Subsec. (d)(2)(B). Pub. L. 111–152, §1004(a)(2)(A), amended subpar. (B) generally. Prior to amendment, text read as follows: ''The term 'modified gross income' means gross income—

''(i) decreased by the amount of any deduction allowable under paragraph (1), (3), (4), or (10) of section 62(a),

''(ii) increased by the amount of interest received or accrued during the taxable year which is exempt from tax imposed by this chapter, and

''(iii) determined without regard to sections 911, 931, and 933.''

Subsec. (f)(2)(B). Pub. L. 111–309, §208(a), amended generally subpar. heading and cl. (i). Prior to amendment, text of cl. (i) read as follows: ''In the case of an applicable taxpayer whose household income is less than 400 percent of the poverty line for the size of the family involved for the taxable year, the amount of the increase under subparagraph (A) shall in no event exceed $400 ($250 in the case of a taxpayer whose tax is determined under section 1(c) for the taxable year).''

Subsec. (f)(2)(B)(ii). Pub. L. 111–309, §208(b), inserted ''in the table contained'' after ''each of the dollar amounts'' in introductory provisions.

Subsec. (f)(3). Pub. L. 111–152, §1004(c), added par. (3).

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–56, title IV, §401(b), Nov. 21, 2011, 125 Stat. 734, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Nov. 21, 2011].''

Pub. L. 112–10, div. B, title VIII, §1858(d), Apr. 15, 2011, 125 Stat. 169, provided that: ''The amendments made by this section [amending this section, sections 162, 4980H, and 6056 of this title, and section 218b of Title 29, Labor, and repealing section 139D of this title and section 18101 of Title 42, The Public Health and Welfare] shall take effect as if included in the provisions of, and the amendments made by, the provisions of the Patient Protection and Affordable Care Act [Pub. L. 111–148] to which they relate.''

Pub. L. 112–9, §4(b), Apr. 14, 2011, 125 Stat. 37, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 2013.''

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–309, title II, §208(c), Dec. 15, 2010, 124 Stat. 3292, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2013.''

Pub. L. 111–148, title X, §10108(h)(2), Mar. 23, 2010, 124 Stat. 914, provided that: ''The amendment made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 2013.''

EFFECTIVE DATE

Pub. L. 111–148, title I, §1401(e), Mar. 23, 2010, 124 Stat. 220, provided that: ''The amendments made by this section [enacting this section and amending sections 280C and 6211 of this title and section 1324 of Title 31, Money and Finance] shall apply to taxable years ending after December 31, 2013.''

NO IMPACT ON SOCIAL SECURITY TRUST FUNDS

Pub. L. 112–56, title IV, §401(c), Nov. 21, 2011, 125 Stat. 734, provided that:

''(1) ESTIMATE OF SECRETARY.—The Secretary of the Treasury, or the Secretary's delegate, shall annually estimate the impact that the amendments made by subsection (a) [amending this section] have on the income and balances of the trust funds established under section 201 of the Social Security Act (42 U.S.C. 401).

''(2) TRANSFER OF FUNDS.—If, under paragraph (1), the Secretary of the Treasury or the Secretary's delegate estimates that such amendments have a negative impact on the income and balances of such trust funds, the Secretary shall transfer, not less frequently than quarterly, from the general fund an amount sufficient so as to ensure that the income and balances of such trust funds are not reduced as a result of such amendments.''

[§ 36C. Renumbered § 23]

§ 37. Overpayments of tax

For credit against the tax imposed by this subtitle for overpayments of tax, see section 6401.

(Aug. 16, 1954, ch. 736, 68A Stat. 16, §38; renumbered §39, Pub. L. 87–834, §2(a), Oct. 16, 1962, 76 Stat. 962; renumbered §40, Pub. L. 89–44, title VIII, §809(c), June 21, 1965, 79 Stat. 167; renumbered §42, Pub. L. 92–178, title VI, §601(a), Dec. 10, 1971, 85 Stat. 553; renumbered §43, Pub. L. 94–12, title II, §203(a), Mar. 29, 1975, 89 Stat. 29; renumbered §44, Pub. L. 94–12, title II, §204(a), Mar. 29, 1975, 89 Stat. 30; renumbered §45, Pub. L. 94–12, title II, §208(a), Mar. 29, 1975, 89 Stat. 32; renumbered §35, Pub. L. 98–369, div. A, title IV, §471(c), July 18, 1984, 98 Stat. 826; renumbered §36, Pub. L. 107–210, div. A, title II, §201(a), Aug. 6, 2002, 116 Stat. 954; renumbered §37, Pub. L. 110–289, div. C, title I, §3011(a), July 30, 2008, 122 Stat. 2888.)

PRIOR PROVISIONS

A prior section 37 was renumbered section 22 of this title.

SUBPART D—BUSINESS RELATED CREDITS

[1] Section 41 repealed by Pub. L. 99–514 without corresponding amendment of subpart analysis.

[2] So in original. Probably should follow item 45J.

AMENDMENT OF ANALYSIS

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note set out under section 1 of this title.

AMENDMENTS

2010—Pub. L. 111–148, title I, § 1421(e), Mar. 23, 2010, 124 Stat. 242, added item 45R.

2008—Pub. L. 110–343, div. B, title I, § 115(c), Oct. 3, 2008, 122 Stat. 3831, which directed amendment of table of sections for subpart B by adding item 45Q at end, was executed by adding item 45Q at end of table of sections for this subpart to reflect the probable intent of Congress.

Pub. L. 110–245, title I, § 111(d), June 17, 2008, 122 Stat. 1635, added item 45P.

Pub. L. 110–234, title XV, §§ 15321(b)(3)(B), 15343(d), May 22, 2008, 122 Stat. 1513, 1520, and Pub. L. 110–246, title XV, §§ 15321(b)(3)(B), 15343(d), June 18, 2008, 122 Stat. 2275, 2282, made identical amendments, inserting '', etc.,'' after ''Alcohol'' in item 40 and adding item 45O. The amendments by Pub. L. 110–234 were repealed by Pub. L. 110–246, § 4(a), June 18, 2008, 122 Stat. 1664.

2006—Pub. L. 109–432, div. A, title IV, § 405(d), Dec. 20, 2006, 120 Stat. 2958, added item 45N.

2005—Pub. L. 109–58, title XIII, §§ 1306(c), 1322(a)(3)(L), 1332(e), 1334(c), 1346(b)(2), Aug. 8, 2005, 119 Stat. 999, 1012, 1026, 1033, 1055, inserted ''and renewable diesel'' after ''Biodiesel'' in item 40A and added items 45J to 45M.

2004—Pub. L. 108–357, title II, § 245(d), title III, §§ 302(c)(3), 339(e), 341(d), title VII, § 710(b)(3)(B), Oct. 22, 2004, 118 Stat. 1448, 1466, 1484, 1487, 1556, added items 40A and 45G to 45I and inserted '', etc'' after ''resources'' in item 45.

Pub. L. 108–311, title IV, § 408(b)(7), Oct. 4, 2004, 118 Stat. 1193, amended directory language of Pub. L. 107–16, § 619(c)(3). See 2001 Amendment note below.

2001—Pub. L. 107–16, title VI, § 619(c)(3), June 7, 2001, 115 Stat. 110, as amended by Pub. L. 108–311, title IV, § 408(b)(7), Oct. 4, 2004, 118 Stat. 1193, added item 45E.

Pub. L. 107–16, title II, § 205(b)(2), title IX, § 901, June 7, 2001, 115 Stat. 53, 150, temporarily added item 45F.

2000—Pub. L. 106–554, § 1(a)(7) [title I, § 121(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–610, added item 45D.

1996—Pub. L. 104–188, title I, § 1205(a)(3)(B), Aug. 20, 1996, 110 Stat. 1775, added item 45C.

1993—Pub. L. 103–66, title XIII, §§ 13322(e), 13443(c), Aug. 10, 1993, 107 Stat. 563, 569, added items 45A and 45B.

1992—Pub. L. 102–486, title XIX, § 1914(d), Oct. 24, 1992, 106 Stat. 3023, added item 45.

1990—Pub. L. 101–508, title XI, §§ 11511(c)(1), 11611(d), Nov. 5, 1990, 104 Stat. 1388–485, 1388–503, added items 43 and 44.

1986—Pub. L. 99–514, title II, §§ 231(d)(3)(K), 252(d), Oct. 22, 1986, 100 Stat. 2180, 2205, added item 41 relating to credit for increasing research activities and item 42.

1984—Pub. L. 98–369, div. A, title IV, § 471(b), July 18, 1984, 98 Stat. 826, added subpart D heading and analysis of sections for subpart D, consisting of items 38 (new), 39 (new), 40 (formerly 44E), and 41 (formerly 44G). Former subpart D was redesignated F.

§ 38. General business credit

(a) Allowance of credit

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

(1) the business credit carryforwards carried to such taxable year,

(2) the amount of the current year business credit, plus

(3) the business credit carrybacks carried to such taxable year.

