

for “captured and disposed of or used as a tertiary injectant”.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-5, div. B, title I, §1131(c), Feb. 17, 2009, 123 Stat. 325, provided that: “The amendments made by this section [amending this section] shall apply to carbon dioxide captured after the date of the enactment of this Act [Feb. 17, 2009].”

EFFECTIVE DATE

Section applicable to carbon dioxide captured after Oct. 3, 2008, see section 115(d) of Pub. L. 110-343, set out as an Effective Date of 2008 Amendment note under section 38 of this title.

SUBPART E—RULES FOR COMPUTING INVESTMENT CREDIT

Sec.	
46.	Amount of credit.
47.	Rehabilitation credit.
48.	Energy credit.
48A.	Qualifying advanced coal project credit.
48B.	Qualifying gasification project credit.
48C.	Qualifying advanced energy project credit.
49.	At-risk rules.
50.	Other special rules.
	[50A, 50B. Repealed.]

AMENDMENTS

2009—Pub. L. 111-5, div. B, title I, §1302(c)(2), Feb. 17, 2009, 123 Stat. 348, added item 48C.

2005—Pub. L. 109-58, title XIII, §1307(c)(2), Aug. 8, 2005, 119 Stat. 1006, added items 48A and 48B.

2004—Pub. L. 108-357, title III, §322(d)(2)(C), Oct. 22, 2004, 118 Stat. 1475, which directed amendment of item 48 by striking out “, reforestation credit”, was executed by striking out “; reforestation credit” after “Energy credit” to reflect the probable intent of Congress.

1990—Pub. L. 101-508, title XI, §11813(a), Nov. 5, 1990, 104 Stat. 1388-536, amended heading and analysis generally, substituting in heading “Investment Credit” for “Credit for Investment in Certain Depreciable Property”, in item 47 “Rehabilitation Credit” for “Certain dispositions, etc., of section 38 property”, in item 48 “Energy credit; reforestation credit” for “Definitions; special rules”, in item 49 “At-risk rules” for “Termination of regular percentage”, and adding item 50.

1986—Pub. L. 99-514, title II, §211(c), Oct. 22, 1986, 100 Stat. 2168, added item 49.

1984—Pub. L. 98-369, div. A, title IV, §474(n)(1), July 18, 1984, 98 Stat. 833, substituted “E” for “B” as subpart designation.

1978—Pub. L. 95-600, title III, §312(c)(5), Nov. 6, 1978, 92 Stat. 2826, struck out item 49 “Termination for period beginning April 19, 1969, and ending during 1971” and item 50 “Restoration of credit”.

1971—Pub. L. 92-178, title I, §101(b)(5), Dec. 10, 1971, 85 Stat. 499, substituted “Termination for period beginning April 19, 1969, and ending during 1971” for “Termination of credit” in item 49 and added item 50.

1969—Pub. L. 91-172, title VII, §703(d), Dec. 30, 1969, 83 Stat. 667, added item 49.

1962—Pub. L. 87-834, §2(b), Oct. 16, 1962, 76 Stat. 963, added subpart B.

§ 46. Amount of credit

For purposes of section 38, the amount of the investment credit determined under this section for any taxable year shall be the sum of—

(1) the rehabilitation credit,

(2) the energy credit¹

(3) the qualifying advanced coal project credit,

(4) the qualifying gasification project credit²

(5) the qualifying advanced energy project credit.

(Added Pub. L. 87-834, §2(b), Oct. 16, 1962, 76 Stat. 963; amended Pub. L. 88-272, title II, §201(d)(4), Feb. 26, 1964, 78 Stat. 32; Pub. L. 89-384, §1(c)(1), Apr. 8, 1966, 80 Stat. 102; Pub. L. 89-389, §2(b)(5), Apr. 14, 1966, 80 Stat. 114; Pub. L. 89-800, §3, Nov. 8, 1966, 80 Stat. 1514; Pub. L. 90-225, §2(a), Dec. 27, 1967, 81 Stat. 731; Pub. L. 91-172, title III, §301(b)(4), title IV, §401(e)(1), title VII, §703(b), Dec. 30, 1969, 83 Stat. 585, 603, 666; Pub. L. 92-178, title I, §§102(a)(1), (b), 105(a)-(c), 106(a)-(c), 107(a)(1), 108(a), Dec. 10, 1971, 85 Stat. 499, 503, 506, 507; Pub. L. 93-406, title II, §§2001(g)(2)(B), 2002(g)(2), 2005(c)(4), Sept. 2, 1974, 88 Stat. 957, 968, 991; Pub. L. 94-12, title III, §301(a), (b)(1)-(3), 302(a), (b)(1), Mar. 29, 1975, 89 Stat. 36, 37, 40, 43; Pub. L. 94-455, title V, §503(b)(4), title VIII, §§802(a), (b)(1)-(5), 803(a), (b)(1), 805(a), title XVI, §1607(b)(1)(B), title XVII, §§1701(b), 1703, title XIX, §§1901(a)(4), (b)(1)(C), 1906(b)(13)(A), title XXI, §2112(a)(2), Oct. 4, 1976, 90 Stat. 1562, 1580-1583, 1596, 1756, 1759, 1761, 1764, 1790, 1834, 1905; Pub. L. 95-600, title I, §141(e), (f)(2), title III, §§311(a), (c), 312(a), (b), (c)(2), 313(a), 316(a), (b)(1), (2), title VII, §703(a)(1), (2), (j)(9), Nov. 6, 1978, 92 Stat. 2794, 2795, 2824-2826, 2829, 2939, 2941; Pub. L. 95-618, title II, §241(a), title III, §301(a), (c)(1), Nov. 9, 1978, 92 Stat. 3192, 3194, 3199; Pub. L. 96-222, title I, §§101(a)(7)(A), (L)(iii)(I), (v)(I), (M)(i), 103(a)(2)(A), (B)(i)-(iii), (3), (4)(A), 107(a)(3)(A), Apr. 1, 1980, 94 Stat. 197, 200, 201, 208, 209, 223; Pub. L. 96-223, title II, §§221(a), 222(e)(2), 223(b)(1), Apr. 2, 1980, 94 Stat. 260, 263, 266; Pub. L. 97-34, title II, §§207(c)(1), 211(a)(1), (b), (d), (e)(1), (2), (f)(1), 212(a)(1), (2), title III, §§302(c)(3), (d)(1), 332(a), Aug. 13, 1981, 95 Stat. 225, 227-229, 235, 236, 272, 274, 296; Pub. L. 97-248, title II, §201(d)(8)(A), formerly §201(c)(8)(A), §§205(b), 265(b)(2)(A)(i), Sept. 3, 1982, 96 Stat. 420, 430, 547, renumbered §201(d)(8)(A), Pub. L. 97-448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 97-354, §5(a)(4)-(6), Oct. 19, 1982, 96 Stat. 1692; Pub. L. 97-424, title V, §§541(b), 546(b), Jan. 6, 1983, 96 Stat. 2192, 2199; Pub. L. 97-448, title I, §102(e)(1), (f)(5), title II, §202(f), Jan. 12, 1983, 96 Stat. 2370, 2372, 2396; Pub. L. 98-21, title I, §122(c)(1), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98-369, div. A, title I, §§16(a), 31(f), 113(b)(2)(B), title IV, §§431(a), (b)(1), (d)(1)-(3), 474(o)(1)-(7), title VII, §713(c)(1)(C), July 18, 1984, 98 Stat. 505, 521, 637, 805, 807, 810, 834-836, 957; Pub. L. 99-514, title II, §§201(d)(7)(B), 251(a), title IV, §421(a), (b), title XVIII, §§1802(a)(6), (8), 1844(a), (b)(3), (5), 1847(b)(11), 1848(a), Oct. 22, 1986, 100 Stat. 2141, 2183, 2229, 2789, 2855, 2857; Pub. L. 100-647, title I, §§1002(a)(4), (15), (17), (25), 1009(a)(1), 1013(a)(44), title IV, §4006, Nov. 10, 1988, 102 Stat. 3353, 3355, 3356, 3445, 3545, 3652; Pub. L. 101-239, title VII, §§7106, 7814(d), Dec. 19, 1989, 103 Stat. 2306, 2413; Pub. L. 101-508, title XI, §§11406, 11813(a), Nov. 5, 1990, 104 Stat. 1388-474, 1388-536; Pub. L. 108-357, title III, §322(d)(1), Oct. 22, 2004, 118 Stat. 1475; Pub. L. 109-58, title XIII, §1307(a), Aug. 8, 2005, 119 Stat. 999; Pub. L. 111-5, div. B, title I, §1302(a), Feb. 17, 2009, 123 Stat. 345.)

AMENDMENTS

2009—Par. (5). Pub. L. 111-5 added par. (5).

¹ So in original. Probably should be followed by a comma.

² So in original. Probably should be followed by “, and”.

2005—Pub. L. 109-58 struck out “and” at end of par. (1), struck out period at end of par. (2), and added pars. (3) and (4).

2004—Pub. L. 108-357 inserted “and” at end of par. (1), substituted a period for “, and” at end of par. (2), and struck out par. (3) which read as follows: “the reforestation credit.”

1990—Pub. L. 101-508, §11813(a), amended section generally, substituting present provisions for provisions relating to amount of investment credit, determination of percentages, qualified investments and qualified progress expenditures, limitations with respect to certain persons, a limitation in the case of certain regulated companies, a 50 percent credit in the case of certain vessels, and special rule for cooperatives.

Subsec. (b)(2)(A). Pub. L. 101-508, §11406, substituted “Dec. 31, 1991” for “Sept. 30, 1990” in table items (viii) C. and (ix) B.

1989—Subsec. (b)(2)(A). Pub. L. 101-239, §7106, substituted “Sept. 30, 1990” for “Dec. 31, 1989” in table items (viii) C., (ix) B., and (x).

Pub. L. 101-239, §7814(d), made technical correction to language of Pub. L. 100-647, §4006, see 1988 Amendment note below.

1988—Subsec. (b)(2)(A). Pub. L. 100-647, §4006, as amended by Pub. L. 101-239, §7814(d), substituted “1989” for “1988” in table items (viii) C., (ix) B., and (x).

Subsec. (c)(5)(B). Pub. L. 100-647, §1013(a)(44), substituted “private activity bonds” for “industrial development bonds” in heading, and in text substituted “a private activity bond (within the meaning of section 141)” for “an industrial development bond (within the meaning of section 103(b)(2))”.

Subsec. (c)(7). Pub. L. 100-647, §1002(a)(17), substituted “property to which section 168 applies” for “recovery property” in heading, substituted “property to which section 168 applies” for “recovery property” and “168(e)” for “168(c)” in subpar. (A), substituted “168(e)” for “168(c)” in subpar. (B), and inserted “(as in effect on the day before the date of the enactment of the Tax Reform Act of 1986)” after “section 168(f)(3)(B)” in concluding provisions.

Subsec. (d)(1)(B)(i). Pub. L. 100-647, §1002(a)(25)(A), substituted “property to which section 168 applies” for “recovery property (within the meaning of section 168)”.

Subsec. (d)(1)(B)(ii). Pub. L. 100-647, §1002(a)(25)(B), substituted “to which section 168 does not apply” for “which is not recovery property (within the meaning of section 168)”.

Subsec. (e)(3). Pub. L. 100-647, §1002(a)(15), substituted “property to which section 168 applies” for “recovery property (within the meaning of section 168)”, “class life” for “present class life”, and “168(i)(1)” for “168(g)(2)”.

Subsec. (e)(4)(B). Pub. L. 100-647, §1002(a)(4)(A), substituted “168(i)(3)” for “168(j)(6)”.

Subsec. (e)(4)(C). Pub. L. 100-647, §1009(a)(1), inserted provisions at end which provided that any such election shall terminate effective with respect to the 1st taxable year of the organization making such election which begins after 1986, and which defined “regular investment tax credit property”.

Subsec. (e)(4)(D). Pub. L. 100-647, §1002(a)(4)(B), substituted “paragraphs (5) and (6) of section 168(h)” for “paragraphs (8) and (9) of section 168(j)”.

Subsec. (e)(4)(E). Pub. L. 100-647, §1002(a)(4)(C), (D), substituted “168(h)” for “168(j)” and “168(h)(2)” for “168(j)(4)”.

1986—Subsec. (b)(2)(A). Pub. L. 99-514, §1847(b)(11), substituted “48(l)(3)(A)(viii)” for “48(l)(3)(A)(vii)” in table item (ii).

Pub. L. 99-514, §421(a), inserted table items (viii) to (xi).

Subsec. (b)(2)(E). Pub. L. 99-514, §421(b), added subpar. (E).

Subsec. (b)(4). Pub. L. 99-514, §251(a), in amending par. (4) generally, substituted in subpar. (A) definition of “rehabilitation percentage” for former table specifying specific rehabilitation percentages, reenacted sub-

par. (B), and struck out subpar. (C) which related to definitions.

Subsec. (c)(8)(D)(v). Pub. L. 99-514, §1844(a), substituted “this subparagraph” for “clause (i)”.

Pub. L. 99-514, §201(d)(7)(B), substituted “section 465(b)(3)(C)” for “section 168(e)(4)”.

Subsec. (c)(9)(A). Pub. L. 99-514, §1844(b)(3), substituted “an increase in the credit base for” for “additional qualified investment in”.

Subsec. (c)(9)(C)(i). Pub. L. 99-514, §1844(b)(5), substituted “any increase in a taxpayer’s credit base for any property by reason of this paragraph shall be taken into account as if it were property placed in service by the taxpayer in the taxable year in which the property referred to in subparagraph (A) was first placed in service” for “any increase in a taxpayer’s qualified investment in property by reason of this paragraph shall be deemed to be additional qualified investment made by the taxpayer in the year in which the property referred to in subparagraph (A) was first placed in service”.

Subsec. (e)(4)(D), (E). Pub. L. 99-514, §1802(a)(6), (8), added subpars. (D) and (E).

Subsec. (f)(9). Pub. L. 99-514, §1848(a), struck out par. (9) which related to a special rule for additional credit.

1984—Subsec. (a). Pub. L. 98-369, §474(o)(1), amended subsec. (a) generally, so as to contain provisions relating to amount of investment credit, which formerly constituted only par. (2)(A)(i), (ii), and (iv) of subsec. (a).

Subsec. (a)(4). Pub. L. 98-369, §713(c)(1)(C), substituted “premature distributions to key employees” for “premature distributions to owner-employees”.

Subsec. (b). Pub. L. 98-369, §474(o)(1), amended subsec. (b) generally, substituting provisions relating to determination of percentages for purposes of subsec. (a), for provisions relating to carryback and carryover of unused credits.

Subsec. (c)(7)(A). Pub. L. 98-369, §13(b)(2)(B), inserted “recovery” before first reference to “property”.

Subsec. (c)(8). Pub. L. 98-369, §431(a), substituted “Certain nonrecourse financing excluded from credit base” for “Limitation to amount at risk” in heading.

Subsec. (c)(8)(A). Pub. L. 98-369, §431(a), substituted provisions reducing the credit base of any property to which this paragraph applies by the nonqualified nonrecourse financing with respect to such property for provisions relating to limitation of the basis to the amount at risk in the case of new or used section 38 property placed in service during the taxable year by a taxpayer described in section 465(a)(1) and used in connection with an activity with respect to which any loss was subject to limitation under section 465.

Subsec. (c)(8)(B). Pub. L. 98-369, §431(a), substituted provisions relating to the property to which this paragraph applies for provisions defining “at risk” and stating the circumstances under which a taxpayer would be considered to be at risk for purposes of this paragraph.

Subsec. (c)(8)(C). Pub. L. 98-369, §431(a), substituted provisions defining “credit base” for provisions relating to a special rule for partnerships and subchapter S corporations.

Subsec. (c)(8)(D). Pub. L. 98-369, §431(a), substituted provisions defining “nonqualified nonrecourse financing” for provisions defining “qualified person”.

Subsec. (c)(8)(D)(i)(I). Pub. L. 98-369, §16(a), repealed amendments made by Pub. L. 97-34, §302(c). See 1981 Amendment note below.

Subsec. (c)(8)(E). Pub. L. 98-369, §431(a), substituted provisions relating to the application of this paragraph to partnerships and subchapter S corporations for provisions defining “related person”.

Subsec. (c)(8)(F)(i). Pub. L. 98-369, §431(d)(1), substituted provisions that subpar. (A) shall not apply with respect to qualified energy property for provisions that subpar. (A) would not apply to amounts borrowed with respect to qualified energy property (other than amounts described in subpar. (B)).

Subsec. (c)(8)(F)(ii)(II). Pub. L. 98-369, §474(o)(2), substituted “subsection (b)(2)” for “section 46(a)(2)(C)”.

Subsec. (c)(8)(F)(ii)(III). Pub. L. 98-369, §431(d)(2), substituted provisions that qualified energy property

means energy property to which (but for this subpar.) subpar. (A) applies and not more than 75 percent of the basis of which is attributable to nonqualified nonrecourse financing for provisions that qualified energy property meant energy property to which (but for this subpar.) subpar. (A) applied and with respect to which the taxpayer was at risk (within the meaning of section 465(b) without regard to par. (5) thereof) in an amount equal to at least 25 percent of the basis of the property.

Subsec. (c)(8)(F)(ii)(IV). Pub. L. 98-369, § 431(d)(3), substituted “nonqualified nonrecourse financing” for “nonrecourse financing (other than financing described in section 46(c)(8)(B)(ii))”.

Subsec. (c)(9). Pub. L. 98-369, § 431(b)(1), substituted provisions relating to subsequent decreases in nonqualified nonrecourse financing with respect to the property for provisions relating to subsequent increases in the taxpayer's amount at risk with respect to the property.

Subsec. (e)(1). Pub. L. 98-369, § 474(o)(3)(A), struck out “and the \$25,000 amount specified under subparagraphs (A) and (B) of subsection (a)(3)”, and substituted “such qualified investment” for “such items”, in provisions following subpar. (B).

Subsec. (e)(2). Pub. L. 98-369, § 474(o)(3)(B), substituted “qualified investment” for “the items described therein” in introductory provisions.

Subsec. (e)(4). Pub. L. 98-369, § 31(b), added par. (4).
Subsec. (f)(1). Pub. L. 98-369, § 474(o)(4)(A), substituted “no credit determined under subsection (a) shall be allowed by section 38” for “no credit shall be allowed by section 38” in introductory provisions.

Subsec. (f)(1)(A), (B). Pub. L. 98-369, § 474(o)(4)(B), substituted “the credit determined under subsection (a) and allowable by section 38” for “the credit allowable by section 38”.

Subsec. (f)(2). Pub. L. 98-369, § 474(o)(4)(A), substituted “no credit determined under subsection (a) shall be allowed by section 38” for “no credit shall be allowed by section 38” in introductory provisions.

Subsec. (f)(2)(A), (B). Pub. L. 98-369, § 474(o)(4)(B), substituted “the credit determined under subsection (a) and allowable by section 38” for “the credit allowable by section 38”.

Subsec. (f)(4)(B). Pub. L. 98-369, § 474(o)(4)(C), substituted “the credit determined under subsection (a) and allowed by section 38” for “the credit allowed by section 38” in introductory provisions.

Subsec. (f)(8). Pub. L. 98-369, § 474(o)(5), substituted “the credit determined under subsection (a) and allowable under section 38” for “the credit allowable under section 38” in two places, and “(within the meaning of the first sentence of subsection (c)(3)(B))” for “(within the meaning of subsection (a)(7)(C))”.

Subsec. (g)(2). Pub. L. 98-369, § 474(o)(6), substituted “the limitation of section 38(c)” for “the limitation of subsection (a)(3)”.

Subsec. (h)(1). Pub. L. 98-369, § 474(o)(7), substituted “the credit determined under subsection (a) and allowable to the organization under section 38” for “the credit allowable to the organization under section 38” and “the limitation contained in section 38(c)” for “the limitation contained in subsection (a)(3)”.

1983—Subsec. (a)(2)(C)(i). Pub. L. 97-424, § 546(b), added section VII to the table.

Subsec. (a)(2)(C)(iii)(I). Pub. L. 97-448, § 202(f), substituted “before January 1, 1983, all engineering studies in connection with the commencement of the construction of the project have been completed and all environmental and construction permits required under Federal, State, or local law in connection with the commencement of the construction of the project have been applied for, and” for “before January 1, 1983, the taxpayer has completed all engineering studies in connection with the commencement of the construction of the project, and has applied for all environmental and construction permits required under Federal, State, or local law in connection with the commencement of the construction of the project, and”.

Subsec. (a)(2)(F)(iii)(II). Pub. L. 97-448, § 102(f)(5)(A), substituted “a qualified rehabilitated building” for “any building”.

Subsec. (a)(2)(F)(iii)(III). Pub. L. 97-448, § 102(f)(5)(B), substituted “means a qualified rehabilitated building which meets the requirements of section 48(g)(3)” for “has the meaning given to such term by section 48(g)(3)”.

Subsec. (a)(4)(B). Pub. L. 98-21 substituted “relating to credit for the elderly and the permanently and totally disabled” for “relating to credit for the elderly”.

Subsec. (c)(7). Pub. L. 97-448, § 102(e)(1), substituted “in the case of property other than 3-year property (within the meaning of section 168(c))” for “in the case of 15-year public utility, 10-year, or 5-year property (within the meaning of section 168(c))” in subpar. (A) and, in provisions following subpar. (B), substituted “shall be treated as property which is not 3-year property” for “shall be treated as 5-year property”.

Subsec. (f)(10). Pub. L. 97-424, § 541(b), added par. (10).
1982—Subsec. (a)(3)(B). Pub. L. 97-248, § 205(b)(1), substituted “85 percent” for “the following percentage”, substituted a period for the colon, and struck out table of percentages at end of subpar. (B).

Subsec. (a)(4). Pub. L. 97-354, § 5(a)(4), substituted “section 1374 (relating to tax on certain capital gains of S corporations)” for “section 1378 (relating to tax on certain capital gains of subchapter S corporations)”.

Pub. L. 97-248, §§ 201(d)(8)(A), formerly 201(c)(8)(A), 265(b)(2)(A), substituted “(relating to corporate minimum tax)” for “(relating to minimum tax for tax preferences)” after “section 56”, and inserted “section 72(a)(1) (relating to 5-percent tax on premature distributions under annuity contracts),” after “owner-employees”.

Subsec. (a)(7). Pub. L. 97-248, § 205(b)(2), redesignated par. (9) as (7), and, in par. (7)(B), as so redesignated, substituted reference to 85 percent for former reference to the percentage determined under subsec. (a)(3)(B) in cl. (i), struck out former cl. (ii), which provided that pars. (7) and (8) would not apply in certain instances, and redesignated former cl. (iii) as (ii). Former par. (7), which provided for alternative limitations in the case of certain utilities, was struck out.

Subsec. (a)(8). Pub. L. 97-248, § 205(b)(2)(A), struck out par. (8) which provided for alternative limitations in the case of certain railroads and airlines.

Subsec. (a)(9). Pub. L. 97-248, § 205(b)(2)(A), redesignated par. (9) as (7).

Subsec. (c)(8)(C). Pub. L. 97-354, § 5(a)(5), substituted “S corporation” for “electing small business corporation (within the meaning of section 1371(b))”.

Subsec. (e)(3). Pub. L. 97-354, § 5(a)(6), substituted “an S corporation” for “an electing small business corporation (as defined in section 1371)”.

1981—Subsec. (a)(2)(A)(iv). Pub. L. 97-34, § 212(a)(1), added cl. (iv).

Subsec. (a)(2)(E). Pub. L. 97-34, § 332(a), substituted “December 31, 1982” for “December 31, 1983” in cls. (i) and (ii) and added cl. (iii).

Subsec. (a)(2)(F). Pub. L. 97-34, § 212(a)(2), added subpar. (F).

Subsec. (b)(1). Pub. L. 97-34, § 207(c)(1), inserted provision after subpar. (D) directing that, in the case of an unused credit for an unused credit year ending after Dec. 31, 1973, this paragraph be applied by substituting “15” for “7” in subpar. (B) and by substituting “18” for “10” and “17” for “9” in second sentence.

Subsec. (c)(2). Pub. L. 97-34, § 211(e)(1), inserted references in provisions preceding table to exceptions provided in paragraphs (3), (6), and (7).

Subsec. (c)(6)(A). Pub. L. 97-34, § 211(e)(2), substituted “Notwithstanding paragraph (2) or (3)” for “Notwithstanding paragraph (2)” and inserted “or which is recovery property (within the meaning of section 168),” after “3 years or more.”

Subsec. (c)(7). Pub. L. 97-34, § 211(a)(1), added par. (7).

Subsec. (c)(8). Pub. L. 97-34, § 211(f)(1), added par. (8).

Subsec. (c)(8)(D)(i)(I). Pub. L. 97-34, § 302(c)(3), (d)(1), provided that, applicable to taxable years beginning after Dec. 31, 1984, subsection (c)(8)(D)(i)(I) of this section (relating to limitation to amount at risk) is amended by striking out “clause (i), (ii), or (iii) of sub-

paragraph (A) or subparagraph (B) of section 128(c)(2)" and inserting in lieu thereof "subparagraph (A) or (B) of section 128(c)(1)". Section 16(a) of Pub. L. 98-369, repealed section 302(c) of Pub. L. 97-34, and provided that this title shall be applied and administered as if section 302(c), and the amendments made by section 302(c), had not been enacted.

Subsec. (c)(9). Pub. L. 97-34, §211(f)(1), added par. (9).

Subsec. (d)(1). Pub. L. 97-34, §211(b)(1), designated existing provisions as subpar. (A), substituted "an amount equal to the aggregate of the applicable percentage of each qualified progress expenditure for the taxable year" for "an amount equal to his aggregate qualified progress expenditures for the taxable year" in subpar. (A) as so designated, and added subpar. (B).

Subsec. (d)(2)(A)(ii). Pub. L. 97-34, §211(b)(2), struck out "having a useful life of 7 years or more" after "it is reasonable to believe will be new section 38 property".

Subsec. (e)(3). Pub. L. 97-34, §211(d), in provisions following subpar. (B), inserted provision that, for purposes of subpar. (B), in the case of any recovery property (within the meaning of section 168), the useful life be the present class life for such property (as defined in section 168(g)(2)).

1980—Subsec. (a)(2)(A). Pub. L. 96-222, §101(a)(7)(L)(iii)(I), substituted "employee plan" for "ESOP".

Subsec. (a)(2)(C). Pub. L. 96-222, §221(a), revised provisions relating to energy percentage by substituting a tabular format embracing separate coverage for solar, wind, or geothermal property, ocean thermal property, qualified hydroelectric generating property, and biomass property using percentages varying between 10 and 15 percent and covering periods from Oct. 1, 1978, to Dec. 31, 1985, with longer periods for certain long-term projects and certain hydroelectric generating property for provisions that had set the energy percentage at 10 percent for the period beginning Oct. 1, 1978, and ending Dec. 31, 1982, and zero with respect to any other period.

Subsec. (a)(2)(D). Pub. L. 96-222, §222(e)(2), inserted provision that in the case of any qualified hydroelectric generating property which is a fish passage-way, the special rule for certain energy property embraced in the first sentence would not apply to any period after 1979 for which the energy percentage for such property is greater than zero.

Subsec. (a)(2)(E). Pub. L. 96-222, §101(a)(7)(L)(v)(I), (M)(i), substituted in heading "employee plan" for "ESOP" and in cls. (i) and (ii) inserted "and ending on" before "December 31, 1983".

Subsec. (a)(9). Pub. L. 96-222, §103(a)(2)(B)(i), redesignated par. (10) as (9). A former par. (9) was previously repealed by section 312(b)(2) of Pub. L. 95-600.

Subsec. (a)(9)(A). Pub. L. 96-222, §223(b)(1)(A), inserted "and" at end of cl. (i), substituted a period for "(other than solar wind energy property), and" at end of cl. (ii), and struck out cl. (iii) which had provided for the application of so much of the credit allowed by section 38 as was attributable to the application of the energy percentage to solar or wind energy property.

Subsec. (a)(9)(B). Pub. L. 96-222, §223(b)(1)(B), struck out "other than solar or wind energy property" after "energy property" in heading.

Pub. L. 96-222, §103(a)(2)(B)(ii), (iii), substituted "paragraph (3)(B) shall be applied by substituting '100 percent' for the percentage determined under the table contained in such paragraph" for "paragraph (3)(C) shall be applied by substituting '100 percent' for '50 percent'" in cl. (i) and "(7) and (8)" for "(7), (8), and (9)" in cl. (ii).

Subsec. (a)(9)(C). Pub. L. 96-222, §223(b)(1)(C), struck out subpar. (C) which related to a refundable credit for solar or wind energy property.

Subsec. (a)(10). Pub. L. 96-222, §103(a)(2)(B)(i), redesignated par. (10) as (9).

Subsec. (c)(5)(B). Pub. L. 96-222, §103(a)(3), inserted provisions requiring that this subparagraph not apply for purposes of applying the energy percentage.

Subsec. (e)(3). Pub. L. 96-222, §103(a)(4)(A), inserted provisions requiring that this paragraph not apply with

respect to any property which is treated as section 38 property by reason of section 48(a)(1)(E).

Subsec. (f)(1), (2). Pub. L. 95-600, §312(c)(2), as amended by Pub. L. 96-222, §103(a)(2)(A), substituted "'described in section 50 (as in effect before its repeal by the Revenue Act of 1978)'" for "'described in section 50'".

Subsec. (f)(8). Pub. L. 96-222, §107(a)(3)(A), substituted "subsection (a)(7)(C)" for "subsection (a)(7)(D)".

Subsec. (f)(9). Pub. L. 96-222, §101(a)(7)(A), substituted in provisions preceding subpar. (A) "subparagraph (E) of subsection (a)(2)" for "subparagraph (B) of subsection (a)(2)" and in subpar. (A) "a tax credit employee stock ownership plan which meets the requirements of section 409A" for "an employee ownership plan which meets the requirements of section 301(d) of the Tax Reduction Act of 1975".

1978—Subsec. (a)(2). Pub. L. 95-618, §301(a)(1), among other changes, inserted provisions relating to an alternative energy property tax credit which would pay for a certain percentage of the cost of equipment which uses sources of energy other than oil and gas and of associated pollution control, handling, and preparation equipment.

Subsec. (a)(2)(B). Pub. L. 95-600, §311(a), made 10 percent limitation on investment tax credit permanent.

Subsec. (a)(2)(E). Pub. L. 95-600, §141(e), (f)(2), substituted "December 31, 1983" for "and ending on December 31, 1980" wherever appearing, "section 48(n)(1)(B)" for "section 301(e) of the Tax Reduction Act of 1975" and "section 409A" for "section 301(d) of the Tax Reduction Act of 1975".

Subsec. (a)(3). Pub. L. 95-600, §312(a), increased the present 50 percent tax liability limitation to 90 percent, to be phased in at an additional 10 percentage points per year beginning with taxable years which end in 1979.

Subsec. (a)(7). Pub. L. 95-600, §312(b)(1), in subpar. (A) substituted "the taxable year ending in 1979" for "a taxable year ending after calendar year 1974 and before calendar year 1981", "subparagraph (B)" for "subparagraph (C)", and "for '60 percent' the taxpayer's" for "for 50 percent his" and inserted "the application of this paragraph results in a percentage higher than 60 percent," before "then subparagraph (B)"; in subpar. (B) substituted "70 percent" for "50 percent plus the tentative percentage for such year"; struck out former subpar. (C), which related to the determination of the tentative percentage, and redesignated former subpar. (D) as (C).

Subsec. (a)(8). Pub. L. 95-600, §312(b)(2), in subpar. (A) substituted "the taxable year ending in 1979" for "a taxable year ending after calendar year 1976, and before calendar year 1983", "subparagraph (B)" for "subparagraph (C)", and "for '60 percent' ('70 percent' in the case of a taxable year ending in 1980) the taxpayer's" for "for 50 percent his" and inserted reference to airline property and "the application of this paragraph results in a percentage higher than 60 percent (70 percent in the case of a taxable year ending in 1980)," before "then subparagraph (B)"; in subpar. (B) inserted reference to airline property and substituted "90 percent (80 percent in the case of a taxable year ending in 1980)" for "50 percent plus the tentative percentage for such year"; in subpar. (C) table struck out tentative percentage of 50 for 1977 or 1978, 20 for 1981, and 10 for 1982; and added subpar. (E).

