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Instructions for Form 8866

(Rev. November 2018)

Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method

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

General Instructions

Future Developments

For the latest information about developments related to Form 8866 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/form8866.

What's New

The tax rate used for the interest computation for individuals, corporations, and certain pass-through entities has changed. See the instructions for line 6, later.

Purpose of Form

Use Form 8866 to figure the interest due or to be refunded under the look-back method of section 167(g)(2) for property placed in service after September 13, 1995, that is depreciated under the income forecast method as described in section 167(g).

The income forecast method generally is limited to depreciation of:

- Motion picture films,
- Video tapes,
- Sound recordings,
- Copyrights,
- Books, and
- Patents.

Who Must File

General Rule

You generally must file Form 8866 to figure interest under the look-back method for each recomputation year for property placed in service after September 13, 1995, that you depreciate under the income forecast method.

Exception. The look-back method does not apply for any property that had an unadjusted basis (total capitalized cost) of \$100,000 or less at the end of the recomputation year.

Recomputation Year

A recomputation year is generally the 3rd and 10th tax years after the tax year

in which the property was placed in service.

Exception. A tax year is not a recomputation year for the property if, for each year before the recomputation year, the actual income from the property is within 10% of the estimated income taken into account in determining the depreciation deduction for the property under the income forecast method.

Additional Costs

Any costs incurred after the property was placed in service (that is not treated as separate property—see below) is taken into account by discounting (using the Federal mid-term rate determined under section 1274(d) as of the time the cost was incurred) the cost to its value as of the date the property was placed in service. However, you may elect not to apply this discounting rule to any property.

Separate property. The following costs are treated as separate property.

- Any costs incurred related to any property after the 10th tax year after the tax year the property was placed in service.
- Any other costs incurred if they are significant and give rise to a significant increase in the income from the property which was not included in the estimated income from the property.

Pass-Through Entities

A pass-through entity (partnership, S corporation, or trust) that is not closely held must apply the look-back method at the entity level to any property for which substantially all of the gross income is from U.S. sources. A pass-through entity is considered closely held if, at any time during any tax year for which there is income related to the property, 50% or more (by value) of the beneficial interests in the entity is held (directly or indirectly) by or for five or fewer persons. For this purpose, rules similar to the constructive ownership rules of section 1563(e) apply.

If you are an owner of an interest in a pass-through entity in which any

property was depreciated under the income forecast method and the entity is not subject to the look-back method at the entity level for that property, you must file this form for your tax year that ends with or includes the end of the entity's recomputation year. The pass-through entity will provide on Schedule K-1 the information you need to complete this form.

Change of Taxpayer

If the taxpayer deducting depreciation under the income forecast method changes prior to the recomputation year, the taxpayer as of the end of the recomputation year will be responsible for the payment of interest, if any, due for any year in which the property was depreciated under the income forecast method. Generally, only the taxpayer that had depreciated property under the income forecast method in a year that an overpayment occurred may request a refund of interest on the overpayment.

Filing Instructions

Interest You Owe (or No Interest Is To Be Refunded to You)

If you owe interest, or no interest is to be refunded to you, attach Form 8866 to your income tax return. You do not have to sign Form 8866 and the paid preparer section does not have to be completed.

For taxpayers other than partnerships, include any interest due in the amount to be entered for total tax (after credits and other taxes) on your return or (for example, 2018 Form 1040, line 15; or 2018 Form 1120, Schedule J, line 9d, etc.). Next to the entry space, write "From Form 8866" and the amount of interest due.

For partnerships, write "From Form 8866" and any interest due in the bottom margin of the tax return, and attach a check or money order for the full amount payable to "United States Treasury." Write the partnership's employer identification number (EIN), daytime phone number, and "Form 8866 Interest" on the check or money order.

Interest To Be Refunded to You

If interest is to be refunded to you, do not attach Form 8866 to your income tax return. Instead, file Form 8866 separately with the IRS at the applicable address listed below.

