

shall not qualify for the 10 percent rehabilitation percentage.

(B) *Property placed in service before January 1, 1987, and property qualifying for a transitional rule.* For purposes of paragraphs (q)(1) (iii) and (iv) of this section, if part of a building meets the definition of a “40-year building” and part of the building is an addition that was placed in service less than forty years before physical work on the rehabilitation began but more than thirty years before such date, then the qualified rehabilitation expenditures made to the building shall be allocated between the forty year old portion of the building and the thirty year old portion of the building, and a 20 percent rehabilitation percentage shall be applied to the forty year old portion of the building and a 15 percent rehabilitation percentage shall be applied to the thirty year old portion. This allocation shall be made using the principles in § 1.48-12(c)(10)(ii). If an allocation cannot be made between the expenditures to the forty year old portion of the building and the thirty year old portion of the building, then the building will be considered to be a 30-year building. Furthermore, for purposes of this paragraph (q), a building (other than a certified historic structure) is not a qualified rehabilitated building to the extent of that portion of the building that is less than 30 years old. If rehabilitation expenditures are incurred with respect to an addition to a qualified rehabilitated building, but the addition is not considered to be part of the qualified rehabilitated building because the addition does not meet the age requirement in section 48(g)(1)(B) (as in effect prior to its amendment by the Tax Reform Act of 1986) and § 1.48-12(b)(4)(i)(B), then no rehabilitation percentage will be applied to the expenditures attributable to the rehabilitation of the addition. Thus, for purposes of paragraphs (q)(1) (iii) and (iv) of this section, it may be necessary to allocate rehabilitation expenditures incurred with respect to a building between the original portion of the building and the addition.

(iii) *Mixed-use buildings.* If qualified rehabilitation expenditures are incurred for property that is excluded from section 38 property described in

section 48(a)(1)(E) (because, for example, they are made with respect to a portion of the building used for lodging within the meaning of section 48(a)(3) and § 1.48-1(h)), an allocation of the expenditures must be made between the expenditures that result in an addition to basis that is section 38 property and the expenditures that result in an addition to basis that is excluded from the definition of section 38 property since the rehabilitation percentage is applicable only to section 38 property. These allocations should be made using the principles contained in § 1.48-12(c)(10)(ii).

(3) *Regular and energy percentages not to apply.* The regular percentage and the energy percentage shall not apply to that portion of the basis of any building that is attributable to qualified rehabilitation expenditures (as defined in § 1.48-12(c)).

(4) *Effective date.* The rehabilitation percentage is applicable only to qualified rehabilitation expenditures (as defined in § 1.48-12(c)). For rules relating to applicability of the regular percentage to qualified rehabilitation expenditures (as defined in § 1.48-11(c)), see § 1.48-11.

[T.D. 6731, 29 FR 6064, May 8, 1964]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.46-1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 1.46-2 Carryback and carryover of unused credit.

(a) *Effective date.* This section is effective for taxable years beginning after December 31, 1975. For taxable years beginning before January 1, 1976, see 26 CFR 1.46-2 (Rev. as of April 1, 1979).

(b) *In general.* Under section 46(b)(1), unused credit may be carried back and carried over. Carrybacks and carryovers of unused credit are taken into account in determining the amount of credit available and the credit allowed for the taxable years to which they may be carried. In general, the application of the rules of this section to regular and ESOP credits are separate from their application to non-refundable energy credits. For example, the limitations on carrybacks and

carryovers of unused nonrefundable energy credit under section 46(b) (2) and (3), respectively, differ in amount from the limitations on the regular and ESOP credits because the tax liability limitations for those credits differ. See § 1.46-1(h). For a further example, see the special ordering rule in § 1.46-1(m). Section 46(b) does not apply to the refundable energy credit.

(c) *Unused credit.* If carryovers and credit earned (as defined in § 1.46-1(c)(1)) exceed the applicable tax liability limitation, the excess attributable to credit earned is an unused credit. The taxable year in which an unused credit arises is referred to as the “unused credit year”.

(d) *Taxable years to which unused credit may be carried.* An unused credit is a carryback to each of the 3 taxable years preceding the unused credit year and a carryover to each of the 7 taxable years succeeding the unused credit year. An unused credit must be carried first to the earliest of those 10 taxable years. An unused credit then must be carried to each of the other 9 taxable years (in order of time) to the extent that the unused credit was not absorbed during a prior taxable year because of the limitations under section 46(b) (2) and (3).

(e) *Special rule for pre-1971 years—(1) In general.* For unused credit years ending before January 1, 1971, unused credit is allowed a 10-year carryover rather than the 7-year carryover. The principles of paragraph (d) of this section apply to this 10-year carryover.

