



# TaxNewsFlash

United States



No. 2020-331  
May 21, 2020

## Proposed regulations: Rehabilitation credit and rules coordinating with other credits

The U.S. Treasury Department and IRS today released for publication in the Federal Register a notice of proposed rulemaking (REG-124327-19) as guidance concerning the rehabilitation credit and including rules to coordinate the new five-year period over which the credit may be claimed with other special rules for investment credit property.

Read the [proposed regulations](#) [PDF 291 KB]

Comments and requests for a public hearing are due by July 21, 2020.

### Background

The 2017 tax law (Pub. L. No. 115-97)—the legislation that is often referred to as the “Tax Cuts and Jobs Act” (TCJA)—modified the Code provisions providing a rehabilitation tax credit.

Prior to the TCJA, former section 47(a) provided a two-tier credit for qualified rehabilitation expenditures (QREs) incurred in connection with the rehabilitation of a qualified rehabilitated building.

Specifically, the TCJA repealed the 10% credit for pre-1936 buildings and made a modification to the 20% credit for certified historic structures, generally for amounts paid or incurred after 2017. Moreover, the credit for certified historic structures remains at 20%, but is to be claimed ratably over a five-year period beginning in the tax year in which a qualified rehabilitated building (QRB) is placed in service.

The TCJA also included a transition rule for qualified rehabilitation expenditures incurred with respect to either a certified historic structure or a pre-1936 building, with respect to any building owned or leased at all times on and after January 1, 2018, if the 24-month period selected by the taxpayer or the 60-month period selected by the taxpayer for phased rehabilitation, begins no later than the end of the 180-day period beginning on the date of the enactment (December 22, 2017). In such case, the modifications made to the rehabilitation credit provisions apply to such expenditures paid or incurred after the end of the tax year in which such 24-month or 60-month period ends.

## Proposed regulations

The preamble to the proposed regulations begins by noting that the rehabilitation credit is no longer fully allowed in the tax year in which a QRB is placed in service and that, instead, the rehabilitation credit must be claimed ratably over the five-year period beginning in the tax year in which the QRB is placed in service.

The preamble continues to note that the Treasury Department and IRS are aware that taxpayers and practitioners have questioned how the five-year period affects taxpayers claiming the rehabilitation credit, including how to apply the special rules of section 50 relating to recapture, basis adjustment, and leased property.

The proposed regulations aim to address questions whether the rehabilitation credit is determined in the year the QRB is placed in service and allocated ratably over the five-year period, or whether five separate rehabilitation credits are determined during each year of the five-year periods.

The proposed regulations clarify that the rehabilitation credit is properly determined in the year the QRB is placed in service (consistent with prior law) but allocated ratably over the five-year period as required by the TCJA—rather than resulting in the determination of five separate rehabilitation credits. Similarly, the proposed regulations follow this same prior-law approach for the determination of a single rehabilitation credit for purposes of applying the rules of section 50.

Therefore, the proposed regulations provide that taxpayers claiming the rehabilitation credit under section 47 with respect to qualified rehabilitation expenditures (QREs) paid or incurred after December 31, 2017, generally will have the same federal income tax consequences from the rules under section 50 for recapture, basis adjustment, and leased property as would taxpayers claiming the rehabilitation credit under prior law.

The proposed regulations add Reg. section 1.47-7(a) through (e) to include:

- A general rule for calculating the rehabilitation credit
- Definitions of ratable share and rehabilitation credit determined
- A rule coordinating the changes to section 47 with the special rules in section 50

There are also examples provided in the proposed regulations to illustrate, among other items, the interaction of section 47 with rules in section 50(a) (recapture in case of dispositions, etc.); section 50(c) (basis adjustment to investment credit property); and section 50(d)(5) (relating to certain leased property when the lessee is treated as owner and subject to an income inclusion requirement).

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