

## IRM PROCEDURAL UPDATE

**DATE: 05/13/2016**

**NUMBER: WI-21-0516-0914**

**SUBJECT: Protecting Americans From Tax Hikes Act of 2015, P.L. 114-113, #2**

**AFFECTED IRM(s)/SUBSECTION(s): 21.7.4**

**CHANGE(s):**

**IRM 21.7.4.4.8.1.3(4) & (6) Added that the empowerment zone employment credit has been modified and extended for two years by the Protecting Americans from Tax Hikes Act of 2015, P.L. 114-113.**

4. The empowerment zone employment credit has been modified by various legislation. Below is a listing of the legislation that has extended the empowerment zone employment credit:
  - Section 753(a)(1), of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312, extended the credit to December 31, 2011.
  - Section 327(a), of the American Taxpayer Relief Act of 2012, P.L. 112-240, extended the credit for two years and is effective after December 31, 2011 and on or before December 31, 2013.
  - Section 139, of the Tax Increase Prevention Act of 2014, P.L. 113-295, extended the credit for one year and is effective after December 31, 2013 and on or before December 31, 2014. See Notice 2015-26 for more information.
  - Section 171 of the Protecting Americans From Tax Hikes Act of 2015, P.L. 114-113, extended the credit for two years and is effective on or before December 31, 2016.
5. A qualified empowerment zone employee is any employee (full-time or part-time) of the employer who:
  - a. Performs substantially all of the services for that employer within an empowerment zone in the employer's trade or business, **and**
  - b. Has their principal residence within that empowerment zone while performing those services. (Employees who work in the Washington, DC empowerment zone may live anywhere in the District of Columbia.)
6. Beginning with wages paid after December 31, 2015, Section 171 of the Protecting Americans From Tax Hikes Act of 2015, P.L. 114-113, an employee shall be treated as a resident of an empowerment zone if the employee is a resident of an:
  - Empowerment zone,
  - Enterprise community, or

- A qualified low-income community within an applicable nominating jurisdiction.

**IRM 21.7.4.4.8.3.2(2) Added that the work opportunity tax credit has been extended for five years by the Protecting Americans from Tax Hikes Act of 2015, P.L. 114-113.**

2. The work opportunity credit has been modified by various legislation. See the 09/09/2013 revision of this IRM for a complete list of legislation that extended the work opportunity credit before 2007. Below is a listing of the most recent legislation that has extended the work opportunity credit:
  - Section 8211, of the Small Business and Work Opportunity Tax Act of 2007, P.L. 110-28, modifies and extends the credit for 44 months for qualified individuals who begin work for an employer after December 31, 2007, and before September 1, 2011.
  - Section 757, of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312, extended the credit for 4 months to December 31, 2011.
  - Section 309(a), of the American Taxpayer Relief Act of 2012, P.L. 112-240, extended the credit for qualified individuals who begin work for the employer after December 31, 2011 and on or before December 31, 2013. See Notice 2013-14 for guidance on claiming the credit under section 309(a) of the Act.
  - Section 119, of the Tax Increase Prevention Act of 2014, P.L. 113-295, extended the credit for one year for qualified individuals who begin work for the employer after December 31, 2013 and on or before December 31, 2014. See Notice 2015-13 for guidance on claiming the credit under section 119 of the act.
  - Section 142 of the Protecting Americans from Tax Hikes Act of 2015, P.L. 114-113, extended the work opportunity tax credit for five years for qualified individuals who begin work for the employer after December 31, 2014 and on or before December 31, 2019. In addition, the Act added a new targeted group, qualified long-term unemployment recipients who begin work after 2015.

**IRM 21.7.4.4.8.3.2.7 Added new subsection titled: Form 5884, Work Opportunity Credit - Section 142 of the Protecting Americans from Tax Hikes Act of 2015, P.L. 114-113.**

1. Taxpayers use Form 5884 to claim the work opportunity credit for qualified first-year and/or second-year wages you paid to or incurred for targeted group employees during the tax year. A business doesn't have to be located in an empowerment zone or rural renewal county to qualify for this credit.

