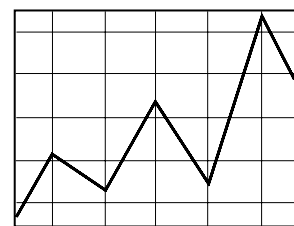


MARKETING AND POLICY BRIEFING PAPER



Department of Agricultural and Applied Economics, College of Agricultural and Life Sciences, University of Wisconsin-Madison
Cooperative Extension, University of Wisconsin-Extension

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Wisconsin Dairy Investment Credit

Philip E. Harris¹

General Rules

Effective for taxable years beginning after December 31, 2003 and before January 1, 2010, individual taxpayers, trusts and estates, and corporations are allowed a credit against their Wisconsin income and franchise taxes. The credit is 10% of the amount the taxpayer paid in the taxable year for dairy farm modernization or expansion related to the operation of the taxpayer's dairy farm.

Note-Alternative Minimum Tax

The dairy investment credit can be used by individuals and trusts and estates to offset the Wisconsin alternative minimum tax liability.

Example 1. Individual Income Tax

In 2004, Paige Turner paid \$100,000 for a free-stall barn to house her dairy cows. Paige is allowed to claim a \$10,000 dairy investment credit against her 2004 Wisconsin income taxes.

Example 2. Income Tax on Estate

Pete Bogg planned to build a new free stall barn but he passed away on December 15, 2003 before the contract was signed. In 2004, while Pete's dairy farm was in his probate estate, his wife, Sally, as the executor of his estate paid \$100,000 to build the free-stall barn. Pete's estate is allowed to claim a \$10,000 dairy investment credit against its 2004 Wisconsin income tax.

Example 3. Income Tax on Corporation

Rolling Hills Farm, Inc. is a C corporation engaged in the business of farming. In 2004, Rolling Hills paid \$100,000 for a free-stall barn to house its dairy cows. Rolling Hills is allowed a \$10,000 dairy investment credit against its 2004 Wisconsin income (or franchise) tax.

¹ Professor and agricultural law specialist, Department of Agricultural and Applied Economics, University of Wisconsin-Madison/Extension

Partnerships, LLCs and S Corporations

Partnerships, limited liability companies (LLCs) taxed as partnerships and S Corporations cannot claim the credit. Instead, partners, members and shareholders are allowed to claim a portion of the dairy investment credit for which the entity is eligible based on their share of ownership in the entity. The entity computes the credit (limited to \$50,000) and allocates it to the owners.

Example 4. Credit for LLC Investments

Jim Nastics owns 60% of Windy Ridge Dairy Farm, LLC and Linda Hand owns the other 40%. In 2004, the LLC paid \$100,000 for a free-stall barn to house its dairy cows. Jim can claim a \$6,000 dairy investment credit against his 2004 Wisconsin income tax and Linda can claim a \$4,000 dairy investment credit against her 2004 Wisconsin income tax.

\$50,000 Limit

Taxpayers are limited to \$50,000 of credit under this provision. The limit is applied to the aggregate of the credits claimed by the taxpayer. It is applied at both the entity level and the owner level of partnerships, LLCs and S corporations.

Example 5. \$50,000 Limit

If Paige Turner from Example 1 paid \$450,000 for a dairy parlor in 2005, her dairy investment credit for 2005 would be the lesser of:

- 10% of the \$450,000 investment in 2005: $\$450,000 \times .10 = \$45,000$, or
- The \$50,000 limit reduced by the \$10,000 credit she claimed in 2004:
 $\$50,000 - \$10,000 = \$40,000$.

Therefore, Paige can claim a \$40,000 credit on her 2005 income tax return.

Carryover of Credit

If the dairy investment credit exceeds the taxpayer's income tax liability for the tax year of the investment, the credit in excess of the tax liability is carried over to the next 15 tax years to offset income (or franchise) tax liability in those years.

Example 6. Carryover of Credit

If Paige from Example 5 had \$25,000 of Wisconsin income tax liability for 2005 before application of the dairy investment credit, she would be allowed to use \$25,000 of the credit to reduce her 2005 Wisconsin income tax liability to zero and she could carry the remaining \$15,000 of investment credit over to the next 15 tax years.

