

(2) *Exception.* This section and §§ 1.280F-2T through 1.280F-6T shall not apply to any property:

(i) Acquired pursuant to a binding contract in effect on June 18, 1984, and at all times thereafter, or under construction by the taxpayer on that date, but only if the property is placed in service before January 1, 1985 (January 1, 1987, in the case of 15-year real property), or

(ii) Leased pursuant to a binding contract in effect on June 18, 1984, and at all times thereafter, but only if the lessee first uses such property under the lease before January 1, 1985 (January 1, 1987, in the case of 15-year real property).

(3) *Leased passenger automobiles.* Section 1.280F-5T(e) generally applies to passenger automobiles leased after April 2, 1985, and before January 1, 1987, in taxable years ending after April 2, 1985. Section 1.280F-5T(e) generally applies to passenger automobiles leased after April 2, 1985, in taxable years ending after that date. Section 1.280F-5T(e) does not apply to any passenger automobile that is leased pursuant to a binding contract, which is entered into no later than April 2, 1985, and which is in effect at all times thereafter, but only if the automobile is used under the lease before August 1, 1985. If § 1.280F-5T(e) does not apply to a passenger automobile, see paragraph (c) (1) and (2) of this section. Section 1.280F-7(a) applies to passenger automobiles leased after December 31, 1986, in taxable years ending after that date.

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§ 1.280F-2T Limitations on recovery deductions and the investment tax credit for certain passenger automobiles (temporary).

(a) *Limitation on amount of investment tax credit—(1) General rule.* The amount of the investment tax credit determined under section 46(a) for any passenger automobile shall not exceed \$1,000. For a passenger automobile placed in service after December 31, 1984, the \$1,000 amount shall be increased by the automobile price inflation adjustment (as defined in section

280F(d)(7)) for the calendar year in which the automobile is placed in service.

(2) *Election of reduced investment tax credit.* If the taxpayer elects under section 48(q)(4) to reduce the amount of the investment tax credit in lieu of adjusting the basis of the passenger automobile under section 48(q)(1), the amount of the investment tax credit for any passenger automobile shall not exceed two-thirds of the amount determined under paragraph (a)(1) of this section.

(b) *Limitations on allowable recovery deductions—(1) Recovery deduction for year passenger automobile is placed in service.* For the taxable year that a taxpayer places a passenger automobile in service, the allowable recovery deduction under section 168(a) shall not exceed \$4,000. See paragraph (b)(3) of this section for the adjustment to this limitation.

(2) *Recovery deduction for remaining taxable years during the recovery period.* For any taxable year during the recovery period remaining after the year that the property is placed in service, the allowable recovery deduction under section 168(a) shall not exceed \$6,000. See paragraph (b)(3) of this section for the adjustment to this limitation.

(3) *Adjustment to limitation by reason of automobile price inflation adjustment.* The limitations on the allowable recovery deductions prescribed in paragraph (b) (1) and (2) of this section are increased by the automobile price inflation adjustment (as defined in section 280F(d)(7)) for the calendar year in which the automobile is placed in service.

(4) *Coordination with section 179.* For purposes of section 280F(a) and this section, any deduction allowable under section 179 (relating to the election to expense certain depreciable trade or business assets) is treated as if that deduction were a recovery deduction under section 168. Thus, the amount of the section 179 deduction is subject to the limitations described in paragraph (b) (1) and (2) of this section.

(c) *Disallowed recovery deductions allowed for years subsequent to the recovery period—(1) In general.* (i) Except as otherwise provided in this paragraph (c), the “unrecovered basis” (as defined in

paragraph (c)(1)(ii) of this section) of any passenger automobile is treated as a deductible expense in the first taxable year succeeding the end of the recovery period.

(ii) The term *unrecovered basis* means the excess (if any) of:

(A) The unadjusted basis (as defined in section 168(d)(1)(A), except that there is no reduction by reason of an election to expense a portion of the basis under section 179) of the passenger automobile, over

(B) The amount of the recovery deductions (including any section 179 deduction elected by the taxpayer) which would have been allowable for taxable years in the recovery period (determined after the application of section 280F (a) and paragraph (b) of this section and as if all use during the recovery period were used described in section 168(c)(1)).

