AMT Credits
The AMT is caused by two types of adjustments and preferences—deferral items and exclusion items. Deferral items, such as AMT depreciation adjustment and bargain element from ISOs, do not cause a permanent difference in taxable income over time. Exclusion items, such as the standard deduction and miscellaneous itemized deductions, are not allowed for AMT and cause a permanent difference. The alternative minimum tax credit is allowed only for the AMT caused by deferral items.

Form 8801, Credit for Prior Year Minimum Tax—Individuals, Estates, and Trusts. If AMT liability is created by deferral items, file Form 8801 in years subsequent to the year of the AMT liability. The AMT credit may be carried forward indefinitely. The AMT credit applies only to regular tax so if AMT applies in the subsequent year, the credit will not apply.

Example: Cheryl has an AMT credit of $8,000 available from 2006. In 2007, her regular tax liability is $37,000, and tentative AMT is $32,000. Since her regular tax in 2007 is higher than her tax computed under AMT rules, Cheryl is not liable for AMT. She is allowed to claim an AMT credit of $5,000, the difference between her regular tax liability and her tax liability computed under AMT rules. The additional $3,000 of unused credit will be carried forward to 2008 on Form 8801.

Corporations

Refundable AMT credit—New Law. Taxpayers who have been unable to use a nonrefundable AMT credit by the fourth year may be able to claim a refundable credit for up to five years. For tax years beginning after December 20, 2006, an individual’s minimum tax credit allowable for any tax year beginning before January 1, 2013, is not less than the AMT refundable credit amount. The AMT refundable credit amount is the greater of:

- $5,000 (or the long-term unused minimum tax credit if less), or
- 20% of the long-term unused minimum tax credit.

The long-term unused minimum tax credit for any tax year means the portion of the minimum tax credit attributable to the adjusted net minimum tax for tax years before the third tax year immediately preceding the tax year (assuming credits are used on a first-in, first-out basis). In the case of an individual whose AGI exceeds the beginning personal exemption phase-out amount, the AMT refundable credit amount is reduced by the phase-out percentage. The additional credit allowable by reason of this provision is refundable.

Example: Assume in 2010 that an individual has AGI that results in an exemption phase-out of 50%, a regular tax of $45,000, a tentative minimum tax of $40,000, no other credits allowable, and a minimum tax credit for the tax year before limitation of $1.1 million of which $1 million is a long-term unused minimum tax credit. The AMT refundable credit amount for the tax year is $100,000 (20% of the $1 million long-term unused minimum tax credit reduced by 50%). The minimum tax credit allowable for the tax year is $100,000, (the greater of the AMT refundable credit amount or the amount of the credit otherwise allowable). The $5,000 credit allowable without regard to this provision is nonrefundable and the additional $95,000 of credit allowable by reason of this provision is treated as a refundable credit. Thus, the taxpayer has an overpayment of $55,000 ($45,000 regular tax less $5,000 nonrefundable AMT credit less $95,000 refundable AMT credit). The $55,000 overpayment is allowed as a refund or credit to the taxpayer. The remaining $1 million minimum tax credit is carried forward.

If AGI did not exceed the personal exemption threshold phase-out amount, the AMT refundable credit amount for the tax year would be $200,000, and the overpayment would be $155,000.

Author’s Comment: This provision was added to help taxpayers who get hit with AMT because of their exercise of incentive stock options. For example, the taxpayer in the court case cited on page 14-4 under Incentive Stock Options would have benefited from this new refundable AMT credit provision. Although incentive stock options are cited as the reason for the refundable credit, the provision is not limited to AMT paid on ISOs.

Stock option reporting. Employers must file an information return with the IRS, in addition to providing information to the employee, when stock is transferred pursuant to exercise of an incentive stock option or through an employee stock purchase plan.

Partners and S Corporation Shareholders
Partners and S corporation shareholders must separately take into account any share of items that enter into the computation of alternative minimum tax. The information about AMT preferences and adjustments should be provided to the partner or the S corporation shareholder on Schedule K-1. Alternative minimum tax items flowing through to an individual are then transferred to the individual’s Form 6251 for computing the AMT.

Cross References
• IRS Pub. 555, Community Property
• IRS Pub. 971, Innocent Spouse Relief
• IRC §66

Related Topics
• Married Filing Separately, page 3-13

Community property rules apply to married taxpayers domiciled in one of the community property states: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, or Wisconsin. Couples in other states may also have community property if:

- They own real property in a community property state, or
- They own other property acquired while they were domiciled in a community property state. A move out of state does not change the character of existing community property.

Filing Separately
Each spouse reports half of all community income and all of his or her separate income. The laws of the state of domicile govern whether taxpayers have community property and income or separate property and income. General rules are summarized below and in the table on page 14-6.

Earned income. Taxpayers domiciled in community property states report earnings as follows:

- Wages and net profits from a sole proprietorship are community income and must be evenly split.
- Partnership income/loss is community income/loss unless the partnership is merely a passive investment.

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