2. Section 142 of the Protecting Americans from Tax Hikes Act of 2015, P.L. 114-113, (the Act), extended the work opportunity credit for five years for qualified individuals who begin work for the employer after December 31, 2014 and on or before December 31, 2019. In addition, the Act added a new targeted group, qualified long-term unemployment recipients who begin work after December 31, 2015.
3. The term “qualified long-term unemployment recipient” means any individual who is certified by the designated local agency as being in a period of unemployment which:
  - o Is not less than 27 consecutive weeks, and
  - o Includes a period in which the individual was receiving unemployment compensation under State or federal law.
4. An individual is a member of a targeted group if such individual began working for the taxpayer after December 31, 2014 and on or before December 31, 2019 and is a:
  - o Long-term family assistance recipient
  - o Qualified recipient of Temporary Assistance for Needy Families (TANF)
  - o Qualified IV-A recipient
  - o Qualified veterans
  - o Qualified ex-felon
  - o Designated community resident
  - o Vocational rehabilitation referral
  - o Qualified summer youth employee
  - o Qualified SSI recipient
  - o Supplemental Nutrition Assistance Program (SNAP) benefits (food stamps) recipient
  - o Qualified long-term unemployment recipient (for individuals who begin work after December 31, 2015)
5. See IRM 21.7.4.4.8.3.2, for more information on claiming the credit. Also, see IRM 21.7.4.4.8.3.2.5., for the credit for the incentives to hire unemployment veterans and disconnected youth, and IRM 21.7.4.4.8.3.2.6, which enhanced the work opportunity credit by providing two new categories to the qualified veteran targeted group.
6. Notice 2016-22 , IRB 2016-13, C.B. 488, provides guidance and transitional relief for employers claiming the work opportunity credit under section 51 and section 3111(e) of the Internal Revenue Code, as extended and amended by P.L. 114-113. See Notice 2016-22 for more specific information.
7. Action required
  - o Math verify, Form 5884
  - o Input TC 291 to increase the credit and a TC 290 to decrease the credit.

**IRM 21.7.4.4.8.3.4 Updated the information on the research credit due to section 124(a) of the Protecting Americans from Tax Hikes Act of 2015, P.L. 114-113.**

1. Taxpayers use Form 6765 to figure and claim the credit for increasing research activities (research credit) or to elect the reduced credit under section 280C. The research credit is generally allowed for expenses paid or incurred for qualified research. **Qualified research** means research that satisfies the following test:
  - For which expenses may be treated as section 174 expenses;
  - Which is undertaken for the purpose of discovering information (i) which is technological in nature, and (ii) the application of which is intended to be useful in the development of a new or improved business component of the taxpayer; and
  - Substantially all of the activities of which constitute elements of a process of experimentation for a new or improved function, substantially all of the activities of which constitute elements of a process of experimentation for a new or improved function performance, reliability or quality.
2. Partnerships and S corporations must file Form 6765 to claim the credit. All other taxpayers are generally not required to complete or file this form if their only source for this credit is a partnership, S corporation, estate, or trust. Instead, they can report this credit directly on Form 3800, General Business Credit. The exception is an estate or trust and the credit can be allocated to the beneficiaries. For more details, see the Instructions for Form 1041, Schedule K-1, Box 13.
3. As part of the general business credit, any portion of the research credit that cannot be used in the current year can be carried back one year to reduce taxes for that taxable year. It can then be carried forward 20 years.
4. The research credit has been modified and extended by various provisions of legislation over the years. See previous revisions of this IRM for a complete list of legislation that previously extended the research credit before 2009. Below is the most recent legislation that has extended the research credit, along with paragraphs (5) & (6) below:
  - Section 731, Title VII, of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312, extended the credit for two years for any amount paid or incurred for taxable years beginning after 12/31/2009 and on or before 12/31/2011.
  - Section 301(a), Title III, of the American Taxpayer Relief Act of 2012, P.L. 112-240, extended the credit for two years for amounts paid or incurred for taxable years beginning after 12/31/2011 and on or before 12/31/2013.
  - Section 111, Div. A, Title I, of the Tax Increase Prevention Act of 2014, P.L. 113-295, extended the credit for one year for amounts paid or incurred for taxable years beginning after 12/31/2013 and on or before 12/31/2014.
5. Section 121(a), Div. Q, of the Protecting Americans from Tax Hikes Act of 2015, of P.L. 114-113, (the Act), **permanently** extended the research credit

for expenses paid and incurred after 12/31/2014. In addition, per section 121(b) of the Act, the credit is allowed against the alternative minimum tax for eligible small businesses (as defined in IRC 38(c)(5)(C)) and is effective for taxable years beginning after 12/31/ 2015.