(b) Current year business credit

For purposes of this subpart, the amount of the current year business credit is the sum of the following credits determined for the taxable year:

(1) the investment credit determined under section 46,

(2) the work opportunity credit determined under section 51(a),

(3) the alcohol fuels credit determined under section 40(a),

(4) the research credit determined under section 41(a),

(5) the low-income housing credit determined under section 42(a),

(6) the enhanced oil recovery credit under section 43(a),

(7) in the case of an eligible small business (as defined in section 44(b)), the disabled access credit determined under section 44(a),

(8) the renewable electricity production credit under section 45(a),

(9) the empowerment zone employment credit determined under section 1396(a),

(10) the Indian employment credit as determined under section 45A(a),

(11) the employer social security credit determined under section 45B(a),

(12) the orphan drug credit determined under section 45C(a),

(13) the new markets tax credit determined under section 45D(a),

(14) in the case of an eligible employer (as defined in section 45E(c)), the small employer pension plan startup cost credit determined under section 45E(a),

(15) the employer-provided child care credit determined under section 45F(a),

(16) the railroad track maintenance credit determined under section 45G(a),

(17) the biodiesel fuels credit determined under section 40A(a),

(18) the low sulfur diesel fuel production credit determined under section 45H(a),

(19) the marginal oil and gas well production credit determined under section 45I(a),

(20) the distilled spirits credit determined under section 5011(a),

(21) the advanced nuclear power facility production credit determined under section 45J(a),

(22) the nonconventional source production credit determined under section 45K(a),

(23) the new energy efficient home credit determined under section 45L(a),

(24) the energy efficient appliance credit determined under section 45M(a),

(25) the portion of the alternative motor vehicle credit to which section 30B(g)(1) applies,

(26) the portion of the alternative fuel vehicle refueling property credit to which section 30C(d)(1) applies,

(27) the Hurricane Katrina housing credit determined under section 1400P(b),

(28) the Hurricane Katrina employee retention credit determined under section 1400R(a),

(29) the Hurricane Rita employee retention credit determined under section 1400R(b),

(30) the Hurricane Wilma employee retention credit determined under section 1400R(c),

(31) the mine rescue team training credit determined under section 45N(a),

(32) in the case of an eligible agricultural business (as defined in section 45O(e)), the agricultural chemicals security credit determined under section 45O(a),

(33) the differential wage payment credit determined under section 45P(a),

(34) the carbon dioxide sequestration credit determined under section 45Q(a)[1]

(35) the portion of the new qualified plug-in electric drive motor vehicle credit to which section 30D(c)(1) applies, plus

(36) the small employer health insurance credit determined under section 45R.

(c) Limitation based on amount of tax

(1) In general

The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of the taxpayer's net income tax over the greater of—

(A) the tentative minimum tax for the taxable year, or

(B) 25 percent of so much of the taxpayer's net regular tax liability as exceeds $25,000.

For purposes of the preceding sentence, the term ''net income tax'' means the sum of the regular tax liability and the tax imposed by section 55, reduced by the credits allowable under subparts A and B of this part, and the term ''net regular tax liability'' means the regular tax liability reduced by the sum of the credits allowable under subparts A and B of this part.

(2) Empowerment zone employment credit may offset 25 percent of minimum tax

(A) In general

In the case of the empowerment zone employment credit credit—

(i) this section and section 39 shall be applied separately with respect to such credit, and

(ii) for purposes of applying paragraph (1) to such credit—

(I) 75 percent of the tentative minimum tax shall be substituted for the tentative minimum tax under subparagraph (A) thereof, and

(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the empowerment zone employment credit, the New York Liberty Zone business employee credit, the eligible small business credits, and the specified credits).

(B) Empowerment zone employment credit

For purposes of this paragraph, the term ''empowerment zone employment credit'' means the portion of the credit under subsection (a) which is attributable to the credit determined under section 1396 (relating to empowerment zone employment credit).

(3) Special rules for New York Liberty Zone business employee credit

(A) In general

In the case of the New York Liberty Zone business employee credit—

(i) this section and section 39 shall be applied separately with respect to such credit, and

(ii) in applying paragraph (1) to such credit—

(I) the tentative minimum tax shall be treated as being zero, and

(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the New York Liberty Zone business employee credit, the eligible small business credits, and the specified credits).

(B) New York Liberty Zone business employee credit

For purposes of this subsection, the term ''New York Liberty Zone business employee credit'' means the portion of work opportunity credit under section 51 determined under section 1400L(a).

(4) Special rules for specified credits

(A) In general

In the case of specified credits—

(i) this section and section 39 shall be applied separately with respect to such credits, and

(ii) in applying paragraph (1) to such credits—

(I) the tentative minimum tax shall be treated as being zero, and

(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the eligible small business credits and the specified credits).

(B) Specified credits

For purposes of this subsection, the term ''specified credits'' means—

(i) for taxable years beginning after December 31, 2004, the credit determined under section 40,

(ii) the credit determined under section 42 to the extent attributable to buildings placed in service after December 31, 2007,

(iii) the credit determined under section 45 to the extent that such credit is attributable to electricity or refined coal produced—

(I) at a facility which is originally placed in service after the date of the enactment of this paragraph, and

(II) during the 4-year period beginning on the date that such facility was originally placed in service,

(iv) the credit determined under section 45B,

(v) the credit determined under section 45G,

(vi) the credit determined under section 45R,

(vii) the credit determined under section 46 to the extent that such credit is attributable to the energy credit determined under section 48,

(viii) the credit determined under section 46 to the extent that such credit is at-

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

tributable to the rehabilitation credit under section 47, but only with respect to qualified rehabilitation expenditures properly taken into account for periods after December 31, 2007, and

(ix) the credit determined under section 51.

(5) Special rules for eligible small business credits in 2010

(A) In general

In the case of eligible small business credits determined in taxable years beginning in 2010—

(i) this section and section 39 shall be applied separately with respect to such credits, and

(ii) in applying paragraph (1) to such credits—

(I) the tentative minimum tax shall be treated as being zero, and

(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the eligible small business credits).

(B) Eligible small business credits

For purposes of this subsection, the term ''eligible small business credits'' means the sum of the credits listed in subsection (b) which are determined for the taxable year with respect to an eligible small business. Such credits shall not be taken into account under paragraph (2), (3), or (4).

(C) Eligible small business

For purposes of this subsection, the term ''eligible small business'' means, with respect to any taxable year—

(i) a corporation the stock of which is not publicly traded,

(ii) a partnership, or

(iii) a sole proprietorship,

if the average annual gross receipts of such corporation, partnership, or sole proprietorship for the 3-taxable-year period preceding such taxable year does not exceed $50,000,000. For purposes of applying the test under the preceding sentence, rules similar to the rules of paragraphs (2) and (3) of section 448(c) shall apply.

(D) Treatment of partners and S corporation shareholders

Credits determined with respect to a partnership or S corporation shall not be treated as eligible small business credits by any partner or shareholder unless such partner or shareholder meets the gross receipts test under subparagraph (C) for the taxable year in which such credits are treated as current year business credits.

(6) Special rules

(A) Married individuals

In the case of a husband or wife who files a separate return, the amount specified under subparagraph (B) of paragraph (1) shall be $12,500 in lieu of $25,000. This subparagraph shall not apply if the spouse of the taxpayer has no business credit carryforward or carryback to, and has no current year business credit for, the taxable year of such spouse which ends within or with the taxpayer's taxable year.

(B) Controlled groups

In the case of a controlled group, the $25,000 amount specified under subparagraph (B) of paragraph (1) shall be reduced for each component member of such group by apportioning $25,000 among the component members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term ''controlled group'' has the meaning given to such term by section 1563(a).

(C) Limitations with respect to certain persons

In the case of a person described in subparagraph (A) or (B) of section 46(e)(1) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), the $25,000 amount specified under subparagraph (B) of paragraph (1) shall equal such person's ratable share (as determined under section 46(e)(2) (as so in effect) of such amount.

(D) Estates and trusts

In the case of an estate or trust, the $25,000 amount specified under subparagraph (B) of paragraph (1) shall be reduced to an amount which bears the same ratio to $25,000 as the portion of the income of the estate or trust which is not allocated to beneficiaries bears to the total income of the estate or trust.

(d) Ordering rules

For purposes of any provision of this title where it is necessary to ascertain the extent to which the credits determined under any section referred to in subsection (b) are used in a taxable year or as a carryback or carryforward—

(1) In general

The order in which such credits are used shall be determined on the basis of the order in which they are listed in subsection (b) as of the close of the taxable year in which the credit is used.

(2) Components of investment credit

The order in which the credits listed in section 46 are used shall be determined on the basis of the order in which such credits are listed in section 46 as of the close of the taxable year in which the credit is used.

(3) Credits no longer listed

For purposes of this subsection—

(A) the credit allowable by section 40, as in effect on the day before the date of the enactment of the Tax Reform Act of 1984, (relating to expenses of work incentive programs) and the credit allowable by section 41(a), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986, (relating to employee stock ownership credit) shall be treated as referred to in that order after the last paragraph of subsection (b), and

(B) the credit determined under section 46—

(i) to the extent attributable to the employee plan percentage (as defined in section 46(a)(2)(E) as in effect on the day before the date of the enactment of the Tax Reform Act of 1984) shall be treated as a credit listed after paragraph (1) of section 46, and

(ii) to the extent attributable to the regular percentage (as defined in section 46(b)(1) as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall be treated as the first credit listed in section 46.

