- on line 15.	12. _____
13. Enter the amount from line 10 allocated to the research credit carryforward shown on line 5.	13. _____
14. Maximum bonus depreciation amount allocable to the research credit. Subtract line 13 from line 5.	14. _____
15. Refundable research credit. Enter the smaller of line 14 or the amount on line 12 that you choose to allocate to the research credit. If you have a minimum tax credit, continue to line 16. All others, enter the line 15 amount on your 2010 Form 3800, line 18b.	15. _____
16. Subtract line 15 from line 12.	16. _____
17. Enter the amount from line 10 allocated to the minimum tax credit carryforward shown on line 6.	17. _____
18. Maximum bonus depreciation amount allocable to the minimum tax credit. Subtract line 17 from line 6.	18. _____
19. Refundable minimum tax credit. Enter the smaller of line 18 or line 16. Enter the line 19 amount on your 2010 Form 8827, line 7b.	19. _____

2008, placed in service in 2009, and that is not property described in section 168(k)(2)(B) or (C), and

- Qualified property described in sections 168(k)(2)(B) and (C), that is acquired after March 31, 2008, and placed in service in 2010.

This does not include property acquired pursuant to a written binding contract in effect before April 1, 2008. See section 168(k)(4)(G)(iii) for special rules for written binding contracts involving certain passenger aircraft.

For corporations electing to accelerate the use of unused research credit carryforwards and obtain a refundable credit in lieu of the special depreciation allowance, figure the bonus depreciation amount attributable to the research credit by using the *Worksheet for Calculating the Refundable Minimum Tax Credit and Research Credit Amounts* on page 4. Allocations of bonus depreciation amounts to research credits may be revoked only with the consent of the IRS. All others enter zero on line 18b.

How to make the election not to apply section 168(k)(4) to extension property.

To make the election not to apply section 168(k)(4) to extension property, the corporation must attach a statement to its timely filed tax return (including extensions) for its first tax year ending after December 31, 2008; and provide written notification to any partnership in which it is a partner. The statement and the written notification to the partnership must indicate that the corporation is making the election not to apply section 168(k)(4) to extension property. Generally, the notification to a partnership in which the corporation is a partner must be made on or before the due date (including extensions) of the corporation's tax return for its first tax year ending after December 31, 2008. If the corporation makes a late election, the notification to the partnership must be made no later than the date the late election is filed. If the corporation timely filed its tax return without making this election, it can still make the election by filing an amended return within 6 months of the due date of the return (excluding extensions). Attach the statement to the amended return and write "Filed pursuant to section 301.9100-2" at the top of the amended return. If the corporation does not meet the requirements of Regulations section 301.9100-2, it can still file a request for extension of time to make the election under Regulations section 301.9100-3.

How to make the extension property election. To make the section 168(k)(4) extension property election, a corporation claims the refundable credit on line 32g of Form 1120, U.S. Corporation Income Tax

Return, for its first tax year ending after December 31, 2008, and attaches Form 3800 and Form 4562, Depreciation and Amortization (Including Information on Listed Property). The corporation must also provide written notification to the partnership in which it is a partner. The notification must indicate that the corporation is making the section 168(k)(4) extension property election. Generally, the notification to a partnership in which the corporation is a partner must be made on or before the due date (including extensions) of the corporation's tax return for its first tax year ending after December 31, 2008. If the corporation makes a late election, the notification to the partnership must be made no later than the date the late election is filed. If the corporation timely filed its tax return without making this election, it can still make the election by filing an amended return within 6 months of the due date of the return (excluding extensions). Attach the statement to the amended return and write "Filed pursuant to section 301.9100-2" at the top of the amended return. If the corporation does not meet the requirements of Regulations section 301.9100-2, it can still file a request for extension of time to make the election under Regulations section 301.9100-3.

For more information on the election to accelerate the research credit in lieu of the special depreciation allowance, including how to make the elections regarding extension property, see the following.

- Rev. Proc. 2008-65, 2008-44 I.R.B. 1082, available at www.irs.gov/irb/2008-44_IRB/ar15.html;
- Rev. Proc. 2009-16, 2009-6 I.R.B. 449, available at www.irs.gov/irb/2009-06_IRB/ar10.html; and
- Rev. Proc. 2009-33, 2009-29 I.R.B. 150, available at www.irs.gov/irb/2009-29_IRB/ar09.html.

For more information on the special depreciation allowance, see the Instructions for Form 4562 and Pub. 946, *How To Depreciate Property*.

Lines 19a and 19b

Corporations. If the corporation has undergone a post-1986 ownership change (as defined in section 382(g)), section 383 may limit the amount of tax that may be offset by pre-change general business credits. Also, if a corporation acquires control of another corporation (or acquires its assets in a reorganization), section 384 may limit the amount of tax attributable to recognized built-in gains that may be offset by pre-acquisition general business credits. If either of these limitations apply, attach a computation of the allowable general business credit,

enter the amount on lines 19a and 19b, and write "Sec. 383" or "Sec. 384" in the margin next to your entry on lines 19a and 19b.

Line 20

Form 8844 filers: multiply line 16 by 75%. All others skip lines 20 through 24 and enter zero on line 25.

Line 24

Eligible small businesses. If you are claiming an ESBC on Form 8844, do not include the ESBC portion on line 24. Instead, include the ESBC portion of the credit on line 30.

All others. If you are not an eligible small business, enter the amount from Form 8844, line 10 or line 12.

Line 29h

Form 8941 filers:

- Tax-exempt eligible small employers, other than certain farmers' cooperatives, do not report the credit for small employer health insurance premiums on line 29h. Eligible tax-exempt small employers will report this credit on Form 990-T, Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e)).
- Eligible small employers (other than tax-exempt eligible small employers) will enter the credit from Form 8941, line 22 or line 24.

See the Instructions for Form 8941 for more information.

Line 30

Add lines 29a through 29h and increase that amount by the sum of ESBCs, if applicable, from the following lines.

- The amount written in the bottom left margin of page 1 (see *Line 8* on page 4); and
- Any portion of the eligible small business credit that was excluded on line 24 from Form 8844, line 10 or line 12 (see *Line 24* above).

Line 32

If line 32 is smaller than the sum of lines 8, 24, and 30, see *Carryback and Carryforward of Unused Credit* on page 1.

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 Internal Revenue Code 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 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	18 hr., 53 min.
Learning about the law or the form	1 hr.
Preparing, copying, assembling, and sending the form to the IRS	1 hr., 20 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.