Order of Claiming Credits

Individuals and Trusts and Estates

Wis. Stat. §71.10(4) lists the order for making income tax computations for individuals and trusts and estates. Under those ordering rules, the dairy investment credit is computed **after** the following credits:

1. Itemized deductions credit under Wis. Stat. §71.07(5),
2. Armed forces member tax credit under Wis. Stat. §71.07 (6m).
3. School property tax credit under Wis. Stat. §71.07 (9).
4. Supplement to federal historic rehabilitation credit under Wis. Stat. §71.07 (9m).
5. State historic rehabilitation credit under Wis. Stat. §71.07 (9r).

6. Working families tax credit under Wis. Stat. §71.07 (5m).
7. Married persons credit under Wis. Stat. §71.07 (6).
8. The manufacturing sales tax credit under Wis. Stat. §71.07 (3s).
9. Manufacturing investment credit under Wis. Stat. §71.07 (3t).

The dairy investment credit is applied **before** the following credits:

1. Development zones credits under Wis. Stat. §71.07.
2. Technology zones credit under Wis. Stat. §71.07 (3g).
3. Payments to other states under Wis. Stat. §71.07 (7).
4. Claim of right credit (credit for taxes paid in a prior year on income that was subsequently repaid) under Wis. Stat. §71.07(1).
5. Farmland preservation credit under Wis. Stat. §§71.57 through 71.61.
6. Homestead credit under Wis. Stat. §§71.51 through 71.55.
7. Farmland tax relief credit under Wis. Stat. §71.07 (3m).
8. Earned income tax credit under Wis. Stat. §71.07 (9e).

Example 7. Order of Credits

For 2004, Bill Meelater can claim \$5,000 of itemized deductions credit, \$7,000 of dairy investment credit and \$2,000 of farmland preservation credit. His Wisconsin income tax liability before application of the credit is \$9,000.

Bill must first use his \$5,000 of itemized deductions credit to reduce his income tax liability to \$4,000. He then uses \$4,000 of his dairy investment credit to reduce his tax liability to zero. He carries the remaining \$3,000 of his dairy investment credit over to 2005. Bill will get a \$2,000 refund for his \$2,000 farmland preservation credit.

Corporations

The ordering rules for credits claimed by a corporation are set out in Wis. Stat. §71.30(3). The dairy investment credit is claimed after the manufacturing sales tax credit and the manufacturing investment credit and before all other credits.

Practitioner Note—Change in Ownership

If there is more than a 50% change in ownership of a corporation in a 3-year period (not counting shareholders with less than 5% ownership) the credit that can be claimed by the corporation after the ownership change is limited. The limit is based on the rules of I.R.C. §383, which limits the credits that can be claimed (for federal income tax purposes) by the corporation after the ownership change. The purpose of I.R.C. §383 is prevent taxpayers from buying corporations that have unused credits and using those credits to offset income from other sources. In general, the limit is the income taxes that are imposed on the earnings that could be expected on the assets that were in the corporation before the ownership change. For example, if there were \$100,000 of assets in the corporation before the ownership change and those assets could be expected to earn a 6% return, the credit can be used to offset the income taxes on \$6,000 of income each year after the ownership change.

Qualifying Investments

To qualify for the dairy investment credit, an investment must be for "dairy farm modernization or expansion." That term means the construction, the improvement, or the acquisition of buildings or facilities, or the acquisition of equipment, for dairy animal housing, confinement, animal feeding, milk production, or waste management, including the following, if used exclusively related to dairy animals:

1. Freestall barns.
2. Fences.
3. Watering facilities.
4. Feed storage and handling equipment.
5. Milking parlors.
6. Robotic equipment.
7. Scales.
8. Milk storage and cooling facilities.
9. Bulk tanks.
10. Manure pumping and storage facilities.
11. Digesters.
12. Equipment used to produce energy.

Note—Land Does Not Qualify

Investment in land does not qualify for the dairy investment credit.

Exclusively for Dairy

The facility or equipment must be used exclusively for dairy. The Department of Revenue has issued an emergency rule that defines "used exclusively related to dairy animals" to mean "used in this state on the taxpayer's dairy farm to the exclusion of all other uses except for other use not exceeding 5% of total use.

Note—Sheep and Goats

"Animals used for dairy" includes any animal used for milk production such as milking sheep and goats.