(Added and amended Pub. L. 98–369, div. A, title IV, § 473, title VI, § 612(e)(1), July 18, 1984, 98 Stat. 827, 912; Pub. L. 99–514, title II, §§ 221(a), 231(d)(1), (3)(B), 252(b), title VII, § 701(c)(4), title XI, § 1171(b)(1), (2), Oct. 22, 1986, 100 Stat. 2173, 2178, 2179, 2205, 2341, 2513; Pub. L. 100–647, title I, §§ 1002(e)(8)(A), 1007(g)(2), (8), Nov. 10, 1988, 102 Stat. 3368, 3434, 3435; Pub. L. 101–508, title XI, §§ 11511(b)(1), 11611(b)(1), 11813(b)(2), Nov. 5, 1990, 104 Stat. 1388–485, 1388–503, 1388–551; Pub. L. 102–486, title XIX, § 1914(b), Oct. 24, 1992, 106 Stat. 3023; Pub. L. 103–66, title XIII, §§ 13302(a)(1), (c)(1), 13322(a), 13443(b)(1), Aug. 10, 1993, 107 Stat. 555, 559, 569; Pub. L. 104–188, title I, §§ 1201(e)(1), 1205(a)(2), 1702(e)(4), Aug. 20, 1996, 110 Stat. 1772, 1775, 1870; Pub. L. 106–554, § 1(a)(7) [title I, § 121(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–609; Pub. L. 107–16, title II, § 205(b)(1), title VI, § 619(b), June 7, 2001, 115 Stat. 53, 110; Pub. L. 107–147, title III, § 301(b)(1), (2), title IV, § 411(d)(2), Mar. 9, 2002, 116 Stat. 39, 46; Pub. L. 108–357, title II, § 245(c)(1), title III, §§ 302(b), 339(b), 341(b), title VII, § 711(a), (b), Oct. 22, 2004, 118 Stat. 1448, 1465, 1484, 1487, 1557, 1558; Pub. L. 109–58, title XIII, §§ 1306(b), 1322(a)(2), 1332(b), 1334(b), 1341(b)(1), 1342(b)(1), Aug. 8, 2005, 119 Stat. 999, 1011, 1026, 1033, 1049, 1051; Pub. L. 109–59, title XI, §§ 11126(b), 11151(d)(1), Aug. 10, 2005, 119 Stat. 1958, 1968; Pub. L. 109–135, title I, § 103(b)(1), title II, § 201(b)(1), title IV, § 412(f), Dec. 21, 2005, 119 Stat. 2595, 2607, 2637; Pub. L. 109–432, div. A, title IV, § 405(b), Dec. 20, 2006, 120 Stat. 2957; Pub. L. 110–28, title VIII, § 8214(a), May 25, 2007, 121 Stat. 193; Pub. L. 110–172, § 11(a)(6), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 110–234, title XV, § 15343(b), May 22, 2008, 122 Stat. 1519; Pub. L. 110–245, title I, § 111(b), June 17, 2008, 122 Stat. 1635; Pub. L. 110–246, § 4(a), title XV, § 15343(b), June 18, 2008, 122 Stat. 1664, 2281; Pub. L. 110–289, div. C, title I, § 3022(b), (c), July 30, 2008, 122 Stat. 2894; Pub. L. 110–343, div. B, title I, §§ 103(b), 115(b), title II, § 205(c), div. C, title III, § 316(b), Oct. 3, 2008, 122 Stat. 3811, 3831, 3838, 3872; Pub. L. 111–5, div. B, title I, § 1141(b)(2), Feb. 17, 2009, 123 Stat. 328; Pub. L. 111–148, title I, § 1421(b), (c), Mar. 23, 2010, 124 Stat. 241, 242; Pub. L. 111–240, title II, § 2013(a), (c), Sept. 27, 2010, 124 Stat. 2555.)

Amendment of Section

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

References in Text

The date of the enactment of this paragraph, referred to in subsec. (c)(4)(B)(iii)(I), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsecs. (c)(6)(C) and (d)(3)(B)(ii), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

The date of the enactment of the Tax Reform Act of 1984, referred to in subsec. (d)(3)(A), (B)(i), is the date of enactment of Pub. L. 98–369, which was approved July 18, 1984.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (d)(3)(A), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

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.

Prior Provisions

A prior section 38, added Pub. L. 87–834, § 2(a), Oct. 16, 1962, 76 Stat. 962; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to investment in certain depreciable property, prior to repeal by Pub. L. 98–369, div. A, title IV, § 474(m)(1), July 18, 1984, 98 Stat. 833.

Another prior section 38 was renumbered section 37 of this title.

Amendments

2010—Subsec. (b)(36). Pub. L. 111–148, § 1421(b), added par. (36).

Subsec. (c)(2)(A)(ii)(II). Pub. L. 111–240, § 2013(c)(1), inserted ''the eligible small business credits,'' after ''the New York Liberty Zone business employee credit,''.

Subsec. (c)(3)(A)(ii)(II). Pub. L. 111–240, § 2013(c)(2), inserted '', the eligible small business credits,'' after ''the New York Liberty Zone business employee credit''.

Subsec. (c)(4)(A)(ii)(II). Pub. L. 111–240, § 2013(c)(3), inserted ''the eligible small business credits and'' before ''the specified credits''.

Subsec. (c)(4)(B)(vi) to (ix). Pub. L. 111–148, § 1421(c), added cl. (vi) and redesignated former cls. (vi) to (viii) as (vii) to (ix), respectively.

Subsec. (c)(5), (6). Pub. L. 111–240, § 2013(a), added par. (5) and redesignated former par. (5) as (6).

2009—Subsec. (b)(35). Pub. L. 111–5 substituted ''30D(c)(1)'' for ''30D(d)(1)''.

2008—Subsec. (b)(32). Pub. L. 110–246, § 15343(b), added par. (32).

Subsec. (b)(33). Pub. L. 110–245 added par. (33).

Subsec. (b)(34). Pub. L. 110–343, § 115(b), added par. (34).

Subsec. (b)(35). Pub. L. 110–343, § 205(c), added par. (35).

Subsec. (c)(4)(B)(ii) to (iv). Pub. L. 110–289, § 3022(b), added cl. (ii) and redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively. Former cl. (iv) redesignated (v).

Subsec. (c)(4)(B)(v). Pub. L. 110–343, § 316(b)(2), added cl. (v). Former cl. (v) redesignated (vi).

Pub. L. 110–343, § 103(b)(1), added cl. (v). Former cl. (v) redesignated (vi).

Pub. L. 110–289, § 3022(c), added cl. (v). Former cl. (v) redesignated (vi).

Pub. L. 110–289, § 3022(b), redesignated cl. (iv) as (v).

Subsec. (c)(4)(B)(vi). Pub. L. 110–343, § 316(b)(1), redesignated cl. (v) as (vi). Former cl. (vi) redesignated (vii).

Pub. L. 110–343, § 103(b)(2), substituted ''section 46 to the extent that such credit is attributable to the rehabilitation credit under section 47, but only with respect to'' for ''section 47 to the extent attributable to''.

Pub. L. 110–343, § 103(b)(1), which directed amendment of subpar. (B) by ''redesignating clause (vi) as clause (vi) and (vii), respectively'', was executed by redesignating cls. (v) and (vi) as (vi) and (vii), respectively, to reflect the probable intent of Congress.

Pub. L. 110–289, § 3022(c), redesignated cl. (v) as (vi).

Subsec. (c)(4)(B)(vii). Pub. L. 110–343, § 316(b)(1), redesignated cl. (vi) as (vii). Former cl. (vii) redesignated (viii).

Pub. L. 110–343, §103(b)(1), which directed amendment of subpar. (B) by ''redesignating clause (vi) as clause (vi) and (vii), respectively'', was executed by redesignating cls. (v) and (vi) as (vi) and (vii), respectively, to reflect the probable intent of Congress.

Subsec. (c)(4)(B)(viii). Pub. L. 110–343, §316(b)(1), redesignated cl. (vii) as (viii).

2007—Subsec. (b)(8), (24). Pub. L. 110–172, §11(a)(6)(A), struck out ''and'' at end.

Subsec. (b)(30). Pub. L. 110–172, §11(a)(6)(C), inserted ''plus'' at end.

Pub. L. 110–172, §11(a)(6)(B), struck out ''plus'' at end.

Subsec. (c)(4)(B)(iii), (iv). Pub. L. 110–28 added cls. (iii) and (iv).

2006—Subsec. (b)(29) to (31). Pub. L. 109–432 struck out ''and'' at end of par. (29), substituted '', plus'' for period at end of par. (30), and added par. (31).

2005—Subsec. (b)(20). Pub. L. 109–59, §11126(b), added par. (20).

Subsec. (b)(21). Pub. L. 109–58, §1306(b), as amended by Pub. L. 109–59, §11151(d)(1), added par. (21).

Subsec. (b)(22). Pub. L. 109–58, §1322(a)(2), added par. (22).

Subsec. (b)(23). Pub. L. 109–58, §1332(b), added par. (23).

Subsec. (b)(24). Pub. L. 109–58, §1342(b)(1), which directed the striking out of ''plus'' at end, could not be executed because ''plus'' did not appear at end.

Pub. L. 109–58, §1334(b), added par. (24).

Subsec. (b)(25). Pub. L. 109–58, §1341(b)(1), added par. (25).

Subsec. (b)(26). Pub. L. 109–58, §1342(b)(1), added par. (26).

Subsec. (b)(27). Pub. L. 109–135, §103(b)(1), added par. (27).

Subsec. (b)(28) to (30). Pub. L. 109–135, §201(b)(1), added pars. (28) to (30).

Subsec. (c)(2)(A)(ii)(II). Pub. L. 109–135, §412(f)(1), substituted '', the New York Liberty Zone business employee credit, and the specified credits'' for ''or the New York Liberty Zone business employee credit or the specified credits''.

Subsec. (c)(3)(A)(ii)(II). Pub. L. 109–135, §412(f)(2), substituted ''and the specified credits'' for ''or the specified credits''.

Subsec. (c)(4)(B). Pub. L. 109–135, §412(f)(3), substituted ''means'' for ''includes'' in introductory provisions and inserted ''and'' at end of cl. (i).

2004—Subsec. (b)(16). Pub. L. 108–357, §245(c)(1), added par. (16).

Subsec. (b)(17). Pub. L. 108–357, §302(b), added par. (17).

Subsec. (b)(18). Pub. L. 108–357, §339(b), added par. (18).

Subsec. (b)(19). Pub. L. 108–357, §341(b), added par. (19).

Subsec. (c)(2)(A)(ii)(II), (3)(A)(ii)(II). Pub. L. 108–357, §711(b), inserted ''or the specified credits'' after ''employee credit''.

Subsec. (c)(4), (5). Pub. L. 108–357, §711(a), added par. (4) and redesignated former par. (4) as (5).

2002—Subsec. (b)(15). Pub. L. 107–147, §411(d)(2), substituted ''45F(a)'' for ''45F''.

