

ferred to in section 50(b) or with respect to the portion of the cost of any property taken into account under section 179.

**(6) Basis reduction**

**(A) In general**

For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

**(B) Ordinary income recapture**

For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

**(f) Termination**

This section shall not apply to any property placed in service after December 31, 2005.

(Added Pub. L. 102-486, title XIX, §1913(a)(1), Oct. 24, 1992, 106 Stat. 3016; amended Pub. L. 104-188, title I, §1704(j)(2), Aug. 20, 1996, 110 Stat. 1881; Pub. L. 107-147, title VI, §606(a), Mar. 9, 2002, 116 Stat. 60; Pub. L. 108-311, title III, §319(a), Oct. 4, 2004, 118 Stat. 1182; Pub. L. 109-58, title XIII, §1348, Aug. 8, 2005, 119 Stat. 1056.)

AMENDMENTS

2005—Subsec. (f). Pub. L. 109-58 substituted “December 31, 2005” for “December 31, 2006”.

2004—Subsec. (b)(1)(B). Pub. L. 108-311 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “In the case of any qualified clean-fuel vehicle property placed in service after December 31, 2003, the limit otherwise applicable under subparagraph (A) shall be reduced by—

“(i) 25 percent in the case of property placed in service in calendar year 2004,

“(ii) 50 percent in the case of property placed in service in calendar year 2005, and

“(iii) 75 percent in the case of property placed in service in calendar year 2006.”

2002—Subsec. (b)(1)(B). Pub. L. 107-147, §606(a)(1)(A), substituted “December 31, 2003,” for “December 31, 2001,” in introductory provisions.

Subsec. (b)(1)(B)(i). Pub. L. 107-147, §606(a)(1)(B), substituted “2004” for “2002”

Subsec. (b)(1)(B)(ii). Pub. L. 107-147, §606(a)(1)(B), substituted “2005” for “2003”.

Subsec. (b)(1)(B)(iii). Pub. L. 107-147, §606(a)(1)(B), substituted “2006” for “2004”.

Subsec. (f). Pub. L. 107-147, §606(a)(2), substituted “December 31, 2006” for “December 31, 2004”.

1996—Subsecs. (f), (g). Pub. L. 104-188 redesignated subsec. (g) as (f).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-311, title III, §319(b), Oct. 4, 2004, 118 Stat. 1182, provided that: “The amendment made by subsection (a) [amending this section] shall apply to property placed in service after December 31, 2003.”

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-147, title VI, §606(b), Mar. 9, 2002, 116 Stat. 60, provided that: “The amendments made by subsection (a) [amending this section] shall apply to property placed in service after December 31, 2001.”

EFFECTIVE DATE

Section applicable to property placed in service after June 30, 1993, see section 1913(c) of Pub. L. 102-486, set out as a note under section 30 of this title.

**§ 179B. Deduction for capital costs incurred in complying with Environmental Protection Agency sulfur regulations**

**(a) Allowance of deduction**

In the case of a small business refiner (as defined in section 45H(c)(1)) which elects the application of this section, there shall be allowed as a deduction an amount equal to 75 percent of qualified costs (as defined in section 45H(c)(2)) which are paid or incurred by the taxpayer during the taxable year and which are properly chargeable to capital account.

**(b) Reduced percentage**

In the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on December 31, 2002, in excess of 155,000 barrels, the number of percentage points described in subsection (a) shall be reduced (not below zero) by the product of such number (before the application of this subsection) and the ratio of such excess to 50,000 barrels.

**(c) Basis reduction**

**(1) In general**

For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

**(2) Ordinary income recapture**

For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

**(d) Coordination with other provisions**

Section 280B shall not apply to amounts which are treated as expenses under this section.

**(e) Election to allocate deduction to cooperative owner**

**(1) In general**

If—

(A) a small business refiner to which subsection (a) applies is an organization to which part I of subchapter T applies, and

(B) one or more persons directly holding an ownership interest in the refiner are organizations to which part I of subchapter T apply,

the refiner may elect to allocate all or a portion of the deduction allowable under subsection (a) to such persons. Such allocation shall be equal to the person's ratable share of the total amount allocated, determined on the basis of the person's ownership interest in the taxpayer. The taxable income of the refiner shall not be reduced under section 1382 by reason of any amount to which the preceding sentence applies.