(2) *Special rule when taxpayer elects to use the section 168(b)(3) optional recovery percentages.* If the taxpayer elects to use the optional recovery percentages under section 168(b)(3) or must use the straight line method over the earnings and profits life (as defined and described in §1.280F-3T(f)), the second succeeding taxable year after the end of the recovery period is treated as the first succeeding taxable year after the end of the recovery period for purposes of this paragraph (c) because of the half-year convention. For example, assume a calendar-year taxpayer places in service on July 1, 1984, a passenger automobile (*i.e.*, 3-year recovery property) and elects under section 168(b)(3) to recover its cost over 5 years using the straight line optional percentages. Based on these facts, calendar year 1990 is treated as the first succeeding taxable year after the end of the recovery period.

(3) *Deduction limited to \$6,000 for any taxable year.* The amount that may be treated as a deductible expense under this paragraph (c) in the first taxable year succeeding the recovery period shall not exceed \$6,000. Any excess shall be treated as an expense for the succeeding taxable years. However, in no event may any deduction in a succeeding taxable year exceed \$6,000. The limitation on amounts deductible as an expense under this paragraph (c) with

respect to any passenger automobile is increased by the automobile price inflation adjustment (as defined in section 280F(d)(7)) for the calendar year in which such automobile is placed in service.

(4) *Deduction treated as a section 168 recovery deduction.* Any amount allowable as an expense in a taxable year after the recovery period by reason of this paragraph (c) shall be treated as a recovery deduction allowable under section 168. However, a deduction is allowable by reason of this paragraph (c) with respect to any passenger automobile for a taxable year only to the extent that a deduction under section 168 would be allowable with respect to the automobile for that year. For example, no recovery deduction is allowable for a year during which a passenger automobile is disposed of or is used exclusively for personal purposes.

(d) *Additional reduction in limitations by reason of personal use of passenger automobile or by reason of a short taxable year.* See paragraph (i) of this section for rules regarding the additional reduction in the limitations prescribed by paragraphs (a) through (c) of this section by reason of the personal use of a passenger automobile or by reason of a short taxable year.

(e) *Examples.* The provisions of paragraphs (a) through (c) of this section may be illustrated by the following examples. For purposes of these examples, assume that all taxpayers use the calendar year and that no short taxable years are involved.

Example 1. (i) On July 1, 1984, B purchases for \$45,000 and places in service a passenger automobile which is 3-year recovery property under section 168. In 1984, B does not elect under section 179 to expense a portion of the cost of the automobile. The automobile is used exclusively in B's business during taxable years 1984 through 1990.

(ii) The maximum amount of B's investment tax credit is \$1,000 (*i.e.*, the lesser of \$1,000 or $.06 \times \$45,000$). B's unadjusted basis for purposes of section 168 is \$44,500 (*i.e.*, \$45,000 reduced under section 48(q)(1) by \$500). B selects the use of the accelerated recovery percentages under section 168(b)(1).

(iii) The maximum amount of B's recovery deduction for 1984 is \$4,000 (*i.e.*, the lesser of \$4,000 or $.25 \times \$44,500$); for 1985, \$6,000 (*i.e.*, the lesser of \$6,000 or $.38 \times \$44,500$); and for 1986, \$6,000 (*i.e.*, the lesser of \$6,000 or $.37 \times \$44,500$).

(iv) At the beginning of taxable year 1987, B's unrecovered basis in the automobile is \$28,500 (*i.e.*, \$44,500 - \$16,000). Under paragraph (c) of this section, B may expense \$6,000 of the unrecovered basis in the automobile in 1987. This expense is treated as a recovery deduction under section 168. For taxable years 1988 through 1990, B may deduct \$6,000 of the unrecovered basis per year. At the beginning of 1991, B's unrecovered basis in the automobile is \$4,500. During that year, B disposes of the automobile. B is not allowed a deduction for 1991 because no deduction would be allowable under section 168 based on these facts.

Example 2. (i) On July 1, 1984, C purchases for \$50,000 and places in service a passenger automobile which is 3-year recovery property under section 168. The automobile is used exclusively in C's business during taxable years 1984 through 1992. In 1984, C does not elect under section 179 to expense a portion of the automobile's cost. C elects under section 48(q)(4) to take a reduced investment tax credit in lieu of the section 48(q)(1) basis adjustment.

(ii) The maximum amount of C's investment tax credit is \$666.67 (*i.e.*, the lesser of $\frac{1}{3}$ of \$1,000 or $.04 \times \$50,000$). C's unadjusted basis for purposes of section 168 is \$50,000. C elects to use the optional recovery percentages under section 168(b)(3) based on a 5-year recovery period.