Subsec. (c)(2)(A)(ii)(II). Pub. L. 107–147, §301(b)(2), inserted ''or the New York Liberty Zone business employee credit'' after ''employment credit''.

Subsec. (c)(3), (4). Pub. L. 107–147, §301(b)(1), added par. (3) and redesignated former par. (3) as (4).

2001—Subsec. (b)(12). Pub. L. 107–16, §619(b), struck out ''plus'' at end.

Subsec. (b)(13). Pub. L. 107–16, §619(b), substituted '', plus'' for period at end.

Pub. L. 107–16, §§205(b)(1), 901, temporarily struck out ''plus'' at end. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(14). Pub. L. 107–16, §619(b), added par. (14).

Pub. L. 107–16, §§205(b)(1), 901, temporarily substituted '', plus'' for period at end. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(15). Pub. L. 107–16, §§205(b)(1), 901, temporarily added par. (15). See Effective and Termination Dates of 2001 Amendment note below.

2000—Subsec. (b)(13). Pub. L. 106–554 added par. (13).

1996—Subsec. (b)(2). Pub. L. 104–188, §1201(e)(1), substituted ''work opportunity credit'' for ''targeted jobs credit''.

Subsec. (b)(12). Pub. L. 104–188, §1205(a)(2), added par. (12).

Subsec. (c)(2)(C). Pub. L. 104–188, §1702(e)(4), amended subpar. (C), as in effect on day before date of enactment of the Revenue Reconciliation Act of 1990 (title XI of Pub. L. 101–508, approved Nov. 5, 1990), by inserting before period at end of first sentence ''and without regard to the deduction under section 56(h)''.

1993—Subsec. (b)(7). Pub. L. 103–66, §13302(a)(1), struck out ''plus'' at end.

Subsec. (b)(8). Pub. L. 103–66, §13322(a), which directed amendment of par. (8) by striking ''plus'' at end, could not be executed because ''plus'' did not appear at end.

Pub. L. 103–66, §13302(a)(1), substituted '', and'' for period at end.

Subsec. (b)(9). Pub. L. 103–66, §13443(b)(1), struck out ''plus'' at end.

Pub. L. 103–66, §13322(a), substituted '', plus'' for period at end.

Pub. L. 103–66, §13302(a)(1), added par. (9).

Subsec. (b)(10). Pub. L. 103–66, §13443(b)(1), substituted '', plus'' for period at end.

Pub. L. 103–66, §13322(a), added par. (10).

Subsec. (b)(11). Pub. L. 103–66, §13443(b)(1), added par. (11).

Subsec. (c)(2), (3). Pub. L. 103–66, §13302(c)(1), added par. (2) and redesignated former par. (2) as (3).

1992—Subsec. (b)(6) to (8). Pub. L. 102–486 struck out ''plus'' at end of par. (6), substituted ''; plus'' for period at end of par. (7), and added par. (8).

1990—Subsec. (b)(1). Pub. L. 101–508, §11813(b)(2)(A), substituted ''section 46'' for ''section 46(a)''.

Subsec. (b)(4). Pub. L. 101–508, §11511(b)(1), struck out ''plus'' at end.

Subsec. (b)(5). Pub. L. 101–508, §11611(b)(1), struck out ''plus'' at end.

Pub. L. 101–508, §11511(b)(1), substituted '', plus'' for period at end.

Subsec. (b)(6). Pub. L. 101–508, §11611(b)(1), substituted '', plus'' for period at end.

Pub. L. 101–508, §11511(b)(1), added par. (6).

Subsec. (b)(7). Pub. L. 101–508, §11611(b)(1), added par. (7).

Subsec. (c)(2). Pub. L. 101–508, §11813(b)(2)(B), redesignated par. (3) as (2) and struck out former par. (2) which permitted an offset of regular investment tax credit against 25 percent of minimum tax.

Subsec. (c)(2)(C). Pub. L. 101–508, §11813(b)(2)(C), inserted ''(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)'' after ''46(e)(1)'' and ''(as so in effect)'' after ''46(e)(2)''.

Subsec. (c)(3). Pub. L. 101–508, §11813(b)(2)(B), redesignated par. (3) as (2).

Subsec. (d). Pub. L. 101–508, §11813(b)(2)(D)(i), substituted ''any provision'' for ''sections 46(f), 47(a), 196(a), and any other provision'' in introductory provisions.

Subsec. (d)(2). Pub. L. 101–508, §11813(b)(2)(D)(ii), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The order in which credits attributable to a percentage referred to in section 46(a) are used shall be determined on the basis of the order in which such percentages are listed in section 46(a) as of the close of the taxable year in which the credit is used.''

Subsec. (d)(3)(B). Pub. L. 101–508, §11813(b)(2)(D)(iii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the employee plan percentage (as defined in section 46(a)(2)(E), as in effect on the day before the date of the enactment of the Tax Reform Act of 1984) shall be treated as referred to after section 46(a)(2).''

1988—Subsec. (c). Pub. L. 100–647, §1007(g)(2), amended pars. (1) to (3) generally, substituting pars. (1) and (2) for former pars. (1) to (3), redesignating former par. (4) as (3), and substituting ''subparagraph (B) of paragraph (1)'' for ''subparagraphs (A) and (B) of paragraph (1)'' in subpars. (A), (B), (C), and (D).

Pub. L. 100–647, §1007(g)(8), made technical correction to directory language of Pub. L. 99–514, §701(c)(4), see 1986 Amendment note below.

Subsec. (d). Pub. L. 100–647, §1002(e)(8)(A), substituted ''Ordering rules'' for ''Special rules for certain regulated companies'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of any taxpayer to which section 46(f) applies, for purposes of sections 46(f), 47(a), and 196(a) and any other provision of this title where it is necessary to ascertain the extent to which the credits determined under section 40(a), 41(a), 42(a), 46(a), or 51(a) are used in a taxable year or as a carryback or carryforward, the order in which such credits are used shall be determined on the basis of the order in which they are listed in subsection (b).''

1986—Subsec. (b)(4). Pub. L. 99–514, §231(d)(1), added par. (4).

Pub. L. 99–514, §1171(b)(1), struck out former par. (4) which read as follows: ''the employee stock ownership credit determined under section 41(a)''.

Subsec. (b)(5). Pub. L. 99–514, §252(b)(1), added par. (5).

Subsec. (c). Pub. L. 99–514, §701(c)(4), as amended by Pub. L. 100–647, §1007(g)(8), added pars. (1) to (3), redesignated former par. (3) as (4), and struck out former par. (1) ''In general'' which provided: ''The credit allowed under subsection (a) for any taxable year shall not exceed the sum of—

''(A) so much of the taxpayer's net tax liability for the taxable year as does not exceed $25,000, plus

''(B) 75 percent of so much of the taxpayer's net tax liability for the taxable year as exceeds $25,000.''

and former par. (2) ''Net tax liability'', which provided: ''For purposes of paragraph (1), the term 'net tax liability' means the tax liability (as defined in section 26(b)), reduced by the sum of the credits allowable under subparts A and B of this part.''

Subsec. (c)(1)(B). Pub. L. 99–514, §221(a), substituted ''75 percent'' for ''85 percent''.

Subsec. (d). Pub. L. 99–514, §252(b)(2), inserted ''42(a),''.

Pub. L. 99–514, §1171(b)(2), substituted ''and 196(a)'' for ''196(a), and 404(i)'' and struck out ''41(a),'' after ''40(a)''.

Pub. L. 99–514, §231(d)(3)(B), inserted ''41(a),'' after ''40(a),''.

1984—Subsec. (c)(2). Pub. L. 98–369, §612(e)(1), substituted ''section 26(b)'' for ''section 25(b)''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, §2013(d), Sept. 27, 2010, 124 Stat. 2556, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to credits determined in taxable years beginning after December 31, 2009, and to carrybacks of such credits.''

Pub. L. 111–148, title I, §1421(f), title X, §10105(e)(4), Mar. 23, 2010, 124 Stat. 242, 907, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting section 45R of this title and amending this section and sections 196 and 280C of this title] shall apply to amounts paid or incurred in taxable years beginning after December 31, 2009.

''(2) MINIMUM TAX.—The amendments made by subsection (c) [amending this section] shall apply to credits determined under section 45R of the Internal Revenue Code of 1986 in taxable years beginning after December 31, 2009, and to carrybacks of such credits.''

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to vehicles acquired after Dec. 31, 2009, see section 1141(c) of Pub. L. 111–5, set out as a note under section 30B of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 103(b) of Pub. L. 110–343 applicable to credits determined under section 46 of this title in taxable years beginning after Oct. 3, 2008, and to carrybacks of such credits, see section 103(f)(1), (2) of Pub. L. 110–343, set out as a note under section 48 of this title.

Pub. L. 110–343, div. B, title I, §115(d), Oct. 3, 2008, 122 Stat. 3831, provided that: ''The amendments made by this section [enacting section 45Q of this title and amending this section] shall apply to carbon dioxide captured after the date of the enactment of this Act [Oct. 3, 2008].''

Amendment by section 205(c) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

Pub. L. 110–343, div. C, title III, §316(c)(2), Oct. 3, 2008, 122 Stat. 3873, provided that: ''The amendments made by subsection (b) [amending this section] shall apply to credits determined under section 45G of the Internal Revenue Code of 1986 in taxable years beginning after December 31, 2007, and to carrybacks of such credits.''

Pub. L. 110–289, div. C, title I, §3022(d)(2), (3), July 30, 2008, 122 Stat. 2894, provided that:

''(2) LOW INCOME HOUSING CREDIT.—The amendments made by subsection (b) [amending this section] shall apply to credits determined under section 42 of the Internal Revenue Code of 1986 to the extent attributable to buildings placed in service after December 31, 2007.