Subsec. (a)(9). Pub. L. 95-600, §312(b)(2), struck out par. (9) which related to the alternative limitation in the case of certain airlines.

Subsec. (a)(10). Pub. L. 95-618, §301(c)(1), added par. (10).

Subsec. (c)(3)(A). Pub. L. 95-618, §301(a)(2)(A), substituted "For the period beginning on January 1, 1981, in the case of any property" for "To the extent that subsection (a)(2)(C) applies to property" and inserted provisions that the preceding sentence not apply for purposes of applying the energy percentage.

Pub. L. 95-600, §311(c)(1), substituted "To the extent that the credit allowed by section 38 with respect to

any public utility property is determined at the rate of 7 percent” for “For the period beginning on January 1, 1981”.

Subsec. (c)(5). Pub. L. 95-600, §313(a), increased the investment credit available to pollution control facilities which a taxpayer has elected to amortize over a five-year period to a full investment credit from a one-half investment credit.

Subsec. (c)(6). Pub. L. 95-618, §241(a), added par. (6).

Subsec. (e)(1)(C). Pub. L. 95-600, §316(b)(1), struck out subpar. (C) which related to a cooperative organization described in section 1381(a).

Subsec. (e)(2)(C). Pub. L. 95-600, §316(b)(2), struck out subpar. (C) which related to a cooperative organization.

Subsec. (f)(1), (2). Pub. L. 95-600, §312(c)(2), struck out “described in section 50” after “with respect to any property”. See 1980 Amendment note above.

Subsec. (f)(8). Pub. L. 95-618, §301(a)(2)(B), substituted “, the Tax Reform Act of 1976, and the Energy Tax Act of 1978” for “and the Tax Reform Act of 1976”.

Pub. L. 95-600, §§311(c)(2), 703(a)(1), substituted “subsection (a)(7)(D)” for “subsection (a)(6)(D)” and inserted reference to the Revenue Act of 1978.

Subsec. (g)(5). Pub. L. 95-600, §703(a)(2), substituted “Merchant Marine Act, 1936” for “Merchant Marine Act, 1970”.

Subsec. (h). Pub. L. 95-600, §316(a), added subsec. (h). 1976—Subsec. (a)(1). Pub. L. 94-455, §802(a)(2), added par. (1) and struck out former par. (1) which related to the percentage of allowable credit under section 38.

Subsec. (a)(2). Pub. L. 94-455, §802(a)(2), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 94-455, §802(a)(1), redesignated former par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 94-455, §§503(b)(4), 802(a)(1), (b)(1), 1901(a)(4)(A), (b)(1)(C), as amended by Pub. L. 95-600, §703(j)(9), redesignated former par. (3) as (4), and in par. (4) as so redesignated, redesignated former subpar. (C) as (B) and substituted in provisions preceding subpar. (A) “paragraph (3)” for “paragraph (2)”, in subpar. (B) as so redesignated “credit for the elderly” for “retirement income”, and in provisions following subpar. (B) “section 408(f)” for “section 408(e)”. Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 94-455, §802(a)(1), (b)(1), redesignated former par. (4) as (5) and substituted “paragraph (3)” for “paragraph (2)”. Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 94-455, §§802(a)(1), (b)(1), 1906(b)(13)(A), redesignated former par. (5) as (6) and substituted “paragraph (3)” for “paragraph (2)” and struck out “or his delegate” after “Secretary”. Former par. (6) redesignated (7).

Subsec. (a)(7). Pub. L. 94-455, §802(a)(1), (b)(1), redesignated former par. (6) as (7) and substituted “paragraph (3)” for “paragraph (2)”.

Subsec. (a)(8). Pub. L. 94-455, §1701(b), added par. (8).

Subsec. (a)(9). Pub. L. 94-455, §1703, added par. (9).

Subsec. (b). Pub. L. 94-455, §802(b)(2), among other changes, inserted requirement that tax credits carried over are applied first to the tax liability for that year, after which tax credits earned currently are then applied.

Subsec. (c)(3)(A). Pub. L. 94-455, §802(b)(3), substituted “subsection (a)(2)(C)” for “subsection (a)(1)(C)”.

Subsec. (c)(3)(B)(iii). Pub. L. 94-455, §1901(a)(4)(B), substituted “47 U.S.C. 222(a)(5)” for “47 U.S.C., sec. 222(a)(5)”.

Subsec. (c)(5). Pub. L. 94-455, §2112(a)(2), added par. (5).

Subsec. (d)(4)(D), (6). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (e)(1)(C). Pub. L. 94-455, §802(b)(4), substituted “subsection (a)(3)” for “subsection (a)(2)”.

Subsec. (e)(2). Pub. L. 94-455, §1607(b)(1)(B), substituted in subpar. (B) “857(b)(2)(B)” for “857(b)(2)(C)” and inserted in provisions following subpar. (C) reference to determine without regard to any deduction for capital gains dividends (as defined in section 857(b)(3)(C)) and by excluding any net capital gain.

Subsec. (f)(1)(B), (2), (3). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (f)(4)(A). Pub. L. 94-455, §803(b)(1)(A), (B), substituted “paragraphs (1), (2), and (9)” for “paragraphs (1) and (2)” and “paragraph (1), (2), or (9)” for “paragraph (1) or (2)” wherever appearing.

Subsec. (f)(4)(B)(ii). Pub. L. 94-455, §803(b)(1)(C), substituted “paragraph (2) or the election described in paragraph (9),” for “paragraph (2),”.

Subsec. (f)(7). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (f)(8). Pub. L. 94-455, §§802(b)(5), 1906(b)(13)(A), inserted reference to the Tax Reform Act of 1976 and struck out “or his delegate” after “Secretary”.

Subsec. (f)(9). Pub. L. 94-455, §803(a), added par. (9).

Subsec. (g). Pub. L. 94-455, §805(a), added subsec. (g). 1975—Subsec. (a)(1). Pub. L. 94-12, §301(a), designated existing provisions as subpar. (A), substituted “Except as otherwise provided in this paragraph, in the case of a property described in subparagraph (D), the” for “The”, “10 percent” for “7 percent”, and “(as determined under subsections (c) and (d))” for “(as defined in subsection (c))” in subpar. (A) as so designated, and added subpars. (B), (C), and (D).

Subsec. (a)(6). Pub. L. 94-12, §301(b)(2), added par. (6).

Subsec. (c)(3)(A). Pub. L. 94-12, §301(b)(1), substituted “To the extent that subsection (a)(1)(C) applies to property which is public utility property, the” for “In the case of section 38 property which is public utility property, the”.

Subsec. (c)(4). Pub. L. 94-12, §302(b)(1), added par. (4).

Subsecs. (d), (e). Pub. L. 94-12, §302(a), added subsec. (d) and redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f) and amended.

Subsec. (f). Pub. L. 94-12, §§301(b)(3), 302(a), redesignated former subsec. (e) as (f) and in subsec. (f) as so redesignated added par. (8).

1974—Subsec. (a)(3). Pub. L. 93-406 inserted reference to section 402(e) (relating to tax on lump sum distributions), section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees), and section 408(e) (relating to additional tax on income from certain retirement accounts).

1971—Subsec. (b)(1). Pub. L. 92-178, §106(b), inserted concluding sentence “In the case of an unused credit for an unused credit year ending before January 1, 1971, which is an investment credit carryover to a taxable year beginning after December 31, 1970 (determined without regard to this sentence), this paragraph shall be applied by substituting ‘10 taxable years’ for ‘7 taxable years’ in subparagraph (B) and by substituting ‘13 taxable years’ for ‘10 taxable years’ and ‘12 taxable years’ for ‘9 taxable years’ in the preceding sentence.”

Subsec. (b)(3). Pub. L. 92-178, §106(a), added par. (3).

Subsec. (b)(5). Pub. L. 92-178, §106(c)(1), substituted “Certain taxable years ending in 1969, 1970, or 1971” for “Taxable years beginning after December 31, 1968, and ending after April 18, 1969” in heading; substituted “ending after April 18, 1969, and before January 1, 1972,” for “ending after April 18, 1969,”; and provided that “In the case of a taxable year ending after August 15, 1971, and before January 1, 1972, the percentage contained in the preceding sentence shall be increased by 6 percentage points for each month (or portion thereof) in the taxable year after August 15, 1971”.

Subsec. (b)(6). Pub. L. 92-178, §106(c)(2), substituted “ending after April 18, 1969, and before January 1, 1971,” for “ending after April 18, 1969,” and “following the 7th taxable year after the unused credit year” for “following the last taxable year for which such portion may be added under paragraph (1)”, respectively.

Subsec. (c)(2). Pub. L. 92-178, §102(a)(1), (b), substituted “3 years”, “5 years”, and “7 years” for “4 years” (once), “6 years” (twice), and “8 years” (twice), respectively in tables of first sentence and substituted in second sentence “subpart” for “paragraph” and “useful life of any property shall be the useful life used in computing the allowance for depreciation under section 167 for the taxable year in which the property is placed in service” for “useful life of any property shall

be determined as of the time such property is placed in service by the taxpayer”.

Subsec. (c)(3)(A). Pub. L. 92-178, §105(a), substituted the fraction of “ $\frac{4}{7}$ ” for “ $\frac{3}{7}$ ”.

Subsec. (c)(3)(B). Pub. L. 92-178, §105(b)(1), (2), struck out cl. (iii) provisions respecting telephone service, redesignated cl. (iv) as (iii), included in cl. (iii) provision of former cl. (iii) respecting telephone service, included other communication services (other than international telegraph service), and defined term “public utility property” to also mean communication property of type used by persons engaged in providing telephone or microwave communication services to which cl. (iii) applies, if such property is used predominantly for communication purposes, respectively.

Subsec. (c)(3)(C). Pub. L. 92-178, §105(b)(3), added subpar. (C).

Subsec. (c)(4). Pub. L. 92-178, §107(a)(1), struck out provisions respecting reduction in basis or cost of certain replacement property.

Subsec. (d)(3). Pub. L. 92-178, §108(a), added par. (3).

Subsec. (e). Pub. L. 92-178, §105(c), added subsec. (e). 1969—Subsec. (a)(3). Pub. L. 91-172, §301(b)(4), inserted “section 56 (relating to minimum tax for tax preference).”.

Subsec. (a)(5). Pub. L. 91-172, §401(e)(1), reenacted subsection with minor changes and substituted reference to section 1563(a) for reference to section 1504.

Subsec. (b)(5), (6). Pub. L. 91-172, §703(b), added pars. (5) and (6).

1967—Subsec. (b). Pub. L. 90-225 struck out par. (3) which provided that to the extent that the excess described in par. (1) of this subsection arises by reason of net operating loss carryback, subpar. (A) of par. (1) of this subsection shall not apply.

1966—Subsec. (a)(2). Pub. L. 89-800, §3(a), inserted “for taxable years ending on or before the last day of the suspension period (as defined in section 48(j)),” at beginning of subpar. (B), and added subpar. (C) and provisions following subpar. (C) covering the application of subpar. (C) and the reduction of the amount otherwise determined under par. (2) by the credit allowable but for the application of section 48(h)(1).

Subsec. (a)(3). Pub. L. 89-389 inserted reference to tax imposed for the taxable year by section 1378 (relating to tax on certain capital gains of subchapter S corporations) in the list of taxes not to be considered tax imposed by this chapter for purposes of par. (3).

Pub. L. 89-384 added any additional tax imposed for the taxable year by section 1351 (relating to recoveries of foreign expropriation losses) to the list of taxes not to be considered a tax imposed by this chapter for purposes of par. (3).

Subsec. (b)(1). Pub. L. 89-800, §3(b), substituted “7 taxable years” for “5 taxable years” in subpar. (B) and “10 taxable years” and “other 9 taxable years” for “8 taxable years” and “other 7 taxable years” respectively in text following subpar. (B).

1964—Subsec. (a)(3)(B) to (D). Pub. L. 88-272 struck out subpar. (B) relating to section 34, and redesignated subpars. (C) and (D) as (B) and (C), respectively.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-5, div. B, title I, §1302(d), Feb. 17, 2009, 123 Stat. 348, provided that: “The amendments made by this section [enacting section 48C of this title and amending this section and section 49 of this title] shall apply to periods after the date of the enactment of this Act [Feb. 17, 2009], under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990]).”

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-58, title XIII, §1307(d), Aug. 8, 2005, 119 Stat. 1006, provided that: “The amendments made by this section [enacting sections 48A and 48B of this title and amending this section and section 49 of this title] shall apply to periods after the date of the enactment

of this Act [Aug. 8, 2005], under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990]).”

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title III, §322(e), Oct. 22, 2004, 118 Stat. 1476, provided that: “The amendments made by this section [amending this section and sections 48, 50, and 194 of this title] shall apply with respect to expenditures paid or incurred after the date of the enactment of this Act [Oct. 22, 2004].”

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(a) of Pub. L. 101-508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101-508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7814(d) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1002(a)(4), (15), (17), (25), 1009(a)(1), and 1013(a)(44) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(7)(B) of Pub. L. 99-514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99-514, set out as a note under section 168 of this title.

Section 251(d) of Pub. L. 99-514, as amended by Pub. L. 100-647, title I, §1002(k), Nov. 10, 1988, 102 Stat. 3371, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 48 of this title] shall apply to property placed in service after December 31, 1986, in taxable years ending after such date.

“(2) GENERAL TRANSITIONAL RULE.—The amendments made by this section and section 201 [amending this section and sections 48, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to any property placed in service before January 1, 1994, if such property is placed in service as part of—

“(A) a rehabilitation which was completed pursuant to a written contract which was binding on March 1, 1986, or

“(B) a rehabilitation incurred in connection with property (including any leasehold interest) acquired before March 2, 1986, or acquired on or after such date pursuant to a written contract that was binding on March 1, 1986, if—

“(i) parts 1 and 2 of the Historic Preservation Certification Application were filed with the Department of the Interior (or its designee) before March 2, 1986, or

“(ii) the lesser of \$1,000,000 or 5 percent of the cost of the rehabilitation is incurred before March 2, 1986, or is required to be incurred pursuant to a

- written contract which was binding on March 1, 1986.
- “(3) CERTAIN ADDITIONAL REHABILITATIONS.—The amendments made by this section and section 201 [amending this section and sections 48, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to—
- “(A) the rehabilitation of 8 bathhouses within the Hot Springs National Park or of buildings in the Central Avenue Historic District at such Park,
- “(B) the rehabilitation of the Upper Pontalba Building in New Orleans, Louisiana,
- “(C) the rehabilitation of at least 60 buildings listed on the National Register at the Frankford Arsenal,
- “(D) the rehabilitation of De Baliveriere Arcade, St. Louis Centre, and Drake Apartments in Missouri,
- “(E) the rehabilitation of The Tides in Bristol, Rhode Island,
- “(F) the rehabilitation and renovation of the Outlet Company building and garage in Providence, Rhode Island,
- “(G) the rehabilitation of 10 structures in Harrisburg, Pennsylvania, with respect to which the Harris-town Development Corporation was designated rede-veloper and received an option to acquire title to the entire project site for \$1 on June 27, 1984,
- “(H) the rehabilitation of a project involving the renovation of 3 historic structures on the Minneapo-lis riverfront, with respect to which the developer of the project entered into a redevelopment agreement with a municipality dated January 4, 1985, and indus-trial development bonds were sold in 3 separate issues in May, July, and October 1985,
- “(I) the rehabilitation of a bank’s main office facili-ties of approximately 120,000 square feet, in connec-tion with which the bank’s board of directors author-ized a \$3,300,000 expenditure for the renovation and retrofit on March 20, 1984,
- “(J) the rehabilitation of 10 warehouse buildings built between 1906 and 1910 and purchased under a contract dated February 17, 1986,
- “(K) the rehabilitation of a facility which is cus-tomarily used for conventions and sporting events if an analysis of operations and recommendations of utilization of such facility was prepared by a certified public accounting firm pursuant to an engagement authorized on March 6, 1984, and presented on June 11, 1984, to officials of the city in which such facility is located,
- “(L) Mount Vernon Mills in Columbia, South Caro-lina,
- “(M) the Barbara Jordan II Apartments,
- “(N) the rehabilitation of the Federal Building and Post Office, 120 Hanover Street, Manchester, New Hampshire,
- “(O) the rehabilitation of the Charleston Water-front project in South Carolina,
- “(P) the Hayes Mansion in San Jose, California,
- “(Q) the renovation of a facility owned by the Na-tional Railroad Passenger Corporation (‘Amtrak’) for which project Amtrak engaged a development team by letter agreement dated August 23, 1985, as mod-ified by letter agreement dated September 9, 1985,
- “(R) the rehabilitation of a structure or its compo-nents which is listed in the National Register of His-toric Places, is located in Allegheny County, Penn-sylvania, will be substantially rehabilitated (as de-fined in section 48(g)(1)(C) prior to amendment by this Act), prior to December 31, 1989; and was pre-viously utilized as a market and an auto dealership,
- “(S) The Bellevue Stratford Hotel in Philadelphia, Pennsylvania,
- “(T) the Dixon Mill Housing project in Jersey City, New Jersey,
- “(U) Motor Square Garden,
- “(V) the Blackstone Apartments, and the Shriver-Johnson building, in Sioux Falls, South Dakota,
- “(W) the Holy Name Academy in Spokane, Wash-ington,
- “(X) the Nike/Clemson Mill in Exeter, New Hamp-shire,
- “(Y) the Central Bank Building in Grand Rapids, Michigan, and
- “(Z) the Heritage Hotel, in the City of Marquette, Michigan.
- “(4) ADDITIONAL REHABILITATIONS.—The amendments made by this section and section 201 [amending sec-tions 46, 48, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to—
- “(A) the Fort Worth Town Square Project in Texas,
- “(B) the American Youth Hostel in New York, New York,
- “(C) The Riverwest Loft Development (including all three phases, two of which do not involve rehabili-tations),
- “(D) the Gaslamp Quarter Historic District in Cali-fornia,
- “(E) the Eberhardt & Ober Brewery, in Pennsyl-vania,
- “(F) the Captain’s Walk Limited Partnership-Har-ris Place Development, in Connecticut,
- “(G) the Velvet Mills in Connecticut,
- “(H) the Roycroft Inn, in New York,
- “(I) Old Main Village, in Mankato, Minnesota,
- “(J) the Washburn-Crosby A Mill, in Minneapolis, Minnesota,
- “(K) the Marble Arcade office building in Lakeland, Florida,
- “(L) the Willard Hotel, in Washington, D.C.,
- “(M) the H. P. Lau Building in Lincoln, Nebraska,
- “(N) the Starks Building, in Louisville, Kentucky,
- “(O) the Bellevue High School, in Bellevue, Ken-tucky,
- “(P) the Major Hampden Smith House, in Owens-boro, Kentucky,
- “(Q) the Doe Run Inn, in Brandenburg, Kentucky,
- “(R) the State National Bank, in Frankfort, Ken-tucky,
- “(S) the Captain Jack House, in Fleming, Ken-tucky,
- “(T) the Elizabeth Arlinghaus House, in Covington, Kentucky,
- “(U) Limerick Shamrock, in Louisville, Kentucky,
- “(V) the Robert Mills Project, in South Carolina,
- “(W) the 620 Project, consisting of 3 buildings, in Kentucky,
- “(X) the Warrior Hotel, Ltd., the first two floors of the Martin Hotel, and the 105,000 square foot ware-house constructed in 1910, all in Sioux City, Iowa,
- “(Y) the waterpark condominium residential project, to the extent of \$2 million of expenditures,
- “(Z) the Bigelow-Hartford Carpet Mill in Enfield, Connecticut,
- “(AA) properties abutting 125th street in New York County from 7th Avenue west to Morningside and the pier area on the Hudson River at the end of such 125th Street,
- “(BB) the City of Los Angeles Central Library project pursuant to an agreement dated December 28, 1983,
- “(CC) the Warehouse Row project in Chattanooga, Tennessee,
- “(DD) any project described in section 204(a)(1)(F) of this Act [26 U.S.C. 168 note],
- “(EE) the Wood Street Commons project in Pitts-burgh, Pennsylvania,
- “(FF) any project described in section 803(d)(6) of this Act [26 U.S.C. 263A note],
- “(GG) Union Station, Indianapolis, Indiana,
- “(HH) the Mattress Factory project in Pittsburgh, Pennsylvania,
- “(II) Union Station in Providence, Rhode Island,
- “(JJ) South Pack Plaza, Asheville, North Carolina,
- “(KK) Old Louisville Trust Project, Louisville, Ken-tucky,
- “(LL) Stewarts Rehabilitation Project, Louisville, Kentucky,
- “(MM) Bernheim Officenter, Louisville, Kentucky,
- “(NN) Springville Mill Project, Rockville, Con-necticut, and

“(OO) the D.J. Stewart Company Building, State and Main Streets, Rockford, Illinois.

“(5) REDUCTION IN CREDIT FOR PROPERTY UNDER TRANSITIONAL RULES.—In the case of property placed in service after December 31, 1986, and to which the amendments made by this section [amending this section and sections 47 and 48 of this title] do not apply, subparagraph (A) of section 46(b)(4) of the Internal Revenue Code of 1954 [now 1986] (as in effect before the enactment of this Act) shall be applied—

“(A) by substituting ‘10 percent’ for ‘15 percent’, and

“(B) by substituting ‘13 percent’ for ‘20 percent’.

“(6) EXPENSING OF REHABILITATION EXPENSES FOR THE FRANKFORD ARSENAL.—In the case of any expenditures paid or incurred in connection with improvements (including repairs and maintenance) of the Frankford Arsenal pursuant to a contract and partnership agreement during the 8-year period specified in the contract or agreement, all such expenditures to be made during the period 1986 through and including 1993 shall—

“(A) be treated as made (and allowable as a deduction) during 1986,

“(B) be treated as qualified rehabilitation expenditures made during 1986, and

“(C) be allocated in accordance with the partnership agreement regardless of when the interest in the partnership was acquired, except that—

“(i) if the taxpayer is not the original holder of such interest, no person (other than the taxpayer) had claimed any benefits by reason of this paragraph,

“(ii) no interest under section 6611 of the 1986 Code on any refund of income taxes which is solely attributable to this paragraph shall be paid for the period—

“(I) beginning on the date which is 45 days after the later of April 15, 1987, or the date on which the return for such taxes was filed, and

“(II) ending on the date the taxpayer acquired the interest in the partnership, and

“(iii) if the expenditures to be made under this provision are not paid or incurred before January 1, 1994, then the tax imposed by chapter 1 of such Code for the taxpayer’s last taxable year beginning in 1993 shall be increased by the amount of the tax benefits by reason of this paragraph which are attributable to the expenditures not so paid or incurred.

“(7) SPECIAL RULE.—In the case of the rehabilitation of the Willard Hotel in Washington, D.C., section 205(c)(1)(B)(ii) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 205(c)(1)(B)(ii) of Pub. L. 97-248, set out as a note under section 196 of this title] shall be applied by substituting ‘1987’ for ‘1986.’”

Section 421(c) of Pub. L. 99-514 provided that: “The amendments made by this section [amending this section] shall apply to periods beginning after December 31, 1985, under rules similar to rules under section 48(m) of the Internal Revenue Code of 1986.”

Amendment by sections 1802(a)(6), (8), 1844(a), (b)(3), (5), 1847(b)(11), 1848(a) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 16 of Pub. L. 98-369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98-369, set out as a note under section 48 of this title.

Amendment by section 31(f) of Pub. L. 98-369 effective, except as otherwise provided in section 31(g) of Pub. L. 98-369, as to property placed in service by the taxpayer after Nov. 5, 1983, in taxable years ending after such date and to property placed in service by the taxpayer on or before Nov. 5, 1983, if the lease to the organization described in section 593 of this title is entered into after Nov. 5, 1983, see section 31(g)(1), (14) of

Pub. L. 98-369, set out as a note under section 168 of this title.

Amendment by section 113(b)(2)(B) of Pub. L. 98-369 applicable as if included in the amendments by sections 201(a), 211(a)(1), and 211(f)(1) of Pub. L. 97-34, which amended this section and enacted section 168 of this title, see section 113(c)(2)(B) of Pub. L. 98-369, set out as a note under section 168 of this title.

Section 431(e) of Pub. L. 98-369 provided:

“(1) IN GENERAL.—The amendments made by this section [amending this section and sections 47 and 48 of this title] shall apply to property placed in service after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date; except that such amendments shall not apply to any property to which the amendments made by section 211(f) of the Economic Recovery Tax Act of 1981 [section 211(f) of Pub. L. 97-34, amending sections 46 and 47 of this title] do not apply.

“(2) AMENDMENTS MAY BE ELECTED RETROACTIVELY.—At the election of the taxpayer, the amendments made by this section shall apply as if included in the amendments made by section 211(f) of the Economic Recovery Tax Act of 1981. Any election made under the preceding sentence shall apply to all property of the taxpayer to which the amendments made by such section 211(f) apply and shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe.”

Amendment by section 474(o)(1)-(7) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 713 of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by section 122(c)(1) of Pub. L. 98-21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual’s annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual’s first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98-21, set out as a note under section 22 of this title.

Amendment by title I of Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

Amendment by section 202(f) of Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. 96-223, to which such amendment relates, see section 203(a) of Pub. L. 97-448, set out as a note under section 6652 of this title.

Section 541(c) of Pub. L. 97-424, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) GENERAL RULE.—The amendments made by subsections (a) and (b) [amending this section and sections 167 and 168 of this title] shall apply to taxable years beginning after December 31, 1979.

“(2) SPECIAL RULE FOR PERIODS BEGINNING BEFORE MARCH 1, 1980.—

“(A) IN GENERAL.—Subject to the provisions of paragraphs (3) and (4), notwithstanding the provisions of sections 167(l) and 46(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] and of any regulations prescribed by the Secretary of the Treasury (or his delegate) under such sections, the use for rate-making purposes or for reflecting operating results in the taxpayer’s regulated books of account, for any period before March 1, 1980, of—

“(i) any estimates or projections relating to the amounts of the taxpayer’s tax expense, depreciation

expense, deferred tax reserve, credit allowable under section 38 of such code, or rate base, or

“(ii) any adjustments to the taxpayer’s rate of return, shall not be treated as inconsistent with the requirements of subparagraph (G) of such section 167(l)(3) nor inconsistent with the requirements of paragraph (1) or (2) of such section 46(f), where such estimates or projections, or such rate of return adjustments, were included in a qualified order.

“(B) QUALIFIED ORDER DEFINED.—For purposes of this subsection, the term “qualified order” means an order—

“(i) by a public utility commission which was entered before March 13, 1980,

“(ii) which used the estimates, projections, or rate of return adjustments referred to in subparagraph (A) to determine the amount of the rates to be collected by the taxpayer or the amount of a refund with respect to rates previously collected, and

“(iii) which ordered such rates to be collected or refunds to be made (whether or not such order actually was implemented or enforced).

“(3) LIMITATIONS ON APPLICATION OF PARAGRAPH (2).—

“(A) PARAGRAPH (2) NOT TO APPLY TO AMOUNTS ACTUALLY FLOWED THROUGH.—Paragraph (2) shall not apply to the amount of any—

“(i) rate reduction, or

“(ii) refund,

which was actually made pursuant to a qualified order.

“(B) TAXPAYER MUST ENTER INTO CLOSING AGREEMENT BEFORE PARAGRAPH (2) APPLIES.—Paragraph (2) shall not apply to any taxpayer unless, before the later of—

“(i) July 1, 1983, or

“(ii) 6 months after the refunds or rate reductions are actually made pursuant to a qualified order.

the taxpayer enters into a closing agreement (within the meaning of section 7121 of the Internal Revenue Code of 1986) which provides for the payment by the taxpayer of the amount of which paragraph (2) does not apply by reason of subparagraph (A).

“(4) SPECIAL RULES RELATING TO PAYMENT OF REFUNDS OR INTEREST BY THE UNITED STATES OR THE TAXPAYER.—

“(A) REFUND DEFINED.—For purposes of this subsection, the term “refund” shall include any credit allowed by the taxpayer under a qualified order but shall not include interest payable with respect to any refund (or credit) under such order.

“(B) NO INTEREST PAYABLE BY UNITED STATES.—No interest shall be payable under section 6611 of the Internal Revenue Code of 1986 on any overpayment of tax which is attributable to the application of paragraph (2).

“(C) PAYMENTS MAY BE MADE IN TWO EQUAL INSTALLMENTS.—

“(i) IN GENERAL.—The taxpayer may make any payment required by reason of paragraph (3) in 2 equal installments, the first installment being due on the last date on which a taxpayer may enter into a closing agreement under paragraph (3)(B), and the second payment being due 1 year after the last date for the first payment.

“(ii) INTEREST PAYMENTS.—For purposes of section 6601 of such Code, the last date prescribed for payment with respect to any payment required by reason of paragraph (3) shall be the last date on which such payment is due under clause (i).

“(5) NO INFERENCE.—The application of subparagraph (G) of section 167(l)(3) of the Internal Revenue Code of 1986, and the application of paragraphs (1) and (2) of section 46(f) of such Code, to taxable years beginning before January 1, 1980, shall be determined without any inference drawn from the amendments made by subsections (a) and (b) of this section [amending this section and sections 167 and 168 of this title] or from the rules contained in paragraphs (2), (3), and (4). Nothing in the preceding sentence shall be construed to limit the relief provided by paragraphs (2), (3), and (4).”

EFFECTIVE DATE OF 1982 AMENDMENTS

Amendment by Pub. L. 97-354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97-354, set out as an Effective Date note under section 1361 of this title.

Amendment by section 201(d)(8)(A), formerly section 201(c)(8)(A), of Pub. L. 97-248, applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97-248, set out as a note under section 5 of this title.

Section 205(c)(2) of Pub. L. 97-248 provided that: “The amendments made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1982.”

Amendment by section 265(b)(2)(A)(i) of Pub. L. 97-248 applicable to distributions after Dec. 31, 1982, see section 265(c)(2) of Pub. L. 97-248, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 207(c)(1) of Pub. L. 97-34 applicable to unused credit years ending after Dec. 31, 1973, see section 209(c)(2)(A) of Pub. L. 97-34, set out as an Effective Date note under section 168 of this title.

Section 211(i) of Pub. L. 97-34 provided that:

“(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 47 and 48 of this title] shall apply to property placed in service after December 31, 1980.

“(2) PROGRESS EXPENDITURES.—The amendments made by subsection (b) [amending this section] shall apply to progress expenditures made after December 31, 1980.

“(3) PETROLEUM STORAGE FACILITIES.—The amendments made by subsection (c) [amending this section] shall apply to periods after December 31, 1980, under rules similar to the rules under section 48(m).

“(4) NONCORPORATE LESSORS.—The amendments made by subsection (d) [amending this section] shall apply to leases entered into after June 25, 1981.

“(5) AT RISK RULES.—

“(A) IN GENERAL.—The amendment made by subsection (f) [amending this section and section 47 of this title] shall not apply to—

“(i) property placed in service by the taxpayer on or before February 18, 1981, and

“(ii) property placed in service by the taxpayer after February 18, 1981, where such property is acquired by the taxpayer pursuant to a binding contract entered into on or before that date.

“(B) BINDING CONTRACT.—For purposes of subparagraph (A)(ii), property acquired pursuant to a binding contract shall, under regulations prescribed by the Secretary, include property acquired in a manner so that it would have qualified as pretermination property under section 49(b) (as in effect before its repeal by the Revenue Act of 1978) [Pub. L. 95-600].

“(6) LEASED ROLLING STOCK.—The amendment made by subsection (h) [amending section 48 of this title] shall apply to taxable years beginning after December 31, 1980.”

Section 212(e) of Pub. L. 97-34, as amended by Pub. L. 97-448, title I, §102(f)(1), Jan. 12, 1983, 96 Stat. 2371; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 48, 57, 167, 280B, 642, 1016, 1082, 1245, and 1250 of this title and repealing section 191 of this title] shall apply to expenditures incurred after December 31, 1981, in taxable years ending after such date.

“(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply with respect to any rehabilitation of a building if—

“(A) the physical work on such rehabilitation began before January 1, 1982, and

“(B) such building does not meet the requirements of paragraph (1) of section 48(g) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this Act [Pub. L. 97-34]).”

Section 332(c)(1) of Pub. L. 97-34 provided that: "The amendments made by subsection (a) [amending this section] shall be effective on the date of enactment of this Act [Aug. 13, 1981]."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 222(e)(2) of Pub. L. 96-223 applicable to periods after Dec. 31, 1979, under rules similar to the rules of section 48(m) of this title, see section 222(j)(1) of Pub. L. 96-223, set out as a note under section 48 of this title.

