

STATE OF HAWAII - DEPARTMENT OF TAXATION
INSTRUCTIONS FOR FORM N-312
CAPITAL GOODS EXCISE TAX CREDIT

GENERAL INSTRUCTIONS

Note: If you are claiming the Ethanol Facility Tax Credit, no other credit can be claimed for the same taxable year.

Each taxpayer subject to Hawaii's net income tax may claim a capital goods excise tax credit for the purchase or importation of eligible depreciable tangible personal property which is used by the taxpayer in a trade or business in Hawaii. The property must be depreciable property with an estimated useful life or recovery period of three years or more. The property must be placed in service within Hawaii and the purchase or importation must be subject to the imposition and payment of tax at the rate of 4% under General Excise or Use Tax Laws. Individual members of partnerships, beneficiaries of estates and trusts, or shareholders of S corporations are also required to be furnished information relating to the credit on Schedule K-1 and recapture information on Part II of Form N-312. Refer also to Tax Information Releases (TIR) Numbered 88-6, 88-8, 89-4, and 2001-4, and the Hawaii Administrative Rules section 18-235-110.7, for more information relating to claiming and recapturing the credit.

The amount of the credit shall be determined by applying 4% against the qualifying cost of eligible depreciable property placed in service during the taxable year. No credit is available for the 1/2 of 1% City and County of Honolulu surcharge.

The general excise or use tax at the rate of 4% must be paid in order to claim this credit. TIR No. 2001-4 provides safe harbor guidelines which a taxpayer may use, solely for the purpose of claiming this credit, to assume that the seller has paid the general excise tax (GET). These safe harbors include:

1. The taxpayer can provide a sales invoice or contract showing the 4% GET as a separately stated component of the purchase price;
2. The taxpayer can provide a sales invoice showing that the vendor has a Hawaii business address;
3. If the sales invoice or contract does not separately state the 4% GET, (i.e., the seller does not visibly pass-on the tax), then the taxpayer must provide the GET license number of the seller, which is valid at the time of the purchase. The taxpayer should also keep records of the seller's business name, address, and other information that the Department may use to verify that the seller was GET-licensed at the time of the purchase. In the case of used property, an affidavit or statement must be obtained from the seller certifying that the transaction is not a casual sale as defined by section 237-1, HRS; or
4. A statement or affidavit from the seller representing that the GET has been paid.

If the taxpayer is unable to provide any evidence that the GET has been paid by the seller, then the Department will presume that the GET has not been paid.

In the case of eligible depreciable tangible personal property for which a credit for sales or use taxes paid to another state is allowable under section 238-3(i), HRS, the amount of the capital goods excise tax credit allowable shall not exceed the amount of use tax actually paid under chapter 238, HRS, with regard to the property.

If a deduction is taken under IRC section 179 (regarding an election to expense certain depreciable business assets) no credit shall be allowed for that portion of the cost of eligible depreciable tangible personal property for which the deduction was taken.

This credit may not be claimed for property for which the Motion Picture, Digital Media, and Film Production Income Tax Credit or the Technology Infrastructure Renovation Tax Credit is claimed.

"Cost" means (1) the actual invoice price of the tangible personal property, or (2) the basis from which depreciation is taken under section 167 (with respect to depreciation) or from which a deduction may be taken under section 168 (with respect to Accelerated Cost Recovery System) of the IRC of 1954, as amended, whichever is less. For purposes of determining the amount of credit available, the cost for passenger automobiles (including electric) used predominantly (over 50%) for business purposes is limited to \$15,300 and for trucks, vans and SUVs the limitation is \$16,300.

"Eligible depreciable tangible personal property" is section 38 property as defined by the operative provisions of section 48 and having a depreciable life under section 167 or for which a deduction may be taken under section 168 of the IRC of 1954, as amended.

The term "section 38 property" (with respect to investment in depreciable tangible personal property) is defined by section 48(a)(1)(A), (a)(1)(B), (a)(3), (a)(4), (a)(7), (a)(8), (a)(10)(A), (b), (c), (f), (l), (m), and (s) of the IRC of 1954, as amended as of December 31, 1984. Computer software is not section 38 property. Because computer software is not tangible personal property as defined, software does not qualify for the credit.

