

Instructions for Form 5735



Department of the Treasury
Internal Revenue Service

(Rev. March 2007)

American Samoa Economic Development Credit

Section references are to the Internal Revenue Code unless otherwise noted.

What's New

The American Samoa economic development credit has replaced the possessions corporation tax credit for tax years beginning after December 31, 2005. For information on the possessions corporation tax credit for tax years beginning before January 1, 2006, see the April 2003 revision of Form 5735 and the Instructions for Form 5735.

General Instructions

Purpose of Form

Form 5735 is used to figure the American Samoa economic development credit under section 30A. The credit is generally allowed against income tax imposed by Chapter 1 (see *Restrictions* below for exceptions).

Who Must File

A domestic corporation (other than an S corporation) that is an existing credit claimant with respect to American Samoa must complete Form 5735 for each year the American Samoa economic development credit election is in effect.

Where To File

Attach Form 5735 to the corporation's income tax return and file the return with the Internal Revenue Service, P.O. Box 409101, Ogden, UT 84409.

Qualifying for the Credit

To qualify for the American Samoa economic development credit, a corporation must meet all four of the following requirements.

1. The corporation must have been an existing credit claimant with respect to American Samoa.
2. The corporation must have elected the application of section 936 for its last tax year beginning before January 1, 2006.
3. The corporation must have derived 80% or more of its gross income from sources in American Samoa during the applicable period (defined in the instructions for Part I) immediately before the tax year ended.
4. The corporation must have derived 75% or more of its gross income from the active conduct of a trade or business in American Samoa during the applicable period (defined in the instructions for Part I) immediately before the tax year ended.

Existing Credit Claimant

A corporation is an existing credit claimant with respect to American Samoa if the corporation:

1. Was engaged in the active conduct of a trade or business within American Samoa on October 13, 1995, and

2. Elected the benefits of the possessions credit, effective for its taxable year that includes Oct. 13, 1995.

A corporation that acquires all of the assets of a trade or business of an existing credit claimant will qualify as an existing credit claimant.

Binding contract exception. For purposes of these rules, a corporation is treated as engaged in the active conduct of a trade or business within American Samoa on October 13, 1995, if the corporation had in effect on that date, and at all times thereafter, a binding contract for the acquisition of assets to be used in, or the sale of property to be produced from, that trade or business.

Substantial new line of business. A corporation that adds a substantial new line of business or that has a new line of business that becomes substantial ceases to be an existing credit claimant at the beginning of the tax year in which (a) it added the new line of business or (b) the new line of business becomes substantial. For more information, see Regulations section 1.936-11.

Restrictions

The credit is not allowed against the following taxes:

1. Tax on accumulated earnings (section 531).
2. Personal holding company tax (section 541).
3. Additional tax for recovery of foreign expropriation losses (section 1351).
4. Recapture of investment credit (section 50).
5. Recapture of low-income housing credit (section 42(j)(4)(D)).
6. Recapture of Indian employment credit (section 45A).

IC-DISC or FSC

A corporation cannot take the American Samoa economic development credit for any tax year it is an IC-DISC or former IC-DISC, or for any tax year in which it owns stock in an IC-DISC or FSC, or former IC-DISC or former FSC (section 936(f)).

Alternative Minimum Tax

Income eligible for the American Samoa economic development credit is not taxed under the alternative minimum tax rules. See Form 4626, Alternative Minimum Tax—Corporations.

Source of Gross Income, etc.

See sections 638, 861-864, and 936 to determine if the source of gross income, deductions, and taxable income is in or outside the United States or American Samoa. Amounts received in the United States may be considered sourced outside the United States if they are from sources outside the United States and received from an unrelated person in the active conduct of a trade or business. See section 936(b).

Specific Instructions

Part I. Gross Income in Applicable Period

Applicable period. The “applicable period” is generally the shorter of 36 months or the period when the corporation actively conducted a trade or business in American Samoa.

Part II. American Samoa Economic Development Credit

Note. Any wages or other expenses taken into account in determining the American Samoa economic development credit may not be taken into account in determining the research credit under section 41.

Line 6

Enter 60% of the sum of:

- The aggregate amount of the corporation’s qualified wages for the tax year and
- The allocable employee fringe benefit expenses of the corporation for the tax year.

Qualified wages. Qualified wages are wages paid or incurred by the corporation during the tax year in connection with the active conduct of a trade or business in American Samoa to an employee for services performed in American Samoa, but only if the services are performed while the employee’s principal place of employment is in American Samoa.

The term “wages” generally means wages as defined in section 3306(b), but without regard to any dollar limitation contained in that section. For this purpose, section 3306(b) is applied as if the term “United States” includes American Samoa. See section 936(i)(1)(D)(ii) for a special rule for agricultural labor and railway labor.

The wages that are taken into account for the tax year for any employee are limited to 85% of the old-age, survivors, and disability insurance (OASDI) contribution and benefit base for the calendar year in which that tax year begins. The OASDI contribution and benefit base for 2006 is \$94,200 and for 2007 is \$97,500.

Special rules apply to part-time employees and employees whose principal place of employment with the corporation is not within American Samoa at all times during the tax year.

For more information, see section 936(i)(1).

Allocable employee fringe benefit expenses. The total amount of employee fringe benefit expenses taken into account in figuring the economic-activity limitation is the amount deductible by the corporation in the tax year for:

- Employer contributions to stock bonus, pensions, profit-sharing, or annuity plans,
- Employer-provided health or accident plan coverage for the employees, and
- The cost of life or disability insurance provided to employees.

Note. Any amount treated as qualified wages may not be treated as an employee fringe benefit expense.

The amount of allocable employee fringe benefit expenses for a tax year is equal to the total amount of employee fringe benefit expenses (defined above) multiplied by a fraction. The fraction consists of the corporation’s qualified wages (defined above) for the tax

year, divided by the aggregate amount of wages paid or incurred by the corporation during the tax year.

The allocable employee fringe benefit expenses cannot exceed 15% of the corporation’s qualified wages for the tax year.

For more information, see section 936(i)(2).

Lines 7–9

Qualified tangible property means any tangible property used by the corporation in the active conduct of a trade or business within American Samoa.

Short-life qualified tangible property is qualified tangible property that is 3-year or 5-year property under section 168.

Medium-life qualified tangible property is qualified tangible property that is 7-year or 10-year property under section 168.

Long-life qualified tangible property is qualified tangible property that is not short-life or medium-life qualified tangible property.

For more information, see section 936(i)(4).

Note. In the case of any qualified tangible property to which section 168 (as in effect before the date of enactment of the Tax Reform Act of 1986) applies, any references above to section 168 are to that Code section as then in effect.

For more information on depreciation, see the Instructions for Form 4562 and Publication 946.

Line 12

Include the line 12 credit on your income tax return on the same line on which the qualified electric vehicle (QEV) credit is reported. Enter “Form 5735” and the amount next to the entry space for that line. On the 2006 Form 1120, the QEV is reported on Schedule J, line 5b. The credit must also be included on the QEV line of the following forms as applicable: Form 3800, Form 6478, Form 8835, Form 8860, Form 8910, Form 8911, and Form 8912.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: **Recordkeeping**, 7 hr., 53 min.; **Learning about the law or the form**, 2 hr., 17 min.; and **Preparing, copying, assembling, and sending the form to the IRS**, 2 hr., 32 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.
