New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

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Corporation Tax
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1982 Legislation
Amendments to the Investment Tax Credit

Sections 4, 5 and 6 of Chapter 55 of the Laws of 1982 amended Sections 210.12(b), 210.12(d) and 210.12(g) of the Tax Law.

Section 4 allows the investment tax credit to be taken on qualified property subject to accelerated cost recovery under Section 168 of the Internal Revenue Code (ACRS), provided such property was placed in service after December 31, 1980.

Section 5 of the Laws of 1982 allows the investment tax credit to be taken by the lessee/user with respect to qualified property involved in a "Safe Harbor" lease for taxable years beginning after December 31, 1981.

Section 6 deals with the amount of investment tax credit allowable on property that is disposed of or ceases to be in qualified use prior to the end of its useful life or depreciated life. Section 6 amended the Tax Law to provide different formulas for property depreciated for Federal purposes under Section 167 or subject to accelerated cost recovery under Section 168 of the Internal Revenue Code.

Property which is depreciated pursuant to Section 167 of the Internal Revenue Code and which is disposed of or ceases to be in qualified use prior to the end of its useful life will compute the credit allowable by multiplying the original investment tax credit claimed by the ratio which the months of qualified use bear to the months of useful life. The difference between the amount of credit originally claimed and the allowable amount of credit as redetermined must be added back in the year the property is disposed of or ceases to be in qualified use. With respect to such property, the formula for recapture of investment tax credit is:

$$\frac{\text{Months in Qualified Use}}{\text{Months of Useful Life}} \quad \text{X} \quad \text{Investment Tax Credit Allowed}$$

With respect to three year property, as defined in paragraph 2 of subdivision (c) of Section 168 of the Internal Revenue Code, which is disposed of or ceases to be in qualified use, the amount of credit for actual use shall be determined by multiplying the original investment tax credit claimed by the ratio which the months of qualified use bear to 36. The difference between the amount of credit originally claimed and the allowable amount of the credit as redetermined must be added back in the year the property is disposed of or ceases to be in qualified use. The formula for recapture of investment tax credit is:

$$\frac{\text{Months in Qualified Use}}{\text{36 months}} \quad \text{X} \quad \text{Investment Tax Credit Allowed}$$

With respect to five year property, ten year property and fifteen year real property, as defined in paragraph 2 of subdivision (c) of Section 168 of the Internal Revenue Code, which is disposed of or ceases to be in qualified use, the amount of credit for actual use shall be determined by multiplying the original credit claimed by the ratio which the months of qualified use bear to 60. The difference between the amount of credit originally claimed and the allowable amount of the credit as redetermined must be added back in the year the property is disposed of or ceases to be in qualified use. The formula for recapture of investment tax credit is:

$$\frac{\text{Months in Qualified Use}}{\text{60 Months}} \quad \text{x} \quad \text{Investment Tax Credit Allowed}$$

With respect to recovery property which is a building or a structural component of a building which is subject to accelerated cost recovery pursuant to Section 168 of the Internal Revenue Code and which is disposed of or ceases to be in qualified use, the amount of credit for actual use shall be determined by multiplying the original investment tax credit claimed by the ratio which the months of qualified use bear to the total number of months over which the taxpayer chose to recover the cost of the property under Section 168 of the Internal Revenue Code. The difference between the amount of credit originally claimed and the allowable amount of the credit as redetermined must be added back in the year the property is disposed of or ceases to be in qualified use. The formula for recapture of investment tax credit is:

$$\frac{\text{Months in Qualified Use}}{\text{Months the Taxpayer chose to depreciate the property under Section 168 of the IRC}} \quad \text{X} \quad \text{Investment Tax Credit Allowed}$$

Recapture of the investment tax credit will only be required where property on which the investment tax credit was claimed remains in qualified use for less than the number of months shown in the chart below:

IRC Section	Description of Property Use	Months of Qualifed
168	3 yr. property	36
168	5 yr. property	60
168	10 yr. property	60
168	15 year real property	60
168	Building & Structural Components	144
167	All	144