Example 8. Exclusively Dairy

Bud Light bought a skid loader that he uses only to clean out his dairy barn and a tractor used 60% of the time to haul feed to his dairy cattle and 40% to plant, cultivate and harvest his crops. He feeds 90% of his crops to his dairy cows and heifers.

The cost of the skid loader qualifies for the dairy investment credit because 100% of its use is for dairy. The cost of the tractor also qualifies because it 96% of its use is for dairy as calculated in Figure 1.

FIGURE 1 ALLOCATION OF TRACTOR USE

Hauling feed to dairy cattle		60%
Raising and harvesting crops	40%	
Crops for dairy	<u>x 90%</u>	
Tractor use for raising dairy feed		<u>+ 36%</u>
Total tractor use for dairy		<u>96%</u>

Example 9. Bulls

Sandy Beach runs bulls with her dairy cows. Bulls are less than 5% of the total herd. Sandy's facilities and equipment that she uses for her herd meets the 95% exclusive use test.

Note—Leased Dairy Animals

A taxpayer who owns and operates a dairy farm but leases the herd from another party can claim the credit as if he or she owned the dairy animal.

Heifer Facilities and Equipment

Under Wis. Stat. §§71.07(3n)1m, 71.28(3n)1m, and 71.47(3n)1m the term "dairy animals" includes heifers raised as replacement dairy animals. Under Wis. Stat. §§71.07(3n)1p, 71.28(3n)1p, and 71.47(3n)1p the term "dairy farm" includes a facility used to raise heifers as replacement dairy animals. Therefore, facilities and equipment for dairy heifers as well as dairy cows qualify for the credit.

Example 10. Heifer Facilities

Eileen Forward paid \$150,000 for a barn that she uses to raise replacement dairy heifers that she sells to neighboring farmers. Eileen can claim a \$15,000 dairy investment credit.

Example 11. Custom Raising of Heifers

If Eileen from the previous example raised heifers owned by neighboring farmers on contract she still qualifies for the dairy investment credit.

Manure Pumping and Storage Facilities

Investment in manure equipment and facilities that are used exclusively for dairy qualifies for the credit. This does not include equipment used to haul the manure and apply it to cropland unless the crops meet the exclusively for dairy requirement.

Machine Shed

A machine shed does not qualify for the credit even if it is used 95% or more to store equipment that is used to care for dairy animals. The machine shed is not being used for dairy animal housing, confinement, animal feeding, milk production, or waste management exclusively related to dairy animals.

Capitalized Expenditure

The credit is not allowed for any amount the taxpayer claimed as a deduction under I.R.C. §162. Because claiming a deduction under I.R.C. §162 is not an election, taxpayers cannot choose to forgo the I.R.C. §162 deduction in order to claim the dairy investment credit.

Example 12. I.R.C. §162 Deduction

Rose Petal paid \$3,500 in 2004 to repair her heifer facility and properly claimed that expense as a deduction on her federal income tax return. Rose cannot claim a dairy investment credit for the \$3,500 expenditure.

I.R.C. §179 Deduction

Deductions under other provisions of the Internal Revenue Code such as I.R.C. §179 do not disqualify an investment for the Wisconsin dairy investment credit.

Example 13. I.R.C. §179 Deduction

In 2004, Chuck Key paid \$35,000 for a bin to store grain for his dairy herd. On his 2004 federal income tax return, Chuck claimed the full \$35,000 as an I.R.C. §179 deduction. On his Wisconsin return, Chuck is limited to a \$25,000 §179 deduction. He can claim depreciation on the remaining \$10,000 and he can claim a dairy investment credit on the full \$35,000.

Like-kind Exchanges

If a taxpayer acquires qualifying property in a like-kind exchange, only the cash (boot) paid for the acquired asset qualifies for the dairy investment credit. The carryover basis does not qualify for the credit.

Example 14. Like-kind Exchange

Amanda Reckonwith traded an old feed wagon for a new feed wagon that is used exclusively to feed her dairy herd. She paid \$3,000 boot and received a \$1,000 credit for the trade-in value of the old wagon. Her basis in the old wagon was \$500 at the time of the trade.

Amanda can claim a \$300 ($\$3,000 \times 10\%$) dairy investment credit on her Wisconsin income tax return. Her basis in the new wagon is \$3,500 ($\$3,000 + \500).