Section 223(b)(3) of Pub. L. 96-223 provided that: "The amendments made by this subsection [amending this section and section 6401 of this title] shall apply to qualified investment for taxable years beginning after December 31, 1979."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 141(e), (f)(2) of Pub. L. 95-600 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95-600, set out as an Effective Date note under section 409 of this title.

Section 312(d) of Pub. L. 95-600 provided that: "The amendments made by this section [amending this section and sections 48 and 167 of this title and repealing sections 49 and 50 of this title] shall apply to taxable years ending after December 31, 1978."

Section 313(b) of Pub. L. 95-600 provided that: "The amendment made by subsection (a) [amending this section] shall apply to—

"(1) property acquired by the taxpayer after December 31, 1978, and

"(2) property the construction, reconstruction, or erection of which was completed by the taxpayer after December 31, 1978 (but only to the extent of the basis thereof attributable to construction, reconstruction, or erection after such date)."

Section 316(c) of Pub. L. 95-600 provided that: "The amendments made by this section [amending this section and section 1388 of this title] shall apply to taxable years ending after October 31, 1978."

Section 703(r) of Pub. L. 95-600 provided that: "Except as otherwise provided, the amendments made by this section [amending this section and sections 48, 103, 447, 453, 501, 801, 911, 995, 996, 999, 1033, 1212, 1375, 1402, 1561, 4041, 4911, 6104, 6427, 6501, 6504, 6511, 7609 of this title and sections 402, 405, 410, and 411 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under sections 103, 311, 443, 501, and 4973 of this title, and amending provisions set out as notes under section 120, 311, 907, 995, 2011, 2501, and 4940 of this title] shall take effect on October 4, 1976."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 503(b)(4) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94-455, set out as a note under section 3 of this title.

Section 802(c) of Pub. L. 94-455 provided that: "The amendments made by this section [amending this section and section 48 of this title and provisions set out below] shall apply to taxable years beginning after December 31, 1975."

Section 803(j) of Pub. L. 94-455 provided that:

"(1) GENERAL RULE.—Except as provided in paragraph (2), the amendments made by this section [see Tables for classification of section 803 of Pub. L. 94-455] shall apply for taxable years beginning after December 31, 1974.

"(2) EXCEPTIONS.—

"(A) Section 301(e) of the Tax Reduction Act of 1975 [set out below], as added by subsection (d), shall apply for taxable years beginning after December 31, 1976.

"(B) The amendments made by subsections (a) and (b)(1) shall apply for taxable years beginning after December 31, 1975.

"(C) The amendments made by subsections (b)(4) and (f) shall apply for years beginning after December 31, 1975."

Section 805(b) of Pub. L. 94-455, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1975, in the case of property placed in service after such date.

"(2) SECTION 46(g)(4).—Section 46(g)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall apply to taxable years beginning after December 31, 1975."

Amendment by section 1607(b)(1)(B) of Pub. L. 94-455 applicable to taxable years ending after Oct. 4, 1976, with certain exceptions, see section 1608(c) of Pub. L. 94-455, set out as a note under section 857 of this title.

Amendment by section 1901(a)(4)(A), (B), (b)(1)(C) of Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

Section 2112(d)(1) of Pub. L. 94-455 provided that: "The amendments made by subsection (a) [amending this section and section 48 of this title] shall apply to—

"(A) property acquired by the taxpayer after December 31, 1976, and

"(B) property the construction, reconstruction, or erection of which was completed by the taxpayer after December 31, 1976, (but only to the extent of the basis thereof attributable to construction, reconstruction, or erection after such date), in taxable years beginning after such date."

EFFECTIVE DATE OF 1975 AMENDMENT

Section 301(b)(4) of Pub. L. 94-12 provided that: "The amendment made by paragraph (1) of this subsection [amending this section] shall apply to property placed in service after January 21, 1975, in taxable years ending after January 21, 1975. The amendments made by paragraphs (2) and (3) [amending this section] shall apply to taxable years ending after December 31, 1974."

Section 305(a) of Pub. L. 94-12 provided that: "The amendments made by section 302 [amending this section and sections 47, 48, and 50B of this title] shall apply to taxable years ending after December 31, 1974."

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 2001(g)(2)(B) of Pub. L. 93-406 applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 2001(i)(5) of Pub. L. 93-406, set out as a note under section 72 of this title.

Amendment by section 2002(g)(2) of Pub. L. 93-406 effective on Jan. 1, 1975, see section 2002(i)(2) of Pub. L. 93-406, set out as an Effective Date note under section 4973 of this title.

Amendment by section 2005(c)(4) of Pub. L. 93-406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93-406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 102(d)(1), (2) of Pub. L. 92-178, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) The amendments made by subsections (a) and (b) [amending this section and section 48 of this title] shall apply to property described in section 50 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

"(2) In redetermining qualified investment for purposes of section 47(a) of the Internal Revenue Code of 1986 in the case of any property which ceases to be section 38 property with respect to the taxpayer after August 15, 1971, or which becomes public utility property after such date, section 46(c)(2) of such Code shall be applied as amended by subsection (a)."

Section 105(d) of Pub. L. 92-178, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section and enacting provisions set out below] shall apply to property described in section 50 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]."

Section 106(d) of Pub. L. 92-178 provided that: "The amendments made by subsections (a), (b), and (c)(2) [amending this section] shall apply to taxable years beginning after December 31, 1970. The amendments made by subsection (c)(1) [amending this section] shall apply to taxable years ending after August 15, 1971."

Section 107(a)(2) of Pub. L. 92-178 provided that: "The repeals made by paragraph (1) [amending this section and section 47 of this title] shall apply to casualties and thefts occurring after August 15, 1971."

Section 108(d) of Pub. L. 92-178 provided that: "The amendments made by subsections (a) and (b) [amending this section and section 48 of this title] shall apply to leases entered into after September 22, 1971. The amendment made by subsection (c) [amending section 48 of this title] shall apply to leases entered into after November 8, 1971."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 301(b)(4) of Pub. L. 91-172 applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91-172, set out as a note under section 5 of this title.

Amendment by section 401(e)(1) of Pub. L. 91-172 applicable with respect to taxable years ending on or after Dec. 31, 1970, see section 401(h)(3) of Pub. L. 91-172, set out as a note under section 1561 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 2(g) of Pub. L. 90-225 provided that: "The amendments made by this section [amending this section and sections 6411, 6501, 6511, 6601, and 6611 of this title] shall apply with respect to investment credit carrybacks attributable to net operating loss carrybacks from taxable years ending after July 31, 1967."

EFFECTIVE DATE OF 1966 AMENDMENTS

Section 4 of Pub. L. 89-800 provided that: "The amendments made by this Act [amending this section and sections 48 and 167 of this title] shall apply to taxable years ending after October 9, 1966, except that the amendments made by section 3(b) [amending this section] shall apply only if the fifth taxable year following the unused credit year ends after December 31, 1966."

Section 2(c) of Pub. L. 89-389 provided that: "The amendments made by this section [enacting section 1378 of this title and amending this section and sections 1372, 1373, and 1375 of this title] shall apply with respect to taxable years of electing small business corporations beginning after the date of enactment of this Act [Apr. 14, 1966], but such amendments shall not apply with respect to sales or exchanges occurring before February 24, 1966."

Amendment by Pub. L. 89-384 applicable with respect to amounts received after December 31, 1964, in respect of foreign expropriation losses (as defined in section 1351(b) of this title) sustained after December 31, 1958, see section 2 of Pub. L. 89-384, set out as an Effective Date note under section 1351 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88-272, set out as a note under section 22 of this title.

EFFECTIVE DATE

Section 2(h) of Pub. L. 87-834 provided that: "The amendments made by this section [enacting this section and sections 38, 47, 48, and 181 of this title, amending sections 381, 1016, 6501, 6511, 6601, and 6611 of this title, and renumbering former section 38 as section 39 of this title] shall apply with respect to taxable years ending after December 31, 1961."

SAVINGS PROVISION

For provisions that nothing in amendment by section 11813(a) of Pub. L. 101-508 be construed to affect treat-

ment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

CLARIFICATION OF EFFECT OF 1984 AMENDMENT ON INVESTMENT TAX CREDIT

Section 475(c) of Pub. L. 98-369 provided that: "Nothing in the amendments made by section 474(o) [amending this section and sections 47 and 48 of this title] shall be construed as reducing the amount of any credit allowable for qualified investment in taxable years beginning before January 1, 1984."

REGULATED PUBLIC UTILITIES; SPECIAL TRANSITIONAL RULE

Section 209(d)(2) of Pub. L. 97-34, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "If, by the terms of the applicable rate order last entered before the date of the enactment of this Act [Aug. 13, 1981] by a regulatory commission having appropriate jurisdiction, a regulated public utility would (but for this provision) fail to meet the requirements of paragraph (1) or (2) of section 46(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to property for an accounting period ending after December 31, 1980, such regulated public utility shall not fail to meet such requirements if, by the terms of its first rate order determining cost of service with respect to such property which becomes effective after the date of the enactment of this Act and on or before January 1, 1983, such regulated public utility meets such requirements. This provision shall not apply to any rate order which, under the rules in effect before the date of the enactment of this Act was inconsistent with the requirements of paragraph (1) or (2) of section 46(f) of such Code (whichever would have been applicable)."

PLAN REQUIREMENTS FOR TAXPAYERS ELECTING ADDITIONAL CREDITS

Section 301(d), (e), (f) of Pub. L. 94-12, as amended by Pub. L. 94-455, §§802(b)(7), 803(c), (d), (e), relating to plan requirements for taxpayers electing additional credit, was repealed by Pub. L. 95-600, title I, §141(f)(1), Nov. 6, 1978, 92 Stat. 2795.

PUBLIC UTILITY PROPERTY SUBJECT TO SUBSEC. (e); PROVISIONS RESPECTING TREATMENT OF INVESTMENT CREDIT BY FEDERAL REGULATORY AGENCIES INAP- PLICABLE

Section 105(e) of Pub. L. 92-178, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Section 203(e) of the Revenue Act of 1964 [set out as note under section 38 of this title] shall not apply to public utility property to which section 46(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (c)) [subsec. (e) of this section] applies."

§ 47. Rehabilitation credit

(a) General rule

For purposes of section 46, the rehabilitation credit for any taxable year is the sum of—

- (1) 10 percent of the qualified rehabilitation expenditures with respect to any qualified re-

habilitated building other than a certified historic structure, and

(2) 20 percent of the qualified rehabilitation expenditures with respect to any certified historic structure.

(b) When expenditures taken into account

(1) In general

Qualified rehabilitation expenditures with respect to any qualified rehabilitated building shall be taken into account for the taxable year in which such qualified rehabilitated building is placed in service.

(2) Coordination with subsection (d)

The amount which would (but for this paragraph) be taken into account under paragraph (1) with respect to any qualified rehabilitated building shall be reduced (but not below zero) by any amount of qualified rehabilitation expenditures taken into account under subsection (d) by the taxpayer or a predecessor of the taxpayer (or, in the case of a sale and leaseback described in section 50(a)(2)(C), by the lessee), to the extent any amount so taken into account has not been required to be recaptured under section 50(a).

(c) Definitions

For purposes of this section—

(1) Qualified rehabilitated building

(A) In general

The term “qualified rehabilitated building” means any building (and its structural components) if—

(i) such building has been substantially rehabilitated,

(ii) such building was placed in service before the beginning of the rehabilitation,

(iii) in the case of any building other than a certified historic structure, in the rehabilitation process—

(I) 50 percent or more of the existing external walls of such building are retained in place as external walls,

(II) 75 percent or more of the existing external walls of such building are retained in place as internal or external walls, and

(III) 75 percent or more of the existing internal structural framework of such building is retained in place, and

(iv) depreciation (or amortization in lieu of depreciation) is allowable with respect to such building.

(B) Building must be first placed in service before 1936

In the case of a building other than a certified historic structure, a building shall not be a qualified rehabilitated building unless the building was first placed in service before 1936.

(C) Substantially rehabilitated defined

(i) In general

For purposes of subparagraph (A)(i), a building shall be treated as having been substantially rehabilitated only if the qualified rehabilitation expenditures during the 24-month period selected by the

taxpayer (at the time and in the manner prescribed by regulation) and ending with or within the taxable year exceed the greater of—

(I) the adjusted basis of such building (and its structural components), or

(II) \$5,000.

The adjusted basis of the building (and its structural components) shall be determined as of the beginning of the 1st day of such 24-month period, or of the holding period of the building, whichever is later. For purposes of the preceding sentence, the determination of the beginning of the holding period shall be made without regard to any reconstruction by the taxpayer in connection with the rehabilitation.

(ii) Special rule for phased rehabilitation

In the case of any rehabilitation which may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins, clause (i) shall be applied by substituting “60-month period” for “24-month period”.

(iii) Lessees

The Secretary shall prescribe by regulation rules for applying this subparagraph to lessees.

(D) Reconstruction

Rehabilitation includes reconstruction.

(2) Qualified rehabilitation expenditure defined

(A) In general

The term “qualified rehabilitation expenditure” means any amount properly chargeable to capital account—

(i) for property for which depreciation is allowable under section 168 and which is—

(I) nonresidential real property,

(II) residential rental property,

(III) real property which has a class life of more than 12.5 years, or

(IV) an addition or improvement to property described in subclause (I), (II), or (III), and

(ii) in connection with the rehabilitation of a qualified rehabilitated building.

(B) Certain expenditures not included

The term “qualified rehabilitation expenditure” does not include—

(i) Straight line depreciation must be used

Any expenditure with respect to which the taxpayer does not use the straight line method over a recovery period determined under subsection (c) or (g) of section 168. The preceding sentence shall not apply to any expenditure to the extent the alternative depreciation system of section 168(g) applies to such expenditure by reason of subparagraph (B) or (C) of section 168(g)(1).

(ii) Cost of acquisition

The cost of acquiring any building or interest therein.

(iii) Enlargements

Any expenditure attributable to the enlargement of an existing building.

(iv) Certified historic structure, etc.

Any expenditure attributable to the rehabilitation of a certified historic structure or a building in a registered historic district, unless the rehabilitation is a certified rehabilitation (within the meaning of subparagraph (C)). The preceding sentence shall not apply to a building in a registered historic district if—

(I) such building was not a certified historic structure,

(II) the Secretary of the Interior certified to the Secretary that such building is not of historic significance to the district, and

(III) if the certification referred to in subclause (II) occurs after the beginning of the rehabilitation of such building, the taxpayer certifies to the Secretary that, at the beginning of such rehabilitation, he in good faith was not aware of the requirements of subclause (II).

(v) Tax-exempt use property**(I) In general**

Any expenditure in connection with the rehabilitation of a building which is allocable to the portion of such property which is (or may reasonably be expected to be) tax-exempt use property (within the meaning of section 168(h), except that “50 percent” shall be substituted for “35 percent” in paragraph (1)(B)(iii) thereof).

(II) Clause not to apply for purposes of paragraph (1)(C)

This clause shall not apply for purposes of determining under paragraph (1)(C) whether a building has been substantially rehabilitated.

(vi) Expenditures of lessee

Any expenditure of a lessee of a building if, on the date the rehabilitation is completed, the remaining term of the lease (determined without regard to any renewal periods) is less than the recovery period determined under section 168(c).

(C) Certified rehabilitation

For purposes of subparagraph (B), the term “certified rehabilitation” means any rehabilitation of a certified historic structure which the Secretary of the Interior has certified to the Secretary as being consistent with the historic character of such property or the district in which such property is located.

(D) Nonresidential real property; residential rental property; class life

For purposes of subparagraph (A), the terms “nonresidential real property,” “residential rental property,” and “class life” have the respective meanings given such terms by section 168.

(3) Certified historic structure defined**(A) In general**

The term “certified historic structure” means any building (and its structural components) which—

(i) is listed in the National Register, or

(ii) is located in a registered historic district and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

(B) Registered historic district

The term “registered historic district” means—

(i) any district listed in the National Register, and

(ii) any district—

(I) which is designated under a statute of the appropriate State or local government, if such statute is certified by the Secretary of the Interior to the Secretary as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district, and

(II) which is certified by the Secretary of the Interior to the Secretary as meeting substantially all of the requirements for the listing of districts in the National Register.

(d) Progress expenditures**(1) In general**

In the case of any building to which this subsection applies, except as provided in paragraph (3)—

(A) if such building is self-rehabilitated property, any qualified rehabilitation expenditure with respect to such building shall be taken into account for the taxable year for which such expenditure is properly chargeable to capital account with respect to such building, and

(B) if such building is not self-rehabilitated property, any qualified rehabilitation expenditure with respect to such building shall be taken into account for the taxable year in which paid.

(2) Property to which subsection applies**(A) In general**

This subsection shall apply to any building which is being rehabilitated by or for the taxpayer if—

(i) the normal rehabilitation period for such building is 2 years or more, and

(ii) it is reasonable to expect that such building will be a qualified rehabilitated building in the hands of the taxpayer when it is placed in service.

Clauses (i) and (ii) shall be applied on the basis of facts known as of the close of the taxable year of the taxpayer in which the rehabilitation begins (or, if later, at the close of the first taxable year to which an election under this subsection applies).

(B) Normal rehabilitation period

For purposes of subparagraph (A), the term “normal rehabilitation period” means the period reasonably expected to be required for the rehabilitation of the building—

(i) beginning with the date on which physical work on the rehabilitation begins (or, if later, the first day of the first taxable year to which an election under this subsection applies), and

(ii) ending on the date on which it is expected that the property will be available for placing in service.

(3) Special rules for applying paragraph (1)

For purposes of paragraph (1)—

(A) Component parts, etc.

Property which is to be a component part of, or is otherwise to be included in, any building to which this subsection applies shall be taken into account—

(i) at a time not earlier than the time at which it becomes irrevocably devoted to use in the building, and

(ii) as if (at the time referred to in clause (i)) the taxpayer had expended an amount equal to that portion of the cost to the taxpayer of such component or other property which, for purposes of this subpart, is properly chargeable (during such taxable year) to capital account with respect to such building.

(B) Certain borrowing disregarded

Any amount borrowed directly or indirectly by the taxpayer from the person rehabilitating the property for him shall not be treated as an amount expended for such rehabilitation.

(C) Limitation for buildings which are not self-rehabilitated

(i) In general

In the case of a building which is not self-rehabilitated, the amount taken into account under paragraph (1)(B) for any taxable year shall not exceed the amount which represents the portion of the overall cost to the taxpayer of the rehabilitation which is properly attributable to the portion of the rehabilitation which is completed during such taxable year.

(ii) Carryover of certain amounts

In the case of a building which is not a self-rehabilitated building, if for the taxable year—

(I) the amount which (but for clause (i)) would have been taken into account under paragraph (1)(B) exceeds the limitation of clause (i), then the amount of such excess shall be taken into account under paragraph (1)(B) for the succeeding taxable year, or

(II) the limitation of clause (i) exceeds the amount taken into account under paragraph (1)(B), then the amount of such excess shall increase the limitation of clause (i) for the succeeding taxable year.

(D) Determination of percentage of completion

The determination under subparagraph (C)(i) of the portion of the overall cost to the taxpayer of the rehabilitation which is properly attributable to rehabilitation com-

pleted during any taxable year shall be made, under regulations prescribed by the Secretary, on the basis of engineering or architectural estimates or on the basis of cost accounting records. Unless the taxpayer establishes otherwise by clear and convincing evidence, the rehabilitation shall be deemed to be completed not more rapidly than ratably over the normal rehabilitation period.

(E) No progress expenditures for certain prior periods

No qualified rehabilitation expenditures shall be taken into account under this subsection for any period before the first day of the first taxable year to which an election under this subsection applies.

(F) No progress expenditures for property for year it is placed in service, etc.

In the case of any building, no qualified rehabilitation expenditures shall be taken into account under this subsection for the earlier of—

(i) the taxable year in which the building is placed in service, or

(ii) the first taxable year for which recapture is required under section 50(a)(2) with respect to such property,

or for any taxable year thereafter.

(4) Self-rehabilitated building

For purposes of this subsection, the term “self-rehabilitated building” means any building if it is reasonable to believe that more than half of the qualified rehabilitation expenditures for such building will be made directly by the taxpayer.

(5) Election

This subsection shall apply to any taxpayer only if such taxpayer has made an election under this paragraph. Such an election shall apply to the taxable year for which made and all subsequent taxable years. Such an election, once made, may be revoked only with the consent of the Secretary.

(Added Pub. L. 87-834, §2(b), Oct. 16, 1962, 76 Stat. 966; amended Pub. L. 91-172, title VII, §703(c), Dec. 30, 1969, 83 Stat. 666; Pub. L. 91-676, §1, Jan. 12, 1971, 84 Stat. 2060; Pub. L. 92-178, title I, §§102(c), 107(a)(1), (b)(1), Dec. 10, 1971, 85 Stat. 500, 507; Mar. 29, 1975, Pub. L. 94-12, title III, §302(b)(2)(A), (c)(1), (2), 89 Stat. 43, 44; Pub. L. 94-455, title VIII, §804(b), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1594, 1834; Pub. L. 95-600, title III, §317(a), Nov. 6, 1978, 92 Stat. 2830; Pub. L. 95-618, title II, §241(b), Nov. 9, 1978, 92 Stat. 3193; Pub. L. 97-34, title II, §211(f)(2), (g), Aug. 13, 1981, 95 Stat. 231, 233; Pub. L. 97-248, title II, §208(a)(2)(B), Sept. 3, 1982, 96 Stat. 435; Pub. L. 97-448, title I, §102(e)(3), Jan. 12, 1983, 96 Stat. 2371; Pub. L. 98-369, div. A, title IV, §§421(b)(7), 431(b)(2), (d)(4), (5), 474(o)(8), (9), July 18, 1984, 98 Stat. 794, 807, 810, 836; Pub. L. 98-443, §9(p), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 99-121, title I, §103(b)(6), Oct. 11, 1985, 99 Stat. 510; Pub. L. 99-514, title XV, §1511(c)(2), title XVIII, §§1802(a)(5)(A), 1844(b)(1), (2), (4), Oct. 22, 1986, 100 Stat. 2744, 2788, 2855; Pub. L. 100-647, title I, §§1002(a)(18), (26)-(28), 1007(g)(3)(A), Nov.

10, 1988, 102 Stat. 3356, 3357, 3435; Pub. L. 101-508, title XI, § 11801(c)(8)(A), 11813(a), Nov. 5, 1990, 104 Stat. 1388-524, 1388-536; Pub. L. 110-289, div. C, title I, § 3025(a), July 30, 2008, 122 Stat. 2897.)

AMENDMENTS

2008—Subsec. (c)(2)(B)(v)(I). Pub. L. 110-289 substituted “section 168(h), except that ‘50 percent’ shall be substituted for ‘35 percent’ in paragraph (1)(B)(iii) thereof” for “section 168(h)”.

1990—Pub. L. 101-508, § 11813(a), amended section generally, substituting section catchline for one which read: “Certain dispositions, etc., of section 38 property” and in text substituting present provisions for provisions relating to general rules regarding disposition of section 38 property, nonapplicability of section in certain cases, the treatment of any increase in tax under the section, increases in nonqualified nonrecourse financing, and transfers between spouses or incident to divorce.

Subsec. (b)(1) to (3). Pub. L. 101-508, § 11801(c)(8)(A), inserted “or” at end of par. (1), substituted a period for “, or” at end of par. (2), and struck out par. (3) which related to nonapplicability of subsec. (a) in the case of a transfer of section 38 property related to exchanges under final system plan for ConRail.

1988—Subsec. (a)(5)(D). Pub. L. 100-647, § 1002(a)(26)(B), struck out at end “If, prior to a disposition to which this subsection applies, any portion of any credit is not allowable with respect to any property by reason of section 168(i)(3), such portion shall be treated (for purposes of this subparagraph) as not having been used to reduce tax liability.”

Subsec. (a)(5)(E)(iii). Pub. L. 100-647, § 1002(a)(26)(C), substituted “168(e)” for “168(c)”.

Subsec. (a)(5)(E)(v). Pub. L. 100-647, § 1002(a)(26)(A), added cl. (v).

Subsec. (a)(9)(A). Pub. L. 100-647, § 1002(a)(27), substituted “section 168(h)(2)” for “section 168(j)(4)(C)”.

Subsec. (c). Pub. L. 100-647, § 1007(g)(3)(A), substituted “D, or G” for “or D”.

Subsec. (d)(1). Pub. L. 100-647, § 1002(a)(18), substituted “section 46(c)(8)(C)” for “section 48(c)(8)(C)”.

Subsec. (d)(3)(C)(i). Pub. L. 100-647, § 1002(a)(28), substituted “class life (as defined in section 168(i)(1))” for “present class life (as defined in section 168(g)(2))” and “no class life” for “no present class life”.

1986—Subsec. (a)(9). Pub. L. 99-514, § 1802(a)(5)(A), added par. (9).

Subsec. (d)(1). Pub. L. 99-514, § 1844(b)(1), substituted “reducing the credit base (as defined in section 48(c)(8)(C))” for “reducing the qualified investment” and inserted “For purposes of determining the amount of credit subject to the early disposition or cessation rules of subsection (a), the net increase in the amount of the nonqualified nonrecourse financing with respect to the property shall be treated as reducing the property’s credit base (and correspondingly reducing the qualified investment in the property) in the year in which the property was first placed in service.”

Subsec. (d)(3)(E)(i). Pub. L. 99-514, § 1844(b)(4), inserted “reduced by the sum of the credit recapture amounts with respect to such property for all preceding years”.

Subsec. (d)(3)(F). Pub. L. 99-514, § 1844(b)(2), struck out subpar. (F) which read as follows: “The amount of any increase in tax under subsection (a) with respect to any property to which this paragraph applies shall be determined by reducing the qualified investment with respect to such property by the aggregate credit recapture amounts for all taxable years under this paragraph.”

Subsec. (d)(3)(G). Pub. L. 99-514, § 1511(c)(2), substituted “determined at the underpayment rate established under section 6621” for “determined under section 6621”.

1985—Subsec. (a)(5)(B). Pub. L. 99-121 substituted “For property other than 3-year property” for “For 15-year, 10-year, and 5-year property” in table heading.

1984—Subsec. (a)(5)(D), (6). Pub. L. 98-369, § 474(o)(8), substituted “under section 39” for “under section 46(b)”.

Subsec. (a)(7)(C). Pub. L. 98-443 substituted “Secretary of Transportation” for “Civil Aeronautics Board”.

Subsec. (c). Pub. L. 98-369, § 474(o)(9), substituted “subpart A, B, or D” for “subpart A”.

Subsec. (d). Pub. L. 98-369, § 431(b)(2), substituted “Increases in nonqualified nonrecourse financing” for “Property ceasing to be at risk” in heading.

Subsec. (d)(1). Pub. L. 98-369, § 431(b)(2), substituted provisions relating to increases in tax liability resulting from increases in nonqualified nonrecourse financing for provisions relating to increases in tax liability resulting from the taxpayer ceasing to be at risk with respect to certain property.

Subsec. (d)(2). Pub. L. 98-369, § 431(b)(2), substituted provisions that for purposes of par. (1), transfers of debt, or agreements to transfer, occurring more than one year after the initial borrowing shall not be treated as increasing nonqualified nonrecourse financing with respect to the taxpayer for provisions that for purposes of par. (1), such transfers (or agreements to transfer) by a qualified person to a nonqualified person would not cause the taxpayer to be treated as ceasing to be at risk.

Subsec. (d)(3)(A). Pub. L. 98-369, § 431(d)(4), substituted “increasing the amount of nonqualified nonrecourse financing (within the meaning of section 46(c)(8))” for “ceasing to be at risk”.

Subsec. (d)(3)(B)(i). Pub. L. 98-369, § 431(d)(5), struck out “other than a loan described in section 46(c)(8)(B)(ii)” after “section 46(c)(8)(F)(iv)”.

Subsec. (e). Pub. L. 98-369, § 421(b)(7), added subsec. (e).

1983—Subsec. (d)(2). Pub. L. 97-448, § 102(e)(3)(A), substituted “section 46(c)(8)(D)” and “section 46(c)(8)(B)” for “section 48(c)(8)(D)” and “section 48(c)(8)(B)”, respectively.

Subsec. (d)(3)(A). Pub. L. 97-448, § 102(e)(3)(B), substituted “section 46(c)(8)(F)” for “section 46(c)(8)(E)”.

1982—Subsec. (a)(5)(D). Pub. L. 97-248, § 208(a)(2)(B), inserted provision that if, prior to a disposition to which this subsection applies, any portion of any credit is not allowable with respect to any property by reason of section 168(i)(3), such portion shall be treated, for purposes of this subparagraph, as not having been used to reduce tax liability.

1981—Subsec. (a)(3)(D). Pub. L. 97-34, § 211(g)(2)(A), inserted provisions relating to disposition, cessation, or change in expected use described in paragraph (5).

Subsec. (a)(5), (6). Pub. L. 97-34, § 211(g)(1), (2)(B), added par. (5), redesignated former par. (5) as (6) and substituted “paragraph (1), (3), or (5)” for “paragraph (1) or (3)”. Former par. (6) redesignated (7).

Subsec. (a)(7), (8). Pub. L. 97-34, § 211(g)(1), (2)(C), redesignated former par. (6) as (7), substituted “paragraph (6)” for “paragraph (5)”, and redesignated former par. (7) as (8).

Subsec. (d). Pub. L. 97-34, § 211(f)(2), added subsec. (d).

1978—Subsec. (a)(4), (5). Pub. L. 95-618, § 241(b)(1), added par. (4), redesignated former par. (4) as (5) and substituted “paragraph (2) or (4)” for “paragraph (2)”.

Subsec. (a)(6)(B). Pub. L. 95-618, § 241(b)(3), substituted “paragraph (5)” for “paragraph (4)”.

Subsec. (b)(3). Pub. L. 95-600, § 317(a), added par. (3).

1976—Subsec. (a). Pub. L. 94-455, § 1906(b)(13)(A), struck out in introductory provision and in par. (3)(C) “or his delegate” after “Secretary”.

Subsec. (a)(7). Pub. L. 94-455, § 804(b), added par. (7).

1975—Subsec. (a)(3), (4). Pub. L. 94-12, § 302(b)(2)(A), (c)(1), added par. (3), redesignated former par. (3) as (4) and substituted “paragraph (1) or (3)” for “paragraph (1)”. A former par. (4), relating to increase or adjustment of tax where property is destroyed by casualty, etc., was repealed by Pub. L. 92-178.

Subsec. (a)(5), (6)(B). Pub. L. 94-12, § 302(c)(2), substituted “paragraph (4)” for “paragraph (3)”.

1971—Subsec. (a)(4). Pub. L. 92-178, § 107(a)(1), struck out par. (4) relating to property destroyed by casualty, etc.

Subsec. (a)(5). Pub. L. 92-178, § 107(b)(1), provided for the repeal of par. (5) with the repeal not to apply, how-

ever, in the case of certain replacement property. See section 107(b)(2) of Pub. L. 92-178, set out in the Effective Date of 1971 Amendment note below.

Subsec. (a)(6)(A). Pub. L. 92-178, §102(c), substituted "3½ years" for "4 years".

Subsec. (a)(6). Pub. L. 91-676 added par. (6).

1969—Subsec. (a)(5). Pub. L. 91-172, §703(c)(2), added par. (5).

Subsec. (a)(4). Pub. L. 91-172, §703(c)(1), inserted provision making subpars. (B) and (C) inapplicable to any casualty or theft occurring after April 18, 1969.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-289, div. C, title I, §3025(b), July 30, 2008, 122 Stat. 2897, provided that: "The amendments made by this section [amending this section] shall apply to expenditures properly taken into account for periods after December 31, 2007."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(a) of Pub. L. 101-508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101-508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1511(d) of Pub. L. 99-514 provided that: "The amendments made by this section [amending this section and sections 48, 167, 644, 852, 4497, 6214, 6332, 6343, 6601, 6602, 6611, 6621, 6654, 6655, and 7426 of this title and sections 1961 and 2411 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as a note under section 6621 of this title] shall apply for purposes of determining interest for periods after December 31, 1986."