(iii) The maximum amount of C's recovery deduction for 1984 is \$4,000 (*i.e.*, the lesser of \$4,000 or $.10 \times \$50,000$); for taxable years 1985 through 1988, \$6,000 per year (*i.e.*, the lesser of \$6,000 or $.20$ of \$50,000). C's recovery deduction for 1989 is \$5,000 (*i.e.*, the lesser of $.10 \times \$50,000$ or \$6,000).

(iv) At the beginning of taxable year 1990, C's unrecovered basis in the automobile is \$17,000. Under paragraph (c) of this section, C may expense \$6,000 of the unrecovered basis in the automobile in 1990. This expense is treated as a recovery deduction under section 168. For taxable years 1991 and 1992, C may deduct \$6,000, and \$5,000, respectively of the unrecovered basis per year.

Example 3. Assume the same facts as in *Example 2*, except that C disposes of the passenger automobile on July 1, 1990. Under paragraph (c) of this section, C is not allowed a deduction for 1990 or for any succeeding taxable year because no deduction would be allowable under section 168 based on these facts.

Example 4. (i) On July 1, 1984, G purchases for \$15,000 and places in service a passenger automobile which is 3-year recovery property under section 168. The automobile is used exclusively in G's business during taxable years 1984 through 1987. In 1984, G elects under section 179 to expense \$5,000 of the cost of the property.

(ii) The maximum amount of G's investment tax credit is \$600 (*i.e.*, the lesser of $.06 \times \$10,000$ or \$1,000).

(iii) G's unadjusted basis for purposes of section 168 is \$9,700 (*i.e.*, \$15,000 minus the sum of \$5,000 (the amount of the expense elected under section 179) and \$300 (one-half of the investment tax credit under section 48(q)(1))). Under paragraph (b)(4) of this section, the allowable deduction under section 179 is treated as a recovery deduction under section 168 for purposes of this section. Thus, the maximum amount of G's section 179 deduction is \$4,000 (*i.e.*, the lesser of \$4,000 or $\$5,000 + .25 \times \$9,700$). G is entitled to no further recovery deduction under section 168 for 1984. The amount of G's 1985 and 1986 recovery deductions are \$3,686 (*i.e.*, the lesser of $.38 \times \$9,700$ or \$6,000) and \$3,589 (*i.e.*, the lesser of $.37 \times \$9,700$ or \$6,000), respectively. At the beginning of 1987, G's unrecovered basis in the automobile is \$3,425 (*i.e.*, \$14,700 - \$11,275). Under paragraph (c) of this section, G may expense the remaining \$3,425 in 1987.

Example 5. (i) On July 1, 1984, D purchases for \$55,000 and places in service a passenger automobile which is 3-year recovery property under section 168. The automobile is used exclusively in D's business during taxable years 1984 through 1993. In 1984, D elects under section 179 to expense \$5,000 of the cost of the property.

(ii) The maximum amount of D's investment tax credit is \$1,000 (*i.e.*, the lesser of \$1,000 or $.06 \times \$50,000$).

(iii) D's unadjusted basis for purposes of section 168 is \$49,500 (*i.e.*, \$55,000 minus the sum of \$5,000 (the amount of the expense elected under section 179) and \$500 (one-half of the investment tax credit under section 48(q)(1))). Under paragraph (b)(4) of this section, the allowable deduction under section 179 is treated as a recovery deduction under section 168 for purposes of this section. Thus, the maximum amount of D's section 179 deduction is \$4,000 (*i.e.*, the lesser of \$4,000 or $\$5,000 + .25 \times \$49,500$). D is entitled to no further recovery deduction under section 168 for 1984. The maximum amount of D's 1985 recovery deduction is \$6,000 (*i.e.*, the lesser of \$6,000 or $.38 \times \$49,500$); and for 1986, \$6,000 (*i.e.*, the lesser of \$6,000 or $.37$ of \$49,500).

(iv) At the beginning of 1987, D's unrecovered basis is \$38,500. D may expense the remaining unrecovered basis at the rate of \$6,000 per year through 1992 and \$2,500 in 1993.

Example 6. Assume the same facts as in *Example 5*, except that in 1993, D uses the automobile only 60 percent in his business. Under paragraph (c)(4) of this section for 1993, D may expense \$1,500 (*i.e.*, $.60 \times \$2,500$). D is entitled to no further deductions with respect to the automobile in any later year.

Example 7. (i) On July 1, 1984, F purchases for \$44,500 and places in service a passenger automobile which is 3-year recovery property under section 168. The automobile is

used exclusively in F's business during taxable years 1984 through 1992. In 1984, F elects under section 179 to expense \$5,000 of the cost of the property.