6. Section 121(c) of the Act allows qualified small businesses to elect to claim the payroll tax credit portion of the research credit as a credit against the employer portion of social security tax. This provision is effective for tax years beginning after 12/31/2015. The credit against the employer portion of social security tax is in lieu of a credit against income tax. The provision does not apply to organizations which are exempt from taxation under section 501. Procedures are being developed for working the credit on Form 94X employment returns. More information will be issued after these procedures are completed.
7. See the Instructions for Form 6765 for specific information on claiming the research credit.
8. Notice 2008-39 , 2008-13 IRB, 684, established the filing address for certain claims for credit or refund reported on amended Forms 1120 or on Forms 1120X, generated by the research credit. **Research Credit Suspension Period claims ARE NOT** covered by this notice.
9. Notice 2008-39 only applies to taxpayers required to file Form 1120 with claims for credit or refund attributable, in whole or in part, to the research credit that were not:
  - o Reported on an original income tax return or an amended income tax return, filed on or before the due date of the original Form 1120, including extensions, and
  - o Filed with the Internal Revenue Service on or before 03/31/2008.
10. Claims attributable in whole or part, to the research credit and reported on Form 1040 or Form 1040X **ARE NOT** subject to this notice. Form 1045 and Form 1139 also **ARE NOT** subject to the notice.
11. All claims subject to this notice should indicate **Refund-Research Credit** at the top of the claim/return and must include a completed Form 6765 (and a copy of the Form 6765 they filed with their original return, if any) **and must:**
  - o Explain in detail the grounds which the credit is claimed
  - o Provide facts sufficient to apprise the Service of the exact basis thereof; and
  - o Include a written declaration under the penalties of perjury.

**NOTE:** Accounts Management in Ogden and Cincinnati follow the general claims instructions in IRM 21.5.3.4.2, *Tax Decrease or Credit Increase Processing*, for claims that do not meet the criteria in paragraph (11) above.

12. Per Notice 2008-39, all claims subject to this notice are worked in Accounts Management at the Ogden campus only. Notice 2008-39 instructs taxpayers to file claims at the following address:  
Internal Revenue Service  
1973 N. Rulon White Blvd.  
Ogden, UT 84201

13. Notice 2008-39 does not apply to those claims for credit or refund subject to the electronic filing requirements for amended returns stated in Treas. Reg. section 301.6011-5.
14. If an amended Form 1120 or Form 1120X subject to this notice is received in Accounts Management (**other than Ogden**) prepare a Form 3210 Transmittal, and route to Ogden Accounts Management, Mail Stop OSC 6552. For CIS cases, reassign to 0433728787. Ogden will suspend the case to Exam based on the taxpayer's Business Operation Division (BOD) code. **For CIS cases received in Ogden**, suspend to Exam as 2CATA. Use suspense reason OTHER for Small Business Self Employed (SB/SE) cases, and use suspense reason HQ Reserved 5, for LB&I cases.
15. If the case is routed back to Accounts Management (Cincinnati or Ogden) stamped "Accepted as Filed," the case is worked in AM in the campus that sent the referral to Exam.
16. Action required:
  - a. Math verify Form 6765
  - b. Input TC 291 to increase the credit or TC 290 to reduce the credit

**IRM 21.7.4.4.8.3.8 Added that the renewable electricity, refined coal, and Indian coal production credit, has been modified and extended by the Protecting Americans from Tax Hikes Act of 2015, P.L. 114-113.**

1. Section 1914(a), Title XIX, of the Energy Policy Act of 1992, P.L. 102-486, revised IRC 38 and added new IRC section 45 (electricity produced from certain renewable, etc.... also known as the Production Tax Credit (PTC)), to allow an income tax credit on the sale of electricity produced in the United States (within the meaning of section 638(1)) and U.S. possessions (within the meaning of section 638(2)) from qualified energy resources.
2. Section 507(a)-(c), Title V, of the Ticket to Work and Work Incentives Improvement Act of 1999, P.L. 106-170, extended and modified the placed in service rules of the PTC, added poultry waste as a qualified energy resource, and provided special rules regarding credit eligibility for government-owned facilities using poultry waste, and for electricity sold to utilities under certain contracts.
3. Section 710(a), Title VII, of the American Jobs Creation Act of 2004, P.L. 108-357, expanded the definition of qualified energy resources to include wind, closed-loop biomass, open-loop biomass, geothermal or solar energy, small irrigation power, landfill gas, and trash combustion. Section 710(b) expanded the list of qualified facilities eligible for the PTC by including wind facilities (placed in service after 12/31/1993 and before 1/1/2006), closed-loop biomass facilities (placed in service after 12/31/1992 and before 1/1/2006), and open-loop biomass, geothermal or solar energy, small irrigation power, landfill gas, and trash facilities (placed in service after 10/22/2004 and before 1/1/2006). Section 710(b) also provided that refined produced from a qualified refined coal production facility placed in service after 10/22/2004 and before 1/1/2009 may be eligible for the PTC. Section 710(c) of the Act also provided

a special credit rate and credit period for electricity produced and sold after 10/22/2004.