- Individuals:

Department of Treasury
Internal Revenue Service
Philadelphia, PA 19255-0001

- All others:

Department of Treasury
Internal Revenue Service
Cincinnati, OH 45999-0001

Complete the Signature section on Form 8866 following the instructions for the Signature section of your income tax return. If you file a joint return, the signature of both spouses is required on Form 8866. A paid preparer must also complete the Signature section. If additional Forms 8866 are needed (to show more than 2 prior tax years), sign only the first Form 8866.

File Form 8866 by the date you are required to file your income tax return (including extensions). Keep a copy of Form 8866 and any attached schedules for your records.

Filing a Corrected Form 8866

You must file a corrected Form 8866 only if the amount shown on line 6 for any prior year changes as a result of an error you made, an income tax examination, or the filing of an amended tax return.

When completing line 1 of the corrected Form 8866, follow the instructions on the form but do not enter the adjusted taxable income from line 3 of the original Form 8866. When completing line 5 of the corrected Form 8866, do not include the interest due, if any, from line 10 of the original Form 8866 that was included in your total tax when Form 8866 was filed with your tax return.

- If both the original and corrected Forms 8866 show interest you owe, file an amended income tax return following the filing instructions, earlier, and the amended return instructions for your tax return.

- If both the original and corrected Forms 8866 show interest to be refunded to you, write "Amended" in the top margin of the corrected Form 8866, and file it separately following the filing instructions, earlier.

- If your original Form 8866 shows interest you owe and the corrected

Form 8866 shows interest to be refunded to you, you must:

1. File an amended tax return showing \$0 interest from Form 8866 and

2. File the corrected Form 8866 separately (but do not write "Amended" at the top of the form because this is the first Form 8866 that you will file separately for this recomputation year). Follow the filing instructions, earlier, and the amended return instructions for your tax return.

- If the original Form 8866 shows interest to be refunded to you and the corrected Form 8866 shows interest you owe, you must:

1. File the corrected Form 8866 separately (with "Amended" written at the top) showing \$0 interest to be refunded and

2. File an amended income tax return and attach a copy of the corrected Form 8866. Follow the filing instructions, earlier, and the amended return instructions for your tax return.

Attachments

If you need more space, attach separate sheets to the back of Form 8866. Put your name and identifying number on each sheet.

Specific Instructions

Recomputation Year

Fill in the recomputation year line at the top of the form to show the tax year for which this form is being filed. If you were an owner of an interest in a pass-through entity that has depreciated one or more properties under the income forecast method, enter your tax year that ends with or includes the end of the entity's recomputation year.

Name

Enter the name shown on your Federal income tax return for the recomputation year. If you are an individual filing a joint return, also enter your spouse's name as shown on Form 1040.

Address

Enter your address only if you are filing this form separately. Include the apartment, suite, room, or other unit number after the street address.

P.O. Box

Enter your box number instead of your street address only if your post office does not deliver mail to your home.

Foreign Address

Enter the information in the following order: city, province or state, and country. Follow the country's practice for entering the postal code. Please do not abbreviate the country name.

Identifying Number

If you are an individual, enter your social security number. Other filers must use their EIN.

Recomputation year column

Enter the month and year for the recomputation year listed at the top of this form.

Columns (a) and (b)

Enter at the top of each column the ending month and year for:

- Each tax year prior to the recomputation year in which you depreciated property under the income forecast method to which this form applies and
- Any other tax year affected by such years.

Note. If there are more than 2 prior tax years, attach additional Forms 8866 as needed. On the additional Forms 8866, enter your name, identifying number, and tax year. Complete lines 1 through 8 (as applicable), but do not enter totals in column (c). Enter totals only in column (c) of the first Form 8866.

Line 1

Do not reduce taxable income or increase a loss on line 1 by any carryback of a net operating loss, net section 1256 contracts loss, or capital loss, except to the extent that carryback resulted from or was adjusted by the redetermination of depreciation under the income forecast method for look-back purposes.