(ii) F elects under section 48(q)(4) to take a reduced investment tax credit in lieu of the section 48(q)(1) basis adjustment. The maximum amount of F's investment tax credit is \$666.67 (*i.e.*, the lesser of $\frac{2}{3}$ of \$1,000 or $.04 \times \$39,500$).

(iii) F's unadjusted basis for purposes of section 168 is \$39,500 (*i.e.*, \$44,500-\$5,000 (the amount of the expense elected under section 179)). F elects to use the optional recovery percentage under section 168(b)(3) based on a 5-year recovery period. Under paragraph (b)(4) of this section, the allowable section 179 deduction is treated as a recovery deduction under section 168 for purposes of this section. Thus, the maximum amount of F's section 179 deduction is \$4,000 (*i.e.*, the lesser of \$4,000 or $5,000 + .10 \times \$39,500$). F is entitled to no further recovery deduction under section 168 for 1984. The maximum amounts of F's recovery deductions for 1985 through 1988 are \$6,000 per year (*i.e.*, the lesser of \$6,000 or $.20 \times \$39,500$). F's recovery deduction for 1989 (the first taxable year after the 5-year recovery period but the sixth recovery year for purposes of section 168) is \$3,950 (*i.e.*, the lesser of $.10 \times \$39,500$ or \$6,000).

(iv) Under paragraph (c), taxable year 1990 is considered to be the first taxable year succeeding the end of the recovery period. At the beginning of taxable year 1990, F's unrecovered basis in the automobile is \$12,550 (*i.e.*, \$44,500-\$31,950). Under paragraph (c), F may expense \$6,000 of his unrecovered basis in the automobile in 1990 and in 1991. This expense is treated as a recovery deduction under section 168. For taxable year 1992, F may expense the remaining \$550 of his unrecovered basis in the automobile.

(f) *Treatment of improvements that qualify as capital expenditures.* An improvement to a passenger automobile that qualifies as a capital expenditure under section 263 is treated as a new item of recovery property placed in service in the year the improvement is made. However, the limitations in paragraph (b) of this section on the amount of recovery deductions allowable are determined by taking into account as a whole both the improvement and the property of which the improvement is a part. If that improvement also qualifies as an investment in new section 38 property under section 48(b) and § 1.48-2(b)(2), the limitation in paragraph (a)(1) of this section on the amount of the investment tax credit for that improvement is determined by taking into account any investment

tax credit previously allowed for the passenger automobile (including any prior improvement considered part of the passenger automobile). Thus, the maximum credit allowable for the automobile (including the improvement) will be \$1,000 (or $\frac{2}{3}$ of \$1,000, in the case of an election to take a reduced credit under section 48(q)(4)) (adjusted under section 280F(d)(7) to reflect the automobile price inflation adjustment for the year the property of which the improvement is a part is placed in service).

(g) *Treatment of section 1031 or section 1033 transactions—(1) Treatment of exchanged passenger automobile.* For a taxable year in which a transaction described in section 1031 or section 1033 occurs, the unadjusted basis of an exchanged or converted passenger automobile shall cease to be taken into account in determining any recovery deductions allowable under section 168 as of the beginning of the taxable year in which the exchange or conversion occurs. Thus, no recovery deduction is allowable for the exchanged or converted automobile in the year of the exchange or conversion.

(2) *Treatment of acquired passenger automobile—(i) In general.* The acquired automobile is treated as new property placed in service in the year of the exchange (or in the replacement year) and that year is its first recovery year.

(ii) *Limitations on recovery deductions.* If the exchanged (or converted) automobile was acquired after the effective date of section 280F (as set out in § 1.280F-1(c)), the basis of that automobile as determined under section 1031(d) or section 1033(b) (whichever is applicable) must be reduced for purposes of computing recovery deductions with respect to the acquired automobile (but not for purposes of determining the amount of the investment tax credit and gain or loss on the sale or other disposition of the property) by the excess (if any) of:

(A) The sum of the amounts that would have been allowable as recovery deductions with respect to the exchanged (or converted) automobile during taxable years preceding the year of the exchange (or conversion) if all of the use of the automobile during those

years was use described in section 168(c), over

(B) The sum of the amounts allowable as recovery deductions during those years.

(3) *Examples.* The provisions of this paragraph (g) may be illustrated by the following examples:

Example 1. (i) In 1982, F purchases and places in service a passenger automobile which is 3-year recovery property under section 168. The automobile is used exclusively in F's business.