4. Section 1301(c) and section 1301(d), Title XIII, of the Energy Policy Act of 2005, P.L. 109-58, extended and modified the PTC to include hydropower and Indian coal production facilities.
5. Section 101(a), Div. B, Title I, of the Emergency Economic Stabilization Act of 2008, P.L. 110-343, extended the PTC. Section 102(a) expanded the PTC to include marine and hydrokinetic renewable energy facilities.
6. The credit has been modified by various legislation. Below is a list of some of the legislation that has impacted the credit. See paragraph (14) below for the placed in service dates for various categories, and the 8835">Instructions for Form 8835 , for more specific information:
  - o Section 201, Div. A, Title II, of the Tax Relief and Health Care Act of 2006, P.L. 109-432; 121 Stat. 2482, 2484;
  - o Section 1101(a)-(b), Div. B, Title I, of the American Recovery and Reinvestment Act of 2009, P.L. 111-5,123 Stat. 319;
  - o Section 702(a), Title VII, of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312, 124 Stat. 3296;
  - o Section 406(a) and section 407(a), Title IV, of the American Taxpayer Relief Act of 2012, P.L. 112-240, 126 Stat. 2313;
  - o Section 154(a) and section 155(a), Div. A, Title I, of the Tax Increase Prevention Act of 2014, P.L. 113-295, 128 Stat. 4010; and
  - o Section 301(a), Div. P, Title III, section 186(a)-(d), section 187(a), Div. Q, Title I, of the Protecting Americans from Tax Hikes Act of 2015, P.L. 114-113, 129 Stat. 3038, 3073-74.
7. Form 8835 is filed to claim the renewable electricity, refined coal, and Indian coal production credit. The credit is allowed only for the sale of electricity, refined coal, or Indian coal produced in the United States or U.S. possessions from qualified energy resources at a qualified facility.
8. Generally, the credit is 1.5 cents per kilowatt-hour (kWh) for the sale of electricity produced by the taxpayer from qualified energy resources at a qualified facility during the credit period. With the exception of certain closed-loop biomass facilities, the credit is reduced for grants, tax-exempt bonds, subsidized energy financing and is adjusted annually based on inflation. The credit for electricity produced at qualified facilities using: wind, closed-loop biomass, geothermal, and solar are listed in the second column. The credit for electricity produced at qualified facilities using: open-loop biomass, small irrigation power, landfill gas, trash, hydropower, marine, and hydrokinetic renewables is reduced by one-half in any calendar year after 2003 and are listed in the third column:

Tax year	Amount per kWh for electricity produced at qualified facilities using: wind, closed-loop biomass, geothermal, and solar	Amount per kWh for electricity produced at qualified facilities using: open-loop biomass, small irrigation power, landfill gas, trash, hydropower, marine and hydrokinetic renewables
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2007	.020	.010
2008	.021	.010
2009	.021	.011
2010 thru 2012	.022	.011
2013 and 2014	.023	.011
2015 and 2016	.023	.012

9. In addition, the amount of the credit is phased out as the market price of electricity (or refined coal in the case of refined coal production credit) exceeds certain threshold levels. The PTC has not been phased out for calendar years 2005- 2015. See the 8835 "Instructions for Form 8835 how to figure the credit. See the chart below for the factor to use to figure the amount of the credit:
10. The phaseout also does not apply to:
- o Electricity sold in 2007 - 2015 that was produced from wind.
  - o Refined coal sold during calendar years 2007- 2015.
  - o Electricity sold in calendar years 2007 - 2015, that was produced from closed-loop biomass, geothermal energy, solar energy, small irrigation power, and municipal solid waste.
  - o Electricity sold in calendar years 2005 - 2015 that was produced from open-loop biomass.
  - o Electricity sold in calendar years 2006 - 2015 that was produced from qualified hydropower.
  - o Electricity sold in calendar years 2009 - 2015 that was produced from marine and hydrokinetic energy.
11. Annually the Service publishes the inflation adjustment factor and reference prices for each calendar year for the PTC and the refined coal production credit under section 45 of the Internal Revenue Code. The inflation adjustment factor and reference prices are used in determining the availability of the credits. The inflation adjustment factor and reference prices apply to sales of kilowatt-hours of electricity produced in the United States or a possession thereof from qualified energy resources in that calendar year. See the following notices for the yearly inflation factor :

<b>Tax Year</b>	<b>Notice Number</b>
2005	Notice 2005-37 , IRB 2005-20, C.B. 1049
2006	Notice 2007-38 , IRB 2007-18, C.B. 1103
2007	Notice 2007-40 , IRB 2007-21, C.B. 1284
2008	Notice 2008-48 , IRB 2008-21, C.B. 1008
2009	Notice 2009-40 , IRB 2009-19, C.B. 931
<b>2010</b>	<b>Notice 2010-37</b> , IRB 2010-18, C.B. 654

<b>2011</b>	<b>Notice 2011-40</b> , IRB 2011-22, C.B. 806
<b>2012</b>	<b>Notice 2012-35</b> , IRB 2012-21, C.B. 937
<b>2013</b>	Notice 2013-33 , IRB 2013-22, C.B. 1140
2014	Notice 2014-36 , IRB 2014-22, C.B. 1058
2015	Notice 2015-32 , IRB 2015-20, C.B. 967 and Notice 2016-11 , IRB 2016-6, C.B. 312