Note. The 2-year carryback rule does not apply to net operating losses arising in the tax years ending after December 31, 2017. An exception applies to farmers and non-life insurance companies. See section 172(b) as amended by P.L. 115-97, section 13302.

Line 2

In each column, show a net increase to taxable income as a positive amount and a net decrease as a negative amount.

In figuring the net adjustment to be entered in each column on line 2, be sure to take into account any other

income and expense adjustments that may result from the increase (or decrease) to depreciation under the income forecast method (for example, for an individual, a change to adjusted gross income may affect medical expenses).

If there are no adjustments besides the look-back adjustments, the sum of all line 2 amounts should be zero and reflected in column 2(c). If there are additional adjustments that result from the application of the look-back, leave column 2(c) blank and reflect the amounts in the schedule below as described in item 3.

Include the following on an attached schedule.

1. Identify each property depreciated under the income forecast method to which this form applies.

2. For each property, report in columns for each prior year: (a) the amount of depreciation previously deducted based on estimated future income and (b) the amount of depreciation allowable for each prior year based on actual income earned before the end of the recomputation year and estimated future income to be earned after the recomputation year. Total the columns for each prior year and show the net adjustment to depreciation.

3. Identify any other adjustments that result from a change in depreciation under the income forecast method and show the amounts in the columns for the affected years so that the net adjustment shown in each column on the attached schedule agrees with the amounts shown on line 2.

An owner of an interest in a pass-through entity is not required to provide the detail listed in 1 and 2 with respect to prior years. The entity should provide the line 2 amounts with Schedule K-1 or on a separate statement for its recomputation year.

Note. Taxpayers reporting line 2 amounts from more than one Schedule K-1 (or a similar statement) must attach a schedule detailing by entity the net change to depreciation under the income forecast method.

Line 3

If line 3 results in a negative amount, it represents a look-back net operating loss (NOL). The adjustment in line 2 either, created, increased, or decreased the net operating loss. The change in the amount of the net operating loss

would be carried back or forward to the appropriate tax year and the hypothetical tax would be recomputed in the carryback/forward year. However, the computation period for computing interest on NOLs is different. See the exceptions listed on lines 7 and 8 below.

Note. The 2-year carryback rule does not apply to net operating losses arising in tax years ending after December 31, 2017. An exception applies to farmers and non-life insurance companies. See section 172(b) as amended by P.L. 115-97, section 13302.

Lines 4 and 5

Reduce the tax liability to be entered on lines 4 and 5 by allowable credits (other than refundable credits, for example, the credit for taxes withheld on wages, the earned income credit, the additional child tax credit, the credit for Federal tax paid on fuels, etc.), but do not take into account any credit carrybacks to the prior year in computing the amount to enter on lines 4 and 5 (except to the extent of carrybacks that resulted from or were adjusted by the redetermination of depreciation for look-back purposes). Include on lines 4 and 5 any taxes (such as alternative minimum tax) required to be taken into account in the computation of your tax liability (as originally reported or as redetermined).

Line 6

Pass-through entities. Multiply the amount on line 2 by the applicable regular tax rate for each prior year shown in column (a) or (b). The applicable regular tax rate is as follows.

1. Pass-through entities in which, at all times during the year, more than 50% of the interests in the entity are held by individuals directly or through other pass-through entities. The rates for tax years beginning:

| | |
|-----------------------------------|-------|
| a. In 2000 or earlier | 39.6% |
| b. In 2001 | 39.1% |
| c. In 2002 | 38.6% |
| d. In 2003 through 2012 | 35.0% |
| e. In 2013 through 2017 | 39.6% |
| f. In 2018 or later | 37.0% |

2. All other pass-through entities not included in 1 above:

| | |
|---------------------------------|-----|
| a. In 2017 or earlier | 35% |
| b. In 2018 or later | 21% |

Lines 7 and 8

For the increase or decrease in tax for each prior year, interest due or to be refunded must be computed at the applicable interest rate and compounded on a daily basis, generally from the due date (not including extensions) of the return for the prior year until the earlier of:

- The due date (not including extensions) of the return for the recomputation year, or
- The date the return for the recomputation year is filed and any income tax due for that year has been fully paid.

