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**Tax Committee Comments and Recommendations, No. 9:
Comments on Proposed Regulations Under Sections 38-48 of the
Internal Revenue Code of 1954 Relating to the Investment Credit,
Submitted to the IRS - March 3, 1965**

American Institute of Certified Public Accountants. Committee on Federal Taxation

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TAX COMMITTEE COMMENTS AND RECOMMENDATIONS

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38-48 of the Internal Revenue Code of 1954 Re-
lating to the Investment Credit

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COMMITTEE ON FEDERAL TAXATION

of the

AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

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38-48 of the Internal Revenue Code of 1954 Re-
lating to the Investment Credit

Specific Comments

Section

1.

1.47-3(f)

The proposed regulations could be interpreted to adopt an extremely narrow concept of what constitutes a "mere change in form of conducting a trade or business."

Additional examples are necessary to expand the scope of this exception to recapture in the case of a number of common business transactions. Additional examples should expand the "mere change in form" concept within the spirit of the investment credit statute to cover situations where there is no genuine disposition of property but merely the continuation of the use of property in a going business.

A specific example should be provided to demonstrate that recapture does not result where two or more individual proprietors combine in partnership form.

2.

1.47-4(b)

The election by an existing corporation of Subchapter S status should not be an event invoking recapture unless the continuing corporation actually disposes of the property or unless a shareholder actually disposes of the interest he had in the corporation. The consent requirement of the proposed regulations is burdensome and unnecessary.

3.

1.47-6(a)(2)

A practical rule should be developed which would make it possible to avoid minor and recurring investment credit recapture in the case of going-concern partnerships which are faced with a constantly changing membership through the process of new admissions and retirements, and where each partner has a relatively minor proportionate share of total partnership profits.

Invoking the recapture rules upon the event of retirement in such a case is highly impractical and imposes an almost impossible administrative burden not only upon taxpayers and partnerships but on the Internal Revenue Service as well. Furthermore, imposition of recapture on retirement of a partner would place an unwarranted tax burden on the retired partner at the time that, and in fact because, his income from the partnership is diminished.

In addition, consideration should be given to a rule that would permit a partnership to elect to have recapture arising from a disposition of property by the partnership fall on the partners at the time of the disposition rather than at the time the property was acquired. A rule such as this could be supported on the basis of administrative convenience.

Comments on Mechanics

4.

1.47-1(b)(3)

Example (c) contains an obvious typographical error on the eighth line. That line should read "1965 net operating loss minus zero credit" rather than "1955 net operating loss minus zero credit."

1.47-4(c)
1.47-5(b)
1.47-6(b)

The wording in the parenthesis contained in the last four lines of Example (2) (iii) in Proposed Regulations Sections 1.47-4(c), 1.47-5(b) and 1.47-6(b) should be changed to read "(that is, \$2,100 original credit earned minus zero recomputed credit earned" instead of "(that is, \$2,520 (\$2,520 original credit earned minus zero recomputed credit earned)".