''(3) REHABILITATION CREDIT.—The amendments made by subsection (c) [amending this section] shall apply to credits determined under section 47 of the Internal Revenue Code of 1986 to the extent attributable to qualified rehabilitation expenditures properly taken into account for periods after December 31, 2007.''

Pub. L. 110–245, title I, §111(e), June 17, 2008, 122 Stat. 1635, provided that: ''The amendments made by this section [enacting section 45P of this title and amending this section and section 280C of this title] shall apply to amounts paid after the date of the enactment of this Act [June 17, 2008].''

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, §15343(e), May 22, 2008, 122 Stat. 1520, and Pub. L. 110–246, §4(a), title XV, §15343(e), June 18, 2008, 122 Stat. 1664, 2282, provided that: ''The amendments made by this section [enacting section 45O of this title and amending this section and section 280C of this title] shall apply to amounts paid or incurred after the date of the enactment of this Act [June 18, 2008].''

[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 2007 AMENDMENT

Pub. L. 110–28, title VIII, §8214(b), May 25, 2007, 121 Stat. 193, provided that: ''The amendments made by this section [amending this section] shall apply to credits determined under sections 45B and 51 of the Internal Revenue Code of 1986 in taxable years beginning after December 31, 2006, and to carrybacks of such credits.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §405(e), Dec. 20, 2006, 120 Stat. 2958, provided that: ''The amendments made by this section [enacting section 45N of this title and amending this section and section 280C of this title] shall apply to taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 2005 AMENDMENTS

Pub. L. 109–59, title XI, §11126(d), Aug. 10, 2005, 119 Stat. 1958, provided that: ''The amendments made by this section [enacting section 5011 of this title and amending this section] shall apply to taxable years beginning after September 30, 2005.''

Pub. L. 109–59, title XI, §11151(d)(2), Aug. 10, 2005, 119 Stat. 1968, provided that: ''If the Energy Policy Act of 2005 [Pub. L. 109–58, see Tables for classification] is enacted before the date of the enactment of this Act

[Aug. 10, 2005], for purposes of executing any amendments made by the Energy Policy Act of 2005 to section 38(b) of the Internal Revenue Code of 1986, the amendments made by section 11126(b) of this Act [amending this section] shall be treated as having been executed before such amendments made by the Energy Policy Act of 2005.''

Pub. L. 109–59, title XI, §11151(f)(3), Aug. 10, 2005, 119 Stat. 1969, provided that: ''The amendments made by subsections (d)(1) and (e)(2) [amending this section and sections 4041 and 6426 of this title] shall take effect as if included in the provision of the Energy Tax Incentives Act of 2005 [Pub. L. 109–58, title XIII] to which they relate.''

Pub. L. 109–58, title XIII, §1306(d), Aug. 8, 2005, 119 Stat. 999, provided that: ''The amendments made by this section [enacting section 45J of this title and amending this section] shall apply to production in taxable years beginning after the date of the enactment of this Act [Aug. 8, 2005].''

Amendment by section 1322(a)(2) of Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

Pub. L. 109–58, title XIII, §1332(f), Aug. 8, 2005, 119 Stat. 1026, provided that: ''The amendments made by this section [enacting section 45L of this title and amending this section and sections 196 and 1016 of this title] shall apply to qualified new energy efficient homes acquired after December 31, 2005, in taxable years ending after such date.''

Pub. L. 109–58, title XIII, §1334(d), Aug. 8, 2005, 119 Stat. 1033, provided that: ''The amendments made by this section [enacting section 45M of this title and amending this section] shall apply to appliances produced after December 31, 2005.''

Amendment by section 1341(b)(1) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1341(c) of Pub. L. 109–58, set out as an Effective Date note under section 30B of this title.

Amendment by section 1342(b)(1) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1342(c) of Pub. L. 109–58, set out as an Effective Date note under section 30C of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §245(e), Oct. 22, 2004, 118 Stat. 1448, provided that: ''The amendments made by this section [enacting section 45G of this title and amending this section and sections 39 and 1016 of this title] shall apply to taxable years beginning after December 31, 2004.''

Pub. L. 108–357, title III, §302(d), Oct. 22, 2004, 118 Stat. 1466, provided that: ''The amendments made by this section [enacting section 40A of this title and amending this section and sections 87 and 196 of this title] shall apply to fuel produced, and sold or used, after December 31, 2004, in taxable years ending after such date.''

Pub. L. 108–357, title III, §339(f), Oct. 22, 2004, 118 Stat. 1485, provided that: ''The amendments made by this section [enacting section 45H of this title and amending this section and sections 196, 280C, and 1016 of this title] shall apply to expenses paid or incurred after December 31, 2002, in taxable years ending after such date.''

Pub. L. 108–357, title III, §341(e), Oct. 22, 2004, 118 Stat. 1487, provided that: ''The amendments made by this section [enacting section 45I of this title and amending this section and section 39 of this title] shall apply to production in taxable years beginning after December 31, 2004.''

Pub. L. 108–357, title VII, §711(c), Oct. 22, 2004, 118 Stat. 1558, provided that: ''Except as otherwise provided, the amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title III, §301(b)(3), Mar. 9, 2002, 116 Stat. 40, provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years ending after December 31, 2001.''

Amendment by section 411(d)(2) of Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107–16, title II, §205(c), June 7, 2001, 115 Stat. 53, provided that: ''The amendments made by this section [enacting section 45F of this title and amending this section and section 1016 of this title] shall apply to taxable years beginning after December 31, 2001.''

Pub. L. 107–16, title VI, §619(d), June 7, 2001, 115 Stat. 110, as amended by Pub. L. 107–147, title IV, §411(n)(2), Mar. 9, 2002, 116 Stat. 48, provided that: ''The amendments made by this section [enacting section 45E of this title and amending this section and sections 39 and 196 of this title] shall apply to costs paid or incurred in taxable years beginning after December 31, 2001, with respect to qualified employer plans first effective after such date.''

Amendment by section 205(b)(1) of Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title I, §121(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–610, provided that: ''The amendments made by this section [enacting section 45D of this title, amending this section and sections 39 and 196 of this title, and enacting provisions set out as notes under section 45D of this title] shall apply to investments made after December 31, 2000.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1201(g) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and sections 41, 45A, 51, 196, and 1396 of this title] shall apply to individuals who begin work for the employer after September 30, 1996.''

Amendment by section 1205(a)(2) of Pub. L. 104–188 applicable to amounts paid or incurred in taxable years ending after June 30, 1996, see section 1205(e) of Pub. L. 104–188, set out as a note under section 45K of this title.

Section 1702(i) of Pub. L. 104–188 provided that: ''Except as otherwise expressly provided, any amendment made by this section [amending this section, sections 50, 56, 59, 143, 151, 168, 172, 179, 243, 280F, 341, 424, 460, 613A, 805, 832, 861, 897, 1248, 1250, 1367, 1504, 2701, 2702, 2704, 4093, 4975, 5041, 5061, 5354, 6038A, 6302, 6416, 6427, 6501, 6503, 6621, 6724, and 7012 of this title, and provisions set out as a note under section 42 of this title] shall take effect as if included in the provision of the Revenue Reconciliation Act of 1990 [Pub. L. 101–508, title XI] to which such amendment relates.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13303 of Pub. L. 103–66 provided that: ''The amendments made by this part [part I (§§13301–13303) of subchapter C of chapter 1 of title XIII of Pub. L. 103–66, enacting sections 1391 to 1394 and 1396 to 1397D of this title and amending this section and sections 39, 51, 196, 280C, and 381 of this title] shall take effect on the date of the enactment of this Act [Aug. 10, 1993].''

Section 13322(f) of Pub. L. 103–66 provided that: ''The amendments made by this section [enacting section 45A of this title and amending this section and sections 39, 196, and 280C of this title] shall apply to wages paid or incurred after December 31, 1993.''

Section 13443(d) of Pub. L. 103–66, as amended by Pub. L. 104–188, title I, §1112(a)(2), Aug. 20, 1996, 110 Stat.

1759, provided that: ''The amendments made by this section [enacting section 45B of this title and amending this section and section 39 of this title] shall apply with respect to taxes paid after December 31, 1993, with respect to services performed before, on, or after such date.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1914(e) of Pub. L. 102–486 provided that: ''The amendments made by this section [enacting section 45 of this title and amending this section and section 39 of this title] shall apply to taxable years ending after December 31, 1992.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11511(b)(1) of Pub. L. 101–508 applicable to costs paid or incurred in taxable years beginning after Dec. 31, 1990, see section 11511(d)(1) of Pub. L. 101–508, set out as an Effective Date note under section 43 of this title.

Section 11611(e) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 44 of this title and amending this section and sections 39 and 190 of this title] shall apply to expenditures paid or incurred after the date of the enactment of this Act [Nov. 5, 1990].

''(2) SUBSECTION (c).—The amendment made by subsection (c) [amending section 190 of this title] shall apply to taxable years beginning after the date of the enactment of this Act.''

Amendment by section 11813(b)(2) 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

Section 1002(e)(8)(C) of Pub. L. 100–647 provided that: ''The amendments made by this paragraph [amending this section and section 49 of this title] shall apply to taxable years beginning after December 31, 1983, and to carrybacks from such years.''

Amendment by section 1007(g)(2), (8) 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

Section 221(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1985.''

Amendment by section 231(d)(1), (3)(B) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 252(b) of Pub. L. 99–514 applicable to buildings placed in service after Dec. 31, 1986, in taxable years ending after such date, see section 252(e) of Pub. L. 99–514, set out as an Effective Date note under section 42 of this title.

Amendment by section 701(c)(4) 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.

Section 1171(c) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 56, 108, 401, and 404 of this title and repealing sections 41 and 6699 of this title] shall apply to compensation paid or accrued after December 31, 1986, in taxable years ending after such date.