Note—Depreciation and I.R.C. §179

Note that for federal income tax purposes, Amanda can claim 50% or 30% bonus depreciation on the full \$3,500 basis. However, only the \$3,000 boot paid qualifies for the I.R.C. §179 deduction (for both federal and Wisconsin tax purposes).

Placed In Service

Administrative rules issued by the Wisconsin Department of Revenue define "Amount the claimant paid in the taxable year" to mean "the purchase price of qualified property acquired and first placed in service in this state during taxable years that begin after December 31, 2003, and before January 1, 2010." 'First placed in service' has the meaning as given under Treas. Reg. §1.167 (a)-11 (e) (1) (i) for purposes of computing depreciation.

Two Requirements

Qualifying assets must be (1) acquired and (2) placed in service in taxable years that begin after December 31, 2003, and before January 1, 2010. An asset is treated as acquired on the date a

binding contract is signed for the purchase of the asset. It is placed in service when it is available for use in the farming business.

Example 15. Contract in 2003

On September 26, 2003, May Flowers, a calendar-year taxpayer, signed a contract with a builder to build a free-stall barn on her farm. Construction began on January 10, 2004 and the barn was finished on June 20, 2004. May made her final payment to the contractor on July 1, 2004.

May cannot claim a dairy investment credit for the barn because it was acquired before January 1, 2004.

Example 16. Finished in 2010

On March 26, 2009, Dwaine Plug, a calendar-year taxpayer, signed a contract with a builder to build a free-stall barn on his farm. Construction began on October 15, 2009 and was finished on January 15, 2010.

Dwaine cannot claim a dairy investment credit for the barn because it was not placed in service before January 1, 2010.

Year of the Credit

The credit can be claimed in the year the second of the two requirements are met.

Example 17. Year of Claiming Credit

On March 26, 2004, Polly Esther, a calendar-year taxpayer, signed a contract with a builder to build a free-stall barn on her farm. Construction began on October 15, 2004 and was finished on January 15, 2005.

Polly can claim a dairy investment credit for the barn in 2005.

Installment Contracts

If a facility or equipment is purchased on an installment contract, the full purchase price is treated as being paid in the year the parties enter into the contract.

Example 18. Installment Contract

If Polly Esther from Example 15 signed an installment contract for the barn that called for payments over 5 years beginning in 2004, she can claim the full credit in 2005—the year the barn is placed in service.

No Related Party Rules

There are no rules that limit or prohibit the credit because a taxpayer purchases the equipment or facilities from a related party.

Note—Used Property Qualifies

Property does not have to be new to qualify. Therefore, if a taxpayer purchases an existing dairy farm, the investment in facilities and equipment that are used exclusively for dairy qualifies for the credit.

No Recapture

There is no recapture provision. Therefore, if dairy use falls below 95% in a year after the credit is claimed or if the assets are sold in a year after the credit is claimed, none of the credit is recaptured.

Inclusion of Credit in Income

The dairy investment credit that is **computed** for a tax year is included in the taxpayer's income for purposes of the Wisconsin income and franchise taxes for the **year of the investment**. However, partners, members and shareholders of partnerships, LLCs and S corporations do not add the credit to their income directly. Instead, the partnership, LLC or S corporation adds the credit that was passed through to owners to the entity income. That entity income is then allocated to the owners.

Example 19. Individual Taxpayer

Red Budd claimed a \$10,000 dairy investment credit on his 2004 income tax return that he filed on March 26, 2005. Red must include the \$10,000 credit in his 2004 Wisconsin income.

Example 20. Member of LLC

Windy Ridge Dairy Farm, LLC from Example 4 must include the \$10,000 dairy investment credit it computed in 2004 in its 2004 income. \$6,000 of that \$10,000 is passed through to Jim Nastics and \$4,000 is passed through to Linda Hand.

Observation—Effective Credit Rate

Including the credit in income reduces the effective rate of the credit to 9.325% for taxpayers in the 6.75% Wisconsin marginal tax bracket.

Credit Limited by Tax Liability

The amount included in income is the credit that is computed for the tax year, not the credit that is used in the tax year. The income is **not** reduced by the carryover credit.

Example 21. Carryover Credit

Paige Turner from Example 6 had a \$40,000 dairy investment credit in 2005 but her tax liability was only \$25,000 so she carried \$15,000 of the credit over to 2006. She is required to include the full \$40,000 credit in her 2005 Wisconsin income.