(ii) On July 1, 1984, F exchanges the passenger automobile and \$1,000 cash for a new passenger automobile ("like kind" property). Under paragraph (g)(1) of this section, no recovery deduction is allowed in 1984 for the exchanged automobile. Any investment tax credit claimed with respect to that automobile is subject to recapture under section 47.

(iii) F's basis in the acquired property (as determined under section 1031(d) and F's qualified investment are \$20,000. Under the provisions of paragraph (g)(2)(i) of this section, the acquired property is treated as new recovery property placed in service in 1984 to the extent of the full \$20,000 of basis. The maximum amount of F's investment tax credit is limited to \$1,000 (*i.e.*, the lesser of \$1,000 or $.06 \times \$20,000$). Cost recovery deductions are computed pursuant to paragraph (b) of this section.

Example 2. (i) On July 1, 1984, E purchases for \$30,000 and places in service a passenger automobile which is 3-year recovery property under section 168. In 1984, E's business use percentage is 80 percent and such use constitutes his total business/investment use.

(ii) E elects under section 48(q)(4) to take a reduced investment tax credit in lieu of the section 48 (q)(1) basis adjustment. The maximum amount of E's investment tax credit is \$533.33 (*i.e.*, the lesser of $\frac{2}{3}$ of $\$1,000 \times .80$ or $.80 \times .04 \times \$30,000$).

(iii) E's unadjusted basis for purposes of section 168 is \$30,000. E selects the use of the accelerated recovery percentages under section 168(b)(1). The maximum amount of E's recovery deduction for 1984 is \$3,200 (*i.e.*, the lesser of $.80 \times \$4,000$ or $.80 \times .25 \times \$30,000$).

(iv) On June 10, 1985, E exchanges the passenger automobile and \$1,000 cash for a new passenger automobile ("like kind" property). Under paragraph (g)(1) of this section, no recovery deduction is allowable in 1985 for the exchanged automobile. The investment tax credit claimed is subject to recapture under section 47. Under paragraph (g)(2)(ii) of this section, E's basis in the acquired property for purposes of computing recovery deductions under section 280F is \$27,000 (*i.e.*, \$27,800 (section 1031(d) basis)—\$800). The acquired

automobile is used exclusively in F's business during taxable years 1985 through 1988. Under paragraph (g)(2) of this section, the acquired property is treated as new recovery property placed in service in 1985. Assume that the automobile price inflation adjustment (as described under section 280F(d)(7)) is zero. E's qualified investment in the property, as determined under §1.46-3(c)(1), is \$27,800. The maximum amount of E's investment tax credit is \$1,000 (*i.e.*, the lesser of \$1,000 or $.06 \times \$27,800$). E's unadjusted basis for purposes of section 168 is \$26,500 (*i.e.*, \$27,000 reduced under section 48(q)(1) by \$500). Cost recovery deductions are computed pursuant to paragraph (b) of this section.

(h) *Other nonrecognition transactions.* [Reserved]

(i) *Limitation under this section applies before other limitations—(1) Personal use.* The limitations imposed upon the maximum amount of the allowable investment tax credit and the allowable recovery deductions (as described in paragraphs (a) through (c) of this section) must be adjusted during any taxable year in which a taxpayer makes any use of a passenger automobile other than for business/investment use (as defined in §1.280F-6T(d)(3)). The limitations on the amount of the allowable investment tax credit (as described in paragraph (a) of this section) and the allowable cost recovery deductions (as described in paragraphs (b) and (c) of this section) are redetermined by multiplying the limitations by the percentage of business/investment use (determined on an annual basis) during the taxable year.

(2) *Short taxable year.* The limitations imposed upon the maximum amount of the allowable recovery deductions (as described in paragraphs (a) through (c) of this section) must be adjusted during any taxable year in which a taxpayer has a short taxable year. In this case, the limitation is adjusted by multiplying the limitation that would have been applied if the taxable year were not a short taxable year by a fraction, the numerator of which is the number of months and part-months in the short taxable year and the denominator of which is 12.

(3) *Examples.* The provisions of this paragraph (i) may be illustrated by the following examples:

Example 1. On July 1, 1984, A purchases and places in service a passenger automobile and

uses it 80 percent for business/investment use during 1984. Under paragraph (i)(1) of this section, the maximum amount of the investment tax credit that A may claim for the automobile is \$800 (*i.e.*, $.80 \times \$1,000$).