(2) *Cross reference.* For limitations on the taxable years to which unused credit from pre-1971 credit years may be carried, see paragraph (g) of this section.

(f) *Limitations on carrybacks.* Under the FIFO rule to section 46(a)(1), carryovers and credit earned are applied against the tax liability limitation before carrybacks. Thus, carrybacks to a taxable year may not exceed the amount by which the applicable tax liability limitation for that year exceeds the sum of carryovers to and credit earned for that year. Carrybacks from an unused credit year are applied against tax liability before carrybacks from a later unused credit year. To the extent an unused credit cannot be carried back to a particular preceding taxable year, the unused credit must be carried to the next succeeding taxable year to which it may be carried.

(g) *Limitations on carryovers—(1) General rule.* Carryovers to a taxable year may not exceed the applicable tax liability limitation for that year. Carryovers from an unused credit year are applied before carryovers from a later unused credit year.

(2) *Exception.* A 10-year carryover from a pre-1971 unused credit year may, under certain circumstances, be postponed to prevent a later-earned 7-year carryover from expiring. This exception does not extend the 10-year carryover period for pre-1971 unused credit. See section 46(b)(1)(D).

(h) *Examples.* The following examples illustrate paragraphs (a) through (g) of this section.

Example 1. (a) Corporation M is organized on January 1, 1977 and files its income tax return on a calendar year basis. Assume the facts set forth in columns (1) and (2) of the following table. The determination of the regular credit allowed for each of the taxable years indicated is set forth in the remaining portions of the table.

	(1) Credit available	(2) Tax liability	(3) Percent	(4) Tax liability limitation (remaining from col. (6) on pre- ceding line)	(5) Credit al- lowed (lower of (1) or (4))	(6) Remain- ing tax li- ability li- mitation (4)-(5))	(7) Unused credit ((1)- (5)) or (amount absorbed)
1977:							
A. Credit earned	\$20,000	\$45,000	50	\$35,000	\$20,000	\$15,000	0
B. Carryback from 1978	*15,000			[15,000]	15,000		
1978:							
A. Credit earned	80,000	55,000	50	40,000	40,000	0	\$20,000
Carryback to 1977							(*15,000)
Carryover to 1979							(*5,000)
1979:							
A. Carryover from 1978	*5,000	50,000	60	40,000	6,000	35,000	

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	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Credit available	Tax liability	Percent	Tax liability limitation (remaining from col. (6) on preceding line)	Credit allowed (lower of (1) or (4))	Remaining tax liability limitation ((4)-(5))	Unused credit ((1)-(5)) or (amount absorbed)
B. Credit earned	50,000	.....	.....	[35,000]	35,000	0	15,000
Carryover to 1980 .....	.....	.....	.....	.....	.....	.....	(*15,000)
1980:							
A. Carryover from 1979	*15,000	55,000	70	46,000	15,000	31,000	.....
B. Credit earned	25,000	.....	.....	[31,000]	25,000	6,000	0

*For line "A" each year: Lesser of (1) tax liability or (2) \$25,000 + (percentage in col. (3) × [col. (2) - \$25,000]). See, § 1.46-1(h). For other lines: Amount in col. (6) on preceding line.

Example 2. (a) Assume the same facts as in *Example 1* except for 1979 M earns a \$35,000 nonrefundable energy credit. The following table shows the determinations for each year.

	(1)	(2)		(3)	(4)	(5)	(6)	(7)
	Credit available	Tax liability		Percent	Tax liability limitation* (remaining from col. (6) on preceding line)	Credit allowed (lower of (1) or (4))	Remaining tax liability limitation ((4)-(5))	Unused credit ((1)-(5)) or (amount absorbed)
		(a) Regular	(b) Energy ((2)(a)-(5)(R))					
1977:								
Regular:								
A. Credit earned	\$20,000	\$45,000	.....	50	\$35,000	\$20,000R	\$15,000	0
B. Carryback from 1978	*15,000	.....	.....	.....	[15,000]	15,000R	0	.....
1978:								
Regular:								
A. Credit earned	60,000	55,000	.....	50	40,000	40,000R	0	\$20,000
Carryback to 1977 .....	.....	.....	.....	.....	.....	.....	.....	(*15,000)
Carryover to 1979 .....	.....	.....	.....	.....	.....	.....	.....	(*5,000)
Energy:								
A. Carryback from 1979	*15,000	.....	\$15,000	100	15,000	15,000E	0	.....
1979:								
Regular:								
A. Carryover from 1978	*5,000	50,000	.....	60	40,000	5,000R	35,000	.....
B. Credit earned	50,000	.....	.....	.....	[35,000]	35,000R	0	15,000
Carryover to 1980 .....	.....	.....	.....	.....	.....	.....	.....	(*15,000)
Energy:								
A. Credit earned	35,000	.....	10,000	100	10,000	10,000E	0	25,000
Carryback to 1978 .....	.....	.....	.....	.....	.....	.....	.....	(*15,000)
Carryover to 1980 .....	.....	.....	.....	.....	.....	.....	.....	(*10,000)
1980:								
Regular:								
A. Carryover from 1979	*15,000	55,000	.....	70	46,000	15,000R	31,000	.....
B. Credit earned	25,000	.....	.....	.....	[31,000]	25,000R	6,000	0
Energy:								
A. Carryover from 1979	*10,000	.....	15,000	100	15,000	10,000E	5,000	.....