Exceptions

- If a net operating loss, capital loss, net section 1256 contracts loss, or credit carryback is being increased or decreased as a result of the adjustment made to net income due to refiguring depreciation under the income forecast method, the interest due or to be refunded must be computed on the increase or decrease in tax attributable to the change to the carryback only from the due date (not including extensions) of the return for the prior year that generated the carryback and not from the due date of the return for the year in which the carryback was absorbed. See section 6611(f).
- In the case of a decrease in tax on line 6, if a refund has been allowed for any part of the income tax liability shown on line 5 for any year as a result of a net operating loss, capital loss, net section 1256 contracts loss, or credit carryback to such year, and the amount of the refund exceeds the amount on line 4, interest is allowed on the amount of such excess only until the due date (not including extensions) of the return for the year in which the carryback arose.

Note. If a different method of interest computation must be used to produce the correct result in your case, use that method and attach an explanation of how the interest was computed.

Applicable Interest Rates

The overpayment rate designated under Section 6621 is used to calculate the interest for both hypothetical overpayments and underpayments. The applicable interest rates are published quarterly in revenue rulings in the

Internal Revenue Bulletin available at IRS.gov.

However, for depreciation deducted in tax years ending after August 5, 1997, an interest rate is determined for each interest accrual period. The interest accrual period starts on the day after the return due date (not including extensions) for each prior tax year and ends on the return due date for the following tax year. The interest rate in effect for the entire interest accrual period is the overpayment rate determined under section 6621(a)(1) applicable on the first day of the interest accrual period.

Even though the interest rates change quarterly, for look-back purposes the interest rate stays the same for the accrual period which is generally one year. The applicable interest rates for non-corporate taxpayers are shown in Table 1 (for interest accrual periods beginning after Jan. 1, 2008).

The applicable interest rates for corporate taxpayers for the first \$10,000 are shown in Table 2. The applicable interest rates for corporate taxpayers for amounts in excess of \$10,000 are shown in Table 3.

Line 9

Additional interest to be refunded for periods after the due date of the return, if any, will be computed by the IRS and included in your refund. Report the amount on line 9 (or the amount refunded by the IRS if different) as interest income on your income tax return for the tax year in which it is received or accrued.

Line 10

Corporations (other than S corporations) may deduct this amount (or the amount computed by the IRS if different) as interest expense for the tax year in which it is paid or incurred. For individuals and other taxpayers, this interest is not deductible.

Table 1
Interest Rates for Non-corporate Taxpayers

| From | Through | Rate | Table | Page |
|---------|----------|------|-------|------|
| 1/1/08 | 3/31/08 | 7% | 67 | 621 |
| 4/1/08 | 6/30/08 | 6% | 65 | 619 |
| 7/1/08 | 9/30/08 | 5% | 63 | 617 |
| 10/1/08 | 12/31/08 | 6% | 65 | 619 |
| 1/1/09 | 3/31/09 | 5% | 15 | 569 |
| 4/1/09 | 12/31/10 | 4% | 13 | 567 |
| 1/1/11 | 3/31/11 | 3% | 11 | 565 |
| 4/1/11 | 9/30/11 | 4% | 13 | 567 |
| 10/1/11 | 12/31/11 | 3% | 11 | 565 |
| 1/1/12 | 12/31/12 | 3% | 59 | 613 |
| 1/1/13 | 12/31/15 | 3% | 11 | 565 |
| 1/1/16 | 3/31/16 | 3% | 59 | 613 |
| 4/1/16 | 12/31/16 | 4% | 61 | 615 |
| 1/1/17 | 3/31/18 | 4% | 13 | 567 |
| 4/1/18 | 9/30/18 | 5% | 15 | 569 |