''(2) SECTIONS 404(i) AND 6699 TO CONTINUE TO APPLY TO PRE-1987 CREDITS.—The provisions of sections 404(i) and 6699 of the Internal Revenue Code of 1986 shall continue to apply with respect to credits under section 41 of such Code attributable to compensation paid or accrued before January 1, 1987 (or under section 38 of such Code with respect to qualified investment before January 1, 1983).''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to interest paid or accrued after December 31, 1984, on indebtedness incurred after December 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

EFFECTIVE DATE

Section 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.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11813(b)(2) of 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.

BUSINESS CREDIT FOR RETENTION OF CERTAIN NEWLY HIRED INDIVIDUALS IN 2010

Pub. L. 111–147, title I, §102, Mar. 18, 2010, 124 Stat. 75, provided that:

''(a) IN GENERAL.—In the case of any taxable year ending after the date of the enactment of this Act [Mar. 18, 2010], the current year business credit determined under section 38(b) of the Internal Revenue Code of 1986 for such taxable year shall be increased, with respect to each retained worker with respect to which subsection (b)(2) is first satisfied during such taxable year, by the lesser of—

''(1) $1,000, or

''(2) 6.2 percent of the wages (as defined in section 3401(a) [probably means section 3401(a) of the Internal Revenue Code of 1986]) paid by the taxpayer to such retained worker during the 52 consecutive week period referred to in subsection (b)(2).

''(b) RETAINED WORKER.—For purposes of this section, the term 'retained worker' means any qualified individual (as defined in section 3111(d)(3) or section 3221(c)(3) of the Internal Revenue Code of 1986)—

''(1) who was employed by the taxpayer on any date during the taxable year,

''(2) who was so employed by the taxpayer for a period of not less than 52 consecutive weeks, and

''(3) whose wages (as defined in section 3401(a) [probably means section 3401(a) of the Internal Revenue Code of 1986]) for such employment during the last 26 weeks of such period equaled at least 80 percent of such wages for the first 26 weeks of such period.

''(c) LIMITATION ON CARRYBACKS.—No portion of the unused business credit under section 38 of the Internal Revenue Code of 1986 for any taxable year which is attributable to the increase in the current year business credit under this section may be carried to a taxable year beginning before the date of the enactment of this section [Mar. 18, 2010].

''(d) TREATMENT OF POSSESSIONS.—

''(1) PAYMENTS TO POSSESSIONS.—

''(A) MIRROR CODE POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States with a mirror code tax system

amounts equal to the loss to that possession by reason of the application of this section (other than this subsection). Such amounts shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

''(B) OTHER POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury as being equal to the aggregate benefits that would have been provided to residents of such possession by reason of the application of this section (other than this subsection) if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply with respect to any possession of the United States unless such possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payments to the residents of such possession.

''(2) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES.—No increase in the credit determined under section 38(b) of the Internal Revenue Code of 1986 against United States income taxes for any taxable year determined under subsection (a) shall be taken into account with respect to any person—

''(A) to whom a credit is allowed against taxes imposed by the possession by reason of this section for such taxable year, or

''(B) who is eligible for a payment under a plan described in paragraph (1)(B) with respect to such taxable year.

''(3) DEFINITIONS AND SPECIAL RULES.—

''(A) POSSESSION OF THE UNITED STATES.—For purposes of this subsection, the term 'possession of the United States' includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

''(B) MIRROR CODE TAX SYSTEM.—For purposes of this subsection, the term 'mirror code tax system' means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

''(C) TREATMENT OF PAYMENTS.—For purposes of section 1324(b)(2) of title 31, United States Code, rules similar to the rules of section 1001(b)(3)(C) of the American Recovery and Reinvestment Tax Act of 2009 [section 1001(b)(3)(C) of Pub. L. 111–5, set out as a note under section 36A of this title] shall apply.''

CREDIT FOR CONTRIBUTIONS TO CERTAIN COMMUNITY DEVELOPMENT CORPORATIONS

Section 13311 of Pub. L. 103–66, as amended by Pub. L. 104–188, title I, §1703(n)(13), Aug. 20, 1996, 110 Stat. 1877, provided that:

''(a) IN GENERAL.—For purposes of section 38 of the Internal Revenue Code of 1986, the current year business credit shall include the credit determined under this section.

''(b) DETERMINATION OF CREDIT.—The credit determined under this section for each taxable year in the credit period with respect to any qualified CDC contribution made by the taxpayer is an amount equal to 5 percent of such contribution.

''(c) CREDIT PERIOD.—For purposes of this section, the credit period with respect to any qualified CDC contribution is the period of 10 taxable years beginning with the taxable year during which such contribution was made.

''(d) QUALIFIED CDC CONTRIBUTION.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified CDC contribution' means any transfer of cash—

''(A) which is made to a selected community development corporation during the 5-year period beginning on the date such corporation was selected for purposes of this section,

''(B) the amount of which is available for use by such corporation for at least 10 years,

''(C) which is to be used by such corporation for qualified low-income assistance within its operational area, and

''(D) which is designated by such corporation for purposes of this section.

''(2) LIMITATIONS ON AMOUNT DESIGNATED.—The aggregate amount of contributions to a selected community development corporation which may be designated by such corporation shall not exceed $2,000,000.

''(e) SELECTED COMMUNITY DEVELOPMENT CORPORATIONS.—

''(1) IN GENERAL.—For purposes of this section, the term 'selected community development corporation' means any corporation—

''(A) which is described in section 501(c)(3) of such Code and exempt from tax under section 501(a) of such Code,

''(B) the principal purposes of which include promoting employment of, and business opportunities for, low-income individuals who are residents of the operational area, and

''(C) which is selected by the Secretary of Housing and Urban Development for purposes of this section.

''(2) ONLY 20 CORPORATIONS MAY BE SELECTED.—The Secretary of Housing and Urban Development may select 20 corporations for purposes of this section, subject to the availability of eligible corporations. Such selections may be made only before July 1, 1994. At least 8 of the operational areas of the corporations selected must be rural areas (as defined by section 1393(a)(2) of such Code).

''(3) OPERATIONAL AREAS MUST HAVE CERTAIN CHARACTERISTICS.—A corporation may be selected for purposes of this section only if its operational area meets the following criteria:

''(A) The area meets the size requirements under section 1392(a)(3).

''(B) The unemployment rate (as determined by the appropriate available data) is not less than the national unemployment rate.

''(C) The median family income of residents of such area does not exceed 80 percent of the median gross income of residents of the jurisdiction of the local government which includes such area.

''(f) QUALIFIED LOW-INCOME ASSISTANCE.—For purposes of this section, the term 'qualified low-income assistance' means assistance—

''(1) which is designed to provide employment of, and business opportunities for, low-income individuals who are residents of the operational area of the community development corporation, and

''(2) which is approved by the Secretary of Housing and Urban Development.''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUBLIC LAW 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(c)(4) 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.

EFFECTIVE 15-YEAR CARRYBACK OF EXISTING CARRYFORWARDS OF STEEL COMPANIES

Section 212 of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1002(f), Nov. 10, 1988, 102 Stat. 3369, provided that:

''(a) GENERAL RULE.—If a qualified corporation makes an election under this section for its 1st taxable year

beginning after December 31, 1986, with respect to any portion of its existing carryforwards, the amount determined under subsection (b) shall be treated as a payment against the tax imposed by chapter 1 of the Internal Revenue Code of 1986 made by such corporation on the last day prescribed by law (without regard to extensions) for filing its return of tax under chapter 1 of such Code for such 1st taxable year.

''(b) AMOUNT.—For purposes of subsection (a), the amount determined under this subsection shall be the lesser of—

''(1) 50 percent of the portion of the corporation's existing carryforwards to which the election under subsection (a) applies, or

''(2) the corporation's net tax liability for the carryback period.

''(c) CORPORATION MAKING ELECTION MAY NOT USE SAME AMOUNTS UNDER SECTION 38.—In the case of a qualified corporation which makes an election under subsection (a), the portion of such corporation's existing carryforwards to which such an election applies shall not be taken into account under section 38 of the Internal Revenue Code of 1986 for any taxable year beginning after December 31, 1986.

''(d) NET TAX LIABILITY FOR CARRYBACK PERIOD.—For purposes of this section—

''(1) IN GENERAL.—A corporation's net tax liability for the carryback period is the aggregate of such corporation's net tax liability for taxable years in the carryback period.

''(2) NET TAX LIABILITY.—The term 'net tax liability' means, with respect to any taxable year, the amount of the tax imposed by chapter 1 of the Internal Revenue Code of 1954 [now 1986] for such taxable year, reduced by the sum of the credits allowable under part IV of subchapter A of such chapter 1 (other than section 34 thereof). For purposes of the preceding sentence, any tax treated as not imposed by chapter 1 of such Code under section 26(b)(2) of such Code shall not be treated as tax imposed by such chapter 1.

''(3) CARRYBACK PERIOD.—The term 'carryback period' means the period—

''(A) which begins with the corporation's 15th taxable year preceding the 1st taxable year from which there is an unused credit included in such corporation's existing carryforwards (but in no event shall such period begin before the corporation's 1st taxable year ending after December 31, 1961), and

''(B) which ends with the corporation's last taxable year beginning before January 1, 1986.

''(e) NO RECOMPUTATION OF MINIMUM TAX, ETC.—Nothing in this section shall be construed to affect—

''(1) the amount of the tax imposed by section 56 of the Internal Revenue Code of 1986, or

''(2) the amount of any credit allowable under such Code,

for any taxable year in the carryback period.

''(f) REINVESTMENT REQUIREMENT.—

''(1) IN GENERAL.—Any amount determined under this section must be committed to reinvestment in, and modernization of the steel industry through investment in modern plant and equipment, research and development, and other appropriate projects, such as working capital for steel operations and programs for the retraining of steel workers.