12. Generally, section 45(e)(8)(A) provides that the credit is \$4.375 per ton for the sale of refined coal produced, and section 45(e)(10)(B)(i) provides that the credit is \$1.50 per ton for the sale of Indian coal produced in calendar years 2006 through 2009 and \$2.00 per ton for calendar years beginning after 2009. See the table below for the credit amount per ton for the sale of refined coal and Indian coal:

<b>Tax Year</b>	<b>Credit amount per ton for refined coal produced and sold</b>	<b>Credit amount per ton for Indian coal produced and sold</b>
2007	\$5.877	\$1.544
2008	\$6.061	\$1.589
2009	\$6.20	\$1.625
2010	\$6.27	\$2.20
2011	\$6.33	\$2.20
2012	\$6.475	\$2.267
2013	\$6.59	\$2.308
2014	\$6.601	\$2.317
2015	\$6.710	\$2.354

13. The PTC for electricity produced at qualified facilities placed in service before 10/23/2004 has expired. See previous revisions of Form 8835 and associated instructions for more information.

14. The PTC for electricity and refined coal produced at qualified facilities placed in service after 10/22/2004 (after 10/02/2008, for electricity produced from marine and hydrokinetic renewables), and Indian coal produced at facilities placed in service after 08/08/2005 (see paragraph (15) below), may be taken on Form 8835 (Part II). The credit includes the following:

- Wind facility placed in service after 10/22/2004 and the construction of which begins before 01/01/2020. This does not include any facility for which any qualified small wind energy property expenditure (as defined in section 25D(d)(4)) is used in determining the residential energy efficient property credit.
- Closed-loop biomass facility placed in service after 10/22/2004 and the construction of which begins before 01/01/2017.
- Closed-loop biomass facility modified before 01/01/2017 to co-fire with coal or other biomass (or both), and placed in service before 01/01/2017. The facility will be treated as modified before 01/01/2017, if the construction of the modification begins before 01/01/2017. See section 45(d)(2)(ii).

- Closed-loop biomass facility that is a new unit placed in service after 10/03/2008, in connection with a facility described in section 45(d)(2)(A)(i), but only to the extent of the increased amount of electricity produced at the facility by reason of the new unit.
- Open-loop biomass facility using cellulosic waste and the construction of which begins before 01/01/2017.
- Open-loop biomass facility using agricultural livestock waste in service after 10/22/2004 and the construction of which begins before 01/01/2017 and the nameplate capacity rating is not less than 150 kilowatts.
- Open-loop biomass facility that is a new unit placed in service after 10/03/2008, in connection with a facility described in section 45(d)(3)(A), but only to the extent of the increased amount of electricity produced at the facility by reason of the new unit.
- Geothermal energy facility placed in service after 10/22/2004, and the construction of which begins before 01/01/2017. The facility does not include any property described in IRC 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under IRC 48.
- Solar energy facility placed in service after 10/22/2004 and before 01/01/2006. The facility does not include any property described in IRC 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under IRC 48.
- Small irrigation power facility placed in service after 10/22/2004 and before 10/03/2008.
- Landfill gas or trash facility using municipal solid waste placed in service after 10/22/2004 and the construction of which begins before 01/01/2017.
- Trash facilities include a new unit placed in service in connection with a facility placed in service on or before 10/22/2004, but only to the extent of the increased amount of electricity produced at the facility by reason of the new unit.
- A refined coal production facility originally placed in service after 10/22/2004 and before 1/1/2012. See Notice 2010-54, IRB 2010-40, for more information on refined coal facilities.
- A refined coal facility producing steel industry fuel, any facility (or any modification to a facility) which is placed in service before 01/01/2010.
- Hydropower facility producing incremental hydroelectric production attributable to efficiency improvements or additions to capacity described in section 45(c)(8)(B) placed in service after 08/08/2005 and before 01/01/2017. An efficiency improvement or addition to capacity shall be treated as placed in service before 01/01/2017, if the construction of the improvement or addition begins before 01/01/2017, and any other facility producing qualified hydroelectric production described in section 45(c)(8) placed in service after 08/08/2005, and the construction of which begins before 01/01/2017.
- Indian coal production facility placed in service before 01/01/2009. See paragraph (15) below.

- Marine and hydrokinetic renewable energy facility placed in service after 10/03/2008, and the construction of which begins before 01/01/2017.

**NOTE:** A qualified facility does not include a refined coal production facility or landfill gas facility using municipal solid waste to produce electricity, if the production from that facility is allowed as a credit under section 45K.