Example 2. Assume the same facts as in *Example 1*, except that A elects under section 48(q)(4) to take a reduced investment tax credit in lieu of the section 48(q)(1) basis adjustment. Under paragraph (i)(1) of this section, the maximum amount of the investment tax credit that A may claim for the automobile is \$533.33 (*i.e.*, $.80 \times \frac{2}{3} \times \$1,000$).

Example 3. On July 1, 1984, B purchases and places in service a passenger automobile and uses it 60 percent for business/investment use during 1984. Under paragraph (i)(1) of this section, the maximum amount of the investment tax credit that B may claim for the automobile is \$600 (*i.e.*, $.60 \times \$1,000$). B uses the car 70 percent for business/investment use during 1985 and 80 percent during 1986. Under paragraph (i)(1) of this section, the maximum amount of recovery deductions that B may claim for 1984, 1985, and 1986 are \$2,400 (*i.e.*, $.60 \times \$4,000$), \$4,200 (*i.e.*, $.70 \times \$6,000$), and \$4,800 (*i.e.*, $.80 \times \$6,000$), respectively.

Example 4. Assume the same facts as in *Example 3* with the added facts that B's unrecovered basis at the beginning of 1987 is \$6,000 and that B uses the automobile 85 percent for business/investment use during 1987. Under paragraph (i)(1) of this section, the maximum amount that B may claim as an expense for 1987 is \$5,000 (*i.e.*, $.85 \times \$6,000$).

Example 5. On August 1, 1984, C purchases and places in service a passenger automobile and uses it exclusively for business. Taxable year 1984 for C is a short taxable year which consists of 6 months. Under paragraph (i)(2) of this section, the maximum amount that C may claim as a recovery deduction for 1984 is \$2,000 (*i.e.*, $\frac{1}{2} \times \$4,000$).

Example 6. Assume the same facts as in *Example 5*, except that C uses the passenger automobile 70 percent for business/investment use during 1984. Under paragraph (i)(1) and (2) of this section, the maximum amount that C may claim as a recovery deduction for 1984 is \$1,400 (*i.e.*, $.70 \times \frac{1}{2} \times \$4,000$).

(98 Stat. 494, 26 U.S.C. 280F; 68A Stat. 917, 26 U.S.C. 7805)

[T.D. 7986, 49 FR 42704, Oct. 24, 1984]

§ 1.280F-3T Limitations on recovery deductions and the investment tax credit when the business use percentage of listed property is not greater than 50 percent (temporary).

(a) *In general.* Section 280F(b), generally, imposes limitations with respect to the amount allowable as an investment tax credit under section 46(a) and the amount allowable as a recovery

deduction under section 168 in the case of listed property (as defined in § 1.280F-6T(b)) if certain business use of the property (referred to as "qualified business use") does not exceed 50 percent during a taxable year. *Qualified business use* generally means use in a trade or business, rather than use in an investment or other activity conducted for the production of income within the meaning of section 212. See § 1.280F-6T(d) for the distinction between "business/investment use" and "qualified business use."

(b) *Limitation on the amount of investment tax credit—(1) Denial of investment tax credit when business use percentage not greater than 50 percent.* Listed property is not treated as section 38 property to any extent unless the business use percentage (as defined in section 280F(d)(6) and § 1.280F-6T(d)(1)) is greater than 50 percent. For example, if a taxpayer uses listed property in a trade or business in the taxable year in which it is placed in service, but the business use percentage is not greater than 50 percent, no investment tax credit is allowed for that listed property. If, in the taxable year in which listed property is placed in service, the only business/investment use (as defined in § 1.280F-6T(d)(3)) of that property is qualified business use (as defined in § 1.280F-6T(d)(2)(i)), and the business use percentage is 55 percent, the investment tax credit is allowed for the 55 percent of the listed property that is treated as section 38 property. The credit allowed is unaffected by any increase in the business use percentage in a subsequent taxable year.

(2) *Recapture of investment tax credit.* Listed property ceases to be section 38 property to the extent that the business/investment use (as defined in § 1.280F-6T(d)(3)) for any taxable year is less than the business/investment use for the taxable year in which the property is placed in service. See § 1.47-2(c). If the business use percentage (as defined in § 1.280F-6T(d)(1)) of listed property is greater than 50 percent for the taxable year in which the property is placed in service, and less than or equal to 50 percent for any subsequent taxable year, that property ceases to be section 38 property in its entirety in that subsequent taxable year. Under