''(2) SPECIAL RULE.—In the case of the LTV Corporation, in lieu of the requirements of paragraph (1)—

''(A) such corporation shall place such refund in a separate account; and

''(B) amounts in such separate account—

''(i) shall only be used by the corporation—

''(I) to purchase an insurance policy which provides that, in the event the corporation becomes involved in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1954 [now 1986]), the insurer will provide life and health insurance coverage during the 1-year period beginning on the date when the corporation receives the refund to any individual with respect to whom the corporation would (but for such involvement) have been obligated to provide such coverage the coverage provided by the insurer will be identical to the coverage which the corporation would (but for such involvement) have been obligated to provide, and provides that the payment of insurance premiums will not be required during such 1-year period to keep such policy in force, or

''(II) directly in connection with the trade or business of the corporation in the manufacturer or production of steel; and

''(ii) shall be used (or obligated) for purposes described in clause (i) not later than 3 months after the corporation receives the refund.

''(3) In the case of a qualified corporation, no offset to any refund under this section may be made by reason of any tax imposed by section 4971 of the Internal Revenue Code of 1986 (or any interest or penalty attributable to any such tax), and the date on which any such refund is to be paid shall be determined without regard to such corporation's status under title 11, United States Code.

''(g) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED CORPORATION.—

''(A) IN GENERAL.—The term 'qualified corporation' means any corporation which is described in section 806(b) of the Steel Import Stabilization Act [19 U.S.C. 2253 note] and a company which was incorporated on February 11, 1983, in Michigan.

''(B) CERTAIN PREDECESSORS INCLUDED.—In the case of any qualified corporation which has carryforward attributable to a predecessor corporation described in such section 806(b), the qualified corporation and the predecessor corporation shall be treated as 1 corporation for purposes of subsections (d) and (e).

''(2) EXISTING CARRYFORWARDS.—The term 'existing carryforward' means the aggregate of the amounts which—

''(A) are unused business credit carryforwards to the taxpayer's 1st taxable year beginning after December 31, 1986 (determined without regard to the limitations of section 38(c) and any reduction under section 49 of the Internal Revenue Code of 1986), and

''(B) are attributable to the amount of the regular investment credit determined for periods before January 1, 1986, under section 46(a)(1) of such Code (relating to regular percentage), or any corresponding provision of prior law, determined on the basis that the regular investment credit was used first.

''(3) SPECIAL RULE FOR RESTRUCTURING.—In the case of any corporation, any restructuring shall not limit, increase, or otherwise affect the benefits which would have been available under this section but for such restructuring.

''(h) TENTATIVE REFUNDS.—Rules similar to the rules of section 6425 of the Internal Revenue Code of 1986 shall apply to any overpayment resulting from the application of this section.''

EFFECTIVE 15-YEAR CARRYBACK OF EXISTING CARRYFORWARDS OF QUALIFIED FARMERS

Section 213 of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1002(g), Nov. 10, 1988, 102 Stat. 3369, provided that:

''(a) GENERAL RULE.—If a taxpayer who is a qualified farmer makes an election under this section for its 1st taxable year beginning after December 31, 1986, with respect to any portion of its existing carryforwards, the amount determined under subsection (b) shall be treated as a payment against the tax imposed by chapter 1 of the Internal Revenue Code of 1986 made by such taxpayer on the last day prescribed by law (without regard to extensions) for filing its return of tax under chapter 1 of such Code for such 1st taxable year.

''(b) AMOUNT.—For purposes of subsection (a), the amount determined under this subsection shall be equal to the smallest of—

''(1) 50 percent of the portion of the taxpayer's existing carryforwards to which the election under subsection (a) applies,

''(2) the taxpayer's net tax liability for the carryback period (within the meaning of section 212(d) of this Act [set out as a note above]), or

''(3) $750.

''(c) TAXPAYER MAKING ELECTION MAY NOT USE SAME AMOUNTS UNDER SECTION 38.—In the case of a qualified farmer who makes an election under subsection (a), the portion of such farmer's existing carryforwards to which such an election applies shall not be taken into account under section 38 of the Internal Revenue Code of 1986 for any taxable year beginning after December 31, 1986.

''(d) NO RECOMPUTATION OF MINIMUM TAX, ETC.—Nothing in this section shall be construed to affect—

''(1) the amount of the tax imposed by section 56 of the Internal Revenue Code of 1954 [now 1986], or

''(2) the amount of any credit allowable under such Code,

for any taxable year in the carryback period (within the meaning of section 212(d)(3) of this Act [set out as a note above]).

''(e) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) QUALIFIED FARMER.—The term 'qualified farmer' means any taxpayer who, during the 3-taxable year period preceding the taxable year for which an election is made under subsection (a), derived 50 percent or more of the taxpayer's gross income from the trade or business of farming.

''(2) EXISTING CARRYFORWARD.—The term 'existing carryforward' means the aggregate of the amounts which—

''(A) are unused business credit carryforwards to the taxpayer's 1st taxable year beginning after December 31, 1986 (determined without regard to the limitations of section 38(c) of the Internal Revenue Code of 1986), and

''(B) are attributable to the amount of the investment credit determined for periods before January 1, 1986, under section 46(a) of such Code (or any corresponding provision of prior law) with respect to section 38 property which was used by the taxpayer in the trade or business of farming, determined on the basis that such credit was used first.

''(3) FARMING.—The term 'farming' has the meaning given such term by section 2032A(e)(4) and (5) of such Code.''

TREATMENT OF INVESTMENT TAX CREDITS WITH RESPECT TO CERTAIN PUBLIC UTILITIES

For provisions requiring different applications of subsec. (c) of this section to certain public utilities by making substitutions in the percentages of the tentative minimum tax referred to in subsec. (c)(3)(A)(ii), (B), under certain circumstances, see section 701(f)(6) of Pub. L. 99–514, set out as an Effective Date note under section 55 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.

TRANSITION RULES

Section 1177 of subtitle C (§§ 1171–1177) of title XI of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1011B(*l*)(1), (2), Nov. 10, 1988, 102 Stat. 3493, provided that:

''(a) SECTION 1171.—The amendments made by section 1171 [amending this section and sections 56, 108, 401, and 404 of this title and repealing sections 41 and 6699 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.

''(b) SUBTITLE NOT TO APPLY TO CERTAIN NEWSPAPER.—The amendments made by section 1175 [amending section 401 of this title] shall not apply to any daily newspaper—

''(1) which was first published on December 17, 1855, and which began publication under its current name in 1954, and

''(2) which is published in a constitutional home rule city (within the meaning of section 146(d)(3)(C) of the Internal Revenue Code of 1986) which has a population of less than 2,500,000.''

Section 1011B(*l*)(3) of Pub. L. 100–647 provided that: ''If any newspaper corporation described in section 1177(b) of the Reform Act [section 1177(b) of Pub. L. 99–514, set out above], as amended by this subsection, pays in cash a dividend within 60 days after the date of the enactment of this Act [Nov. 10, 1988] to the corporation's employee stock ownership plans and if a corporate resolution declaring such dividend was adopted before November 30, 1987, and such resolution specifies that such dividend shall be contingent upon passage by the Congress of technical corrections, then such dividend (to the extent the aggregate amount so paid does not exceed $3,500,000) shall be treated as if it had been declared and paid in 1987 for all purposes of the Internal Revenue Code of 1986.''

ACCOUNTING FOR INVESTMENT CREDIT IN CERTAIN FINANCIAL REPORTS AND REPORTS TO FEDERAL AGENCIES

Pub. L. 92–178, title I, § 101(c), Dec. 10, 1971, 85 Stat. 499, as amended by Pub. L. 98–369, div. A, title IV, § 450(a), July 18, 1984, 98 Stat. 818; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—It was the intent of Congress in enacting, in the Revenue Act of 1962 [see Short Title of 1962 Amendment note set out under section 1 of this title], the investment credit allowed by section 38 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and it is the intent of the Congress in restoring that credit in this Act [section 50 of this title], to provide an incentive for modernization and growth of private industry. Accordingly, notwithstanding any other provision of law, on and after the date of the enactment of this Act [Dec. 10, 1971]—

''(A) no taxpayer shall be required to use, for purposes of financial reports subject to the jurisdiction of any Federal agency or reports made to any Federal agency, any particular method of accounting for the credit allowed by such section 38 [this section], and

''(B) a taxpayer shall disclose, in any such report, the method of accounting for such credit used by him for purposes of such report.

''(2) EXCEPTIONS.—Paragraph (1) shall not apply to taxpayers who are subject to the provisions of section 46(e) of the Internal Revenue Code of 1986 (as added by section 105(c) of this Act) or to section 203(e) of the Revenue Act of 1964 (as modified by section 105(e) of this Act) [set out as note below].''

[Section 450(b) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this note] shall take effect as if included in the Revenue Act of 1971.'']

TREATMENT OF INVESTMENT CREDIT BY FEDERAL REGULATORY AGENCIES

Pub. L. 88–272, title II, § 203(e), Feb. 26, 1964, 78 Stat. 35, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''It was the intent of the Congress in providing an investment credit under section 38 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] and it is the intent of the Congress in repealing the reduction in basis required by section 48(g) of such Code to provide an incentive for modernization and

growth of private industry (including that portion thereof which is regulated). Accordingly, Congress does not intend that any agency or instrumentality of the United States having jurisdiction with respect to a taxpayer shall, without the consent of the taxpayer, use—

''(1) in the case of public utility property (as defined in section 46(c)(3)(B) of the Internal Revenue Code of 1986, more than a proportionate part (determined with reference to the average useful life of the property with respect to which the credit was allowed) of the credit against tax allowed for any taxable year by section 38 of such Code, or

''(2) in the case of any other property, any credit against tax allowed by section 38 of such Code,

to reduce such taxpayer's Federal income taxes for the purpose of establishing the cost of service of the taxpayer or to accomplish a similar result by any other method.''