15. The PTC for Indian coal produced at a qualified Indian coal production facility has been extended and modified. Section 186, Div. Q, of the Protecting Americans from Tax Hikes Act of 2015, P.L. 114-113, amended the PTC for Indian Coal produced at a qualified Indian coal facility (a facility that produces Indian Coal) during the 11-year period beginning on 01/01/2006 and sold by the taxpayer to an unrelated person (either directly by the taxpayer or after sale or transfer to one or more related persons) during such 11-year period. In addition, the provision modifies the credit for tax years beginning after 12/31/2015 by allowing the credit to be claimed against the alternative minimum tax.
16. Notice 2013-29, IRB 2013-20, C.B. 1085, provides guidance on determining when construction has begun on a qualified facility for purposes of the PTC. Notice 2013-29 provides two methods that a taxpayer may use to establish that construction of a qualified facility has begun:
  - By starting physical work of a significant nature (Physical Work Test), or
  - By demonstrating, after the facility is placed in service, that 5-percent or more of the total cost of the facility was paid or incurred before 01/01/2014 (5-percent Safe Harbor). Both of these methods require that a taxpayer maintain a continuous program of construction to be determined by the relevant facts and circumstances (Continuous Construction Test and Continuous Efforts Test, respectively, and the Continuity Requirement, collectively).
17. The following bullets summarize the IRS guidance regarding the PTC under IRC 45 and the Investment Tax Credit (ITC) under IRC 48:
  - Notice 2013-60, IRB 2013-44, C.B. 431, clarifies in part Notice 2013-29, IRB 2013-20, C.B. 1085
  - Notice 2014-46, IRB 2014-36, C.B. 520, clarifies and modifies Notice 2013-29 and Notice 2013-60.
  - Notice 2015-25, IRB 2015-13, C.B. 814, updates Notice 2013-29, Notice 2013-60, and Notice 2014-46.
18. For TY 2006 and subsequent tax years the PTC can only be claimed as a general business credit and must be carried to Form 3800, *General Business Credit*. The allowable credit will then be figured on Form 3800.
19. Any unused portion of the PTC remaining, after the tax is reduced to zero, can be carried back one year to reduce taxes for that year. It can then be carried forward 20 years. See IRM 21.7.4.4.8.1.4, Carryback/Carryforward of Excess Credit, for tax years beginning prior to 1998.
20. Action required:

- a. Math verify Form 8835
- b. Input TC 291 to increase the credit or TC 290 to reduce the credit

**IRM 21.7.4.4.8.3.17.1(8) Added a link to Notice 2016-20 which provides for the allocation of the national limitation for qualified zone academy bonds.**

8. A QZAB is any bond issued by a state or local government as a qualified zone academy bond and 100 percent of the available project proceeds of which are used to improve certain eligible public schools (for QZABs issued before October 4, 2008, 95 percent or more of the proceeds are used to improve certain eligible public schools). Below is a list of recent legislation that extended the QZAB credit:
  - Division C, Section 313, of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, P.L. 110-343, provided national authority to issue \$400,000,000 of qualified zone academy bonds for 2008.
  - Section 1522, of the American Recovery and Reinvestment Act of 2009 Act, P.L. 111-5, extended the authority to issue QZAB and increased the national limitations for QZABs. The provision authorizes the issuance of up to \$1,400,000,000 in QZAB annually for 2009 and 2010. . See Notice 2009-30, IRB 2009-16, and Notice 2010-22, IRB 2010-10 for the maximum face amount of QZAB that may be issued for each State for calendar years 2008, 2009, and 2010, respectively, under IRC 54E.
  - Section 758(a), of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312, extended the credit for one year to December 31, 2011. In addition, section 758(a) sets the national limitation at \$400,000,000 for 2011. See Rev. Proc. 2011-19, IRB 2011-6, for the maximum face amount of QZAB that may be issued for each State for calendar year 2011 under IRC 54E(c)(2).
  - Section 310(a), of the American Taxpayer Relief Act of 2012, P.L. 112-240, extended the authority to issue QZAB for two years for calendar years 2012 and 2013. Notice 2013-3, IRB 2013-7, provides for the allocation of the national limitation for qualified zone academy bonds among the States, the District of Columbia, and the possessions of the United States for 2013.
  - Section 120, of the Tax Increase Prevention Act of 2014, P.L. 113-295, extended the authority to issue QZABs for calendar year 2014. Notice 2015-11, IRB 2015-11, provides for the allocation of the national limitation for qualified zone academy bonds among the States, the District of Columbia, and the possessions of the United States for 2014.
  - Section 164 of the Protecting Americans from Tax Hikes Act of 2015, P.L. 114-113, authorizes the issuance of \$400 million of qualified zone academy bonds for 2 years for calendar year 2015 and 2016. Notice

2016-20, I.R.B. 2016-9, provides for the allocation of the national limitation for qualified zone academy bonds among the States, the District of Columbia, and the possessions of the United States.