*See footnote to the chart in *Example 1*.

(b) Although, in general, a nonrefundable energy credit may be carried back to taxable years ending before October 1, 1978, in this example the unused nonrefundable energy credit from 1979 may not be absorbed in 1977. The 1977 tax liability limitation for the nonrefundable energy credit is the same as it is for the regular credit, reduced by regular

credit previously allowed for 1977. See §§1.46-1(h)(3) and 1.46-1(m).

Example 3. (a) Assume the same facts as in *Example 2* except M has regular credit of \$37,000 for 1981 and M's tax liability for 1981 is \$32,500. The determinations for 1980 and 1981 are set forth in the following table.

	(1)	(2)		(3)	(4)	(5)	(6)	(7)
	Credit available	Tax liability		Percent	Tax liability limitation* (remaining from col. (6) on preceding line)	Credit allowed (lower of (1) or (4))	Remaining tax liability limitation ((4)-(5))	Unused credit ((1)-(5)) or (amount absorbed)
		(a) Regular	(b) Energy ((2)-(5)(R))					
1979 (restated):								
Energy:								
To be carried over								\$10,000
Carryover to 1980								(*9,000)
Carryover to 1981								(*1,000)
1980 (restated):								
Regular:								
A. Carryover from								
1979	\$15,000	\$55,000		70	\$46,000	\$15,000R	\$31,000	
B. Credit earned	*25,000				[31,000]	25,000R	6,000	0
C. Carryback from								
1981	*6,000				[6,000]	6,000R	0	
Energy:								
A. Carryover from								
1979	*9,000		\$9,000	100	9,000	9,000E		
1981: Regular:								
A. Credit earned	37,000	32,500		80	31,000	31,000R	0	6,000
Carryback to 1980								(*6,000)
Energy:								
A. Carryover from								
1979	*1,000		1,500	100	1,500	1,000E	500	0

*See footnote to chart under *Example 1*.

(b) Allowance of the regular carryback in 1980 from 1981 requires that the computations for 1980 be restated. The energy tax liability limitation for 1980 is reduced from \$15,000 (as determined in *Example 2*) to \$9,000. Thus, \$1,000 of the \$10,000 energy credit allowed for 1980 is displaced by the regular carryback. That amount may not be carried back because there is no remaining energy tax liability limitation for the prior 3 years (see table in *Example 2*). It may be carried over to 1981 and allowed in full in that year.

(i) [Reserved]

(j) *Electing small business corporation.*

A shareholder of an electing small business corporation (as defined in section 1371(b)) may not take into account unused credit of the corporation attributable to unused credit years for which the corporation was not an electing small business corporation. However, a taxable year for which the corporation is an electing small business corporation is counted as a taxable year for determining the taxable years to which that unused credit may be carried.

(k) *Periods of less than 12 months.* A fractional part of a year that is considered a taxable year under sections 441(b) and 7701(a)(23) is treated as a preceding or succeeding taxable year for determining under section 46(b) the taxable years to which an unused credit may be carried.

(1) *Corporate acquisitions.* For carryover of unused credits in the case of certain corporate acquisitions, see section 381(c)(23).

(Secs. 7805 (68A Stat. 917, 26 U.S.C. 7805) and 38(b) (76 Stat. 962, 26 U.S.C. 38))

[T.D. 7751, 46 FR 1679, Jan. 7, 1981]

§ 1.46-3 Qualified investment.

(a) *In general.* (1) With respect to any taxable year, the qualified investment of the taxpayer is the aggregate (expressed in dollars) of (i) the applicable percentage of the basis of each new section 38 property placed in service by the taxpayer during such taxable year, plus (ii) the applicable percentage of the cost of each used section 38 property placed in service by the taxpayer during such taxable year. With respect to any section 38 property, qualified investment means the applicable percentage of the basis (or cost) of such property. Section 38 property placed in service by the taxpayer during the taxable year includes the taxpayer's share of the basis (or cost) of section 38 property placed in service by a partnership in the taxable year of such partnership ending with or within the taxpayer's taxable year. In the case of a shareholder of an electing small business