Table 2
Interest Rates for Corporate Increases or Decreases in Tax of \$10,000 or Less

| From | Through | Rate | Table | Page |
|---------|----------|------|-------|------|
| 1/1/08 | 3/31/08 | 6% | 65 | 619 |
| 4/1/08 | 6/30/08 | 5% | 63 | 617 |
| 7/1/08 | 9/30/08 | 4% | 61 | 615 |
| 10/1/08 | 12/31/08 | 5% | 63 | 617 |
| 1/1/09 | 3/31/09 | 4% | 13 | 567 |
| 4/1/09 | 12/31/10 | 3% | 11 | 565 |
| 1/1/11 | 3/31/11 | 2% | 9 | 563 |
| 4/1/11 | 9/30/11 | 3% | 11 | 565 |
| 10/1/11 | 12/31/11 | 2% | 9 | 563 |
| 1/1/12 | 12/31/12 | 2% | 57 | 611 |
| 1/1/13 | 12/31/15 | 2% | 9 | 563 |
| 1/1/16 | 3/31/16 | 2% | 57 | 611 |
| 4/1/16 | 12/31/16 | 3% | 59 | 613 |
| 1/1/17 | 3/31/18 | 3% | 11 | 565 |
| 4/1/18 | 9/30/18 | 4% | 13 | 567 |

Table 3
Interest Rates for Corporate Increases or Decreases in Tax Exceeding \$10,000

| From | Through | Rate | Table | Page |
|---------|----------|------|-------|------|
| 1/1/08 | 3/31/08 | 4.5% | 62 | 616 |
| 4/1/08 | 6/30/08 | 3.5% | 60 | 614 |
| 7/1/08 | 9/30/08 | 2.5% | 58 | 612 |
| 10/1/08 | 12/31/08 | 3.5% | 60 | 614 |
| 1/1/09 | 3/31/09 | 2.5% | 10 | 564 |
| 4/1/09 | 12/31/10 | 1.5% | 8 | 562 |
| 1/1/11 | 3/31/11 | 0.5% | - | - |
| 4/1/11 | 9/30/11 | 1.5% | 8 | 562 |
| 10/1/11 | 3/31/16 | 0.5% | - | - |
| 4/1/16 | 12/31/16 | 1.5% | 56 | 610 |
| 1/1/17 | 3/31/18 | 1.5% | 8 | 562 |
| 4/1/18 | 9/30/18 | 2.5% | 10 | 564 |

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need it to ensure that you are complying with these laws and to figure and collect or refund the correct amount of interest. Section 167(g) provides special rules for computing interest under the look-back method for property depreciated under the income

forecast method. Sections 6001 and 6109 and their regulations require you to provide this information, including your identifying number, if this provision applies to you. If you do not file Form 8866, do not provide the information we ask for, or provide fraudulent information, you may forfeit any refund of interest otherwise owed to you and be subject to other penalties.

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. However, section 6103 sometimes permits or requires us to disclose this information.

We may give the information to the Department of Justice and to other Federal agencies, as provided by law. We may give it to cities, states, the District of Columbia, and U.S. commonwealths or possessions to carry out their tax laws. We may give it to foreign governments because of tax treaties they have with the United States. We may also disclose this information to Federal and state agencies to enforce Federal nontax criminal laws and to combat terrorism.

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 7 hr., 39 min.

Learning about the law or the form 1 hr., 33 min.

Preparing, copying, assembling, and sending the form to the IRS 2 hr., 56 min.

If you have comments or suggestions for making this form simpler, we would be happy to hear from you. You can send us comments from IRS.gov/FormComments. Or you can send us

your comments to: Internal Revenue
Service; Tax Forms and Publications
Division: SE:W:CAR:MP:T;

1111 Constitution Ave.; NW; IR-6526;
Washington, DC 20224. Do not send

the tax form to this office. Instead, see
Filing Instructions, earlier.

DRAFT AS OF August 31, 2018