Amendment by sections 1802(a)(5)(A) and 1844(b)(1), (2), (4) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-121 applicable as if included in the amendments made by section 111 of the Tax Reform Act of 1984, Pub. L. 98-369, see section 105(b)(4) of Pub. L. 99-121, set out as a note under section 168 of this title, and section 111(g) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 168 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

Amendment by section 421(b)(7) of Pub. L. 98-369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98-369, set out as an Effective Date note under section 1041 of this title.

Amendment by section 431(b)(2), (d)(4), (5) of Pub. L. 98-369 applicable to property placed in service after

July 18, 1984, in taxable years ending after such date, but not applicable to property to which subsec. (d) of this section and section 46(c)(8), (9) of this title, as enacted by section 211(f) of Pub. L. 97-34, do not apply, with the taxpayer having an option to elect retroactive application of amendment by Pub. L. 98-369, see section 431(e) of Pub. L. 98-369, set out as a note under section 46 of this title.

Amendment by section 474(o)(8), (9) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to agreements entered into after July 1, 1982, or to property placed in service after that date, but not to transitional safe harbor lease property, nor to qualified leased property described in section 168(f)(8)(D)(v) of this title which is placed in service before Jan. 1, 1988, or is placed in service after such date pursuant to a binding contract or commitment entered into before April 1, 1983, and solely because of conditions which, as determined by the Secretary of the Treasury or his delegate, are not within the control of the lessor or lessee, see section 208(d)(1), (2)(A), (5) of Pub. L. 97-248, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 211(g) of Pub. L. 97-34 applicable to property placed in service after Dec. 31, 1980, see section 211(i)(1) of Pub. L. 97-34, set out in a note under section 46 of this title.

Amendment by section 211(f)(2) of Pub. L. 97-34 not to apply to property placed in service by the taxpayer on or before Feb. 18, 1981, and property placed in service by the taxpayer after Feb. 18, 1981, where such property was acquired by the taxpayer pursuant to a binding contract entered into on or before that date, see section 211(i)(5) of Pub. L. 97-34, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 317(b) of Pub. L. 95-600 provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after March 31, 1976."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 804(b) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1974, see section 804(e) of Pub. L. 94-455, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-12 applicable to taxable years ending after Dec. 31, 1974, see section 305(a) of Pub. L. 94-12, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1971 AMENDMENTS

In redetermining qualified investment for purposes of subsec. (a) of this section in the case of any property which ceases to be section 38 property with respect to the taxpayer after Aug. 15, 1971, or which becomes public utility property after such date, section 46(c)(2) of this title as amended by section 102(a) of Pub. L. 92-178 as applicable, see section 102(d)(2) of Pub. L. 92-178, set out as a note under section 46 of this title.

Amendment by section 107(a)(1) of Pub. L. 92-178 applicable to casualties and thefts occurring after Aug. 15, 1971, see section 107(a)(2) of Pub. L. 92-178, set out as a note under section 46 of this title.

Section 107(b)(2) of Pub. L. 92-178, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The repeal made by paragraph (1) [repealing subsec. (a)(5) of this section] shall not apply if replacement property described in subparagraph (B) of such section 47(a)(5) is not property described in section 50 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].”

Section 102(d)(3) of Pub. L. 92-178 provided that: “The amendment made by subsection (c) [amending this section] shall apply to leases executed after April 18, 1969.”

Section 2 of Pub. L. 91-676 provided that: “The amendment made by the first section of this Act [amending this section] shall apply to taxable years ending after April 18, 1969.”

EFFECTIVE DATE

Section applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87-834, set out as a note under section 46 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

CLARIFICATION OF EFFECT OF 1984 AMENDMENT ON INVESTMENT TAX CREDIT

For provision that nothing in the amendments made by section 474(o) of Pub. L. 98-369, which amended this section, be construed as reducing the investment tax credit in taxable years beginning before Jan. 1, 1984, see section 475(c) of Pub. L. 98-369, set out as a note under section 46 of this title.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Federal Aviation Agency and of Administrator and other offices and officers thereof transferred by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, to Secretary of Transportation, with functions, powers, and duties of Secretary of Transportation pertaining to aviation safety to be exercised by Federal Aviation Administrator in Department of Transportation, see section 106 of Title 49, Transportation.

§ 48. Energy credit

(a) Energy credit

(1) In general

For purposes of section 46, except as provided in paragraphs (1)(B), (2)(B), (3)(B), and (4)(B)¹ of subsection (c), the energy credit for any taxable year is the energy percentage of

the basis of each energy property placed in service during such taxable year.

(2) Energy percentage

(A) In general

The energy percentage is—

- (i) 30 percent in the case of—
 - (I) qualified fuel cell property,
 - (II) energy property described in paragraph (3)(A)(i) but only with respect to periods ending before January 1, 2017,
 - (III) energy property described in paragraph (3)(A)(ii), and
 - (IV) qualified small wind energy property, and
- (ii) in the case of any energy property to which clause (i) does not apply, 10 percent.

(B) Coordination with rehabilitation credit

The energy percentage shall not apply to that portion of the basis of any property which is attributable to qualified rehabilitation expenditures.

(3) Energy property

For purposes of this subpart, the term “energy property” means any property—

- (A) which is—
 - (i) equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, excepting property used to generate energy for the purposes of heating a swimming pool,
 - (ii) equipment which uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight but only with respect to periods ending before January 1, 2017,
 - (iii) equipment used to produce, distribute, or use energy derived from a geothermal deposit (within the meaning of section 613(e)(2)), but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage,
 - (iv) qualified fuel cell property or qualified microturbine property,
 - (v) combined heat and power system property,
 - (vi) qualified small wind energy property, or
 - (vii) equipment which uses the ground or ground water as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure, but only with respect to periods ending before January 1, 2017,

(B)(i) the construction, reconstruction, or erection of which is completed by the taxpayer, or

(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer,

(C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable, and

(D) which meets the performance and quality standards (if any) which—

- (i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy), and

¹ See References in Text note below.

(ii) are in effect at the time of the acquisition of the property.

Such term shall not include any property which is part of a facility the production from which is allowed as a credit under section 45 for the taxable year or any prior taxable year.

(4) Special rule for property financed by subsidized energy financing or industrial development bonds

(A) Reduction of basis

For purposes of applying the energy percentage to any property, if such property is financed in whole or in part by—

- (i) subsidized energy financing, or
- (ii) the proceeds of a private activity bond (within the meaning of section 141) the interest on which is exempt from tax under section 103,

the amount taken into account as the basis of such property shall not exceed the amount which (but for this subparagraph) would be so taken into account multiplied by the fraction determined under subparagraph (B).

(B) Determination of fraction

For purposes of subparagraph (A), the fraction determined under this subparagraph is 1 reduced by a fraction—

- (i) the numerator of which is that portion of the basis of the property which is allocable to such financing or proceeds, and
- (ii) the denominator of which is the basis of the property.

(C) Subsidized energy financing

For purposes of subparagraph (A), the term “subsidized energy financing” means financing provided under a Federal, State, or local program a principal purpose of which is to provide subsidized financing for projects designed to conserve or produce energy.

(D) Termination

This paragraph shall not apply to periods after December 31, 2008, under rules similar to the rules of section 48(m) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(5) Election to treat qualified facilities as energy property

(A) In general

In the case of any qualified property which is part of a qualified investment credit facility—

- (i) such property shall be treated as energy property for purposes of this section, and
- (ii) the energy percentage with respect to such property shall be 30 percent.

(B) Denial of production credit

No credit shall be allowed under section 45 for any taxable year with respect to any qualified investment credit facility.

(C) Qualified investment credit facility

For purposes of this paragraph, the term “qualified investment credit facility” means

any of the following facilities if no credit has been allowed under section 45 with respect to such facility and the taxpayer makes an irrevocable election to have this paragraph apply to such facility:

(i) Wind facilities

Any qualified facility (within the meaning of section 45) described in paragraph (1) of section 45(d) if such facility is placed in service in 2009, 2010, 2011, or 2012.

(ii) Other facilities

Any qualified facility (within the meaning of section 45) described in paragraph (2), (3), (4), (6), (7), (9), or (11) of section 45(d) if such facility is placed in service in 2009, 2010, 2011, 2012, or 2013.

(D) Qualified property

For purposes of this paragraph, the term “qualified property” means property—

- (i) which is—
 - (I) tangible personal property, or
 - (II) other tangible property (not including a building or its structural components), but only if such property is used as an integral part of the qualified investment credit facility, and
- (ii) with respect to which depreciation (or amortization in lieu of depreciation) is allowable.

(b) Certain progress expenditure rules made applicable

Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of subsection (a).

(c) Definitions

For purposes of this section—

(1) Qualified fuel cell property

(A) In general

The term “qualified fuel cell property” means a fuel cell power plant which—

- (i) has a nameplate capacity of at least 0.5 kilowatt of electricity using an electrochemical process, and
- (ii) has an electricity-only generation efficiency greater than 30 percent.

(B) Limitation

In the case of qualified fuel cell property placed in service during the taxable year, the credit otherwise determined under subsection (a) for such year with respect to such property shall not exceed an amount equal to \$1,500 for each 0.5 kilowatt of capacity of such property.

(C) Fuel cell power plant

The term “fuel cell power plant” means an integrated system comprised of a fuel cell stack assembly and associated balance of plant components which converts a fuel into electricity using electrochemical means.

(D) Termination

The term “qualified fuel cell property” shall not include any property for any period after December 31, 2016.

(2) Qualified microturbine property**(A) In general**

The term “qualified microturbine property” means a stationary microturbine power plant which—

- (i) has a nameplate capacity of less than 2,000 kilowatts, and
- (ii) has an electricity-only generation efficiency of not less than 26 percent at International Standard Organization conditions.

(B) Limitation

In the case of qualified microturbine property placed in service during the taxable year, the credit otherwise determined under subsection (a) for such year with respect to such property shall not exceed an amount equal² \$200 for each kilowatt of capacity of such property.

(C) Stationary microturbine power plant

The term “stationary microturbine power plant” means an integrated system comprised of a gas turbine engine, a combustor, a recuperator or regenerator, a generator or alternator, and associated balance of plant components which converts a fuel into electricity and thermal energy. Such term also includes all secondary components located between the existing infrastructure for fuel delivery and the existing infrastructure for power distribution, including equipment and controls for meeting relevant power standards, such as voltage, frequency, and power factors.

(D) Termination

The term “qualified microturbine property” shall not include any property for any period after December 31, 2016.

(3) Combined heat and power system property**(A) Combined heat and power system property**

The term “combined heat and power system property” means property comprising a system—

- (i) which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications),
- (ii) which produces—
 - (I) at least 20 percent of its total useful energy in the form of thermal energy which is not used to produce electrical or mechanical power (or combination thereof), and
 - (II) at least 20 percent of its total useful energy in the form of electrical or mechanical power (or combination thereof),
- (iii) the energy efficiency percentage of which exceeds 60 percent, and
- (iv) which is placed in service before January 1, 2017.

(B) Limitation**(i) In general**

In the case of combined heat and power system property with an electrical capacity in excess of the applicable capacity placed in service during the taxable year, the credit under subsection (a)(1) (determined without regard to this paragraph) for such year shall be equal to the amount which bears the same ratio to such credit as the applicable capacity bears to the capacity of such property.

(ii) Applicable capacity

For purposes of clause (i), the term “applicable capacity” means 15 megawatts or a mechanical energy capacity of more than 20,000 horsepower or an equivalent combination of electrical and mechanical energy capacities.

(iii) Maximum capacity

The term “combined heat and power system property” shall not include any property comprising a system if such system has a capacity in excess of 50 megawatts or a mechanical energy capacity in excess of 67,000 horsepower or an equivalent combination of electrical and mechanical energy capacities.

(C) Special rules**(i) Energy efficiency percentage**

For purposes of this paragraph, the energy efficiency percentage of a system is the fraction—

- (I) the numerator of which is the total useful electrical, thermal, and mechanical power produced by the system at normal operating rates, and expected to be consumed in its normal application, and
- (II) the denominator of which is the lower heating value of the fuel sources for the system.

(ii) Determinations made on Btu basis

The energy efficiency percentage and the percentages under subparagraph (A)(ii) shall be determined on a Btu basis.

(iii) Input and output property not included

The term “combined heat and power system property” does not include property used to transport the energy source to the facility or to distribute energy produced by the facility.

(D) Systems using biomass

If a system is designed to use biomass (within the meaning of paragraphs (2) and (3) of section 45(c) without regard to the last sentence of paragraph (3)(A)) for at least 90 percent of the energy source—

- (i) subparagraph (A)(iii) shall not apply, but
- (ii) the amount of credit determined under subsection (a) with respect to such system shall not exceed the amount which bears the same ratio to such amount of credit (determined without regard to this subparagraph) as the energy efficiency percentage of such system bears to 60 percent.

²So in original. Probably should be followed by “to”.

(4) Qualified small wind energy property**(A) In general**

The term “qualified small wind energy property” means property which uses a qualifying small wind turbine to generate electricity.

(B) Qualifying small wind turbine

The term “qualifying small wind turbine” means a wind turbine which has a nameplate capacity of not more than 100 kilowatts.

(C) Termination

The term “qualified small wind energy property” shall not include any property for any period after December 31, 2016.

(d) Coordination with Department of Treasury grants

In the case of any property with respect to which the Secretary makes a grant under section 1603 of the American Recovery and Reinvestment Tax Act of 2009—

(1) Denial of production and investment credits

No credit shall be determined under this section or section 45 with respect to such property for the taxable year in which such grant is made or any subsequent taxable year.

(2) Recapture of credits for progress expenditures made before grant

If a credit was determined under this section with respect to such property for any taxable year ending before such grant is made—

(A) the tax imposed under subtitle A on the taxpayer for the taxable year in which such grant is made shall be increased by so much of such credit as was allowed under section 38,

(B) the general business carryforwards under section 39 shall be adjusted so as to recapture the portion of such credit which was not so allowed, and

(C) the amount of such grant shall be determined without regard to any reduction in the basis of such property by reason of such credit.

(3) Treatment of grants

Any such grant shall—

(A) not be includible in the gross income of the taxpayer, but

(B) shall³ be taken into account in determining the basis of the property to which such grant relates, except that the basis of such property shall be reduced under section 50(c) in the same manner as a credit allowed under subsection (a).

(Added Pub. L. 87-834, §2(b), Oct. 16, 1962, 76 Stat. 967; amended Pub. L. 88-272, title II, §203(a)(1), (3)(A), (b), (c), Feb. 26, 1964, 78 Stat. 33, 34; Pub. L. 89-800, §1 Nov. 8, 1966, 80 Stat. 1508; Pub. L. 89-809, title II, §201(a), Nov. 13, 1966, 80 Stat. 1575; Pub. L. 90-26, §§1, 2(a), 3, June 13, 1967, 81 Stat. 57, 58; Pub. L. 91-172, title I, §121(d)(2)(A), title IV, §401(e)(2)-(4), Dec. 30, 1969, 83 Stat. 547, 603; Pub. L. 92-178, title I, §§102(a)(2), 103, 104(a)(1), (b)-(f)(1), (g), 108(b), (c), Dec. 10, 1971, 85 Stat.

499-502, 507; Pub. L. 94-12, title III, §§301(c)(1), 302(c)(3), title VI, §604(a), Mar. 29, 1975, 89 Stat. 38, 44, 65; Pub. L. 94-455, title VIII, §§802(b)(6), 804(a), title X, §1051(h)(1), title XIX, §§1901(a)(5), (b)(11)(A), 1906(b)(13)(A), title XXI, §2112(a)(1), Oct. 4, 1976, 90 Stat. 1583, 1591, 1647, 1764, 1795, 1834, 1905; Pub. L. 95-473, §2(a)(2)(A), Oct. 17, 1978, 92 Stat. 1464; Pub. L. 95-600, title I, §141(b), title III, §§312(c)(1)-(3), 314(a), (b), 315(a)-(c), title VII, §703(a)(3), (4), Nov. 6, 1978, 92 Stat. 2791, 2826-2829, 2939; Pub. L. 95-618, title III, §301(b), (d)(1), (2), Nov. 9, 1978, 92 Stat. 3195, 3199, 3200; Pub. L. 96-222, title I, §§101(a)(7)(G), (H), (L)(i)(I)-(IV), (ii)(III)-(VI), (iii)(II), (III), (v)(II)-(V), (M)(ii), (iii), 103(a)(2)(A), (4)(B), 108(c)(6), Apr. 1, 1980, 94 Stat. 198-201, 208, 209, 228; Pub. L. 96-223, title II, §221(b), 222(a)-(e)(1), (f)-(i), 223(a)(1), (c)(1), Apr. 2, 1980, 94 Stat. 261-266; Pub. L. 96-451, title III, §302(a), Oct. 14, 1980, 94 Stat. 1991; Pub. L. 96-605, title I, §109(a), title II, §223(a), Dec. 28, 1980, 94 Stat. 3525, 3528; Pub. L. 97-34, title II, §211(a)(2), (c), (e)(3), (4), (h), 212(a)(3), (b), (c), (d)(2)(A), 213(a), 214(a), (b), title III, §332(b), Aug. 13, 1981, 95 Stat. 227-229, 235, 236, 239, 240, 296; Pub. L. 97-248, title II, §§205(a)(1), (4), (5)(A), 209(c), Sept. 3, 1982, 96 Stat. 427, 429, 447; Pub. L. 97-354, §§3(d), 5(a)(7), (8), Oct. 19, 1982, 96 Stat. 1689, 1692; Pub. L. 97-362, title I, §104(a), Oct. 25, 1982, 96 Stat. 1729; Pub. L. 97-424, title V, §546(a), Jan. 6, 1983, 96 Stat. 2198; Pub. L. 97-448, title I, §102(e)(2)(A), (f)(2), (3), (6), title II, §202(c), title III, §306(a)(3), Jan. 12, 1983, 96 Stat. 2371, 2372, 2396, 2400; Pub. L. 98-369, div. A, title I, §§11, 31(b), (c), 111(e)(8), 113(a)(1), (b)(3), (4), 114(a), title IV, §§431(c), 474(o)(10)-(18), title VII, §§712(b), 721(x)(1), 735(c)(1), title X, §1043(a), July 18, 1984, 98 Stat. 503, 517, 518, 633, 635, 637, 638, 808, 836, 837, 946, 971, 981, 1044; Pub. L. 99-121, title I, §103(b)(5), Oct. 11, 1985, 99 Stat. 510; Pub. L. 99-514, title II, §251(b), (c), title VII, §701(e)(4)(C), title VIII, §803(b)(2)(B), title XII, §§1272(d)(5), 1275(c)(5), title XV, §1511(c)(3), title XVIII, §§1802(a)(4)(C), (5)(B), (9)(A), (B), 1809(d)(2), (e), 1847(b)(6), 1879(j)(1), Oct. 22, 1986, 100 Stat. 2184, 2186, 2343, 2355, 2594, 2599, 2745, 2788, 2789, 2821, 2856, 2908; Pub. L. 100-647, title I, §§1002(a)(14), (16)(A), (20), (29), (30), 1013(a)(41), Nov. 10, 1988, 102 Stat. 3355-3357, 3544; Pub. L. 101-508, title XI, §§11801(c)(6)(A), 11813(a), Nov. 5, 1990, 104 Stat. 1388-523, 1388-541; Pub. L. 102-227, title I, §106, Dec. 11, 1991, 105 Stat. 1687; Pub. L. 102-486, title XIX, §1916(a), Oct. 24, 1992, 106 Stat. 3024; Pub. L. 108-357, title III, §322(d)(2)(A), (B), title VII, §710(e), Oct. 22, 2004, 118 Stat. 1475, 1557; Pub. L. 109-58, title XIII, §§1336(a)-(d), 1337(a)-(c), Aug. 8, 2005, 119 Stat. 1036-1038; Pub. L. 109-135, title IV, §412(m), (n), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 109-432, div. A, title II, §207, Dec. 20, 2006, 120 Stat. 2945; Pub. L. 110-172, §11(a)(8), (9), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 110-343, div. B, title I, §§103(a), (c)-(e), 104(a)-(d), 105(a), Oct. 3, 2008, 122 Stat. 3811, 3813, 3814; Pub. L. 111-5, div. B, title I, §§1102(a), 1103(a), (b)(1), 1104, Feb. 17, 2009, 123 Stat. 319-321.)

REFERENCES IN TEXT

Paragraph (4)(B) of subsection (c), referred to in subsec. (a)(1), was repealed and par. (4)(C) of subsec. (c) was redesignated as (4)(B) by Pub. L. 111-5, div. B, title I, §1103(a), Feb. 17, 2009, 123 Stat. 320.

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsecs. (a)(4)(D) and

³ So in original. The word “shall” probably should not appear.

(b), is the date of enactment of Pub. L. 101-508, which was approved Nov. 5, 1990.

Section 1603 of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (d), is section 1603 of Pub. L. 111-5, which is set out as a note below.

AMENDMENTS

2009—Subsec. (a)(4)(D). Pub. L. 111-5, §1103(b)(1), added subpar. (D).

Subsec. (a)(5). Pub. L. 111-5, §1102(a), added par. (5).

Subsec. (c)(4)(B) to (D). Pub. L. 111-5, §1103(a), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B). Text of former subpar. (B) read as follows: “In the case of qualified small wind energy property placed in service during the taxable year, the credit otherwise determined under subsection (a)(1) for such year with respect to all such property of the taxpayer shall not exceed \$4,000.”

Subsec. (d). Pub. L. 111-5, §1104, added subsec. (d).

2008—Subsec. (a)(1). Pub. L. 110-343, §104(d), substituted “paragraphs (1)(B), (2)(B), (3)(B), and (4)(B)” for “paragraphs (1)(B), (2)(B), and (3)(B)”.

Pub. L. 110-343, §103(c)(3), substituted “paragraphs (1)(B), (2)(B), and (3)(B)” for “paragraphs (1)(B) and (2)(B)”.

Subsec. (a)(2)(A)(i)(II). Pub. L. 110-343, §103(a)(1), substituted “January 1, 2017” for “January 1, 2009”.

Subsec. (a)(2)(A)(i)(IV). Pub. L. 110-343, §104(b), added subcl. (IV).

Subsec. (a)(3). Pub. L. 110-343, §103(e)(1), in concluding provisions, struck out “The term ‘energy property’ shall not include any property which is public utility property (as defined in section 46(f)(5) as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).” before “Such term”.

Subsec. (a)(3)(A)(ii). Pub. L. 110-343, §103(a)(1), substituted “January 1, 2017” for “January 1, 2009”.

Subsec. (a)(3)(A)(v). Pub. L. 110-343, §103(c)(1), added cl. (v).

Subsec. (a)(3)(A)(vi). Pub. L. 110-343, §104(a), added cl. (vi).

Subsec. (a)(3)(A)(vii). Pub. L. 110-343, §105(a), added cl. (vii).

Subsec. (c). Pub. L. 110-343, §103(c)(2)(A), inserted heading and struck out former heading “Qualified fuel cell property; qualified microturbine property”.

Subsec. (c)(1)(B). Pub. L. 110-343, §103(d), substituted “\$1,500” for “\$500”.

Subsec. (c)(1)(D). Pub. L. 110-343, §103(e)(2)(A), redesignated subpar. (E) as (D) and struck out heading and text of former subpar. (D). Text read as follows: “The first sentence of the matter in subsection (a)(3) which follows subparagraph (D) thereof shall not apply to qualified fuel cell property which is used predominantly in the trade or business of the furnishing or sale of telephone service, telegraph service by means of domestic telegraph operations, or other telegraph services (other than international telegraph services).”

Subsec. (c)(1)(E). Pub. L. 110-343, §103(e)(2)(A), redesignated subpar. (E) as (D).

Pub. L. 110-343, §103(a)(2), substituted “December 31, 2016” for “December 31, 2008”.

Subsec. (c)(2)(D). Pub. L. 110-343, §103(e)(2)(B), redesignated subpar. (E) as (D) and struck out heading and text of former subpar. (D). Text read as follows: “The first sentence of the matter in subsection (a)(3) which follows subparagraph (D) thereof shall not apply to qualified microturbine property which is used predominantly in the trade or business of the furnishing or sale of telephone service, telegraph service by means of domestic telegraph operations, or other telegraph services (other than international telegraph services).”

Subsec. (c)(2)(E). Pub. L. 110-343, §103(e)(2)(B), redesignated subpar. (E) as (D).

Pub. L. 110-343, §103(a)(3), substituted “December 31, 2016” for “December 31, 2008”.

Subsec. (c)(3). Pub. L. 110-343, §103(c)(2)(B), added par. (3).

Subsec. (c)(4). Pub. L. 110-343, §104(c), added par. (4).

2007—Subsec. (c). Pub. L. 110-172, §11(a)(8), substituted “section” for “subsection” in introductory provisions.

Subsec. (c)(1)(B), (2)(B). Pub. L. 110-172, §11(a)(9), substituted “subsection (a)” for “paragraph (1)”.

2006—Subsec. (a)(2)(A)(i)(II), (3)(A)(ii). Pub. L. 109-432, §207(1), substituted “January 1, 2009” for “January 1, 2008”.

Subsec. (c)(1)(E), (2)(E). Pub. L. 109-432, §207(2), substituted “December 31, 2008” for “December 31, 2007”.

2005—Subsec. (a)(1). Pub. L. 109-135, §412(m), substituted “paragraphs (1)(B) and (2)(B) of subsection (c)” for “paragraph (1)(B) or (2)(B) of subsection (d)”.

Pub. L. 109-58, §1336(d), inserted “except as provided in paragraph (1)(B) or (2)(B) of subsection (d),” before “the energy credit”.

Subsec. (a)(2)(A). Pub. L. 109-58, §1337(a), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: “The energy percentage is—

“(i) in the case of qualified fuel cell property, 30 percent, and

“(ii) in the case of any other energy property, 10 percent.”

Pub. L. 109-58, §1336(c), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: “The energy percentage is 10 percent.”

Subsec. (a)(3)(A)(i). Pub. L. 109-58, §1337(c), inserted “excepting property used to generate energy for the purposes of heating a swimming pool,” after “solar process heat,”.

Subsec. (a)(3)(A)(ii). Pub. L. 109-135, §412(n)(2), struck out “or” at end.

Pub. L. 109-58, §1337(b), added cl. (ii). Former cl. (ii) redesignated (iii) relating to equipment used to produce, distribute, or use energy derived from a geothermal deposit.

Subsec. (a)(3)(A)(iii). Pub. L. 109-58, §1337(b), redesignated cl. (ii) as (iii) relating to equipment used to produce, distribute, or use energy derived from a geothermal deposit.

Pub. L. 109-58, §1336(a), added cl. (iii) relating to qualified fuel cell property or qualified microturbine property.

Subsec. (a)(3)(A)(iv). Pub. L. 109-135, §412(n)(1), redesignated cl. (iii), relating to qualified fuel cell property or qualified microturbine property, as (iv).

Subsec. (c). Pub. L. 109-58, §1336(b), added subsec. (c). 2004—Pub. L. 108-357, §322(d)(2)(B), struck out “; reforestation credit” after “Energy credit” in section catchline.

Subsec. (a)(3). Pub. L. 108-357, §710(e), inserted at end of concluding provisions “Such term shall not include any property which is part of a facility the production from which is allowed as a credit under section 45 for the taxable year or any prior taxable year.”

Subsec. (a)(5). Pub. L. 108-357, §322(d)(2)(A)(iii), redesignated subsec. (a)(5) as (b).

Pub. L. 108-357, §322(d)(2)(A)(ii), substituted “subsection (a)” for “this subsection”.

Subsec. (b). Pub. L. 108-357, §322(d)(2)(A)(iii), redesignated subsec. (a)(5) as (b).

Pub. L. 108-357, §322(d)(2)(A)(i), struck out heading and text of subsec. (b). Text read as follows:

“(1) IN GENERAL.—For purposes of section 46, the reforestation credit for any taxable year is 10 percent of the portion of the amortizable basis of any qualified timber property which was acquired during such taxable year and which is taken into account under section 194 (after the application of section 194(b)(1)).

“(2) DEFINITIONS.—For purposes of this subpart, the terms ‘amortizable basis’ and ‘qualified timber property’ have the respective meanings given to such terms by section 194.”

1992—Subsec. (a)(2). Pub. L. 102-486 substituted “The” for “Except as provided in subparagraph (B), the” in subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: “(B) TERMINATION.—Effective with respect to periods after June

30, 1992, the energy percentage is zero. For purposes of the preceding sentence, rules similar to the rules of section 48(m) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply."

1991—Subsec. (a)(2)(B). Pub. L. 102-227 substituted "June 30, 1992" for "December 31, 1991".

1990—Pub. L. 101-508, §11813(a), amended section generally, substituting section catchline for one which read: "Definitions; special rules" and in text substituting present provisions for provisions defining section 38 property, new section 38 property, used section 38 property, provisions relating to certain leased property, estates and trusts, special rules for qualified rehabilitated buildings, credit for movie and television films, treatment of energy property, application of certain transitional rules, definitions of certain credits, definition of single purpose agricultural or horticultural structure, basis adjustment to section 38 property, certain section 501(d) organizations, special rules relating to sound recordings, and a cross reference to section 381 of this title.

Subsec. (a)(8). Pub. L. 101-508, §11801(c)(6)(A), struck out par. (8) "Amortized property" which read as follows: "Any property with respect to which an election under section 167(k), 184, or 188 applies shall not be treated as section 38 property."

1988—Subsec. (a)(1). Pub. L. 100-647, §1002(a)(29), which directed amendment of par. (1) by substituting "property to which section 168 applies" for "recovery property (within the meaning of section 168)" in penultimate sentence, was executed by making the substitution for "recovery property (within the meaning of section 168)", which results in retaining remaining parenthetical material and closing parenthesis.

Subsec. (a)(5)(A)(ii). Pub. L. 100-647, §1002(a)(14)(A)-(C), substituted "168(h)(2)(C)" for "168(j)(4)(C)", "168(h)(2)(A)(iii)" for "168(j)(4)(A)(iii)", and "168(h)(2)(B)" for "168(j)(4)(B)".

Subsec. (a)(5)(B)(i). Pub. L. 100-647, §1002(a)(14)(D), substituted "168(i)(3)" for "168(j)(6)".

Subsec. (a)(5)(B)(ii). Pub. L. 100-647, §1002(a)(14)(E), substituted "168(h)(1)(C)(ii)" for "168(j)(3)(C)(ii)".

Subsec. (a)(5)(D). Pub. L. 100-647, §1002(a)(14)(F), substituted "paragraphs (5) and (6) of section 168(h)" for "paragraphs (8) and (9) of section 168(j)".

Subsec. (a)(5)(E). Pub. L. 100-647, §1002(a)(14)(G), amended subpar. (E) generally, substituting "provision" for "provisions" and "168(h)" for "168(j)".

Subsec. (b)(2)(C). Pub. L. 100-647, §1002(a)(30), substituted "to which section 168 applies" for "which is recovery property (within the meaning of section 168)".

Subsec. (b)(11)(A)(ii). Pub. L. 100-647, §1013(a)(41), substituted "a private activity bond (within the meaning of section 141)" for "an industrial development bond (within the meaning of section 103(b)(2))".

Subsec. (s). Pub. L. 100-647, §1002(a)(20), redesignated subsec. (s), relating to cross reference, as (t).

Subsec. (s)(9). Pub. L. 100-647, §1002(a)(16)(A), added par. (9).

Subsec. (t). Pub. L. 100-647, §1002(a)(20), redesignated subsec. (s), relating to cross reference, as (t).

1986—Subsec. (a)(2)(B)(vii). Pub. L. 99-514, §§1272(d)(5), 1275(c)(5), struck out "932," after "931," and "or which is entitled to the benefits of section 934(b)" after "in effect under section 936", and substituted "or 933" for "933, or 934(c)".

Subsec. (a)(4). Pub. L. 99-514, §1802(a)(9)(A), substituted "514(b)" for "514(c)" and "514(a)" for "514(b)".

Subsec. (a)(5)(B)(iii). Pub. L. 99-514, §1802(a)(5)(B), struck out cl. (iii) which provided that (I) in the case of any aircraft used under a qualifying lease (as defined in section 47(a)(7)(C)) and which is leased to a foreign person or entity before January 1, 1990, clause (i) shall be applied by substituting "3 years" for "6 months" and that (II) for purposes of applying section 47(a)(1) and (5)(B) there shall not be taken into account any period of a lease to which subclause (I) applies.