**IRM 21.7.4.4.18.7(2) Added to see IRM 21.7.4.4.18.7.6, for tax years beginning on or after January 1, 2014, and to see IRM 21.7.4.4.18.7.7, for tax years beginning on or after January 1, 2016 due to the Protecting Americans from Tax Hikes Act of 2015, P.L. 114-113.**

2. Per IRC 179(d)(1), "section 179 property" means property which is:
  - Tangible property (to which section 168 applies), **or** computer software (as defined in IRC 197(e)(3)(B)) which is described in IRC 197(e)(3)(A)(i), to which IRC 167 applies, and which is placed in service in a taxable year beginning after 2002 and before 2011,
  - IRC 1245 property (as defined in section 1245(a)(3), **and**
  - Acquired by purchase for use in the active conduct of a trade or business.

**NOTE:** See IRM 21.7.4.4.18.7.6, for tax years beginning after December 31, 2013, and IRM 21.7.4.4.18.7.7, for tax years beginning after December 31, 2014, for more specific information concerning these tax years.

**IRM 21.7.4.4.18.7.6(6) & (8) Added to see IRM 21.7.4.4.18.7.7, for tax years beginning on or after January 1, 2015 by the Protecting Americans from Tax Hikes Act of 2015, P.L. 114-113.**

1. Taxpayers may elect under IRC 179 to expense the cost of qualifying property, rather than to recover their cost through depreciation deductions. See the various subsections in this IRM for the maximum dollar amount that a taxpayer previously could have expensed under IRC 179(b)(1), and for the dollar limitation under IRC 179(b)(2) that the aggregate cost of qualifying property placed in service by the taxpayer during the taxable year cannot exceed without reducing the amount that can be expensed under IRC 179(b)(1).
2. Per IRC 179(d)(1), "section 179 property" means property which is:
  - Tangible property (to which section 168 applies), or computer software (as defined in IRC 197(e)(3)(B)) which is described in IRC 197(e)(3)(A)(i), to which IRC 167 applies, and which is placed in service in a taxable year beginning after 2002 and before 2015,
  - IRC 1245 property (as defined in section 1245(a)(3)), and
  - Acquired by purchase for use in the active conduct of a trade or business.

**NOTE:** Section 179 property does not include any property described in IRC 50(b) and does not include air conditioning or heating units.

3. See IRM 21.7.4.4.18.7.7, for tax years beginning on or after 01/01/2015.
  4. Section 127(a)(1)(A), of the Tax Increase Prevention Act of 2014, P.L. 113-295, sets the maximum amount under IRC 179(b)(1) of the aggregated cost of qualifying property placed in service for the taxable year that a taxpayer may expense. For taxable years beginning after 2009 and before 2015, the amount remains at \$500,000. Per section 127(a)(1)(B) of the Act, for taxable years beginning after 2014, the aggregated cost of qualifying property placed in service for the taxable year under IRC 179 that a taxpayer may expense is \$25,000.
  5. Section 127(b), of the Tax Increase Prevention Act of 2014, P.L. 113-295, extended the placed in service date for computer software described in paragraph (2) directly above, for one year to taxable years beginning after 2002 and before 2015.
  6. Under IRC 179(b)(2), the applicable IRC 179(b)(1) amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service by the taxpayer during the taxable year exceeds certain thresholds. Per section 127(a)(2)(A), of the Tax Increase Prevention Act of 2014, P.L. 113-295, the threshold amount under IRC 179(b)(2), for taxable years beginning after 2009 and before 2015, the amount remains at \$2,000,000. Per section 127(a)(2)(B) of the Act, the threshold amount is \$200,000 for tax years beginning after 2014.
  7. Section 127(c), of the Tax Increase Prevention Act of 2014, P.L. 113-295, extended for one year the provision permitting a taxpayer to irrevocably revoke an election for a taxable year under IRC 179(c)(2) without the consent of the Commissioner for elections with respect to taxable years beginning after 2002 and before 2015.
  8. Section 127(d)(1), of the Tax Increase Prevention Act of 2014, P.L. 113-295, extended the special rules for qualified real property for one year. If a taxpayer elects the application of IRC 179(f) for any taxable year beginning after 2009 and before 2015, the term section 179 property shall include any qualified real property which is
    - o Of a character subject to an allowance for depreciation,
    - o Acquired by purchase for use in the active conduct of a trade or business, and
    - o Not described in the last sentence of IRC 179(d)(1) (see note in paragraph (2) above).
- (i) (ii)(iii)
9. The term "qualified real property" means:
    - o Qualified leasehold improvement property described in IRC 168(e)(6),
    - o Qualified restaurant property described in IRC 168(e)(7), and
    - o Qualified retail improvement property described in IRC 168(e)(8).