Observation—Not Added to Federal Income

Note that the \$40,000 credit is not added to Paige's 2005 federal income. However, the credit reduced her 2005 Wisconsin income taxes to zero. That will reduce her deduction for state taxes and/or increase her income from state tax refunds on her 2006 federal return, which will cause her federal income for 2006 to be \$25,000 more than it would have been without the dairy tax credit. If the \$15,000 credit carryover is used to reduce Wisconsin income taxes in future years, it will also increase federal income by reducing the state tax deduction and/or increasing the state tax refund that is reported as income.

Miscellaneous Provisions

Time Limit for Claiming the Credit

The credit must be claimed within 4 years of the unextended due date of the tax return.

Alternative Minimum Tax

As noted earlier, the credit is allowed to reduce the alternative minimum tax imposed on individuals and trusts and estates. For purposes of computing the alternative minimum tax, the dairy investment credit is **not** subtracted from Wisconsin regular taxes before it is compared with the Wisconsin equivalent of the federal tentative minimum tax.

Recycling Surcharge

For purposes of the recycling surcharge, the dairy investment credit is included in a partnership's "net business income."

Effect on Other Tax Provisions

The inclusion of the dairy investment credit in Wisconsin taxable income does not change the taxpayer's gross income from farming for purposes of other tax provisions such as the Wisconsin farmland preservation credit or for purposes of the exception to the federal and Wisconsin estimated tax penalty.

Delegation to Department of Revenue

The Department of Revenue has full power to administer the dairy investment credit and may take any action, conduct any proceeding and proceed as it is authorized in respect to income and franchise taxes. The income and franchise tax provisions relating to assessments, refunds, appeals, collection, interest, and penalties apply to the dairy investment credit.

Reporting

The credit is computed on Schedule DI, Wisconsin Dairy Investment Credit. The credit is reported on line 30 of the October 29, 2004 draft of the Wisconsin Form 1. The same amount is reported as income on line 4 of the October 29, 2004 draft of the Wisconsin Form 1. (The forms and schedules are in draft form and are subject to change.)

Example 22. Reporting the Credit

In 2004, Neil Down paid \$100,000 for a new freestall barn and \$5,000 for new feed handling equipment. His income tax liability before the dairy investment credit is applied is \$7,000. Neil reports his \$105,000 of qualifying investments and computes his \$10,500 credit on Schedule DI as shown in Figure 2. He then reports the \$10,500 as a credit on line 30 of Form 1 and as income on line 4 of Form 1 as shown in Figure 3. (Figure 3 shows entries only for the information presented in this example.) The \$3,500 excess of the credit over his Wisconsin income tax liability is carried forward to 2005.

Note—Code Numbers for Line 30 Entries

Line 30 of Form 1 is used to report several different additions to income. The instructions for Form 1 include a list of codes for the various types of income. The code for the dairy investment credit is 8.

FIGURE 2

2004	Wisconsin Dairy Investment Credit		Schedule DI
	(Attach to Wisconsin Form 1, 1NPR, 2, 3, 4, 4I, 4T, 5, or 5S)		Wisconsin Department of Revenue
	Name <i>Neil Down</i>	Identifying Number <i>071-07-0001</i>	
1 Fill in the amount paid in 2004 for the following items if used exclusively for dairy farm modernization or expansion:			
	a Freestall barns	1a	<i>100,000</i>
	b Fences	1b	
	c Watering facilities	1c	
	d Feed storage and handling equipment	1d	<i>5,000</i>
	e Milking parlors	1e	
	f Robotic equipment	1f	
	g Scales	1g	
	h Milk storage and cooling facilities	1h	
	i Bulk tanks	1i	
	j Manure pumping and storage facilities	1j	
	k Digesters	1k	
	l Equipment used to produce energy	1l	
	m Other (list) _____ _____ _____	1m	
2	Add lines 1a through 1m	2	<i>105,000</i>
3	Multiply line 2 by 10% (0.10)	3	<i>10,500</i>
4	Fill in 2004 dairy investment credit passed through from other entities	4	<i>0</i>
5	Add lines 3 and 4. If the total is more than \$50,000, fill in \$50,000. This is your 2004 dairy investment credit	5	<i>10,500</i>

FIGURE 3

1 Wisconsin income tax

Complete form using BLACK INK

2004

For the year Jan. 1-Dec. 31, 2004, or other tax year beginning _____, 2004 ending _____, 20__

Your legal last name
Down

If a joint return, spouse's legal last name

Legal first name and middle initial
Neil

Spouse's legal first name and middle initial

You must fill in your social security number
071-07-0001

You must fill in spouse's social security number

State election campaign fund
If you want \$1 to go to the State Election Campaign Fund, check box(es). ▼

You Your spouse

Checking the box(es) will not change your tax or refund.