Subsec. (a)(5)(D), (E). Pub. L. 99-514, §1802(a)(4)(C), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (b)(1). Pub. L. 99-514, §1809(e)(1), inserted "Such term includes any section 38 property the reconstruction of which is completed by the taxpayer, but only with respect to that portion of the basis which is properly attributable to such reconstruction."

Subsec. (b)(2). Pub. L. 99-514, §1809(e)(2), in introductory provisions substituted "the first sentence of paragraph (1)" for "paragraph (1)", in subpar. (B) substituted "3 months after" for "3 months of", in closing provisions substituted "used under the leaseback (or lease) referred to in subparagraph (B)" for "used under the lease" and inserted "The preceding sentence shall not apply to any property if the lessee and lessor of such property make an election under this sentence. Such an election, once made, may be revoked only with the consent of the Secretary."

Subsec. (d)(4)(D). Pub. L. 99-514, §701(e)(4)(C), inserted "(as in effect on the day before the date of the enactment of the Tax Reform Act of 1986)".

Subsec. (d)(6)(C)(ii). Pub. L. 99-514, §1511(c)(3), substituted "the underpayment rate" for "the rate" in closing provisions.

Subsec. (g)(1). Pub. L. 99-514, §251(b), amended par. (1) generally, restating in subpars. (A) to (D) provisions relating to qualified rehabilitated buildings which had in subpar. (A) provided general definition of qualified rehabilitated building, in subpar. (B) directed that 30 years must have elapsed since construction, in subpar. (C) provided general definition of substantially rehabilitated with special rule for phased rehabilitation and application of provision to lessees, and in subpar. (D) provided that rehabilitation included reconstruction, and striking out former subpar. (E) which had provided an alternative test for definition of qualified rehabilitated building.

Subsec. (g)(2). Pub. L. 99-514, §251(b), amended par. (2) generally, in subpar. (A) striking out reference to amounts "incurred after December 31, 1981" in introductory provision, and in cl. (i) substituting subcls. (I) to (IV) for "for real property (or additions or improvements to real property) which have a recovery period (within the meaning of section 168) of 19 (15 years in the case of low-income housing) years," in subpar. (B), in cl. (i), substituting provision relating to use of straight line depreciation for provision relating to use of accelerated methods of depreciation, redesignating former cl. (vi) as (v) and substituting "section 168(h)" for "section 168(j)", redesignating former cl. (v) as (vi) and substituting "less than the recovery period determined under section 168(c)" for "less than 19 years (15 years in the case of low-income housing)", restating subpar. (C) without change, and in subpar. (D) substituting provisions defining nonresidential real property, residential rental property and class life for provisions defining low-income housing.

Subsec. (g)(2)(B)(vi)(I). Pub. L. 99-514, §1802(a)(9)(B), substituted "section 168(j)" for "section 168(j)(3)".

Subsec. (g)(3). Pub. L. 99-514, §251(b), in amending par. (3) generally, inserted introductory phrase "For purposes of this subsection—".

Subsec. (g)(4). Pub. L. 99-514, §251(b), in amending subsec. (g) generally, reenacted par. (4) without change.

Subsec. (b)(5). Pub. L. 99-514, §1847(b)(6), substituted "section 23(c)" for "section 44C(c)" and "section 23(c)(4)(A)(viii)" for "section 44C(c)(4)(A)(viii)".

Subsec. (q)(3). Pub. L. 99-514, §251(c), struck out "other than a certified historic structure" after "qualified rehabilitated building".

Subsec. (q)(7). Pub. L. 99-514, §1809(d)(2), renumbered par. (6), relating to special rule for qualified films, as (7).

Subsec. (r). Pub. L. 99-514, §1879(j)(1), added subsec. (r). Former subsec. (r) redesignated (s).

Subsec. (s). Pub. L. 99-514, §1879(j)(1), redesignated former subsec. (r) as (s).

Subsec. (s)(5). Pub. L. 99-514, §803(b)(2)(B), which directed the general amendment of par. (5) of subsec. (s), was executed by amending par. (5) of subsec. (s) to reflect the probable intent of Congress and the intervening redesignation of subsec. (r) as (s) by Pub. L. 99-514,

§1879(j)(1), see note above. Prior to amendment, par. (5) read as follows: "For purposes of this subsection, the term "sound recording" means any sound recording described in section 280(c)(2)."

1985—Subsec. (g)(2)(A)(i), (B)(v). Pub. L. 99-121 substituted "19" for "18".

1984—Subsec. (a)(5). Pub. L. 98-369, §31(b), amended par. (5) generally, to extend its scope to encompass property used by foreign persons or entities and to create an exception for short-term leases by substituting provisions covered by subpars. (A) to (D) for former provisions which had directed that property used by the United States, any State or political subdivision thereof, any international organization, or any agency or instrumentality of any of the foregoing not be treated as section 38 property, that for purposes of that prohibition the International Telecommunications Satellite Consortium, the International Maritime Satellite Organization, and any successor organization of such Consortium or Organization not be treated as an international organization, and that if any qualified rehabilitated building were used by the governmental unit pursuant to a lease, this paragraph would not apply to that portion of the basis of such building attributable to qualified rehabilitation expenditures.

Subsec. (b). Pub. L. 98-369, §114(a), amended subsec. (b) generally, substituting a general definition of "new section 38 property" for definitions which made reference to property constructed, reconstructed or erected after December 31, 1961, and adding pars. (2) and (3).

Subsec. (c)(2)(A). Pub. L. 98-369, §11(a), substituted "\$125,000 (\$150,000 for taxable years beginning after 1987)" for "\$150,000 (\$125,000 for taxable years beginning in 1981, 1982, 1983, or 1984)" in first sentence, and "\$125,000 (or \$150,000)" for "\$150,000 (or \$125,000)" in two places in second sentence.

Subsec. (c)(2)(B). Pub. L. 98-369, §11(b), substituted "\$62,500 (\$75,000 for taxable years beginning after 1987)" for "\$75,000 (\$62,500 for taxable years beginning in 1981, 1982, 1983, or 1984)".

Subsec. (c)(3)(B). Pub. L. 98-369, §474(o)(10), substituted "section 39" for "section 46(b)".

Subsec. (d)(1)(B). Pub. L. 98-369, §474(o)(11), substituted "section 38(c)(3)(B)" for "section 46(a)(6)".

Subsec. (d)(6). Pub. L. 98-369, §431(c), added par. (6).

Subsec. (f)(3). Pub. L. 98-369, §474(o)(12), struck out par. (3) which provided that the \$25,000 amount specified under subparagraphs (A) and (B) of section 46(a)(3) applicable to an estate or trust be reduced to an amount which bore the same ratio to \$25,000 as the amount of the qualified investment allocated to the estate or trust under paragraph (1) to the entire amount of the qualified investment.

Subsec. (g)(1)(E). Pub. L. 98-369, §1043(a), added subpar. (E).

Subsec. (g)(2)(A)(i). Pub. L. 98-369, §111(e)(8)(A), (B), substituted "real property" for "property" in two places, and "18 (15 years in the case of low-income housing)" for "15".

Subsec. (g)(2)(B)(i). Pub. L. 98-369, §31(c)(2), inserted "The preceding sentence shall not apply to any expenditure to the extent subsection (f)(12) or (j) of section 168 applies to such expenditure."

Subsec. (g)(2)(B)(v). Pub. L. 98-369, §111(e)(8)(C), substituted "18 years (15 years in the case of low-income housing)" for "15 years".

Subsec. (g)(2)(B)(vi). Pub. L. 98-369, §31(c)(1), added cl. (vi).

Subsec. (g)(2)(D). Pub. L. 98-369, §111(e)(8)(D), added subpar. (D).

Subsec. (k)(4). Pub. L. 98-369, §113(b)(3)(B), inserted "or at-risk rules" after "test" in heading.

Subsec. (k)(4)(A). Pub. L. 98-369, §113(b)(3)(A), inserted ", section 46(c)(8), or section 46(c)(9)".

Subsec. (k)(4)(B). Pub. L. 98-369, §113(b)(3)(C), substituted "used" for "issued".

Subsec. (k)(5)(D)(i). Pub. L. 98-369, §721(x)(1), substituted "S corporation" for "electing small business corporation".

Subsec. (l)(1). Pub. L. 98-369, §474(o)(13), substituted "section 46(b)(2)" for "section 46(a)(2)(C)".

Subsec. (l)(16)(B)(i). Pub. L. 98-369, §735(c)(1), substituted "the chassis of which is an automobile bus chassis and the body of which is an automobile bus body" for "the chassis and body of which is exempt under section 4063(a)(6) from the tax imposed by section 4061(a)".

Subsec. (m). Pub. L. 98-369, §474(o)(14), substituted "subsection (b)" for "subsection (a)(2)".

Subsec. (n). Pub. L. 98-369, §474(o)(15), repealed subsec. (n). For continuing applicability of par. (4) of subsec. (n), see section 474(o)(15) of Pub. L. 98-369, set out in Effective Date of 1984 Amendment note below.

Subsec. (o)(3) to (8). Pub. L. 98-369, §474(o)(16), redesignated par. (8) as (3) and struck out former pars. (3) to (7) which defined "employee plan credit", "basic employee plan credit", "matching employee plan credit", "basic employee plan percentage", and "matching employee plan percentage", respectively.

Subsec. (q)(1), (3). Pub. L. 98-369, §474(o)(17)(A), substituted "section 46(a)" for "section 46(a)(2)".

Subsec. (q)(4)(A)(i). Pub. L. 98-369, §474(o)(17), substituted "section 46(a)" for "section 46(a)(2)" and "section 46(b)(1)" for "section 46(a)(2)(B)".

Subsec. (q)(4)(B)(ii). Pub. L. 98-369, §474(o)(17)(B), substituted "section 46(b)(1)" for "section 46(a)(2)(B)".

Subsec. (q)(6). Pub. L. 98-369, §712(b), added par. (6) relating to adjustment in basis of interest in partnership or S corporation.

Pub. L. 98-369, §113(b)(4), added par. (6) relating to special rule for qualified films.

Subsec. (r). Pub. L. 98-369, §113(a)(1), added subsec. (r). Former subsec. (r) redesignated (s).

Pub. L. 98-369, §474(o)(18), substituted "section 381(c)(26)" for "section 381(c)(23)".

Subsec. (s). Pub. L. 98-369, §113(a)(1), redesignated former subsec. (r) as (s).

1983—Subsec. (a)(1)(G). Pub. L. 97-448, §102(e)(2)(A), inserted "(not including a building and its structural components) used in connection" after "storage facility".

Subsec. (a)(10). Pub. L. 97-448, §202(c), amended directory language of Pub. L. 96-223, §223(a)(1), to correct an error, and did not involve any change in text. See 1980 Amendment note below.

Subsec. (g)(1)(C)(i). Pub. L. 97-448, §102(f)(2), (6), substituted "the 24-month period selected by the taxpayer (at the time and in the manner prescribed by regulation) and ending with or within the taxable year" for "the 24-month period ending on the last day of the taxable year" in provisions preceding subcl. (I), substituted "adjusted basis of such building (and its structural components)" for "adjusted basis of such property" both in subcl. (I) and in provision following subcl. (II), and, in provisions following subcl. (II), substituted "holding period of the building" for "holding period of the property" and inserted provision that, for purposes of the preceding sentence, the determination of the beginning of the holding period shall be made without regard to any reconstruction by the taxpayer in connection with the rehabilitation.

Subsec. (g)(5)(A). Pub. L. 97-448, §102(f)(3), substituted "a credit is determined under section 46(a)(2)" for "a credit is allowed under this section" and "the credit so determined" for "the credit so allowed". See 1982 Amendment note for subsec. (g)(5) below and see Effective Date of 1982 and 1983 Amendment notes set out under sections 1 and 196 of this title.

Subsec. (l)(5). Pub. L. 97-424, §546(a)(3), substituted reference to subpar. (N) for reference to subpar. (M) in provision following subparagraphs.

Subsec. (l)(5)(M), (N). Pub. L. 97-424, §546(a)(1), (2), added subpar. (M) and redesignated former subpar. (M) as (N).

Subsec. (q)(3). Pub. L. 97-448, §306(a)(3), substituted "paragraphs (1) and (2) of this subsection and paragraph (5) of subsection (d)" for "paragraphs (1) and (2)".

1982—Subsec. (b). Pub. L. 97-248, §209(c), inserted provision that for purposes of determining whether section 38 property subject to a lease is new section 38 property, such property shall be treated as originally placed

in service not earlier than the date such property is used under the lease, but only if such property is leased within 3 months after such property is placed in service.

Subsec. (c)(2)(D). Pub. L. 97-354 substituted "Partnerships and S corporations" for "Partnerships" in subpar. heading, and inserted "A similar rule shall apply in the case of an S corporation and its shareholders".

Subsec. (d)(5). Pub. L. 97-248, § 205(a)(4), added par. (5).

Subsec. (e). Pub. L. 97-354, § 5(a)(7), struck out subsec. (e) relating to apportionment among shareholders of qualified investments by an electing small business corporation.

Subsec. (g)(5). Pub. L. 97-248, § 205(a)(5)(A), struck out par. (5) which, as amended by § 102(f)(3) of Pub. L. 97-448, had provided that for purposes of this subtitle, if a credit were determined under section 46(a)(2) for any qualified rehabilitation expenditure in connection with a qualified rehabilitated building other than a certified historic structure, the increase in basis of such property which would (but for this paragraph) have resulted from such expenditure had to be reduced by the amount of the credit so determined, that if during any taxable year there was a recapture amount determined with respect to any qualified rehabilitated building the basis of which was reduced under subpar. (A), the basis of such building (immediately before the event resulting in such recapture), had to be increased by an amount equal to such recapture amount, and that for purposes of this paragraph "recapture amount" was defined as any increase in tax (or adjustment in carrybacks or carryovers) determined under section 47(a)(5). See 1983 Amendment note for subsec. (g)(5) above and see Effective Date of 1982 and 1983 Amendment notes set out under sections 1 and 196 of this title.

Subsec. (k)(5)(D)(i). Pub. L. 97-354, § 5(a)(8), substituted "an S corporation" for "an electing small business corporation (within the meaning of section 1371)".

Subsec. (l)(7). Pub. L. 97-362, § 104(a), temporarily substituted the qualification that such term does not include equipment for hydrogenation, refining, or other process subsequent to retorting other than hydrogenation or other process which is applied in the vicinity of the property from which the shale was extracted and which is applied to bring the shale oil to a grade and quality suitable for transportation to and processing in a refinery, for the qualification that such equipment did not include equipment for hydrogenation, refining, or other processes subsequent to retorting. See Effective and Termination Dates of 1982 Amendment note below.

Subsecs. (q), (r). Pub. L. 97-248, § 205(a)(1), added subsec. (q) and redesignated former subsec. (q) as (r).

1981—Subsec. (a)(1). Pub. L. 97-34, § 211(e)(4), in provisions following subpar. (G), substituted "Such term includes only recovery property (within the meaning of section 168 without regard to any useful life) and any other property" for "Such term includes only property".

Subsec. (a)(1)(G). Pub. L. 97-34, § 211(c), added subpar. (G).

Subsec. (a)(2)(B)(ii). Pub. L. 97-34, § 211(h), designated existing provisions as subcl. (I) and added subcl. (II).

Subsec. (a)(3)(D). Pub. L. 97-34, § 212(c), added subpar. (D).

Subsec. (a)(4). Pub. L. 97-34, § 214(a), inserted provision that, if any qualified rehabilitated building is used by the tax-exempt organization pursuant to a lease, this paragraph shall not apply to that portion of the basis of such building which is attributable to qualified rehabilitation expenditures.

Subsec. (a)(5). Pub. L. 97-34, § 214(b), inserted provision that, if any qualified rehabilitated building is used by the governmental unit pursuant to a lease, this paragraph shall not apply to that portion of the basis of such building which is attributable to qualified rehabilitation expenditures.

Subsec. (a)(8). Pub. L. 97-34, § 212(d)(2)(A), substituted "or 188" for "188, or 191".

Subsec. (a)(9). Pub. L. 97-34, § 211(a)(2), struck out par. (9) which set out a special rule for the depreciation of railroad track.

Subsec. (c)(2)(A) to (C). Pub. L. 97-34, § 213(a), amended subpars. (A) to (C) generally raising in subpar. (A) the existing \$100,000 dollar limitation to \$125,000 in 1981 and to \$150,000 in 1985 and in subpar. (B) the existing \$50,000 dollar limitation to \$62,500 in 1981 and to \$75,000 in 1985.

Subsec. (g). Pub. L. 97-34, § 212(b), in amending subsec. (c) generally incorporated the concept of "substantial rehabilitation" into par. (1)(A), substituted "30 years" for "20 years" as the requisite period in par. (1)(B), substituted a definition of "substantially rehabilitated" for former provisions that a major portion could be treated as a separate building in certain cases in par. (1)(C), reenacted par. (1)(D) without change, substituted "December 31, 1981" for "October 31, 1978" in provisions of par. (2)(A) preceding cl. (i), substituted provisions for a recovery period of 15 years for provisions that had provided for a useful life of 5 years or more in cl. (i) of par. (2)(A), reenacted cl. (ii) without change, substituted provisions that accelerated methods of depreciation may not be used for provisions relating to property otherwise section 38 property in cl. (i) of par. (2)(B), reenacted cls. (ii) and (iii) without change, revised the provisions of cl. (iv) relating to certified historic structures, and added cl. (v) relating to expenditures of lessees, added par. (3), redesignated former par. (3) as (4), and added par. (5).

Subsec. (l)(2)(C). Pub. L. 97-34, § 211(e)(3), inserted "or which is recovery property (within the meaning of section 168)" after "3 years or more".

Subsec. (n)(1)(A)(i). Pub. L. 97-34, § 332(b), substituted "which does not exceed" for "equal to".

Subsec. (o)(8). Pub. L. 97-34, § 212(a)(3), added par. (8).

1980—Subsec. (a)(1). Pub. L. 96-451 added subpar. (F) and provision for treatment of the useful life of subpar. (F) property as its normal growing period.

Subsec. (a)(2)(B)(xi). Pub. L. 96-223, § 222(i)(2), added cl. (xi).

Subsec. (a)(5). Pub. L. 96-605, § 109(a), included the International Maritime Satellite Organization or any successor organization within organizations not to be treated as international organizations.

Subsec. (a)(7)(B). Pub. L. 95-600, § 312(c)(2), as amended by Pub. L. 96-222, § 103(a)(2)(A), substituted "described in section 50 (as in effect before its repeal by the Revenue Act of 1978)" for "described in section 50".

Subsec. (a)(10)(A). Pub. L. 96-223, § 223(a)(1), as amended by Pub. L. 97-448, § 202(c), provided that "petroleum or petroleum products" does not include petroleum coke or petroleum pitch.

Subsec. (a)(10)(B). Pub. L. 96-222, § 108(c)(6), substituted "5" for "51".

Subsec. (g)(2)(B)(i). Pub. L. 96-222, § 103(a)(4)(B), substituted "subsections (a)(1)(E) and (l)" for "subsection (a)(1)(E)".

Subsec. (l)(1). Pub. L. 96-223, § 221(b)(1), substituted "For any period for which the energy percentage determined under section 46(a)(2)(C) for any energy property is greater than zero" for "For the period beginning on October 1, 1978, and ending on December 31, 1982" in provisions preceding subpar. (A) and, in subpars. (A) and (B), substituted "such energy property" and "such property" for "any energy property".

Subsec. (l)(2)(A). Pub. L. 96-223, § 222(a), added cls. (vii), (viii), and (ix).

Subsec. (l)(3)(A). Pub. L. 96-223, § 222(b), (g)(2), struck out "(other than coke or coke gas)" after "solid fuel" in cl. (iii) and, in cl. (v), substituted provisions relating to equipment which converts coal into a substitute for a petroleum or natural gas derived feedstock for the manufacture of chemicals or other products and equipment which converts coal into methanol, ammonia, or hydroprocessed coal liquid or solid for provisions which had related simply to equipment which used coal as feedstock for the manufacture of chemicals or other products other than coke or coke gas, added cl. (ix), and, following cl. (ix), inserted provision that the

equipment described in cl. (vii) includes equipment used for the storage of fuel derived from garbage at the site at which such fuel was produced from garbage.

Subsec. (l)(3)(B). Pub. L. 96-223, § 222(i)(1)(A), redesignated subpar. (C) as (B). Former subpar. (B), which excluded public utility property from the terms “alternative energy property”, “solar or wind energy property”, or “recycling equipment”, was struck out.

Subsec. (l)(3)(C), (D). Pub. L. 96-223, § 222(i)(1)(A), (3), redesignated subpar. (D) as (C) and inserted following cl. (i) provision that, for the purposes of the preceding sentence, in the case of property which is alternative energy property solely by reason of the amendments made by section 222(b) of the Crude Oil Windfall Profit Tax Act of 1980, “January 1, 1980” was to be substituted for “October 1, 1978”. Former subpar. (C) redesignated (B).

Subsec. (l)(4)(C). Pub. L. 96-223, § 222(c), added subpar. (C).

Subsec. (l)(5). Pub. L. 96-223, § 222(d), added subpar. (L), redesignated former subpar. (L) as (M), and inserted provision that the Secretary shall not specify any property under subpar. (M) unless he determines that such specification meets the requirements of par. (9) of section 44C(c) for specification of items under section 44C(c)(4)(A)(viii).

Subsec. (l)(11). Pub. L. 96-223, § 221(b)(2), substituted “one-half of the energy percentage determined under section 46(a)(2)(C)” for “5 percent”.

Pub. L. 96-223, § 223(c)(1), completely revised par. (11) to incorporate property financed by subsidized energy financing, effective with regard to periods after Dec. 31, 1982. Prior to the revision par. (11) read as follows: “In the case of property which is financed in whole or in part by the proceeds of an industrial development bond (within the meaning of section 103(b)(2)) the interest on which is exempt from tax under section 103, the energy percentage shall be one-half of the energy percentage determined under section 46(a)(2)(C).”

Subsec. (l)(13). Pub. L. 96-223, § 222(e)(1), added par. (13).

Subsec. (l)(14). Pub. L. 96-223, § 222(f), added par. (14).

Subsec. (l)(15). Pub. L. 96-223, § 222(g)(1), added par. (15).

Subsec. (l)(16). Pub. L. 96-223, § 222(h), added par. (16).

Subsec. (l)(17). Pub. L. 96-223, § 222(i)(1)(B), added par. (17).

Subsec. (n). Pub. L. 96-222, § 101(a)(7)(G), (H), (L)(i)(I)-(IV), (ii)(III)-(VI), (iii)(II), (v)(II)-(IV), (M)(ii), amended subsec. (n) generally to reflect the renaming of an investment tax credit ESOP to a tax credit employee stock ownership plan and a leveraged employee stock ownership plan (commonly referred to as an ESOP) to an employee stock ownership plan.

Subsec. (n)(6)(B)(i). Pub. L. 96-605, § 223(a), substituted “the date on which the securities are contributed to the plan” for “the due date for filing the return for the taxable year (determined with regard to extensions)”.

Subsec. (o). Pub. L. 96-222, § 101(a)(7)(L)(iii)(III), (v)(IV), (V), (M)(iii), substituted “employee plan” for “ESOP” wherever appearing and inserted “percentage” after “attributable to the matching employee plan” in par. (5).

1978—Subsec. (a)(1)(A). Pub. L. 95-618, § 301(d)(1), inserted “(other than an air conditioning or heating unit)” after “personal property”.

Subsec. (a)(1)(D). Pub. L. 95-600, § 314(a), added par. (D).

Subsec. (a)(1)(E). Pub. L. 95-600, § 315(a), added par. (E).

Subsec. (a)(2)(B)(ii). Pub. L. 95-473, § 2(a)(2)(A), substituted “providing transportation subject to subchapter I of chapter 105 of title 49” for “subject to part I of the Interstate Commerce Act”.

Subsec. (a)(7)(A). Pub. L. 95-600, § 312(c)(3), struck out “(other than pretermination property)” after “Property”.

Subsec. (a)(7)(B). Pub. L. 95-600, § 312(c)(2), struck out “described in section 50” after “with respect to property”. See 1980 Amendment note above.

Subsec. (a)(8). Pub. L. 95-600, § 315(c), substituted “188, or 191” for “or 188”.

Subsec. (a)(10). Pub. L. 95-618, § 301(d)(2), added par. (10).

Subsec. (d)(1)(B). Pub. L. 95-600, § 703(a)(3), substituted “section 46(a)(6)” for “section 46(a)(5)”.

Subsec. (d)(4)(D). Pub. L. 95-600, § 703(a)(4), substituted “section 57(c)(1)(B)” for “section 57(c)(2)”.

Subsec. (g). Pub. L. 95-600, § 315(b), added subsec. (g).

Subsec. (h). Pub. L. 95-600, § 312(c)(1), struck out subsec. (h) which related to suspension of investment credit.

Subsec. (i). Pub. L. 95-600, § 312(c)(1), struck out subsec. (i) which related to an exemption from suspension of \$20,000 of investment.

Subsec. (j). Pub. L. 95-600, § 312(c)(1), struck out subsec. (j) which defined “suspension period”.

Subsecs. (l), (m). Pub. L. 95-618, § 301(b), added subsecs. (l) and (m) and redesignated former subsec. (l) as (n).

Subsec. (n). Pub. L. 95-618, § 301(b), redesignated former subsec. (l) as (n).

Pub. L. 95-600, § 141(b), added subsec. (n). Former subsec. (n) redesignated (p).

Subsec. (o). Pub. L. 95-600, § 141(b), added subsec. (o).

Subsecs. (p), (q). Pub. L. 95-600, §§ 141(b), 314(b), added subsec. (p). Former subsec. (n) redesignated (p) and subsequently as (q).

1976—Subsec. (a)(2)(B)(vi). Pub. L. 94-455, § 1901(a)(5)(A), substituted “(43 U.S.C. 1331)” for “; 43 U.S.C., sec. 1331”.

Subsec. (a)(2)(B)(vii). Pub. L. 94-455, § 1051(h)(1), substituted “(other than a corporation which has an election in effect under section 936 or which is entitled to the benefits of section 934(b))” for “(other than a corporation entitled to the benefits of section 931 or 934(b))”.

Subsec. (a)(2)(B)(viii). Pub. L. 94-455, § 1901(a)(5)(B), substituted “47 U.S.C. 702” for “47 U.S.C., sec. 702”.

Subsec. (a)(8). Pub. L. 94-455, §§ 1901(b)(11)(A), 2112(a)(1), struck out “169,” after “section 167(k),”, “187,” before “or 188 applies”, and provisions relating to the limitation of the applicability of this paragraph on property to which section 169 applies.

Subsecs. (c)(2)(A), (d)(1), (2)(A). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (f). Pub. L. 94-455, § 802(b)(6), substituted “section 46(a)(3)” for “section 46(a)(2)”.

Subsec. (i)(2). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsecs. (k), (l). Pub. L. 94-455, § 804(a), added subsec. (k) and redesignated former subsec. (k) as subsec. (l).

1975—Subsec. (a)(2)(B). Pub. L. 94-12, § 604(a), substituted “territorial waters within the northern portion of the Western Hemisphere” for “territorial waters” in cl. (x) and inserted definition of “northern portion of the Western Hemisphere” following cl. (x).

Subsec. (c)(2)(A). Pub. L. 94-12 § 301(c)(1)(A), substituted “\$100,000” for “\$50,000”.

Subsec. (c)(2)(B). Pub. L. 94-12, § 301(c)(1)(A), (B), substituted “\$50,000” for “\$25,000” and “\$100,000” for “\$50,000”.

Subsec. (c)(2)(C). Pub. L. 94-12, § 301(c)(1)(A), substituted “\$100,000” for “\$50,000”.

Subsec. (d)(1), (2)(A). Pub. L. 94-12, § 302(c)(3), substituted “section 46(e)(1)” for “section 46(d)(1)”.

1971—Subsec. (a)(1). Pub. L. 92-178, § 102(a)(2), substituted “3 years” for “4 years” in second sentence.

Subsec. (a)(1)(B)(ii), (iii). Pub. L. 92-178, § 104(a)(1), substituted “research facility” for “research or storage facility” in cl. (ii) and added cl. (iii).

Subsec. (a)(2)(B). Pub. L. 92-178, § 104(c)(2), (3), (d), added cls. (viii) to (x), respectively.

Subsec. (a)(3)(C). Pub. L. 92-178, § 104(b), added subpar. (C).

Subsec. (a)(5). Pub. L. 92-178, § 104(c)(1), inserted “(other than the International Telecommunications Satellite Consortium or any successor organization)” after “international organization”.

Subsec. (a)(6). Pub. L. 92-178, §104(e), substituted provisions for treatment of livestock (other than horses) acquired by the taxpayer as section 38 property, with exception provision for reduction of acquisition cost by amount equal to amount realized on sale or other disposition under certain circumstances, and for nontreatment of horses as section 38 property for former provision that livestock shall not be treated as section 38 property.

Subsec. (a)(7) to (9). Pub. L. 92-178, §§103, 104(f)(1), (g), added pars. (7) to (9), respectively.

Subsec. (d). Pub. L. 92-178, §108(b) and (c), substituted "section 46(d)(1)" for "section 46(d)"; and designated as par. (1) the present first sentence, redesignated as subpars. (A) and (B) provisions formerly designated cls. (1) and (2), again substituted "section 46(d)(1)" for "section 46(d)" in par. (1) and inserted "(other than property described in paragraph (4))" in par. (1), added pars. (2) and (4), incorporated provisions of former second, third, and fourth sentences in provisions designated as par. (3), substituted in par. (3) "the lessee shall be treated for all purposes of this subpart as having acquired a fractional portion of such property equal to the fraction determined under paragraph (2)(B) with respect to such property" for "the lessee shall be treated for all purposes of this subpart as having acquired such property", and struck out former fifth and sixth sentences respecting election regarding treatment of leases of suspension period property and section 38 property. See Effective Date of 1971 Amendment note below.

1969—Subsec. (a)(4). Pub. L. 91-172, §121(d)(2)(A), inserted provision relating to the percentage of the basis or cost of debt-financed property that may be considered in computing qualified investment under section 46(c) of this title.

Subsec. (c)(2)(C). Pub. L. 91-172, §401(e)(2), reenacted subpar. (C) with minor changes and substituted reference to controlled group for reference to affiliated group.

Subsec. (c)(3)(C). Pub. L. 91-172, §401(e)(3), substituted definition of controlled group for definition of affiliated group.

Subsec. (d)(2). Pub. L. 91-172, §401(e)(4), substituted reference to a component member of a controlled group for reference to a member of an affiliated group.

1967—Subsec. (a)(2)(B)(i). Pub. L. 90-26, §3, inserted "or is operated under contract with the United States" after "the United States".

Subsec. (h)(2). Pub. L. 90-26, §2(a), limited definition of suspension period property to section 38 property where the physical construction, reconstruction or erection was begun before May 24, 1967, pursuant to an order placed during the suspension period, subject to the proviso that in applying the definition to property the physical construction, reconstruction or erection of which was begun before May 24, 1967, only that portion of the basis properly attributable to construction, reconstruction or erection before May 24, 1967 be taken into account.

Subsec. (j). Pub. L. 90-26, §1, substituted "March 9, 1967" for "December 31, 1967".

1966—Subsec. (a)(2)(B). Pub. L. 89-809 added cl. (vii).

Subsec. (d). Pub. L. 89-800, §1(b), inserted provisions covering the treatment of suspension period property, and the elections to be deemed made in connection therewith.

Subsecs. (h) to (k). Pub. L. 89-800, §1(a), added subsecs. (h) to (j) and redesignated former subsec. (h) as (k).

1964—Subsec. (a)(1)(C). Pub. L. 88-272, §203(c)(2), added subpar. (C).

Subsec. (d). Pub. L. 88-272, §203(a)(3)(A), (b), substituted "except as provided in paragraph (2)" for "if such property was constructed by the lessor (or by a corporation which controls or is controlled by the lessor within the meaning of section 368(c))" in par. (1), "if such property is leased by a corporation which is a member of an affiliated group (within the meaning of section 46(a)(5) to another corporation which is a member of the same affiliated group" for "if paragraph (1)

does not apply" in par. (2), and deleted provisions which stated that if a lessor made an election under this subsection, subsec. (g) would not apply with respect to such property, and deductions otherwise allowable under section 162 to the lessee for amounts paid the lessor would be adjusted consistent with subsec. (g).