"Tangible personal property" means tangible personal property which is placed in service within Hawaii after December 31, 1987, and the purchase or importation of which resulted in a transaction which was subject to the imposition and payment of tax at the rate of 4% under Hawaii's General Excise or Use Tax Laws. "Tangible personal property" does not include tangible personal property which is an integral part of a building or structure or tangible personal property used in a foreign trade zone, as defined under chapter 212, HRS.

"Placed in service" means the earliest of the following taxable years:

- (1) Taxable year in which, under the
 - (A) taxpayer's depreciation practice, the period for depreciation, or
 - (B) accelerated cost recovery system, a claim for recovery allowances, with respect to such property, begins; or
- (2) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

"Purchase" means an acquisition of property.

Pass-through entities. In the case of a partnership, S Corporation, estate, or trust, the credit allowable is for eligible depreciable property which is placed in service by the entity. The cost upon which the credit is computed is determined at the entity level. Form N-312 shall be completed and attached to the entity's return. Each partner, S Corporation shareholder, or beneficiary of an estate or trust shall separately take into account for its taxable year with or within which the entity's taxable year ends, the partner's, shareholder's, or beneficiary's share of the cost and resulting credit. A partner's share of the cost shall be determined in accordance with the ratio (in effect on the date on which the eligible property is placed in service) in which the partners divide the general profits of the partnership. The cost of eligible partnership property which is subject to a special allocation that is recognized under section 704(a) and (b) of the Internal Revenue Code (IRC) shall be recognized for the purposes of this credit. Each S Corporation shareholder's cost of eligible property is the shareholder's allocated share of the S Corporation's cost of the eligible property. A beneficiary's share of the cost of the eligible property is apportioned between the entity and the beneficiaries based on the income of the entity allocable to each on the date the eligible property is placed in service. The term "beneficiary" includes an heir, legatee, or devisee.

A pass-through entity (i.e., partnership, LLC, S corporation, estate, or trust) shall provide information to the partners, members, shareholders, or beneficiaries (members) relating to the credit. The member's share of the cost of qualifying property is to be reported on line 12, Schedule K-1, Form N-20; line 12b, Schedule K-1, Form N-35; or on line 7a, Schedule K-1, Form N-40. The member's apportioned amount of sales or use taxes paid to another state or jurisdiction upon the acquisition of the property and a statement as to whether 4% use tax was paid on purchases from sellers outside Hawaii is to be reported on line 31, Schedule K-1, Form N-20; line 24, Schedule K-1, Form N-35; or line 9, Schedule K-1, Form N-40. Credit recapture information is to be provided to the members on Form N-312, Part II.

In the case of a taxpayer who is a member of a pass-through entity and who claims a credit for the entity's eligible property, the taxpayer shall attach a copy of Schedule K-1 and any other statement relating to the credit which is provided by the pass-through entity, to Form N-312 when the credit is claimed, even when the credit is subject to recapture, or both. Members are to enter their allocated amount of the entity's eligible property on line 1, Part I, indicating "from Schedule K-1 (or statement) attached."

Tax credit to be deducted from income tax liability, if any; refunds. If the credit allowed exceeds the taxpayer's net income tax liability, the excess of credit over liability shall be refunded to the taxpayer, however, no refund on account of the credit shall be made for an amount less than \$1. There shall be no carryback or carryover of excess credit over tax liability.

Time for filing. Any claim for the credit, including an amended claim, must be filed on or before the end of the 12th month following the close of the taxable year for which the credit may be claimed. An extension of time for filing a return does not extend the time for claiming the credit. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

Amount of credit allowable and claimed is treated as a taxable income item, or the basis of eligible property for depreciation or ACRS purposes is reduced by the amount of credit allowable and claimed. The taxpayer shall treat the amount of credit allowable and claimed as a taxable income item for the taxable year in which it is properly recognized under the method of accounting used to compute taxable income. Alternatively, the basis of eligible property for depreciation purposes for State income taxes shall be reduced by the amount of credit allowable and claimed.