**(2) Form and effect of election**

An election under paragraph (1) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

**(3) Written notice to owners**

If any portion of the deduction available under subsection (a) is allocated to owners

under paragraph (1), the cooperative shall provide any owner receiving an allocation written notice of the amount of the allocation. Such notice shall be provided before the date on which the return described in paragraph (2) is due.

(Added Pub. L. 108-357, title III, § 338(a), Oct. 22, 2004, 118 Stat. 1480; amended Pub. L. 109-58, title XIII, § 1324(a), Aug. 8, 2005, 119 Stat. 1015; Pub. L. 110-172, § 7(a)(3)(A), (C), Dec. 29, 2007, 121 Stat. 2482.)

#### AMENDMENTS

2007—Subsec. (a). Pub. L. 110-172 substituted “qualified costs” for “qualified capital costs” and inserted “and which are properly chargeable to capital account” before period at end.

2005—Subsec. (e). Pub. L. 109-58 added subsec. (e).

#### EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 7(e) of Pub. L. 110-172, set out as a note under section 1092 of this title.

#### EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-58, title XIII, § 1324(b), Aug. 8, 2005, 119 Stat. 1015, provided that: “The amendment made by this section [amending this section] shall take effect as if included in the amendment made by section 338(a) of the American Jobs Creation Act of 2004 [Pub. L. 108-357, enacting this section].”

#### EFFECTIVE DATE

Pub. L. 108-357, title III, § 338(c), Oct. 22, 2004, 118 Stat. 1481, provided that: “The amendment made by this section [enacting this section and amending sections 263, 263A, 312, 1016, and 1245 of this title] shall apply to expenses paid or incurred after December 31, 2002, in taxable years ending after such date.”

### § 179C. Election to expense certain refineries

#### (a) Treatment as expenses

A taxpayer may elect to treat 50 percent of the cost of any qualified refinery property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the qualified refinery property is placed in service.

#### (b) Election

##### (1) In general

An election under this section for any taxable year shall be made on the taxpayer’s return of the tax imposed by this chapter for the taxable year. Such election shall be made in such manner as the Secretary may by regulations prescribe.

##### (2) Election irrevocable

Any election made under this section may not be revoked except with the consent of the Secretary.

#### (c) Qualified refinery property

##### (1) In general

The term “qualified refinery property” means any portion of a qualified refinery—

(A) the original use of which commences with the taxpayer,

(B) which is placed in service by the taxpayer after the date of the enactment of this section and before January 1, 2014,

(C) in the case any portion of a qualified refinery (other than a qualified refinery which is separate from any existing refinery), which meets the requirements of subsection (e),

(D) which meets all applicable environmental laws in effect on the date such portion was placed in service,

(E) no written binding contract for the construction of which was in effect on or before June 14, 2005, and

(F)(i) the construction of which is subject to a written binding construction contract entered into before January 1, 2010,

(ii) which is placed in service before January 1, 2010, or

(iii) in the case of self-constructed property, the construction of which began after June 14, 2005, and before January 1, 2010.

#### (2) Special rule for sale-leasebacks

For purposes of paragraph (1)(A), if property is—

(A) originally placed in service after the date of the enactment of this section by a person, and

(B) sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in subparagraph (B).

#### (3) Effect of waiver under Clean Air Act

A waiver under the Clean Air Act shall not be taken into account in determining whether the requirements of paragraph (1)(D) are met.

#### (d) Qualified refinery

For purposes of this section, the term “qualified refinery” means any refinery located in the United States which is designed to serve the primary purpose of processing liquid fuel from crude oil or qualified fuels (as defined in section 45K(c)), or directly from shale or tar sands.

#### (e) Production capacity

The requirements of this subsection are met if the portion of the qualified refinery—

(1) enables the existing qualified refinery to increase total volume output (determined without regard to asphalt or lube oil) by 5 percent or more on an average daily basis, or

(2) enables the existing qualified refinery to process shale, tar sands, or qualified fuels (as defined in section 45K(c)) at a rate which is equal to or greater than 25 percent of the total throughput of such qualified refinery on an average daily basis.

#### (f) Ineligible refinery property

No deduction shall be allowed under subsection (a) for any qualified refinery property—

(1) the primary purpose of which is for use as a topping plant, asphalt plant, lube oil facility, crude or product terminal, or blending facility, or

(2) which is built solely to comply with consent decrees or projects mandated by Federal, State, or local governments.