Filing status Check box

Single

Married filing joint return

Married filing separate return. Fill in spouse's SSN above and full name here ▼

Head of household (see page 6). Also, check here if married ▶

Tax district Check proper box and fill in name of city, village, or town, and the county in which you lived at the end of 2004

City }
Village }
Town }

County of _____



School district
Fill in your school district number (see page 38)

1	Federal adjusted gross income (see page 7)	1	.00
	W-2 wages included in line 1	▶	.00
2	State and municipal interest (see page 7)	2	.00
3	Capital gain/loss addition (see page 7)	3	.00
4	Other additions (fill in code number and amount, see page 8)		
	8. 10,500 .. Total ▶	4	10,500 .00
5	Add the amounts in the right column for lines 1 through 4	5	.00
6	State tax refund (Form 1040, line 10)	6	.00
7	United States government interest	7	.00
8	Unemployment compensation (see page 9)	8	.00
9	Social security adjustment (see page 10)	9	.00
10	Capital gain/loss subtraction (see page 10)	10	.00
11	Other subtractions (fill in code number and amount, see page 10)		
 Total ▶	11	.00
12	Add lines 6 through 11	12	.00
13	Subtract line 12 from line 5. This is your Wisconsin income	13	.00

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I-010

14	Wisconsin income from line 13	14	.00	
15	Standard deduction. See table on page 30, OR ▼ If someone else can claim you (or your spouse) as a dependent, see page 17 and check box ▶	15	.00	
16	Subtract line 15 from line 14. If line 15 is larger than line 14, fill in 0	16	.00	
17	Deduction for exemptions (from line 6 of Exemption Worksheet on page 17)	17a	.00	
	b Fill in number of dependents (do not count yourself or your spouse)			
	c If you (or your spouse if filing joint) were age 65 or over, check appropriate box(es)	You Spouse		
18	Subtract line 17a from line 16. If line 17a is larger than line 16, fill in 0. This is your taxable income	18	.00	
19	Tax (see table on page 31)	19	.00	
20	Itemized deduction credit. Attach Schedule 1, page 4	20	.00	
21	Armed forces member credit (must be stationed outside U.S. See page 18)	21	.00	
22	School property tax credit			
	a Rent paid in 2004-heat included00	} Find credit from table page 19 ... 22a	
	Rent paid in 2004-heat not included00		
	b Property taxes paid on home in 200400	} Find credit from table page 20 ... 22b	
23	Working families tax credit } If line 14 is less than \$10,000 (\$19,000 if married filing joint), see page 20	23	.00	
24	Add lines 20 through 23	24	.00	
25	Subtract line 24 from line 19. If line 24 is larger than line 19, fill in 0	25	.00	
26	Alternative minimum tax. Attach Schedule MT	26	.00	
27	Add lines 25 and 26	27	7,000 .00	
28	Married couple credit. Attach Schedule 2, page 4	28	.00	
29	Manufacturer's sales tax credit. Attach Schedule MS	29	.00	
30	Dairy investment credit. Attach Schedule DI	30	10,500 .00	
31	Add lines 28, 29 and 30	31	10,500 .00	
32	Subtract line 31 from line 27. If line 31 is larger than line 27, fill in 0. This is your net tax	32	0 .00	
33	Recycling surcharge. Attach Schedule RS	33	.00	
34	Packers football stadium donation (decreases refund or increases amount owed) ... 	34	.00	
35	Sales and use tax due on out-of-state purchases (see page 22)	35	.00	
36	Endangered resources donation (decreases refund or increases amount owed) ... 	36	.00	
37	Breast cancer research donation (decreases refund or increases amount owed)	37	.00	
38	Penalties on IRAs, other retirement plans, MSAs, etc. (see page 22)00 x .33 =	38	.00
39	Add lines 32 through 38	39	.00	