Use Part II of Form N-312 to determine the increase in tax as a result of the recapture of credit. The recapture rule requires a recomputation of a previously taken credit if eligible depreciable tangible personal property is disposed of or otherwise ceases to be eligible property within the recapture period. The recapture period means the period beginning on the 1st day of the month the eligible property is placed in service and extending for a full 3 years. A decrease in business use will trigger a recapture of the credit.

The credit is recaptured by multiplying the decrease in previously taken credit by a recapture percentage, taking into account any prior recapture determination in connection with the same property.

An increase in income tax as a result of credit recapture shall be treated as income tax imposed on the taxpayer by chapter 235, HRS, for the recapture year. This is the rule despite the fact that absent the increase, the taxpayer has no income tax liability, has a net operating loss, or no income tax return is otherwise required for the taxable year. An increase in income tax due to recapture is limited to the total credit claimed. Refer to TIR No. 88-8 for details and examples illustrating the recapture rule.

A taxpayer must maintain records from which the taxpayer can establish, with respect to each item of eligible depreciable tangible personal property, the following facts: (1) the date the property is disposed of or otherwise ceases to be eligible property; (2) the estimated useful life or recovery period that was assigned to the property to determine eligibility for the credit; (3) the month and taxable year in which the property was placed in service; and (4) the vendor and cost of the property. These facts will be analyzed to determine both the eligibility for the credit, and the necessity for any recapture of the credit. If the taxpayer's records are insufficient to establish these facts, it will generally be assumed that the most recently acquired eligible depreciable tangible personal property was disposed of first.

Where the maintenance of records of details on mass assets is impractical, the taxpayer may adopt reasonable record keeping practices, consistent with good accounting and engineering practices and consistent with the taxpayer's prior record keeping practices. "Mass assets" is defined in TIR No. 88-8.

Flow-through entities are to provide their members with a completed Form N-312, Part II to provide apportioned information regarding the credit recapture.

SPECIFIC INSTRUCTIONS

PART I INSTRUCTIONS

Line 1 col.(a)—List and describe eligible property placed in service during the year purchased from Hawaii sellers. Enter only the qualifying business-use portion of the eligible property. If a deduction is taken under IRC section 179 (regarding an election to expense certain depreciable business assets), the amount deducted should be eliminated from the business-use portion of the asset cost. This is similar to determining the depreciable basis of the asset. Therefore, if an asset is purchased for \$10,000, is used 80% for business purposes, and an election is made to currently expense \$2,000 of the depreciable basis, the cost of the property would be listed as \$6,000 (\$10,000 multiplied by 80% minus \$2,000).

Examples of properties which are **not** eligible for the credit include:

- Air conditioning or heating units;
- Buildings or their structural components;
- Computer software;
- Property purchased for use in a foreign trade zone (as defined under chapter 212, HRS);
- Property used by an organization which is exempt from Hawaii's net income tax. Exceptions to this general rule are stated in IRC section 48(a)(4), as amended as of December 31, 1984;

- Intangible property (e.g., patent, copyright, subscription list);
- Property which is used predominantly to furnish lodging, or in connection with the furnishing of lodging. Three exceptions to this general rule are stated in TIR No. 88-6;
- Elevators and escalators;
- Single purpose agricultural or horticultural structures;
- Qualified rehabilitated buildings;
- Property completed abroad or predominantly of foreign origin;
- Livestock;
- Movie and television films; and
- Property for which the the Motion Picture, Digital Media, and Film Production Income Tax Credit or the Technology Infrastructure Renovation Tax Credit is claimed.

Members of pass-through entities are to enter their allocated amount of the entity's eligible property on this line, indicating "from Schedule K-1 (or statement) attached" in column (a).

Line 1 col.(b)—Enter the date the qualifying property was placed in service. See TIR No. 88-6 for more information relating to the determination of this date.

Line 1 col.(c)—Enter the cost of qualifying property purchased from Hawaii sellers in column (c). For motor vehicles subject to cost limitations, do not enter more than the limitation amount.

Line 2(a)—Follow the instructions for line 1, listing purchases from sellers outside Hawaii.

Line 2(b)—Indicate, by checking the appropriate box, whether 4% Hawaii use tax was paid on the purchases from sellers outside Hawaii.

