



TaxNewsFlash

United States



No. 2019-368
July 17, 2019

Final regulations: Partner treated as lessee, when lessor elects to pass through investment tax credits to lessee

The U.S. Treasury Department and IRS this afternoon released for publication in the Federal Register final regulations (T.D. 9872) concerning the income inclusion rules under section 50(d)(5) that apply to a lessee of investment credit property when a lessor of that property elects to treat the lessee as having acquired the property.

Today's [final regulations](#) [PDF 352 KB] finalize regulations that were proposed in July 2016 (and withdraw corresponding temporary regulations) and, according to the preamble, adopt the "proposed regulations without modification."

The final regulations are effective July 17, 2019.

Overview

These regulations provide the income inclusion rules under section 50(d)(5) as applicable to a lessee of investment credit property when a lessor elects to treat the lessee as having acquired the property.

Generally, if an owner of investment credit property claims the investment tax credit, the owner must reduce the basis in such property by an amount of the investment tax.

The regulations released in 2016 provided: (1) rules to coordinate the section 50(a) recapture rules with the section 50(d)(5) income inclusion rules; and (2) rules regarding income inclusion upon a lease termination, lease disposition by a lessee, or disposition of a partner's or S corporation shareholder's entire interest in a lessee partnership or S corporation outside of the recapture period. Read [TaxNewsFlash](#)

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