Subsec. (g). Pub. L. 88-272, §203(a)(1), repealed subsec. (g) which required that the basis of section 38 property be reduced by 7 percent of the qualified investment.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-5, div. B, title I, §1102(b), Feb. 17, 2009, 123 Stat. 320, provided that: "The amendments made by this section [amending this section] shall apply to facilities placed in service after December 31, 2008."

Amendment by section 1103(a), (b)(1) of Pub. L. 111-5 applicable to periods after Dec. 31, 2008, under rules similar to the rules of subsec. (m) of this section as in effect on the day before Nov. 5, 1990, see section 1103(c)(1) of Pub. L. 111-5, set out as a note under section 25C of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. B, title I, §103(f), Oct. 3, 2008, 122 Stat. 3813, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 38 of this title] shall take effect on the date of the enactment of this Act [Oct. 3, 2008].

"(2) ALLOWANCE AGAINST ALTERNATIVE MINIMUM TAX.—The amendments made by subsection (b) [amending section 38 of this title] shall apply to credits determined under section 46 of the Internal Revenue Code of 1986 in taxable years beginning after the date of the enactment of this Act and to carrybacks of such credits.

"(3) COMBINED HEAT AND POWER AND FUEL CELL PROPERTY.—The amendments made by subsections (c) and (d) [amending this section] shall apply to periods after the date of the enactment of this Act, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990]).

"(4) PUBLIC UTILITY PROPERTY.—The amendments made by subsection (e) [amending this section] shall apply to periods after February 13, 2008, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)."

Pub. L. 110-343, div. B, title I, §104(e), Oct. 3, 2008, 122 Stat. 3814, provided that: "The amendments made by this section [amending this section] shall apply to periods after the date of the enactment of this Act [Oct. 3, 2008], in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990])."

Pub. L. 110-343, div. B, title I, §105(b), Oct. 3, 2008, 122 Stat. 3814, provided that: "The amendments made by this section [amending this section] shall apply to periods after the date of the enactment of this Act [Oct. 3, 2008], in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990])."

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-58, title XIII, §1336(e), Aug. 8, 2005, 119 Stat. 1038, provided that: "The amendments made by this section [amending this section] shall apply to periods after December 31, 2005, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990])."

Pub. L. 109-58, title XIII, §1337(d), Aug. 8, 2005, 119 Stat. 1038, provided that: "The amendments made by this section [amending this section] shall apply to periods after December 31, 2005, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990])."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 322(d)(2)(A), (B) of Pub. L. 108-357 applicable with respect to expenditures paid or incurred after Oct. 22, 2004, see section 322(e) of Pub. L. 108-357, set out as a note under section 46 of this title.

Amendment by section 710(e) of Pub. L. 108-357 applicable, except as otherwise provided, to electricity produced and sold after Oct. 22, 2004, in taxable years ending after such date, see section 710(g) of Pub. L. 108-357, as amended, set out as a note under section 45 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1916(b) of Pub. L. 102-486 provided that: "The amendments made by this section [amending this section] shall take effect on June 30, 1992."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(a) of Pub. L. 101-508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101-508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the amendment by section 803(b)(2)(B) of Pub. L. 99-514 is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99-514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101-239, set out as an Effective Date note under section 263A of this title.

Amendment by section 251(b), (c) of Pub. L. 99-514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided for certain rehabilitations, see section 251(d) of Pub. L. 99-514, set out as a note under section 46 of this title.

Amendment by section 701(e)(4)(C) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99-514, set out as an Effective Date note under section 55 of this title.

Amendment by section 803(b)(2)(B) of Pub. L. 99-514 applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99-514, set out as an Effective Date note under section 263A of this title.

Amendment by sections 1272(d)(5) and 1275(c)(5) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99-514, set out as a note under section 931 of this title.

Amendment by section 1511(c)(3) of Pub. L. 99-514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99-514, set out as a note under section 47 of this title.

Section 1879(j)(2) of Pub. L. 99-514 provided that: "The amendments made by this subsection [amending this section] shall apply to periods after December 31, 1978 (under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1954 [now 1986]), in taxable years ending after such date."

Section 1881 of title XVIII of Pub. L. 99-514 provided that: "Except as otherwise provided in this subtitle, any amendment made by this subtitle [subtitle A (§§1801-1881) of title XVIII of Pub. L. 99-514, see Tables for classification] shall take effect as if included in the provision of the Tax Reform Act of 1984 [Pub. L. 98-369, div. A] to which such amendment relates."

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-121 applicable with respect to property placed in service by the taxpayer after May 8, 1985, with specified exceptions, but amendment of subsec. (g)(2)(B)(v) not applicable to leases entered into before May 22, 1985, if the lessee signed the lease before May 17, 1985, see section 105(b)(1), (5) of Pub. L. 99-121, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 18 of Pub. L. 98-369 provided that:

"(a) GENERAL RULE.—The amendments made by this part [part I (§§11-18) of subtitle A of title I of div. A of Pub. L. 98-369, amending this section and sections 41, 46, 57, 128, 168, 179, 265, 415, 854, 857, and 911 of this title, enacting provisions set out as a note under section 168 of this title, and amending provisions set out as notes under sections 128 and 168 of this title] shall apply to taxable years ending after December 31, 1983.

"(b) SPECIAL RULE FOR SECTION 14.—The amendment made by section 14 [amending section 41 of this title] shall not apply in the case of a tax credit employee stock ownership plan if—

"(1) such plan was favorably approved on September 23, 1983, by employees, and

"(2) not later than January 11, 1984, the employer of such employees was 100 percent owned by such plan."

Amendment by section 31(b), (c)(1) of Pub. L. 98-369 effective, except as otherwise provided in section 31(g) of Pub. L. 98-369, as to property placed in service by the taxpayer after May 23, 1983, in taxable years ending after such date and to property placed in service by the taxpayer on or before May 23, 1983, if the lease to the tax-exempt entity is entered into after May 23, 1983, and amendment by section 31(c)(2) of Pub. L. 98-369, to the extent it relates to section 168(f)(12) of this title, effective as if it had been included in the amendments to section 168 of this title by section 216(a) of Pub. L. 97-248, see section 31(g)(1), (12) of Pub. L. 98-369, set out as a note under section 168 of this title.

Amendment by section 111(e)(8) of Pub. L. 98-369 applicable with respect to property placed in service by the taxpayer after Mar. 15, 1984, subject to certain exceptions, see section 111(g) of Pub. L. 98-369, set out as a note under section 168 of this title.

Amendment by section 113(b)(3) of Pub. L. 98-369 applicable as if included in the amendments made by sections 201(a), 211(a)(1), and 211(f)(1) of Pub. L. 97-34, which enacted section 168 and amended section 46 of this title, see section 113(c)(2)(B) of Pub. L. 98-369, set out as a note under section 168 of this title.

Amendment by section 113(b)(4) of Pub. L. 98-369 applicable as if included in the amendments made by section 205(a)(1) of Pub. L. 97-248, see section 113(c)(2)(C) of Pub. L. 98-369, set out as a note under section 168 of this title.

Section 113(c)(1) of Pub. L. 98-369 provided that: "The amendments made by subsection (a) [amending this section and section 168 of this title] shall apply to property placed in service after March 15, 1984, in taxable years ending after such date."

Section 114(b) of Pub. L. 98-369 provided that: "The amendment made by this section [amending this section] shall apply to property originally placed in service after April 11, 1984 (determined without regard to such amendment)."

Amendment by section 431(c) of Pub. L. 98-369 applicable to property placed in service after July 18, 1984, in taxable years ending after such date, but not applicable to property to which sections 46(c)(8), (9) and 47(d) of this title, as enacted by section 211(f) of Pub. L. 97-34, do not apply, with the taxpayer having an option to elect retroactive application of amendment by Pub. L. 98-369, see section 431(e) of Pub. L. 98-369, set out as a note under section 46 of this title.

Amendment by section 474(o)(10)-(18) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Section 474(o)(15) of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Subsection (n) of section 48 (relating to requirements for allowance of employee plan percentage) is hereby repealed; except that paragraph (4) of section 48(n) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before its repeal by this paragraph) shall continue to apply in the case of any recapture under section 47(f) of such Code of a credit allowable for a taxable year beginning before January 1, 1984."

Amendment by section 712(b) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Amendment by section 721(x)(1) of Pub. L. 98-369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97-354, see section 721(y)(1) of Pub. L. 98-369, set out as a note under section 1361 of this title.

Amendment by section 735(c)(1) of Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

Section 1043(b) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section] shall apply to expenditures incurred after December 31, 1983, in taxable years ending after such date."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by title I of Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

Amendment by section 202(c) of Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. 96-223 to which such amendment relates, see section 203(a) of Pub. L. 97-448, set out as a note under section 6652 of this title.

Amendment by section 306(a)(3) of Pub. L. 97-448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 311(d) of Pub. L. 97-448, set out as a note under section 31 of this title.

EFFECTIVE AND TERMINATION DATES OF 1982 AMENDMENTS

Section 104(b) of Pub. L. 97-362, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by this section [amending this section] shall apply to periods beginning after December 31, 1980, and before January 1, 1983, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]."

Amendment by Pub. L. 97-354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97-354, set out as an Effective Date note under section 1361 of this title.

Amendment by section 205(a)(1), (4), (5)(A) of Pub. L. 97-248, applicable to periods after Dec. 31, 1982, under rules similar to the rules of subsec. (m) of this section, with certain exceptions and qualifications, see section 205(c)(1) of Pub. L. 97-248, set out as an Effective Date note under section 196 of this title.

Amendment by section 209(c) of Pub. L. 97-248 applicable to property placed in service after Dec. 31, 1983, but not to qualified leased property described in section 168(f)(8)(D)(v) of this title which is placed in service before Jan. 1, 1988, or is placed in service after such date pursuant to a binding contract or commitment entered into before April 1, 1983, and solely because of conditions which, as determined by the Secretary of the Treasury or his delegate, are not within the control of the lessor or lessee, see sections 208(d)(5) and 209(d)(2) of Pub. L. 97-248, set out as notes under section 168 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 213(b) of Pub. L. 97-34, as amended by Pub. L. 97-448, title I, §102(g), Jan. 12, 1983, 96 Stat. 2372, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1980."

Section 214(c) of Pub. L. 97-34 provided that: "The amendments made by this section [amending this section] shall apply to uses after July 29, 1980, in taxable years ending after such date."

Section 332(c)(2) of Pub. L. 97-34 provided that: "The amendment made by subsection (b) [amending this section] shall apply to qualified investments made after December 31, 1981."

Amendment by section 211(a)(2), (e)(3), (4) of Pub. L. 97-34 applicable to property placed in service after Dec. 31, 1980, see section 211(i)(1) of Pub. L. 97-34, set out as a note under section 46 of this title.

Amendment by section 211(c) of Pub. L. 97-34 applicable to periods after Dec. 31, 1980, under rules similar to the rules under subsec. (m) of this section, see section 211(i)(3) of Pub. L. 97-34, set out as a note under section 46 of this title.

Amendment by section 211(h) of Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1980, see section 211(i)(6) of Pub. L. 97-34, set out as a note under section 46 of this title.

Amendment by section 212(a)(3), (b), (c), (d)(2)(A) of Pub. L. 97-34 applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after such date, see section 212(e) of Pub. L. 97-34, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 109(b) of Pub. L. 96-605 provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1979."

Section 223(b) of Pub. L. 96-605 provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1980."

Section 302(b) of Pub. L. 96-451 provided that: "The amendments made by this section [amending this section] shall apply with respect to additions to capital account made after December 31, 1979."

Section 222(j) of Pub. L. 96-223, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 46 of this title] shall apply to periods after December 31, 1979, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]."

"(2) ALUMINA ELECTROLYTIC CELLS.—The amendments made by subsection (d)(1) [amending this section] shall

apply to periods after September 30, 1978, under rules similar to the rules of section 48(m) of such Code."

Section 223(a)(2) of Pub. L. 96-223, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to periods after December 31, 1979, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]."

Section 223(c)(2) of Pub. L. 96-223, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by paragraph (1) [amending this section] shall apply to periods after December 31, 1982, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]."

"(B) EARLIER APPLICATION FOR CERTAIN PROPERTY.—In the case of property which is—

"(i) qualified hydroelectric generating property (described in section 48(l)(2)(A)(vii) of such Code),

"(ii) cogeneration equipment (described in section 48(l)(2)(A)(viii) of such Code),

"(iii) qualified intercity buses (described in section 48(l)(2)(A)(ix) of such Code),

"(iv) ocean thermal property (described in section 48(l)(3)(A)(ix) of such Code), or

"(v) expanded energy credit property,

the amendment made by paragraph (1) shall apply to periods after December 31, 1979, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986.

"(C) EXPANDED ENERGY CREDIT PROPERTY.—For purposes of subparagraph (B), the term 'expanded energy credit property' means—

"(i) property to which section 48(l)(3)(A) of such Code applies because of the amendments made by paragraphs (1) and (2) of section 222(b) [amending this section],

"(ii) property described in section 48(l)(4)(C) of such Code (relating to solar process heat),

"(iii) property described in section 48(l)(5)(L) of such Code (relating to alumina electrolytic cells), and

"(iv) property described in the last sentence of section 48(l)(3)(A) of such Code (relating to storage equipment for refuse-derived fuel).

"(D) FINANCING TAKEN INTO ACCOUNT.—For the purpose of applying the provisions of section 48(l)(11) of such Code in the case of property financed in whole or in part by subsidized energy financing (within the meaning of section 48(l)(11)(C) of such Code), no financing made before January 1, 1980, shall be taken into account. The preceding sentence shall not apply to financing provided from the proceeds of any tax exempt industrial development bond (within the meaning of section 103(b)(2) of such Code)."

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

Section 108(c)(7) of Pub. L. 96-222 provided that: "Any amendment made by this subsection [amending sections 4071, 4221, 6416, and 6421 of this title] shall take effect as if included in the provision of the Energy Tax Act of 1978 [See Short Title of 1978 Amendment note set out under section 1 of this title] to which such amendment relates; except that the amendment made by paragraph (6) [amending this section] shall take effect on the first day of the first calendar month which begins more than 10 days after the date of the enactment of this Act [Apr. 1, 1980]."

EFFECTIVE DATE OF 1978 AMENDMENTS

Section 301(d)(4) of Pub. L. 95-618 provided that:

"(A) IN GENERAL.—The amendments made by this subsection [amending this section and section 167 of this title] shall apply to property which is placed in service after September 30, 1978.

"(B) BINDING CONTRACTS.—The amendments made by this subsection [amending this section and section 167

of this title] shall not apply to property which is constructed, reconstructed, erected, or acquired pursuant to a contract which, on October 1, 1978, and at all times thereafter, was binding on the taxpayer."

Amendment by section 141(b) of Pub. L. 95-600 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95-600, set out as an Effective Date note under section 409 of this title.

Amendment by section 312(c)(1), (2), (3) of Pub. L. 95-600 applicable to taxable years ending after Dec. 31, 1978, see section 312(d) of Pub. L. 95-600, set out as a note under section 46 of this title.

Section 314(c) of Pub. L. 95-600 provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years ending after August 15, 1971."

Section 315(d) of Pub. L. 95-600 provided that: "The amendments made by this section [amending this section] shall apply to taxable years ending after October 31, 1978; except that the amendment made by subsection (c) shall only apply with respect to property placed in service after such date."

Amendment by section 703(a)(3), (4) of Pub. L. 95-600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 802(b)(6) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1975, see section 802(c) of Pub. L. 94-455, set out as a note under section 46 of this title.

Section 804(e) of Pub. L. 94-455, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendments made by subsections (a) and (b) [amending this section and section 47 of this title] shall apply to taxable years beginning after December 31, 1974.

"(2) ELECTION MAY ALSO APPLY TO PROPERTY DESCRIBED IN SECTION 50(a).—At the election of the taxpayer, made within 1 year after the date of the enactment of this Act [Oct. 4, 1976] in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe, the amendments made by subsections (a) and (b) shall also apply to property which is property described in section 50(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] and which is placed in service in taxable years beginning before January 1, 1975."

Amendment by section 1051(h)(1) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1975 with certain exceptions, see section 1051(i) of Pub. L. 94-455, set out as a note under section 27 of this title.

Amendment by section 1901(a)(5), (b)(11)(A) of Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

Amendment by section 2112(a) of Pub. L. 94-455 applicable to property acquired by the taxpayer after Dec. 31, 1976, and property, the construction, reconstruction, or erection of which was completed by the taxpayer after Dec. 31, 1976, (but only to the extent of the basis thereof attributable to construction, reconstruction, or erection after such date), in taxable years beginning after such date, see section 2112(d)(1) of Pub. L. 94-455, set out as a note under section 46 of this title.

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENT

Section 301(c)(2) of Pub. L. 94-12, as amended by Pub. L. 94-455, title VIII, § 801, Oct. 4, 1976, 90 Stat. 1580; Pub. L. 95-600, title III, § 311(b), Nov. 6, 1978, 92 Stat. 2824, provided that: "The amendments made by paragraph (1) [amending this section] shall apply only to taxable years beginning after December 31, 1974."

Amendment by section 302(c)(3) of Pub. L. 94-12 applicable to taxable years ending after Dec. 31, 1974, see section 305(a) of Pub. L. 94-12, set out as an Effective Date of 1975 Amendment note under section 46 of this title.

Section 604(b) of Pub. L. 94-12, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall apply to property, the construction, reconstruction, or erection of which was completed after March 18, 1975, or the acquisition of which by the taxpayer occurred after such date.

“(2) BINDING CONTRACT.—The amendments made by subsection (a) [amending this section] shall not apply to property constructed, reconstructed, erected, or acquired pursuant to a contract which was on April 1, 1974, and at all times thereafter, binding on the taxpayer.

“(3) CERTAIN LEASE-BACK TRANSACTIONS, ETC.—Where a person who is a party to a binding contract described in paragraph (2) transfers rights in such contract (or in the property to which such contract relates) to another person but a party to such contract retains a right to use the property under a lease with such other person, then to the extent of the transferred rights such other person shall, for purposes of paragraph (2), succeed to the position of the transferor with respect to such binding contract and such property. The preceding sentence shall apply, in any case in which the lessor does not make an election under section 48(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], only if a party to such contract retains a right to use the property under a long-term lease.”

EFFECTIVE DATE OF 1971 AMENDMENT

Section 104(h) of Pub. L. 92-178, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by this section [amending this section and sections 169 and 1245 of this title] (other than by subsections (c)(1), (c)(2), and (g) [amending this section]) shall apply to property described in section 50 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]. The amendments made by subsections (c)(1), (c)(2), and (g) [amending this section] shall apply to taxable years ending after December 31, 1961.”

Amendment by section 108(b), (c) of Pub. L. 92-178, applicable to leases entered into after Sept. 22, 1971, and after Nov. 8, 1971, respectively, see section 108(d) of Pub. L. 92-178, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 121(d)(2)(A) of Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91-172, set out as a note under section 511 of this title.

Amendment by section 401(e)(2)-(4) of Pub. L. 91-172 applicable with respect to taxable years ending on or after Dec. 31, 1970, see section 401(h)(3) of Pub. L. 91-172, set out as a note under section 1561 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 4 of Pub. L. 90-26 provided that: “The amendments made by the first three sections of this Act [amending this section and section 167 of this title] shall apply to taxable years ending after March 9, 1967.”

EFFECTIVE DATE OF 1966 AMENDMENTS

Section 201(b) of Pub. L. 89-809, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1965, but only with respect to property placed in service after such date. In applying section 46(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to carryback and carryover of unused credits), the amount of any investment credit carryback to any taxable year ending on or before December 31, 1965, shall be determined without regard to the amendments made by this section.”

Amendment by Pub. L. 89-800 applicable to taxable years ending after Oct. 9, 1966, see section 4 of Pub. L. 89-800, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 203(a)(4) of Pub. L. 88-272 provided that: “Paragraphs (1) [amending this section] and (3) [amending this section and section 1016 of this title and repealing section 181 of this title] of this subsection shall apply—

“(A) in the case of property placed in service after December 31, 1963, with respect to taxable years ending after such date, and

“(B) in the case of property placed in service before January 1, 1964, with respect to taxable years beginning after December 31, 1963.”

Section 203(f) of Pub. L. 88-272 provided that:

“(1) The amendments made by subsection (b) [amending this section] shall apply with respect to property possession of which is transferred to a lessee on or after the date of enactment of this Act [Feb. 26, 1964].

“(2) The amendments made by subsection (c) [amending this section] shall apply with respect to taxable years ending after June 30, 1963.

“(3) The amendments made by subsection (d) [amending section 1245 of this title] shall apply with respect to dispositions after December 31, 1963, in taxable years ending after such date.”

EFFECTIVE DATE

Section applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87-834, set out as a note under section 46 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Federal Aviation Agency and of Administrator and other offices and officers thereof transferred by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, to Secretary of Transportation, with functions, powers, and duties of Secretary of Transportation pertaining to aviation safety to be exercised by Federal Aviation Administrator in Department of Transportation, see section 106 of Title 49, Transportation.

GRANTS FOR SPECIFIED ENERGY PROPERTY IN LIEU OF TAX CREDITS

Pub. L. 111-5, div. B, title I, §1603, Feb. 17, 2009, 123 Stat. 364, provided that:

“(a) IN GENERAL.—Upon application, the Secretary of the Treasury shall, subject to the requirements of this section, provide a grant to each person who places in service specified energy property to reimburse such person for a portion of the expense of such property as provided in subsection (b). No grant shall be made under this section with respect to any property unless such property—

“(1) is placed in service during 2009 or 2010, or

“(2) is placed in service after 2010 and before the credit termination date with respect to such property, but only if the construction of such property began during 2009 or 2010.

“(b) GRANT AMOUNT.—

“(1) IN GENERAL.—The amount of the grant under subsection (a) with respect to any specified energy property shall be the applicable percentage of the basis of such property.

“(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term ‘applicable percentage’ means—

“(A) 30 percent in the case of any property described in paragraphs (1) through (4) of subsection (d), and

“(B) 10 percent in the case of any other property.
 “(3) DOLLAR LIMITATIONS.—In the case of property described in paragraph (2), (6), or (7) of subsection (d), the amount of any grant under this section with respect to such property shall not exceed the limitation described in section 48(c)(1)(B), 48(c)(2)(B), or 48(c)(3)(B) of the Internal Revenue Code of 1986, respectively, with respect to such property.

“(c) TIME FOR PAYMENT OF GRANT.—The Secretary of the Treasury shall make payment of any grant under subsection (a) during the 60-day period beginning on the later of—

- “(1) the date of the application for such grant, or
- “(2) the date the specified energy property for which the grant is being made is placed in service.

“(d) SPECIFIED ENERGY PROPERTY.—For purposes of this section, the term ‘specified energy property’ means any of the following:

“(1) QUALIFIED FACILITIES.—Any qualified property (as defined in section 48(a)(5)(D) of the Internal Revenue Code of 1986) which is part of a qualified facility (within the meaning of section 45 of such Code) described in paragraph (1), (2), (3), (4), (6), (7), (9), or (11) of section 45(d) of such Code.

“(2) QUALIFIED FUEL CELL PROPERTY.—Any qualified fuel cell property (as defined in section 48(c)(1) of such Code).

“(3) SOLAR PROPERTY.—Any property described in clause (i) or (ii) of section 48(a)(3)(A) of such Code.

“(4) QUALIFIED SMALL WIND ENERGY PROPERTY.—Any qualified small wind energy property (as defined in section 48(c)(4) of such Code).

“(5) GEOTHERMAL PROPERTY.—Any property described in clause (iii) of section 48(a)(3)(A) of such Code.

“(6) QUALIFIED MICROTURBINE PROPERTY.—Any qualified microturbine property (as defined in section 48(c)(2) of such Code).

“(7) COMBINED HEAT AND POWER SYSTEM PROPERTY.—Any combined heat and power system property (as defined in section 48(c)(3) of such Code).

“(8) GEOTHERMAL HEAT PUMP PROPERTY.—Any property described in clause (vii) of section 48(a)(3)(A) of such Code.

Such term shall not include any property unless depreciation (or amortization in lieu of depreciation) is allowable with respect to such property.

“(e) CREDIT TERMINATION DATE.—For purposes of this section, the term ‘credit termination date’ means—

“(1) in the case of any specified energy property which is part of a facility described in paragraph (1) of section 45(d) of the Internal Revenue Code of 1986, January 1, 2013,

“(2) in the case of any specified energy property which is part of a facility described in paragraph (2), (3), (4), (6), (7), (9), or (11) of section 45(d) of such Code, January 1, 2014, and

“(3) in the case of any specified energy property described in section 48 of such Code, January 1, 2017.

In the case of any property which is described in paragraph (3) and also in another paragraph of this subsection, paragraph (3) shall apply with respect to such property.

“(f) APPLICATION OF CERTAIN RULES.—In making grants under this section, the Secretary of the Treasury shall apply rules similar to the rules of section 50 of the Internal Revenue Code of 1986. In applying such rules, if the property is disposed of, or otherwise ceases to be specified energy property, the Secretary of the Treasury shall provide for the recapture of the appropriate percentage of the grant amount in such manner as the Secretary of the Treasury determines appropriate.

“(g) EXCEPTION FOR CERTAIN NON-TAXPAYERS.—The Secretary of the Treasury shall not make any grant under this section to—

“(1) any Federal, State, or local government (or any political subdivision, agency, or instrumentality thereof),

“(2) any organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code,

“(3) any entity referred to in paragraph (4) of section 54(j) of such Code, or

“(4) any partnership or other pass-thru entity any partner (or other holder of an equity or profits interest) of which is described in paragraph (1), (2) or (3).

“(h) DEFINITIONS.—Terms used in this section which are also used in section 45 or 48 of the Internal Revenue Code of 1986 shall have the same meaning for purposes of this section as when used in such section 45 or 48. Any reference in this section to the Secretary of the Treasury shall be treated as including the Secretary’s delegate.

“(i) APPROPRIATIONS.—There is hereby appropriated to the Secretary of the Treasury such sums as may be necessary to carry out this section.

“(j) TERMINATION.—The Secretary of the Treasury shall not make any grant to any person under this section unless the application of such person for such grant is received before October 1, 2011.”

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(C) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

SPECIAL RULE

Section 1879(j)(3) of Pub. L. 99–514 provided that: “If refund or credit of any overpayment of tax resulting from the application of this subsection [amending this section] is prevented at any time before the close of the date which is 1 year after the date of the enactment of this Act [Oct. 22, 1986] by operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the application of the amendments made by this subsection [amending this section]) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period.”

CLARIFICATION OF EFFECT OF 1984 AMENDMENT ON INVESTMENT TAX CREDIT

For provision that nothing in the amendments made by section 474(o) of Pub. L. 98–369, which amended this section, be construed as reducing the investment tax credit in taxable years beginning before Jan. 1, 1984, see section 475(c) of Pub. L. 98–369, set out as a note under section 46 of this title.

ALTERNATIVE METHODS OF COMPUTING CREDIT FOR PAST PERIODS

Section 804(c) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) GENERAL RULE FOR DETERMINING USEFUL LIFE, PREDOMINANT FOREIGN USE, ETC.—In the case of a qualified film (within the meaning of section 48(k)(1)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) placed in service in a taxable year beginning before January 1, 1975, with respect to which neither an election under paragraph (2) of this subsection nor an election under subsection (e)(2) applies—

“(A) the applicable percentage under section 46(c)(2) of such Code shall be determined as if the useful life of the film would have expired at the close of the first taxable year by the close of which the aggregate amount allowable as a deduction under section 167 of such Code would equal or exceed 90 percent of the basis of such property (adjusted for any partial dispositions).

“(B) for purposes of section 46(c)(1) of such Code, the basis of the property shall be determined by taking into account the total production costs (within the meaning of section 48(k)(5)(B) of such Code).

“(C) for purposes of section 48(a)(2) of such Code, such film shall be considered to be used predominantly outside the United States in the first taxable year for which 50 percent or more of the gross revenues received or accrued during the taxable year from showing the film were received or accrued from showing the film outside the United States, and

“(D) Section 47(a)(7) of such Code shall apply.

“(2) ELECTION OF 40-PERCENT METHOD.—

“(A) IN GENERAL.—A taxpayer may elect to have this paragraph apply to all qualified films placed in service during taxable years beginning before January 1, 1975 (other than films to which an election under subsection (e)(2) of this section applies).

“(B) EFFECT OF ELECTION.—If the taxpayer makes an election under this paragraph, then section 48(k) of the Internal Revenue Code of 1986 shall apply to all qualified films described in subparagraph (A) with the following modifications:

“(i) subparagraph (B) of paragraph (4) shall not apply, but in determining qualified investment under section 46(c)(1) of such Code there shall be used (in lieu of the basis of such property) an amount equal to 40 percent of the aggregate production costs (within the meaning of paragraph (5)(B) of such section 48(k)).

“(ii) paragraph (2) shall be applied by substituting ‘100 percent’ for ‘66½ percent’, and

“(iii) paragraph (3) and paragraph (5) (other than subparagraph (B)) shall not apply.

“(C) RULES RELATING TO ELECTIONS.—An election under this paragraph shall be made not later than the day which is 6 months after the date of the enactment of this Act [Oct. 4, 1976] and shall be made in such manner as the Secretary of the Treasury or his delegate shall by regulations prescribe. Such an election may be revoked only with the consent of the Secretary of the Treasury or his delegate.

“(D) THE TAXPAYER MUST CONSENT TO JOIN IN CERTAIN PROCEEDINGS.—No election may be made under this paragraph or subsection (e)(2) by any taxpayer unless he consents, under regulations prescribed by the Secretary of the Treasury or his delegate, to treat the determination of the investment credit allowable on each film subject to an election as a separate cause of action, and to join in any judicial proceeding for determining the person entitled to, and the amount of, the credit allowable under section 38 of the Internal Revenue Code of 1986 with respect to any film covered by such election.

“(3) ELECTION TO HAVE CREDIT DETERMINED IN ACCORDANCE WITH PREVIOUS LITIGATION.—

“(A) IN GENERAL.—A taxpayer described in subparagraph (B) may elect to have this paragraph apply to all films (whether or not qualified) placed in service in taxable years beginning before January 1, 1975, and with respect to which an election under subsection (e)(2) is not made.

“(B) WHO MAY ELECT.—A taxpayer may make an election under this paragraph if he has filed an action in any court of competent jurisdiction, before January 1, 1976, for a determination of such taxpayer’s rights to the allowance of a credit against tax under section 38 of the Internal Revenue Code of 1986 for any taxable year beginning before January 1, 1975, with respect to any film.

“(C) EFFECT OF ELECTION.—If the taxpayer makes an election under this paragraph—

“(i) paragraphs (1) and (2) of this subsection, and subsection (d) shall not apply to any film placed in service by the taxpayer, and

“(ii) subsection 48(k) of the Internal Revenue Code of 1986 shall not apply to any film placed in service by the taxpayer in any taxable year beginning before January 1, 1975, and with respect to which an election under subsection (e)(2) is not made,

and the right of the taxpayer to the allowance of a credit against tax under section 38 of such Code with respect to any film placed in service in any taxable year beginning before January 1, 1975, and as to which an election under subsection (e)(2) is not made, shall be determined as though this section (other than this paragraph) has not been enacted.

“(D) RULES RELATING TO ELECTIONS.—An election under this paragraph shall be made not later than the day which is 90 days after the date of the enactment of this Act [Oct. 4, 1976], by filing a notification of such election with the national office of the Internal Revenue Service. Such an election, once made, shall be irrevocable.”

ENTITLEMENT TO CREDIT

Section 804(d) of Pub. L. 94-455, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Paragraph (1) of section 48(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to entitlement to credit) shall apply to any motion picture film or video tape placed in service in any taxable year beginning before January 1, 1975.”

INCREASE IN BASIS OF PROPERTY PLACED IN SERVICE BEFORE JANUARY 1, 1964

Section 203(a)(2) of Pub. L. 88-272, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(A) The basis of any section 38 property (as defined in section 48(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) placed in service before January 1, 1964, shall be increased, under regulations prescribed by the Secretary of the Treasury or his delegate, by an amount equal to 7 percent of the qualified investment with respect to such property under section 46(c) of the Internal Revenue Code of 1986. If there has been any increase with respect to such property under section 48(g)(2) of such Code, the increase under the preceding sentence shall be appropriately reduced therefor.