Line 3—Estates and trusts: The total cost on line 3 is to be allocated between the estate or trust and the beneficiaries in the proportion of the income allocable to each party. On the dotted line to the left of line 3, enter the cost allocable to the estate or trust with the designation "N-40 PORTION". Attach Form N-312 to the N-40 return and show the distributive share of the costs for each beneficiary.

Cooperatives: A cooperative may claim the capital goods excise tax credit to the extent it is subject to the income tax and has an income tax liability. Any excess tax credit is allocated among the members of the cooperative. The cooperative is to prepare a statement showing the distributive share of the tax credit to each cooperative member.

Line 6—Section 238-3(i), HRS, allows a credit for the Hawaii use tax imposed upon imported tangible personal property where the taxpayer has paid sales or use taxes to another state or any subdivision thereof which had jurisdiction on that property. Enter on line 6, the amount of taxes paid to another state that relates to the cost of qualifying property listed on lines 1 and 2 for which a credit was claimed under section 238-3(i), HRS. The maximum use tax credit amount to be entered on line 6 is the actual amount of the tax paid up to 4% of the basis of the property. Include on this line the amount shown on line 31, Schedule K-1, Form N-20; line 24, Schedule K-1, Form N-35; or line 9, Schedule K-1, Form N-40; if applicable.

PART II INSTRUCTIONS—Refer to TIR No. 88-8 relating to the capital goods excise tax credit recapture.

Flow-through entities are to provide their members with Form N-312, Part II to provide apportioned information regarding the credit recapture. Enter the member's and the entity's names and identification numbers where indicated. The entity is to complete lines 1 through 7. Members are to attach a copy of this Part II prepared by the entity to their Hawaii return reporting the recapture of the credit.

Line 1—The original rate of credit for the property subject to recapture is 4%.

Line 2—The date that the recapture period begins is the 1st day of the month within which the qualifying property was placed in service.

Line 3—This date is the actual date that the property ceases to be eligible depreciable property (e.g., a sale, transfer, etc.) or, if for any other reason such as a decrease in business use of property subject to IRC section 280F, the 1st day of the taxable year.

Line 4—Do not enter partial years. If the property was held for less than 12 months, enter zero.

Line 5 - 7— Lines 5 through 7 are to be completed by a pass-through entity reporting to it's member.

Line 8—This is the amount of credit (a) originally claimed or (b) if you were previously subject to a partial recapture, the recomputed amount of the capital goods excise tax credit before the percentage adjustment for the period of time the property was held. Do not enter the amount of the previously recaptured credit, but the recomputed amount of the credit. See the Instructions for line 9 below for an explanation of the recomputed credit.

Line 9—The credit must be recomputed if you have a partial disposition of the property. For a total disposition, enter zero. If the business use of property subject to IRC section 280F decreases to 50% or less, a total disposition of the property is considered to have occurred. The recomputed credit is the amount of credit allowed based on the original cost of the property multiplied by (a) the current business-use percentage, or (b) the current percentage of the total ownership interest held at the time that the property was originally placed in service. The recomputed credit can be computed by completing the following worksheet:

- a. Original cost of the property..... _____
- b. Current business-use or ownership %; if a total disposition, enter zero..... _____
- c. Unadjusted cost or basis of the property (line a multiplied by line b) _____
- d. Deduction under IRC section 179 _____
- e. Adjusted cost or basis of the property (line c minus line d)..... _____

- f. Original rate of credit claimed for the property..... 4% _____
- g. Credit before adjustment (line e multiplied by line f) .. _____
- h. Sales or use tax credit under section 238-3(i), HRS; up to the amount of the credit available on the property (4% of the qualifying basis of the property). If this amount is zero, enter zero here and on line j..... _____
- i. Adjusted business-use or ownership % (line e divided by amount on line a) _____
- j. Credit on line h above applicable to the business-use or ownership (line h multiplied by line i)..... _____
- k. Recomputed credit (line g minus line j) _____

Line 11—Enter the recapture percentage from the following table:

Number of full years on line 4	Recapture percentage is:
0	100
1	66
2	33
3	0