**IRM 21.7.4.4.18.7.7 Added new subsection: Protecting Americans from Tax Hikes Act of 2015, P.L. 114-113, IRC 179 Expensing.**

1. Taxpayers may elect under IRC 179 to expense the cost of qualifying property, rather than to recover their cost through depreciation deductions. See the various subsections under IRM 21.7.4.4.18, for the maximum dollar amount that a taxpayer previously could have expensed under IRC 179(b)(1), and for the dollar limitation under IRC 179(b)(2) that the aggregate cost of qualifying property placed in service by the taxpayer during the taxable year cannot exceed without reducing the amount that can be expensed under IRC 179(b)(1).
2. Section 124(a), of the Protecting Americans from Tax Hikes Act of 2015 (the Act), enacted as part of the Consolidated Appropriations Act, 2016, Division Q, P.L. 114-113, **permanently extended** the maximum dollar amount under IRC 179(b)(1) and the dollar limitation under IRC 179(b)(2) for Section 179 property as follows:
  - Per section 124(a)(1) of the Act, for taxable years beginning after December 31, 2014, the maximum amount under IRC 179(b)(1) of the aggregated cost of qualifying property placed in service for the taxable year that a taxpayer may expense is \$500,000.
  - Under IRC 179(b)(2), the applicable IRC 179(b)(1) amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service by the taxpayer during the taxable year exceeds certain thresholds. Per section 124(a)(2) of the Act, the threshold amount under IRC 179(b)(2), for taxable years beginning after December 31, 2014 is \$2,000,000.
3. Per section 124(f) of the Act, section 179(b) is amended by adding an inflation adjustment:
  - In general, for any taxable year beginning after December 31, 2015, the dollar amounts shown in paragraph (2) above, may be increased by an amount equal to (i) such dollar amount multiplied by (ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by the CPI for calendar year 2014.
  - The amount of any increase in the bullet above shall be rounded to the nearest multiple of \$10,000.
  - Per Rev. Proc. 2016-14, I.R.B. 2016-9, C.B. 365, for taxable years beginning in 2016, the inflation adjusted maximum amount under IRC 179(b)(1) remains at \$500,000, and the inflation adjusted threshold amount under IRC 179(b)(2) is increased to \$2,010,000.
4. The law does not alter the rule that a taxpayer cannot elect under IRC 179 to expense more than \$25,000 of the cost of any sport utility vehicle, which is qualifying property, placed in service in the taxable year.
5. Per IRC 179(d)(1), as amended by section 124(b) of the Act, "section 179 property" means property which is:
  - Tangible property (to which section 168 applies), or
  - Computer software (as defined in IRC 197(e)(3)(B)) which is defined in IRC 197(e)(3)(A)(i), and to which section 167 applies, and

- Acquired by purchase for use in the active conduct of a trade or business.
6. IRC 179 property does not include any property described in IRC 50(b) and does not include air conditioning and heating units.

**NOTE:** Per section 124(e) of the Act, effective with taxable years beginning after December 31, 2015, IRC 179(d)(1) includes air conditioning and heating units.

7. Section 124(c)(2) of the Act, **permanently extended** the special rules for qualified real property, effective for taxable years beginning after December 31, 2015. If a taxpayer elects the application of IRC 179(f) for any taxable year.
8. The term “section 179 property” shall include any qualified real property which is:
  - Of a character subject to an allowance for depreciation,
  - Acquired by purchase for use in the active conduct of a trade or business, and
  - Not described in the last sentence of IRC 179(d)(1) (see note in paragraph (6) above).
9. The term “qualified real property” means:
  - Qualified leasehold improvement property described in IRC 168(e)(6),
  - Qualified restaurant property described in IRC 168(e)(7), and
  - Qualified retail improvement property described in IRC 168(e)(8).
10. For taxable years beginning after 2009 and before 2016, for purposes of applying the limitation under IRC 179(b)(1), not more than \$250,000 of the aggregate cost which is taken into account under IRC 179(a) for any taxable year may be attributable to qualified real property. Section 124(c)(2) of the Act eliminated this \$250,000 limitation, effective for taxable years beginning after December 31, 2015.
11. Per IRC 179(c)(2), any election made under section 179, and any specification contained in any such election, for any taxable year beginning before 2003 may not be revoked except with the consent of the Commissioner. Any such election or specification with respect to any taxable year beginning after 2002 and before 2015 may be revoked by the taxpayer with respect to any property, and any such revocation, once made, is irrevocable. Per Section 124(d) of the Act, for taxable years beginning after December 31, 2014, an election made under section 179 may be revoked by the taxpayer with respect to any property, and such revocation once made, shall be irrevocable.
12. See IRC 179(a) through 179(f) for more specific information.