“(B) If a lessor made the election provided by section 48(d) of the Internal Revenue Code of 1986 with respect to property placed in service before January 1, 1964—

“(i) subparagraph (A) shall not apply with respect to such property, but

“(ii) under regulations prescribed by the Secretary of the Treasury or his delegate, the deductions otherwise allowable under section 162 of such Code to the lessee for amounts paid to the lessor under the lease (or, if such lessee has purchased such property, the basis of such property) shall be adjusted in a manner consistent with subparagraph (A).

“(C) The adjustments under this paragraph shall be made as of the first day of the taxpayer’s first taxable year which begins after December 31, 1963.”

§ 48A. Qualifying advanced coal project credit

(a) In general

For purposes of section 46, the qualifying advanced coal project credit for any taxable year is an amount equal to—

(1) 20 percent of the qualified investment for such taxable year in the case of projects described in subsection (d)(3)(B)(i),

(2) 15 percent of the qualified investment for such taxable year in the case of projects described in subsection (d)(3)(B)(ii), and

(3) 30 percent of the qualified investment for such taxable year in the case of projects described in clause (iii) of subsection (d)(3)(B).

(b) Qualified investment

(1) In general

For purposes of subsection (a), the qualified investment for any taxable year is the basis of eligible property placed in service by the taxpayer during such taxable year which is part of a qualifying advanced coal project—

(A)(i) the construction, reconstruction, or erection of which is completed by the taxpayer, or

(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer, and

(B) with respect to which depreciation (or amortization in lieu of depreciation) is allowable.

(2) Special rule for certain subsidized property

Rules similar to section 48(a)(4) (without regard to subparagraph (D) thereof) shall apply for purposes of this section.

(3) Certain qualified progress expenditures rules made applicable

Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this section.

(c) Definitions

For purposes of this section—

(1) Qualifying advanced coal project

The term “qualifying advanced coal project” means a project which meets the requirements of subsection (e).

(2) Advanced coal-based generation technology

The term “advanced coal-based generation technology” means a technology which meets the requirements of subsection (f).

(3) Eligible property

The term “eligible property” means—

(A) in the case of any qualifying advanced coal project using an integrated gasification combined cycle, any property which is a part of such project and is necessary for the gasification of coal, including any coal handling and gas separation equipment, and

(B) in the case of any other qualifying advanced coal project, any property which is a part of such project.

(4) Coal

The term “coal” means anthracite, bituminous coal, subbituminous coal, lignite, and peat.

(5) Greenhouse gas capture capability

The term “greenhouse gas capture capability” means an integrated gasification combined cycle technology facility capable of adding components which can capture, separate on a long-term basis, isolate, remove, and sequester greenhouse gases which result from the generation of electricity.

(6) Electric generation unit

The term “electric generation unit” means any facility at least 50 percent of the total an-

nual net output of which is electrical power, including an otherwise eligible facility which is used in an industrial application.

(7) Integrated gasification combined cycle

The term “integrated gasification combined cycle” means an electric generation unit which produces electricity by converting coal to synthesis gas which is used to fuel a combined-cycle plant which produces electricity from both a combustion turbine (including a combustion turbine/fuel cell hybrid) and a steam turbine.

(d) Qualifying advanced coal project program

(1) Establishment

Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying advanced coal project program for the deployment of advanced coal-based generation technologies.

(2) Certification

(A) Application period

Each applicant for certification under this paragraph shall submit an application meeting the requirements of subparagraph (B). An applicant may only submit an application—

(i) for an allocation from the dollar amount specified in clause (i) or (ii) of paragraph (3)(B) during the 3-year period beginning on the date the Secretary establishes the program under paragraph (1), and

(ii) for an allocation from the dollar amount specified in paragraph (3)(B)(iii) during the 3-year period beginning at the earlier of the termination of the period described in clause (i) or the date prescribed by the Secretary.

(B) Requirements for applications for certification

An application under subparagraph (A) shall contain such information as the Secretary may require in order to make a determination to accept or reject an application for certification as meeting the requirements under subsection (e)(1). Any information contained in the application shall be protected as provided in section 552(b)(4) of title 5, United States Code.

(C) Time to act upon applications for certification

The Secretary shall issue a determination as to whether an applicant has met the requirements under subsection (e)(1) within 60 days following the date of submittal of the application for certification.

(D) Time to meet criteria for certification

Each applicant for certification shall have 2 years from the date of acceptance by the Secretary of the application during which to provide to the Secretary evidence that the criteria set forth in subsection (e)(2) have been met.

(E) Period of issuance

An applicant which receives a certification shall have 5 years from the date of issuance

of the certification in order to place the project in service and if such project is not placed in service by that time period then the certification shall no longer be valid.

(3) Aggregate credits

(A) In general

The aggregate credits allowed under subsection (a) for projects certified by the Secretary under paragraph (2) may not exceed \$2,550,000,000.

(B) Particular projects

Of the dollar amount in subparagraph (A), the Secretary is authorized to certify—

(i) \$800,000,000 for integrated gasification combined cycle projects the application for which is submitted during the period described in paragraph (2)(A)(i),

(ii) \$500,000,000 for projects which use other advanced coal-based generation technologies the application for which is submitted during the period described in paragraph (2)(A)(i), and

(iii) \$1,250,000,000 for advanced coal-based generation technology projects the application for which is submitted during the period described in paragraph (2)(A)(ii).

(4) Review and redistribution

(A) Review

Not later than 6 years after the date of enactment of this section, the Secretary shall review the credits allocated under this section as of the date which is 6 years after the date of enactment of this section.

(B) Redistribution

The Secretary may reallocate credits available under clauses (i) and (ii) of paragraph (3)(B) if the Secretary determines that—

(i) there is an insufficient quantity of qualifying applications for certification pending at the time of the review, or

(ii) any certification made pursuant to paragraph (2) has been revoked pursuant to paragraph (2)(D) because the project subject to the certification has been delayed as a result of third party opposition or litigation to the proposed project.

(C) Reallocation

If the Secretary determines that credits under clause (i) or (ii) of paragraph (3)(B) are available for reallocation pursuant to the requirements set forth in paragraph (2), the Secretary is authorized to conduct an additional program for applications for certification.

(5) Disclosure of allocations

The Secretary shall, upon making a certification under this subsection or section 48B(d), publicly disclose the identity of the applicant and the amount of the credit certified with respect to such applicant.

(e) Qualifying advanced coal projects

(1) Requirements

For purposes of subsection (c)(1), a project shall be considered a qualifying advanced coal

project that the Secretary may certify under subsection (d)(2) if the Secretary determines that, at a minimum—

(A) the project uses an advanced coal-based generation technology—

(i) to power a new electric generation unit; or

(ii) to retrofit or repower an existing electric generation unit (including an existing natural gas-fired combined cycle unit);

(B) the fuel input for the project, when completed, is at least 75 percent coal;

(C) the project, consisting of one or more electric generation units at one site, will have a total nameplate generating capacity of at least 400 megawatts;

(D) the applicant provides evidence that a majority of the output of the project is reasonably expected to be acquired or utilized;

(E) the applicant provides evidence of ownership or control of a site of sufficient size to allow the proposed project to be constructed and to operate on a long-term basis;

(F) the project will be located in the United States; and

(G) in the case of any project the application for which is submitted during the period described in subsection (d)(2)(A)(ii), the project includes equipment which separates and sequesters at least 65 percent (70 percent in the case of an application for reallocated credits under subsection (d)(4)) of such project's total carbon dioxide emissions.

(2) Requirements for certification

For the purpose of subsection (d)(2)(D), a project shall be eligible for certification only if the Secretary determines that—

(A) the applicant for certification has received all Federal and State environmental authorizations or reviews necessary to commence construction of the project; and

(B) the applicant for certification, except in the case of a retrofit or repower of an existing electric generation unit, has purchased or entered into a binding contract for the purchase of the main steam turbine or turbines for the project, except that such contract may be contingent upon receipt of a certification under subsection (d)(2).

(3) Priority for certain projects

In determining which qualifying advanced coal projects to certify under subsection (d)(2), the Secretary shall—

(A) certify capacity, in accordance with the procedures set forth in subsection (d), in relatively equal amounts to—

(i) projects using bituminous coal as a primary feedstock,

(ii) projects using subbituminous coal as a primary feedstock, and

(iii) projects using lignite as a primary feedstock,

(B) give high priority to projects which include, as determined by the Secretary—

(i) greenhouse gas capture capability,

(ii) increased by-product utilization,

(iii) applicant participants who have a research partnership with an eligible edu-

cational institution (as defined in section 529(e)(5)), and
(iv) other benefits, and

(C) give highest priority to projects with the greatest separation and sequestration percentage of total carbon dioxide emissions.

(f) Advanced coal-based generation technology

(1) In general

For the purpose of this section, an electric generation unit uses advanced coal-based generation technology if—

(A) the unit—

(i) uses integrated gasification combined cycle technology, or

(ii) except as provided in paragraph (3), has a design net heat rate of 8530 Btu/kWh (40 percent efficiency), and

(B) the unit is designed to meet the performance requirements in the following table:

Performance characteristic: Design level for project:

SO ₂ (percent removal)	99 percent
NO _x (emissions)	0.07 lbs/MMBTU
PM* (emissions)	0.015 lbs/MMBTU
Hg (percent removal)	90 percent

For purposes of the performance requirement specified for the removal of SO₂ in the table contained in subparagraph (B), the SO₂ removal design level in the case of a unit designed for the use of feedstock substantially all of which is subbituminous coal shall be 99 percent SO₂ removal or the achievement of an emission level of 0.04 pounds or less of SO₂ per million Btu, determined on a 30-day average.

(2) Design net heat rate

For purposes of this subsection, design net heat rate with respect to an electric generation unit shall—

(A) be measured in Btu per kilowatt hour (higher heating value),

(B) be based on the design annual heat input to the unit and the rated net electrical power, fuels, and chemicals output of the unit (determined without regard to the cogeneration of steam by the unit),

(C) be adjusted for the heat content of the design coal to be used by the unit—

(i) if the heat content is less than 13,500 Btu per pound, but greater than 7,000 Btu per pound, according to the following formula: design net heat rate = unit net heat rate x [1-(((13,500-design coal heat content, Btu per pound)/1,000)* 0.013)], and

(ii) if the heat content is less than or equal to 7,000 Btu per pound, according to the following formula: design net heat rate = unit net heat rate x [1-(((13,500-design coal heat content, Btu per pound)/1,000)* 0.018)], and

(D) be corrected for the site reference conditions of—

(i) elevation above sea level of 500 feet,

(ii) air pressure of 14.4 pounds per square inch absolute,

(iii) temperature, dry bulb of 63°F,

(iv) temperature, wet bulb of 54°F, and

(v) relative humidity of 55 percent.

(3) Existing units

In the case of any electric generation unit in existence on the date of the enactment of this section, such unit uses advanced coal-based generation technology if, in lieu of the requirements under paragraph (1)(A)(ii), such unit achieves a minimum efficiency of 35 percent and an overall thermal design efficiency improvement, compared to the efficiency of the unit as operated, of not less than—

(A) 7 percentage points for coal of more than 9,000 Btu,

(B) 6 percentage points for coal of 7,000 to 9,000 Btu, or

(C) 4 percentage points for coal of less than 7,000 Btu.

(g) Applicability

No use of technology (or level of emission reduction solely by reason of the use of the technology), and no achievement of any emission reduction by the demonstration of any technology or performance level, by or at one or more facilities with respect to which a credit is allowed under this section, shall be considered to indicate that the technology or performance level is—

(1) adequately demonstrated for purposes of section 111 of the Clean Air Act (42 U.S.C. 7411);

(2) achievable for purposes of section 169 of that Act (42 U.S.C. 7479); or

(3) achievable in practice for purposes of section 171 of such Act (42 U.S.C. 7501).

(h) Competitive certification awards modification authority

In implementing this section or section 48B, the Secretary is directed to modify the terms of any competitive certification award and any associated closing agreement where such modification—

(1) is consistent with the objectives of such section,

(2) is requested by the recipient of the competitive certification award, and

(3) involves moving the project site to improve the potential to capture and sequester carbon dioxide emissions, reduce costs of transporting feedstock, and serve a broader customer base,

unless the Secretary determines that the dollar amount of tax credits available to the taxpayer under such section would increase as a result of the modification or such modification would result in such project not being originally certified. In considering any such modification, the Secretary shall consult with other relevant Federal agencies, including the Department of Energy.

(i) Recapture of credit for failure to sequester

The Secretary shall provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any project which fails to attain or maintain the separation and sequestration requirements of subsection (e)(1)(G).

(Added Pub. L. 109-58, title XIII, §1307(b), Aug. 8, 2005, 119 Stat. 999; amended Pub. L. 109-432, div.

A, title II, §203(a), Dec. 20, 2006, 120 Stat. 2945; Pub. L. 110-172, §11(a)(10), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 110-234, title XV, §15346(a), May 22, 2008, 122 Stat. 1523; Pub. L. 110-246, §4(a), title XV, §15346(a), June 18, 2008, 122 Stat. 1664, 2285; Pub. L. 110-343, div. B, title I, §111(a)-(d), Oct. 3, 2008, 122 Stat. 3822, 3823; Pub. L. 111-5, div. B, title I, §1103(b)(2)(C), Feb. 17, 2009, 123 Stat. 321.)

REFERENCES IN TEXT

The enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (b)(3), is the date of enactment of title XI of Pub. L. 101-508, which was approved Nov. 5, 1990.

The date of enactment of this section, referred to in subsecs. (d)(1), (4)(A) and (f)(3), is the date of enactment of Pub. L. 109-58, which was approved Aug. 8, 2005.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2009—Subsec. (b)(2). Pub. L. 111-5 inserted “(without regard to subparagraph (D) thereof)” after “section 48(a)(4)”.

2008—Subsec. (a)(3). Pub. L. 110-343, §111(a), added par. (3).

Subsec. (d)(2)(A). Pub. L. 110-343, §111(c)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Each applicant for certification under this paragraph shall submit an application meeting the requirements of subparagraph (B). An applicant may only submit an application during the 3-year period beginning on the date the Secretary establishes the program under paragraph (1).”

Subsec. (d)(3)(A). Pub. L. 110-343, §111(b), substituted “\$2,550,000,000” for “\$1,300,000,000”.

Subsec. (d)(3)(B). Pub. L. 110-343, §111(c)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Of the dollar amount in subparagraph (A), the Secretary is authorized to certify—

“(i) \$800,000,000 for integrated gasification combined cycle projects, and

“(ii) \$500,000,000 for projects which use other advanced coal-based generation technologies.”

Subsec. (d)(5). Pub. L. 110-343, §111(d), added par. (5). Subsec. (e)(1)(G). Pub. L. 110-343, §111(c)(3)(A), added subpar. (G).

Subsec. (e)(3). Pub. L. 110-343, §111(c)(5), substituted “certain” for “integrated gasification combined cycle” in heading.

Subsec. (e)(3)(B)(iii), (iv). Pub. L. 110-343, §111(c)(4), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (e)(3)(C). Pub. L. 110-343, §111(c)(3)(B), added subpar. (C).

Subsec. (h). Pub. L. 110-246, §15346(a), added subsec. (h).

Subsec. (i). Pub. L. 110-343, §111(c)(3)(C), added subsec. (i).

2007—Subsec. (d)(4)(B)(ii). Pub. L. 110-172 struck out “subsection” before “paragraph” in two places.

2006—Subsec. (f)(1). Pub. L. 109-432 inserted concluding provisions.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-5 applicable to periods after Dec. 31, 2008, under rules similar to the rules of section 48(m) of this title as in effect on the day before Nov. 5, 1990, see section 1103(c)(1) of Pub. L. 111-5, set out as a note under section 25C of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. B, title I, §111(e), Oct. 3, 2008, 122 Stat. 3823, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to credits the application for which is submitted during the period described in section 48A(d)(2)(A)(ii) of the Internal Revenue Code of 1986 and which are allocated or reallocated after the date of the enactment of this Act [Oct. 3, 2008].

“(2) DISCLOSURE OF ALLOCATIONS.—The amendment made by subsection (d) [amending this section] shall apply to certifications made after the date of the enactment of this Act.

“(3) CLERICAL AMENDMENT.—The amendment made by subsection (c)(5) [amending this section] shall take effect as if included in the amendment made by section 1307(b) of the Energy Tax Incentives Act of 2005 [Pub. L. 109-58].”

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110-234, title XV, §15346(b), May 22, 2008, 122 Stat. 1523, and Pub. L. 110-246, §4(a), title XV, §15346(b), June 18, 2008, 122 Stat. 1664, 2285, provided that: “The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [June 18, 2008] and is applicable to all competitive certification awards entered into under section 48A or 48B of the Internal Revenue Code of 1986, whether such awards were issued before, on, or after such date of enactment.”

[Pub. L. 110-234 and Pub. L. 110-246 enacted identical provisions. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. A, title II, §203(b), Dec. 20, 2006, 120 Stat. 2945, provided that: “The amendment made by this section [amending this section] shall take apply [sic] with respect to applications for certification under section 48A(d)(2) of the Internal Revenue Code of 1986 submitted after October 2, 2006.”

EFFECTIVE DATE

Section applicable to periods after Aug. 8, 2005, under rules similar to the rules of section 48(m) of this title, as in effect on the day before Nov. 5, 1990, see section 1307(d) of Pub. L. 109-58, set out as an Effective Date of 2005 Amendment note under section 46 of this title.

§ 48B. Qualifying gasification project credit

(a) In general

For purposes of section 46, the qualifying gasification project credit for any taxable year is an amount equal to 20 percent (30 percent in the case of credits allocated under subsection (d)(1)(B)) of the qualified investment for such taxable year.

(b) Qualified investment

(1) In general

For purposes of subsection (a), the qualified investment for any taxable year is the basis of eligible property placed in service by the taxpayer during such taxable year which is part of a qualifying gasification project—

(A)(i) the construction, reconstruction, or erection of which is completed by the taxpayer, or

(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer, and

(B) with respect to which depreciation (or amortization in lieu of depreciation) is allowable.

(2) Special rule for certain subsidized property

Rules similar to section 48(a)(4) (without regard to subparagraph (D) thereof) shall apply for purposes of this section.

(3) Certain qualified progress expenditures rules made applicable

Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this section.

(c) Definitions

For purposes of this section—

(1) Qualifying gasification project

The term “qualifying gasification project” means any project which—

- (A) employs gasification technology,
- (B) will be carried out by an eligible entity, and
- (C) any portion of the qualified investment of which is certified under the qualifying gasification program as eligible for credit under this section in an amount (not to exceed \$650,000,000) determined by the Secretary.

(2) Gasification technology

The term “gasification technology” means any process which converts a solid or liquid product from coal, petroleum residue, biomass, or other materials which are recovered for their energy or feedstock value into a synthesis gas composed primarily of carbon monoxide and hydrogen for direct use or subsequent chemical or physical conversion.

(3) Eligible property

The term “eligible property” means any property which is a part of a qualifying gasification project and is necessary for the gasification technology of such project.

(4) Biomass**(A) In general**

The term “biomass” means any—

- (i) agricultural or plant waste,
- (ii) byproduct of wood or paper mill operations, including lignin in spent pulping liquors, and
- (iii) other products of forestry maintenance.

(B) Exclusion

The term “biomass” does not include paper which is commonly recycled.

(5) Carbon capture capability

The term “carbon capture capability” means a gasification plant design which is determined by the Secretary to reflect reasonable consideration for, and be capable of, accommodating the equipment likely to be necessary to capture carbon dioxide from the gaseous stream, for later use or sequestration, which would otherwise be emitted in the flue gas from a project which uses a nonrenewable fuel.

(6) Coal

The term “coal” means anthracite, bituminous coal, subbituminous coal, lignite, and peat.

(7) Eligible entity

The term “eligible entity” means any person whose application for certification is principally intended for use in a domestic project which employs domestic gasification applications related to—

- (A) chemicals,
- (B) fertilizers,
- (C) glass,
- (D) steel,
- (E) petroleum residues,
- (F) forest products,
- (G) agriculture, including feedlots and dairy operations, and
- (H) transportation grade liquid fuels.

(8) Petroleum residue

The term “petroleum residue” means the carbonized product of high-boiling hydrocarbon fractions obtained in petroleum processing.

(d) Qualifying gasification project program**(1) In general**

Not later than 180 days after the date of the enactment of this section, the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying gasification project program to consider and award certifications for qualified investment eligible for credits under this section to qualifying gasification project sponsors under this section. The total amounts of credit that may be allocated under the program shall not exceed—

- (A) \$350,000,000, plus
- (B) \$250,000,000 for qualifying gasification projects that include equipment which separates and sequesters at least 75 percent of such project’s total carbon dioxide emissions.

(2) Period of issuance

A certificate of eligibility under paragraph (1) may be issued only during the 10-fiscal year period beginning on October 1, 2005.

(3) Selection criteria

The Secretary shall not make a competitive certification award for qualified investment for credit eligibility under this section unless the recipient has documented to the satisfaction of the Secretary that—

- (A) the award recipient is financially viable without the receipt of additional Federal funding associated with the proposed project,
- (B) the recipient will provide sufficient information to the Secretary for the Secretary to ensure that the qualified investment is spent efficiently and effectively,
- (C) a market exists for the products of the proposed project as evidenced by contracts or written statements of intent from potential customers,
- (D) the fuels identified with respect to the gasification technology for such project will comprise at least 90 percent of the fuels required by the project for the production of chemical feedstocks, liquid transportation fuels, or coproduction of electricity,
- (E) the award recipient’s project team is competent in the construction and operation

of the gasification technology proposed, with preference given to those recipients with experience which demonstrates successful and reliable operations of the technology on domestic fuels so identified, and

(F) the award recipient has met other criteria established and published by the Secretary.

(4) Selection priorities

In determining which qualifying gasification projects to certify under this section, the Secretary shall—

(A) give highest priority to projects with the greatest separation and sequestration percentage of total carbon dioxide emissions, and

(B) give high priority to applicant participants who have a research partnership with an eligible educational institution (as defined in section 529(e)(5)).

(e) Denial of double benefit

A credit shall not be allowed under this section for any qualified investment for which a credit is allowed under section 48A.

(f) Recapture of credit for failure to sequester

The Secretary shall provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any project which fails to attain or maintain the separation and sequestration requirements for such project under subsection (d)(1).

(Added Pub. L. 109-58, title XIII, §1307(b), Aug. 8, 2005, 119 Stat. 1004; amended Pub. L. 110-343, div. B, title I, §112(a)-(e), Oct. 3, 2008, 122 Stat. 3824; Pub. L. 111-5, div. B, title I, §1103(b)(2)(D), Feb. 17, 2009, 123 Stat. 321.)

REFERENCES IN TEXT

The enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (b)(3), is the date of enactment of title XI of Pub. L. 101-508, which was approved Nov. 5, 1990.

The date of the enactment of this section, referred to in subsec. (d)(1), is the date of enactment of Pub. L. 109-58, which was approved Aug. 8, 2005.

AMENDMENTS

2009—Subsec. (b)(2). Pub. L. 111-5 inserted “(without regard to subparagraph (D) thereof)” after “section 48(a)(4)”.

2008—Subsec. (a). Pub. L. 110-343, §112(a), inserted “(30 percent in the case of credits allocated under subsection (d)(1)(B))” after “20 percent”.

Subsec. (c)(7)(H). Pub. L. 110-343, §112(e), added subpar. (H).

Subsec. (d)(1). Pub. L. 110-343, §112(b), substituted “shall not exceed—” for “shall not exceed \$350,000,000 under rules similar to the rules of section 48A(d)(4).” and added subpars. (A) and (B).

Subsec. (d)(4). Pub. L. 110-343, §112(d), added par. (4).

Subsec. (f). Pub. L. 110-343, §112(c), added subsec. (f).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-5 applicable to periods after Dec. 31, 2008, under rules similar to the rules of section 48(m) of this title as in effect on the day before Nov. 5, 1990, see section 1103(c)(1) of Pub. L. 111-5, set out as a note under section 25C of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. B, title I, §112(f), Oct. 3, 2008, 122 Stat. 3824, provided that: “The amendments made by

this section [amending this section] shall apply to credits described in section 48B(d)(1)(B) of the Internal Revenue Code of 1986 which are allocated or reallocated after the date of the enactment of this Act [Oct. 3, 2008].”

EFFECTIVE DATE

Section applicable to periods after Aug. 8, 2005, under rules similar to the rules of section 48(m) of this title, as in effect on the day before Nov. 5, 1990, see section 1307(d) of Pub. L. 109-58, set out as an Effective Date of 2005 Amendment note under section 46 of this title.

§ 48C. Qualifying advanced energy project credit

(a) In general

For purposes of section 46, the qualifying advanced energy project credit for any taxable year is an amount equal to 30 percent of the qualified investment for such taxable year with respect to any qualifying advanced energy project of the taxpayer.

(b) Qualified investment

(1) In general

For purposes of subsection (a), the qualified investment for any taxable year is the basis of eligible property placed in service by the taxpayer during such taxable year which is part of a qualifying advanced energy project.

(2) Certain qualified progress expenditures rules made applicable

Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this section.

(3) Limitation

The amount which is treated for all taxable years with respect to any qualifying advanced energy project shall not exceed the amount designated by the Secretary as eligible for the credit under this section.

(c) Definitions

(1) Qualifying advanced energy project

(A) In general

The term “qualifying advanced energy project” means a project—

(i) which re-equips, expands, or establishes a manufacturing facility for the production of—

(I) property designed to be used to produce energy from the sun, wind, geothermal deposits (within the meaning of section 613(e)(2)), or other renewable resources,

(II) fuel cells, microturbines, or an energy storage system for use with electric or hybrid-electric motor vehicles,

(III) electric grids to support the transmission of intermittent sources of renewable energy, including storage of such energy,

(IV) property designed to capture and sequester carbon dioxide emissions,

(V) property designed to refine or blend renewable fuels or to produce energy conservation technologies (including energy-conserving lighting technologies and smart grid technologies),

(VI) new qualified plug-in electric drive motor vehicles (as defined by section 30D), qualified plug-in electric vehicles (as defined by section 30(d)), or components which are designed specifically for use with such vehicles, including electric motors, generators, and power control units, or

(VII) other advanced energy property designed to reduce greenhouse gas emissions as may be determined by the Secretary, and

(ii) any portion of the qualified investment of which is certified by the Secretary under subsection (d) as eligible for a credit under this section.

(B) Exception

Such term shall not include any portion of a project for the production of any property which is used in the refining or blending of any transportation fuel (other than renewable fuels).

(2) Eligible property

The term “eligible property” means any property—

(A) which is necessary for the production of property described in paragraph (1)(A)(i),

(B) which is—

(i) tangible personal property, or

(ii) other tangible property (not including a building or its structural components), but only if such property is used as an integral part of the qualified investment credit facility, and

(C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable.

(d) Qualifying advanced energy project program

(1) Establishment

(A) In general

Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying advanced energy project program to consider and award certifications for qualified investments eligible for credits under this section to qualifying advanced energy project sponsors.

(B) Limitation

The total amount of credits that may be allocated under the program shall not exceed \$2,300,000,000.

(2) Certification

(A) Application period

Each applicant for certification under this paragraph shall submit an application containing such information as the Secretary may require during the 2-year period beginning on the date the Secretary establishes the program under paragraph (1).

(B) Time to meet criteria for certification

Each applicant for certification shall have 1 year from the date of acceptance by the Secretary of the application during which to provide to the Secretary evidence that the

requirements of the certification have been met.

(C) Period of issuance

An applicant which receives a certification shall have 3 years from the date of issuance of the certification in order to place the project in service and if such project is not placed in service by that time period, then the certification shall no longer be valid.

(3) Selection criteria

In determining which qualifying advanced energy projects to certify under this section, the Secretary—

(A) shall take into consideration only those projects where there is a reasonable expectation of commercial viability, and

(B) shall take into consideration which projects—

(i) will provide the greatest domestic job creation (both direct and indirect) during the credit period,

(ii) will provide the greatest net impact in avoiding or reducing air pollutants or anthropogenic emissions of greenhouse gases,

(iii) have the greatest potential for technological innovation and commercial deployment,

(iv) have the lowest levelized cost of generated or stored energy, or of measured reduction in energy consumption or greenhouse gas emission (based on costs of the full supply chain), and

(v) have the shortest project time from certification to completion.

(4) Review and redistribution

(A) Review

Not later than 4 years after the date of enactment of this section, the Secretary shall review the credits allocated under this section as of such date.

(B) Redistribution

The Secretary may reallocate credits awarded under this section if the Secretary determines that—

(i) there is an insufficient quantity of qualifying applications for certification pending at the time of the review, or

(ii) any certification made pursuant to paragraph (2) has been revoked pursuant to paragraph (2)(B) because the project subject to the certification has been delayed as a result of third party opposition or litigation to the proposed project.

(C) Reallocation

If the Secretary determines that credits under this section are available for reallocation pursuant to the requirements set forth in paragraph (2), the Secretary is authorized to conduct an additional program for applications for certification.

(5) Disclosure of allocations

The Secretary shall, upon making a certification under this subsection, publicly disclose the identity of the applicant and the amount of the credit with respect to such applicant.

(e) Denial of double benefit

A credit shall not be allowed under this section for any qualified investment for which a credit is allowed under section 48, 48A, or 48B.

(Added Pub. L. 111-5, div. B, title I, § 1302(b), Feb. 17, 2009, 123 Stat. 345.)

REFERENCES IN TEXT

Subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990), referred to in subsec. (b)(2), means section 46(c)(4) and (d) as in effect before enactment of Pub. L. 101-508, which amended section 46 generally.

The date of enactment of this section, referred to in subsec. (d)(1)(A), (4)(A), is the date of enactment of Pub. L. 111-5, which was approved Feb. 17, 2009.

EFFECTIVE DATE

Section applicable to periods after Feb. 17, 2009, under rules similar to the rules of section 48(m) of this title as in effect on the day before Nov. 5, 1990, see section 1302(d) of Pub. L. 111-5, set out as an Effective Date of 2009 Amendment note under section 46 of this title.

§ 49. At-risk rules**(a) General rule****(1) Certain nonrecourse financing excluded from credit base****(A) Limitation**

The credit base of any property to which this paragraph applies shall be reduced by the nonqualified nonrecourse financing with respect to such credit base (as of the close of the taxable year in which placed in service).

(B) Property to which paragraph applies

This paragraph applies to any property which—

(i) is placed in service during the taxable year by a taxpayer described in section 465(a)(1), and

(ii) is used in connection with an activity with respect to which any loss is subject to limitation under section 465.

(C) Credit base defined

For purposes of this paragraph, the term “credit base” means—

(i) the portion of the basis of any qualified rehabilitated building attributable to qualified rehabilitation expenditures,

(ii) the basis of any energy property,

(iii) the basis of any property which is part of a qualifying advanced coal project under section 48A,

(iv) the basis of any property which is part of a qualifying gasification project under section 48B, and

(v) the basis of any property which is part of a qualifying advanced energy project under section 48C.

(D) Nonqualified nonrecourse financing**(i) In general**

For purposes of this paragraph and paragraph (2), the term “nonqualified nonrecourse financing” means any nonrecourse financing which is not qualified commercial financing.

(ii) Qualified commercial financing

For purposes of this paragraph, the term “qualified commercial financing” means

any financing with respect to any property if—

(I) such property is acquired by the taxpayer from a person who is not a related person,

(II) the amount of the nonrecourse financing with respect to such property does not exceed 80 percent of the credit base of such property, and

(III) such financing is borrowed from a qualified person or represents a loan from any Federal, State, or local government or instrumentality thereof, or is guaranteed by any Federal, State, or local government.

Such term shall not include any convertible debt.

(iii) Nonrecourse financing

For purposes of this subparagraph, the term “nonrecourse financing” includes—

(I) any amount with respect to which the taxpayer is protected against loss through guarantees, stop-loss agreements, or other similar arrangements, and

(II) except to the extent provided in regulations, any amount borrowed from a person who has an interest (other than as a creditor) in the activity in which the property is used or from a related person to a person (other than the taxpayer) having such an interest.

In the case of amounts borrowed by a corporation from a shareholder, subclause (II) shall not apply to an interest as a shareholder.¹

(iv) Qualified person

For purposes of this paragraph, the term “qualified person” means any person which is actively and regularly engaged in the business of lending money and which is not—

(I) a related person with respect to the taxpayer,

(II) a person from which the taxpayer acquired the property (or a related person to such person), or

(III) a person who receives a fee with respect to the taxpayer’s investment in the property (or a related person to such person).

(v) Related person

For purposes of this subparagraph, the term “related person” has the meaning given such term by section 465(b)(3)(C). Except as otherwise provided in regulations prescribed by the Secretary, the determination of whether a person is a related person shall be made as of the close of the taxable year in which the property is placed in service.

(E) Application to partnerships and S corporations

For purposes of this paragraph and paragraph (2)—

¹ So in original. Probably should not be hyphenated.

(i) In general

Except as otherwise provided in this subparagraph, in the case of any partnership or S corporation, the determination of whether a partner's or shareholder's allocable share of any financing is nonqualified nonrecourse financing shall be made at the partner or shareholder level.

(ii) Special rule for certain recourse financing of S corporation

A shareholder of an S corporation shall be treated as liable for his allocable share of any financing provided by a qualified person to such corporation if—

(I) such financing is recourse financing (determined at the corporate level), and

(II) such financing is provided with respect to qualified business property of such corporation.

(iii) Qualified business property

For purposes of clause (ii), the term "qualified business property" means any property if—

(I) such property is used by the corporation in the active conduct of a trade or business,

(II) during the entire 12-month period ending on the last day of the taxable year, such corporation had at least 3 full-time employees who were not owner-employees (as defined in section 465(c)(7)(E)(i)) and substantially all the services of whom were services directly related to such trade or business, and

(III) during the entire 12-month period ending on the last day of such taxable year, such corporation had at least 1 full-time employee substantially all of the services of whom were in the active management of the trade or business.

(iv) Determination of allocable share

The determination of any partner's or shareholder's allocable share of any financing shall be made in the same manner as the credit allowable by section 38 with respect to such property.

(F) Special rules for energy property

Rules similar to the rules of subparagraph (F) of section 46(c)(3) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this paragraph.

(2) Subsequent decreases in nonqualified nonrecourse financing with respect to the property**(A) In general**

If, at the close of a taxable year following the taxable year in which the property was placed in service, there is a net decrease in the amount of nonqualified nonrecourse financing with respect to such property, such net decrease shall be taken into account as an increase in the credit base for such property in accordance with subparagraph (C).

(B) Certain transactions not taken into account

For purposes of this paragraph, nonqualified nonrecourse financing shall not be

treated as decreased through the surrender or other use of property financed by nonqualified nonrecourse financing.

(C) Manner in which taken into account**(i) Credit determined by reference to taxable year property placed in service**

For purposes of determining the amount of credit allowable under section 38 and the amount of credit subject to the early disposition or cessation rules under section 50(a), any increase in a taxpayer's credit base for any property by reason of this paragraph shall be taken into account as if it were property placed in service by the taxpayer in the taxable year in which the property referred to in subparagraph (A) was first placed in service.

(ii) Credit allowed for year of decrease in nonqualified nonrecourse financing

Any credit allowable under this subpart for any increase in qualified investment by reason of this paragraph shall be treated as earned during the taxable year of the decrease in the amount of nonqualified nonrecourse financing.

(b) Increases in nonqualified nonrecourse financing**(1) In general**

If, as of the close of the taxable year, there is a net increase with respect to the taxpayer in the amount of nonqualified nonrecourse financing (within the meaning of subsection (a)(1)) with respect to any property to which subsection (a)(1) applied, then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in credits allowed under section 38 for all prior taxable years which would have resulted from reducing the credit base (as defined in subsection (a)(1)(C)) taken into account with respect to such property by the amount of such net increase. For purposes of determining the amount of credit subject to the early disposition or cessation rules of section 50(a), the net increase in the amount of the nonqualified nonrecourse financing with respect to the property shall be treated as reducing the property's credit base in the year in which the property was first placed in service.

(2) Transfers of debt more than 1 year after initial borrowing not treated as increasing nonqualified nonrecourse financing

For purposes of paragraph (1), the amount of nonqualified nonrecourse financing (within the meaning of subsection (a)(1)(D)) with respect to the taxpayer shall not be treated as increased by reason of a transfer of (or agreement to transfer) any evidence of any indebtedness if such transfer occurs (or such agreement is entered into) more than 1 year after the date such indebtedness was incurred.

(3) Special rules for certain energy property

Rules similar to the rules of section 47(d)(3) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this subsection.

(4) Special rule

Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit allowable under this chapter.

(Added Pub. L. 99-514, title II, §211(a), Oct. 22, 1986, 100 Stat. 2166; amended Pub. L. 100-647, title I, §1002(e)(1)-(3), (8)(B), Nov. 10, 1988, 102 Stat. 3367, 3369; Pub. L. 101-508, title XI, §11813(a), Nov. 5, 1990, 104 Stat. 1388-543; Pub. L. 105-206, title VI, §6004(g)(6), July 22, 1998, 112 Stat. 796; Pub. L. 109-58, title XIII, §1307(c)(1), Aug. 8, 2005, 119 Stat. 1006; Pub. L. 111-5, div. B, title I, §1302(c)(1), Feb. 17, 2009, 123 Stat. 347.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsecs. (a)(1)(F) and (b)(3), is the date of enactment of Pub. L. 101-508, which was approved Nov. 5, 1990.

PRIOR PROVISIONS

A prior section 49, Pub. L. 91-172, title VII, §703(a), Dec. 30, 1969, 83 Stat. 660; Pub. L. 92-178, title I, §101(b)(1)-(4), Dec. 10, 1971, 85 Stat. 498, 499, related to termination of rules for computing credit for investment in certain depreciable property for period beginning Apr. 19, 1969, and ending during 1971, prior to repeal by Pub. L. 95-600, title III, §312(c)(1), Nov. 6, 1978, 92 Stat. 2826, applicable to taxable years ending after Dec. 31, 1978.

AMENDMENTS

2009—Subsec. (a)(1)(C)(v). Pub. L. 111-5 added cl. (v).

2005—Subsec. (a)(1)(C)(iii), (iv). Pub. L. 109-58 added cls. (iii) and (iv) and struck out former cl. (iii) which read as follows: “the amortizable basis of any qualified timber property.”

1998—Subsec. (b)(4). Pub. L. 105-206 substituted “this chapter” for “subpart A, B, D, or G”.

1990—Pub. L. 101-508, §11813(a), amended section generally, substituting section catchline for one which read: “Termination of regular percentage” and in text substituting present provisions for provisions relating to the nonapplicability of the regular percentage to any property placed in service after Dec. 31, 1985, for purposes of determining the investment tax credit, exceptions to such rule, the 35 percent reduction in credit for taxable years after 1986, the full basis adjustment in determining investment tax credit, and the definition of transition property and treatment of progress expenditures.

1988—Subsec. (c)(4)(B). Pub. L. 100-647, §1002(e)(2), substituted “years” for “year” in heading and amended text generally. Prior to amendment, text read as follows: “The amount of the reduction of the regular investment credit under paragraph (3)—

“(i) may not be carried back to any taxable year, but

“(ii) shall be added to the carryforwards from the taxable year before applying paragraph (2).”

Subsec. (c)(5)(B)(i). Pub. L. 100-647, §1002(e)(3), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “The term ‘regular investment credit’ has the meaning given such term by section 48(o)”.

Subsec. (c)(5)(C). Pub. L. 100-647, §1002(e)(8)(B), struck out subpar. (C) which related to portion of credits attributable to regular investment credit.

Subsec. (d)(1). Pub. L. 100-647, §1002(e)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “In the case of periods after December 31, 1985, section 48(q) (relating to basis adjustment to section 38 property) shall be applied with respect to transaction property—

“(A) by substituting ‘100 percent’ for ‘50 percent’ in paragraph (1), and

“(B) without regard to paragraph (4) thereof (relating to election of reduced credit in lieu of basis adjustment).”

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-5 applicable to periods after Feb. 17, 2009, under rules similar to the rules of section 48(m) of this title as in effect on the day before Nov. 5, 1990, see section 1302(d) of Pub. L. 111-5, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-58 applicable to periods after Aug. 8, 2005, under rules similar to the rules of section 48(m) of this title, as in effect on the day before Nov. 5, 1990, see section 1307(d) of Pub. L. 109-58, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101-508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1002(e)(1)-(3) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Amendment by section 1002(e)(8)(B) of Pub. L. 100-647 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 1002(e)(8)(C) of Pub. L. 100-647, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 211(e) of Pub. L. 99-514, as amended by Pub. L. 100-647, title I, §1002(e)(4)-(7), Nov. 10, 1988, 102 Stat. 3367, 3368, provided that:

“(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting this section and provisions set out below] shall apply to property placed in service after December 31, 1985, in taxable years ending after such date. Section 49(c) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to taxable years ending after June 30, 1987, and to amounts carried to such taxable years.

“(2) EXCEPTIONS FOR CERTAIN FILMS.—For purposes of determining whether any property is transition property within the meaning of section 49(e) of the Internal Revenue Code of 1986—

“(A) in the case of any motion picture or television film, construction shall be treated as including production for purposes of section 203(b)(1) of this Act [enacting provisions set out as a note under section 168 of this title], and written contemporary evidence of an agreement (in accordance with industry practice) shall be treated as a written binding contract for such purposes,

“(B) in the case of any television film, a license agreement or agreement for production services between a television network and a producer shall be

treated as a binding contract for purposes of section 203(b)(1)(A) of this Act, and

“(C) a motion picture film shall be treated as described in section 203(b)(1)(A) of this Act if—

“(i) funds were raised pursuant to a public offering before September 26, 1985, for the production of such film,

“(ii) 40 percent of the funds raised pursuant to such public offering are being spent on films the production of which commenced before such date, and

“(iii) all of the films funded by such public offering are required to be distributed pursuant to distribution agreements entered into before September 26, 1985.

“(3) NORMALIZATION RULES.—The provisions of subsection (b) [see Normalization Rules note below] shall apply to any violation of the normalization requirements under paragraph (1) or (2) of section 46(f) of the Internal Revenue Code of 1986 occurring in taxable years ending after December 31, 1985.

“(4) ADDITIONAL EXCEPTIONS.—

“(A) Subsections (c) and (d) of section 49 of the Internal Revenue Code of 1986 shall not apply to any continuous caster facility for slabs and blooms which is subject to a lease and which is part of a project the second phase of which is a continuous slab caster which was placed in service before December 31, 1985.

“(B) For purposes of determining whether an automobile manufacturing facility (including equipment and incidental appurtenances) is transition property within the meaning of section 49(e), property with respect to which the Board of Directors of an automobile manufacturer formally approved the plan for the project on January 7, 1985 shall be treated as transition property and subsections (c) and (d) of section 49 of such Code shall not apply to such property, but only with respect to \$70,000,000 of regular investment tax credits.

“(C) Any solid waste disposal facility which will process and incinerate solid waste of one or more public or private entities including Dakota County, Minnesota, and with respect to which a bond carry-forward from 1985 was elected in an amount equal to \$12,500,000 shall be treated as transition property within the meaning of section 49(e) of the Internal Revenue Code of 1986.

“(D) For purposes of section 49 of such Code, the following property shall be treated as transition property:

“(i) 2 catamarans built by a shipbuilder incorporated in the State of Washington in 1964, the contracts for which were signed on April 22, 1986 and November 12, 1985, and 1 barge built by such shipbuilder the contract for which was signed on August 7, 1985.

“(ii) 2 large passenger ocean-going United States flag cruise ships with a passenger rated capacity of up to 250 which are built by the shipbuilder described in clause (i), which are the first such ships built in the United States since 1952, and which were designed at the request of a Pacific Coast cruise line pursuant to a contract entered into in October 1985. This clause shall apply only to that portion of the cost of each ship which does not exceed \$40,000,000.

“(iii) Property placed in service during 1986 by Satellite Industries, Inc., with headquarters in Minneapolis, Minnesota, to the extent that the cost of such property does not exceed \$1,950,000.

“(E) Subsections (c) and (d) of section 49 of such Code shall not apply to property described in section 204(a)(4) of this Act [enacting provisions set out as a note under section 168 of this title].”

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account

prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

NORMALIZATION RULES

Section 211(b) of Pub. L. 99-514 provided that: “If, for any taxable year beginning after December 31, 1985, the requirements of paragraph (1) or (2) of section 46(f) of the Internal Revenue Code of 1986 are not met with respect to public utility property to which the regular percentage applied for purposes of determining the amount of the investment tax credit—

“(1) all credits for open taxable years as of the time of the final determination referred to in section 46(f)(4)(A) of such Code shall be recaptured, and

“(2) if the amount of the taxpayer’s unamortized credits (or the credits not previously restored to rate base) with respect to such property (whether or not for open years) exceeds the amount referred to in paragraph (1), the taxpayer’s tax for the taxable year shall be increased by the amount of such excess.

If any portion of the excess described in paragraph (2) is attributable to a credit which is allowable as a carry-over to a taxable year beginning after December 31, 1985, in lieu of applying paragraph (2) with respect to such portion, the amount of such carryover shall be reduced by the amount of such portion. Rules similar to the rules of this subsection shall apply in the case of any property with respect to which the requirements of section 46(f)(9) of such Code are met.”

EXCEPTION FOR CERTAIN AIRCRAFT USED IN ALASKA

Section 211(d) of Pub. L. 99-514 provided that:

“(1) The amendments made by subsection (a) [enacting this section and provisions set out above] shall not apply to property originally placed in service after December 29, 1982, and before August 1, 1985, by a corporation incorporated in Alaska on May 21, 1953, and used by it—

“(A) in part, for the transportation of mail for the United States Postal Service in the State of Alaska, and

“(B) in part, to provide air service in the State of Alaska on routes which had previously been served by an air carrier that received compensation from the Civil Aeronautics Board for providing service.

“(2) In the case of property described in subparagraph (A)—

“(A) such property shall be treated as recovery property described in section 208(d)(5) of the Tax Equity and Fiscal Responsibility Act of 1982 (‘TEFRA’) [section 208(d)(5) of Pub. L. 97-248, enacting provisions set out as a note under section 168 of this title];

“(B) ‘48 months’ shall be substituted for ‘3 months’ each place it appears in applying—

“(i) section 48(b)(2)(B) of the Code [26 U.S.C. 48(b)(2)(B)], and

“(ii) section 168(f)(8)(D) of the Code [26 U.S.C. 168(f)(8)(D)] (as in effect after the amendments made by the Technical Corrections Act of 1982 [Pub. L. 97-448] but before the amendments made by TEFRA); and

“(C) the limitation of section 168(f)(8)(D)(ii)(III) (as then in effect) shall be read by substituting ‘the lessee’s original cost basis.’, for ‘the adjusted basis of the lessee at the time of the lease.’

“(3) The aggregate amount of property to which this paragraph shall apply shall not exceed \$60,000,000.”

§ 50. Other special rules

(a) Recapture in case of dispositions, etc.

Under regulations prescribed by the Secretary—

(1) Early disposition, etc.

(A) General rule

If, during any taxable year, investment credit property is disposed of, or otherwise

ceases to be investment credit property with respect to the taxpayer, before the close of the recapture period, then the tax under this chapter for such taxable year shall be increased by the recapture percentage of the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero any credit determined under this subpart with respect to such property.

(B) Recapture percentage

For purposes of subparagraph (A), the recapture percentage shall be determined in accordance with the following table:

If the property ceases to be investment credit property within—	The recapture percentage is:
(i) One full year after placed in service	100
(ii) One full year after the close of the period described in clause (i)	80
(iii) One full year after the close of the period described in clause (ii)	60
(iv) One full year after the close of the period described in clause (iii)	40
(v) One full year after the close of the period described in clause (iv)	20

(2) Property ceases to qualify for progress expenditures

(A) In general

If during any taxable year any building to which section 47(d) applied ceases (by reason of sale or other disposition, cancellation or abandonment of contract, or otherwise) to be, with respect to the taxpayer, property which, when placed in service, will be a qualified rehabilitated building, then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero the credit determined under this subpart with respect to such building.

(B) Certain excess credit recaptured

Any amount which would have been applied as a reduction under paragraph (2) of section 47(b) but for the fact that a reduction under such paragraph cannot reduce the amount taken into account under section 47(b)(1) below zero shall be treated as an amount required to be recaptured under subparagraph (A) for the taxable year during which the building is placed in service.

(C) Certain sales and leasebacks

Under regulations prescribed by the Secretary, a sale by, and leaseback to, a taxpayer who, when the property is placed in service, will be a lessee to whom the rules referred to in subsection (d)(5) apply shall not be treated as a cessation described in subparagraph (A) to the extent that the amount which will be passed through to the lessee under such rules with respect to such property is not less than the qualified rehabilitation expenditures properly taken into

account by the lessee under section 47(d) with respect to such property.

(D) Coordination with paragraph (1)

If, after property is placed in service, there is a disposition or other cessation described in paragraph (1), then paragraph (1) shall be applied as if any credit which was allowable by reason of section 47(d) and which has not been required to be recaptured before such disposition, cessation, or change in use were allowable for the taxable year the property was placed in service.

(E) Special rules

Rules similar to the rules of this paragraph shall apply in cases where qualified progress expenditures were taken into account under the rules referred to in section 48(b).

(3) Carrybacks and carryovers adjusted

In the case of any cessation described in paragraph (1) or (2), the carrybacks and carryovers under section 39 shall be adjusted by reason of such cessation.

(4) Subsection not to apply in certain cases

- Paragraphs (1) and (2) shall not apply to—
 - (A) a transfer by reason of death, or
 - (B) a transaction to which section 381(a) applies.

For purposes of this subsection, property shall not be treated as ceasing to be investment credit property with respect to the taxpayer by reason of a mere change in the form of conducting the trade or business so long as the property is retained in such trade or business as investment credit property and the taxpayer retains a substantial interest in such trade or business.

(5) Definitions and special rules

(A) Investment credit property

For purposes of this subsection, the term “investment credit property” means any property eligible for a credit determined under this subpart.

(B) Transfer between spouses or incident to divorce

In the case of any transfer described in subsection (a) of section 1041—

- (i) the foregoing provisions of this subsection shall not apply, and
- (ii) the same tax treatment under this subsection with respect to the transferred property shall apply to the transferee as would have applied to the transferor.

(C) Special rule

Any increase in tax under paragraph (1) or (2) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit allowable under this chapter.

(b) Certain property not eligible

No credit shall be determined under this subpart with respect to—

(1) Property used outside United States

(A) In general

Except as provided in subparagraph (B), no credit shall be determined under this sub-

part with respect to any property which is used predominantly outside the United States.

(B) Exceptions

Subparagraph (A) shall not apply to any property described in section 168(g)(4).

(2) Property used for lodging

No credit shall be determined under this subpart with respect to any property which is used predominantly to furnish lodging or in connection with the furnishing of lodging. The preceding sentence shall not apply to—

(A) nonlodging commercial facilities which are available to persons not using the lodging facilities on the same basis as they are available to persons using the lodging facilities.¹

(B) property used by a hotel or motel in connection with the trade or business of furnishing lodging where the predominant portion of the accommodations is used by transients;

(C) a certified historic structure to the extent of that portion of the basis which is attributable to qualified rehabilitation expenditures; and

(D) any energy property.

(3) Property used by certain tax-exempt organization

No credit shall be determined under this subpart with respect to any property used by an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter unless such property is used predominantly in an unrelated trade or business the income of which is subject to tax under section 511. If the property is debt-financed property (as defined in section 514(b)), the amount taken into account for purposes of determining the amount of the credit under this subpart with respect to such property shall be that percentage of the amount (which but for this paragraph would be so taken into account) which is the same percentage as is used under section 514(a), for the year the property is placed in service, in computing the amount of gross income to be taken into account during such taxable year with respect to such property. If any qualified rehabilitated building is used by the tax-exempt organization pursuant to a lease, this paragraph shall not apply for purposes of determining the amount of the rehabilitation credit.

(4) Property used by governmental units or foreign persons or entities

(A) In general

No credit shall be determined under this subpart with respect to any property used—

(i) by the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing, or

(ii) by any foreign person or entity (as defined in section 168(h)(2)(C)), but only with respect to property to which section

168(h)(2)(A)(iii) applies (determined after the application of section 168(h)(2)(B)).

(B) Exception for short-term leases

This paragraph and paragraph (3) shall not apply to any property by reason of use under a lease with a term of less than 6 months (determined under section 168(i)(3)).

(C) Exception for qualified rehabilitated buildings leased to governments, etc.

If any qualified rehabilitated building is leased to a governmental unit (or a foreign person or entity) this paragraph shall not apply for purposes of determining the rehabilitation credit with respect to such building.

(D) Special rules for partnerships, etc.

For purposes of this paragraph and paragraph (3), rules similar to the rules of paragraphs (5) and (6) of section 168(h) shall apply.

(E) Cross reference

For special rules for the application of this paragraph and paragraph (3), see section 168(h).

(c) Basis adjustment to investment credit property

(1) In general

For purposes of this subtitle, if a credit is determined under this subpart with respect to any property, the basis of such property shall be reduced by the amount of the credit so determined.

(2) Certain dispositions

If during any taxable year there is a recapture amount determined with respect to any property the basis of which was reduced under paragraph (1), the basis of such property (immediately before the event resulting in such recapture) shall be increased by an amount equal to such recapture amount. For purposes of the preceding sentence, the term "recapture amount" means any increase in tax (or adjustment in carrybacks or carryovers) determined under subsection (a).

(3) Special rule

In the case of any energy credit—

(A) only 50 percent of such credit shall be taken into account under paragraph (1), and

(B) only 50 percent of any recapture amount attributable to such credit shall be taken into account under paragraph (2).

(4) Recapture of reductions

(A) In general

For purposes of sections 1245 and 1250, any reduction under this subsection shall be treated as a deduction allowed for depreciation.

(B) Special rule for section 1250

For purposes of section 1250(b), the determination of what would have been the depreciation adjustments under the straight line method shall be made as if there had been no reduction under this section.

(5) Adjustment in basis of interest in partnership or S corporation

The adjusted basis of—

¹ So in original. The period probably should be a semicolon.

(A) a partner's interest in a partnership, and

(B) stock in an S corporation,

shall be appropriately adjusted to take into account adjustments made under this subsection in the basis of property held by the partnership or S corporation (as the case may be).

(d) Certain rules made applicable

For purposes of this subpart, rules similar to the rules of the following provisions (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply:

(1) Section 46(e) (relating to limitations with respect to certain persons).

(2) Section 46(f) (relating to limitation in case of certain regulated companies).

(3) Section 46(h) (relating to special rules for cooperatives).

(4) Paragraphs (2) and (3) of section 48(b) (relating to special rule for sale-leasebacks).

(5) Section 48(d) (relating to certain leased property).

(6) Section 48(f) (relating to estates and trusts).

(7) Section 48(r) (relating to certain 501(d) organizations).

Paragraphs (1)(A), (2)(A), and (4) of the section 46(e) referred to in paragraph (1) of this subsection shall not apply to any taxable year beginning after December 31, 1995.

(Added Pub. L. 101-508, title XI, §11813(a), Nov. 5, 1990, 104 Stat. 1388-546; amended Pub. L. 104-188, title I, §§1616(b)(1), 1702(h)(11), 1704(t)(29), Aug. 20, 1996, 110 Stat. 1856, 1874, 1889; Pub. L. 105-206, title VI, §6004(g)(7), July 22, 1998, 112 Stat. 796; Pub. L. 108-357, title III, §322(d)(2)(D), Oct. 22, 2004, 118 Stat. 1475; Pub. L. 109-135, title IV, §412(o), Dec. 21, 2005, 119 Stat. 2638.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (d), is the date of enactment of Pub. L. 101-508, which was approved Nov. 5, 1990.

PRIOR PROVISIONS

A prior section 50, Pub. L. 92-178, title I, §101(a), Dec. 10, 1971, 85 Stat. 498, related to restoration of credit for investment in certain depreciable property, prior to repeal by Pub. L. 95-600, title III, §312(c)(1), Nov. 6, 1978, 92 Stat. 2826, applicable to taxable years ending after Dec. 31, 1978.

AMENDMENTS

2005—Subsec. (a)(2)(E). Pub. L. 109-135 substituted “section 48(b)” for “section 48(a)(5)”.

2004—Subsec. (c)(3). Pub. L. 108-357 struck out “or reforestation credit” after “energy credit” in introductory provisions.

1998—Subsec. (a)(5)(C). Pub. L. 105-206 substituted “this chapter” for “subpart A, B, D, or G”.

1996—Subsec. (a)(2)(C). Pub. L. 104-188, §1704(t)(29), substituted “subsection (d)(5)” for “subsection (c)(4)”.

Subsec. (a)(2)(E). Pub. L. 104-188, §1702(h)(11), substituted “48(a)(5)” for “48(a)(5)(A)”.

Subsec. (d). Pub. L. 104-188, §1616(b)(1), inserted closing provisions.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable with respect to expenditures paid or incurred after Oct. 22,

2004, see section 322(e) of Pub. L. 108-357, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1616(b)(1) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104-188, set out as a note under section 593 of this title.

Amendment by section 1702(h)(11) of Pub. L. 104-188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101-508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104-188, set out as a note under section 38 of this title.

EFFECTIVE DATE

Section applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101-508, set out as an Effective Date of 1990 Amendment note under section 45K of this title.

SAVINGS PROVISION

For provisions that nothing in this section be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

[§§ 50A, 50B. Repealed. Pub. L. 98-369, div. A, title IV, § 474(m)(2), July 18, 1984, 98 Stat. 833]

Section 50A, added Pub. L. 92-178, title VI, §601(b), Dec. 10, 1971, 85 Stat. 554; amended Pub. L. 93-406, title II, §§2001(g)(2)(B), 2002(g)(2), 2005(c)(4), Sept. 2, 1974, 88 Stat. 957, 968, 991; Pub. L. 94-12, title IV, §401(a)(1), (2), Mar. 29, 1975, 89 Stat. 45; Pub. L. 94-401, §4(a), Sept. 7, 1976, 90 Stat. 1217; Pub. L. 94-455, title V, §503(b)(4), title XIX, §§1901(a)(6), (b)(1)(D), 1906(b)(13)(A), title XXI, §2107(a)(1)-(3), (b), (c), Oct. 4, 1976, 90 Stat. 1562, 1765, 1790, 1834, 1903, 1904; Pub. L. 95-600, title III, §322(a)-(c), Nov. 6, 1978, 92 Stat. 2836, 2837; Pub. L. 96-178, §6(c)(1), Jan. 2, 1980, 93 Stat. 1298; Pub. L. 96-222, title I, §103(a)(7)(D)(i), Apr. 1, 1980, 94 Stat. 211; Pub. L. 97-34, title II, §207(c)(1), Aug. 13, 1981, 95 Stat. 225; Pub. L. 97-248, title I, §265(b)(2)(A)(ii), Sept. 3, 1982, 96 Stat. 547; Pub. L. 97-354, §5(a)(9), Oct. 19, 1982, 96 Stat. 1693, provided for a credit for expenses of work incentive programs, for the determination of the amount of that credit, and for the carryover and carryback of unused credit.

Section 50B, added Pub. L. 92-178, title VI, §601(b), Dec. 10, 1971, 85 Stat. 556; amended Pub. L. 94-12, title III, §302(c)(4), title IV, §401(a)(3)-(5), Mar. 29, 1975, 89 Stat. 44, 46; Pub. L. 94-401, §4(b), Sept. 7, 1976, 90 Stat. 1218; Pub. L. 94-455, title XIX, §1906(b)(13)(A), title XXI, §2107(a)(4), (d)-(f), Oct. 4, 1976, 90 Stat. 1834, 1903, 1904; Pub. L. 95-171, §1(e), Nov. 12, 1977, 91 Stat. 1353; Pub. L. 95-600, title III, §322(d), Nov. 6, 1978, 92 Stat. 2837; Pub. L. 96-178, §§3(a)(1), (3), 6(c)(2), (3), Jan. 2, 1980, 93 Stat. 1295, 1298; Pub. L. 96-222, title I, §103(a)(5), (7)(C), (D)(ii), (iii), Apr. 1, 1980, 94 Stat. 209, 211; Pub. L. 96-272, title II, §208(b)(1), (2), June 17, 1980, 94 Stat. 526, 527; Pub. L. 97-34, title II, §261(b)(2)(B)(i), Aug. 13, 1981, 95 Stat. 261;

Pub. L. 97-354, §5(a)(10), Oct. 19, 1982, 96 Stat. 1693; Pub. L. 101-239, title VII, §7644, Dec. 19, 1989, 103 Stat. 2381, provided for the definition of terms related to the expenses of work incentive programs, limitations on such expenses, and special rules to be applied in connection with the computation of the credit.

Subsequent to repeal, Pub. L. 101-239, title VII, §7644(a), Dec. 19, 1989, 103 Stat. 2381, provided that:

“(a) IN GENERAL.—So much of subparagraph (A) of section 50B(h)(1) of the Internal Revenue Code of 1954 (as in effect for taxable years beginning before January 1, 1982) as precedes clause (i) thereof is amended to read as follows:

“(A) who has been certified (or for whom a written request for certification has been made) on or before the day the individual began work for the taxpayer by the Secretary of Labor or by the appropriate agency of State or local government as—”.

“(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply for purposes of credits first claimed after March 11, 1987.”

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 21 of this title.

SUBPART F—RULES FOR COMPUTING WORK OPPORTUNITY CREDIT

Sec.	
51.	Amount of credit.
[51A.	Repealed.]
52.	Special rules.

AMENDMENTS

2006—Pub. L. 109-432, div. A, title I, §105(e)(4)(B), Dec. 20, 2006, 120 Stat. 2937, struck out item 51A “Temporary incentives for employing long-term family assistance recipients”.

1997—Pub. L. 105-34, title VIII, §801(b), Aug. 5, 1997, 111 Stat. 871, added item 51A.

1996—Pub. L. 104-188, title I, §1201(e)(2), Aug. 20, 1996, 110 Stat. 1772, substituted “Work Opportunity Credit” for “Targeted Jobs Credit” in subpart heading.

1984—Pub. L. 98-369, div. A, title IV, §474(n)(1), (2), (p)(9), July 18, 1984, 98 Stat. 833, 838, substituted “F” for “D” as subpart designation, substituted “Rules for Computing Targeted Jobs Credit” for “Rules for Computing Credit for Employment of Certain New Employees” in heading, and struck out item 53 “Limitation based on amount of tax”.

§ 51. Amount of credit

(a) Determination of amount

For purposes of section 38, the amount of the work opportunity credit determined under this section for the taxable year shall be equal to 40 percent of the qualified first-year wages for such year.

(b) Qualified wages defined

For purposes of this subpart—

(1) In general

The term “qualified wages” means the wages paid or incurred by the employer during the taxable year to individuals who are members of a targeted group.

(2) Qualified first-year wages

The term “qualified first-year wages” means, with respect to any individual, qualified wages attributable to service rendered during the 1-year period beginning with the

day the individual begins work for the employer.

(3) Limitation on wages per year taken into account

The amount of the qualified first-year wages which may be taken into account with respect to any individual shall not exceed \$6,000 per year (\$12,000 per year in the case of any individual who is a qualified veteran by reason of subsection (d)(3)(A)(ii)).

(c) Wages defined

For purposes of this subpart—

(1) In general

Except as otherwise provided in this subsection and subsection (h)(2), the term “wages” has the meaning given to such term by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section).

(2) On-the-job training and work supplementation payments

(A) Exclusion for employers receiving on-the-job training payments

The term “wages” shall not include any amounts paid or incurred by an employer for any period to any individual for whom the employer receives federally funded payments for on-the-job training of such individual for such period.

(B) Reduction for work supplementation payments to employers

The amount of wages which would (but for this subparagraph) be qualified wages under this section for an employer with respect to an individual for a taxable year shall be reduced by an amount equal to the amount of the payments made to such employer (however utilized by such employer) with respect to such individual for such taxable year under a program established under section 482(e)¹ of the Social Security Act.

(3) Payments for services during labor disputes

If—

(A) the principal place of employment of an individual with the employer is at a plant or facility, and

(B) there is a strike or lockout involving employees at such plant or facility,

the term “wages” shall not include any amount paid or incurred by the employer to such individual for services which are the same as, or substantially similar to, those services performed by employees participating in, or affected by, the strike or lockout during the period of such strike or lockout.

(4) Termination

The term “wages” shall not include any amount paid or incurred to an individual who begins work for the employer—

(A) after December 31, 1994, and before October 1, 1996, or

(B) after August 31, 2011.

(d) Members of targeted groups

For purposes of this subpart—

¹ See References in Text note below.