Section 203(e) of Pub. L. 88–272, not applicable to public utility property to which section 46(e) of this title applies, see section 105(e) of Pub. L. 92–178, set out as a note under section 46 of this title.

§ 39. Carryback and carryforward of unused credits

(a) In general

(1) 1-year carryback and 20-year carryforward

If the sum of the business credit carryforwards to the taxable year plus the amount of the current year business credit for the taxable year exceeds the amount of the limitation imposed by subsection (c) of section 38 for such taxable year (hereinafter in this section referred to as the ''unused credit year''), such excess (to the extent attributable to the amount of the current year business credit) shall be—

(A) a business credit carryback to the taxable year preceding the unused credit year, and

(B) a business credit carryforward to each of the 20 taxable years following the unused credit year,

and, subject to the limitations imposed by subsections (b) and (c), shall be taken into account under the provisions of section 38(a) in the manner provided in section 38(a).

(2) Amount carried to each year

(A) Entire amount carried to first year

The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the 21 taxable years to which (by reason of paragraph (1)) such credit may be carried.

(B) Amount carried to other 20 years

The amount of the unused credit for the unused credit year shall be carried to each of the other 20 taxable years to the extent that such unused credit may not be taken into account under section 38(a) for a prior taxable year because of the limitations of subsections (b) and (c).

(3) 5-year carryback for marginal oil and gas well production credit

Notwithstanding subsection (d), in the case of the marginal oil and gas well production credit—

(A) this section shall be applied separately from the business credit (other than the marginal oil and gas well production credit) or the eligible small business credits,

(B) paragraph (1) shall be applied by substituting ''each of the 5 taxable years'' for ''the taxable year'' in subparagraph (A) thereof, and

(C) paragraph (2) shall be applied—

(i) by substituting ''25 taxable years'' for ''21 taxable years'' in subparagraph (A) thereof, and

(ii) by substituting ''24 taxable years'' for ''20 taxable years'' in subparagraph (B) thereof.

(4) 5-year carryback for eligible small business credits

(A) In general

Notwithstanding subsection (d), in the case of eligible small business credits determined in the first taxable year of the taxpayer beginning in 2010—

(i) paragraph (1) shall be applied by substituting ''each of the 5 taxable years'' for ''the taxable year'' in subparagraph (A) thereof, and

(ii) paragraph (2) shall be applied—

(I) by substituting ''25 taxable years'' for ''21 taxable years'' in subparagraph (A) thereof, and

(II) by substituting ''24 taxable years'' for ''20 taxable years'' in subparagraph (B) thereof.

(B) Eligible small business credits

For purposes of this subsection, the term ''eligible small business credits'' has the meaning given such term by section 38(c)(5)(B).

(b) Limitation on carrybacks

The amount of the unused credit which may be taken into account under section 38(a)(3) for any preceding taxable year shall not exceed the amount by which the limitation imposed by section 38(c) for such taxable year exceeds the sum of—

(1) the amounts determined under paragraphs (1) and (2) of section 38(a) for such taxable year, plus

(2) the amounts which (by reason of this section) are carried back to such taxable year and are attributable to taxable years preceding the unused credit year.

(c) Limitation on carryforwards

The amount of the unused credit which may be taken into account under section 38(a)(1) for any succeeding taxable year shall not exceed the amount by which the limitation imposed by section 38(c) for such taxable year exceeds the sum of the amounts which, by reason of this section, are carried to such taxable year and are attributable to taxable years preceding the unused credit year.

(d) Transitional rule

No portion of the unused business credit for any taxable year which is attributable to a credit specified in section 38(b) or any portion thereof may be carried back to any taxable year before the first taxable year for which such specified credit or such portion is allowable (without regard to subsection (a)).

(Added Pub. L. 98–369, div. A, title IV, § 473, July 18, 1984, 98 Stat. 828; amended Pub. L. 99–514,

title II, §231(d)(3)(C)(i), title XVIII, §1846, Oct. 22, 1986, 100 Stat. 2179, 2856; Pub. L. 100–647, title I, §1002(*l*)(26), Nov. 10, 1988, 102 Stat. 3381; Pub. L. 101–508, title XI, §§11511(b)(2), 11611(b)(2), 11801(a)(2), Nov. 5, 1990, 104 Stat. 1388–485, 1388–503, 1388–520; Pub. L. 102–486, title XIX, §1914(c), Oct. 24, 1992, 106 Stat. 3023; Pub. L. 103–66, title XIII, §§13302(a)(2), 13322(d), 13443(b)(2), Aug. 10, 1993, 107 Stat. 555, 563, 569; Pub. L. 104–188, title I, §§1205(c), 1703(n)(1), Aug. 20, 1996, 110 Stat. 1775, 1877; Pub. L. 105–34, title VII, §701(b)(1), title X, §1083(a), Aug. 5, 1997, 111 Stat. 869, 951; Pub. L. 105–206, title VI, §6010(n), July 22, 1998, 112 Stat. 816; Pub. L. 106–554, §1(a)(7) [title I, §121(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–610; Pub. L. 107–16, title VI, §619(c)(1), June 7, 2001, 115 Stat. 110; Pub. L. 108–357, title II, §245(b)(1), title III, §341(c), Oct. 22, 2004, 118 Stat. 1447, 1487; Pub. L. 109–135, title IV, §412(g), Dec. 21, 2005, 119 Stat. 2637; Pub. L. 111–240, title II, §2012(a), (b), Sept. 27, 2010, 124 Stat. 2554.)

PRIOR PROVISIONS

A prior section 39 was renumbered section 34 of this title.

Another prior section 39 was renumbered section 37 of this title.

AMENDMENTS

2010—Subsec. (a)(3)(A). Pub. L. 111–240, §2012(b), inserted ''or the eligible small business credits'' after ''credit)''.

Subsec. (a)(4). Pub. L. 111–240, §2012(a), added par. (4).

2005—Subsec. (a)(1)(A). Pub. L. 109–135, §412(g)(1), substituted ''the taxable year'' for ''each of the 1 taxable years''.

Subsec. (a)(3)(B). Pub. L. 109–135, §412(g)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''paragraph (1) shall be applied by substituting '5 taxable years' for '1 taxable years' in subparagraph (A) thereof, and''.

2004—Subsec. (a)(3). Pub. L. 108–357, §341(c), added par. (3).

Subsec. (d). Pub. L. 108–357, §245(b)(1), amended heading and text of subsec. (d) generally, substituting provisions prohibiting carryback of the unused business credit attributable to a credit specified in section 38(b) for provisions prohibiting carryback of the enhanced oil recovery credit before 1991, sections 44, 45A, and 45B credits before their enactments, the renewable electricity production credit before its effective date, the empowerment zone employment credit, section 45C credit before July 1, 1996, DC Zone credits before their effective date, the new markets tax credit before Jan. 1, 2001, and the small employer pension plan startup cost credit before Jan. 1, 2002.

2001—Subsec. (d)(10). Pub. L. 107–16, §619(c)(1), added par. (10).

2000—Subsec. (d)(9). Pub. L. 106–554 added par. (9).

1998—Subsec. (a)(2). Pub. L. 105–206 amended Pub. L. 105–34, §1083(a)(2). See 1997 Amendment note below.

1997—Subsec. (a)(1). Pub. L. 105–34, §1083(a)(1), substituted ''1-year'' for ''3-year'' and ''20-year'' for ''15-year'' in heading, ''1 taxable'' for ''3 taxable'' in subpar. (A), and ''20 taxable'' for ''15 taxable'' in subpar. (B).

Subsec. (a)(2). Pub. L. 105–34, §1083(a)(2), as amended by Pub. L. 105–206, §6010(n), in subpar. (A), substituted ''21 taxable'' for ''18 taxable'', and in subpar. (B), substituted ''20 years'' for ''17 years'' in heading and ''20 taxable'' for ''17 taxable'' in text.

Subsec. (d)(8). Pub. L. 105–34, §701(b)(1), added par. (8).

1996—Subsec. (d)(5). Pub. L. 104–188, §1703(n)(1)(A), substituted ''45A'' for ''45'' in heading.

Subsec. (d)(6). Pub. L. 104–188, §1703(n)(1)(B), substituted ''45B'' for ''45'' in heading.

Subsec. (d)(7). Pub. L. 104–188, §1205(c), added par. (7).

1993—Subsec. (d)(4). Pub. L. 103–66, §13302(a)(2), added par. (4).

Subsec. (d)(5). Pub. L. 103–66, §13322(d), added par. (5).

Subsec. (d)(6). Pub. L. 103–66, §13443(b)(2), added par. (6).

1992—Subsec. (d). Pub. L. 102–486 redesignated par. (5), relating to carryback of enhanced oil recovery credit, as (1), redesignated par. (5), relating to carryback of section 44 credit, as (2), and added par. (3).

1990—Subsec. (d)(1) to (4). Pub. L. 101–508, §11801(a)(2), struck out par. (1) which related to carryforwards from an unused credit year which did not expire before first taxable year beginning after Dec. 31, 1983, par. (2) which related to carrybacks in determining amount allowable as credit including net tax liability, par. (3) which related to similar rules for research credit under section 30, and par. (4) which provided for no carryback of low-income housing credit before 1987.

Subsec. (d)(5). Pub. L. 101–508, §11611(b)(2), added par. (5) relating to carryback of section 44 credit.

Pub. L. 101–508, §11511(b)(2), added par. (5) relating to carryback of enhanced oil recovery credit.

1988—Subsec. (d)(4). Pub. L. 100–647 added par. (4).

1986—Subsec. (d)(1)(A). Pub. L. 99–514, §1846(1), inserted ''(as in effect before the enactment of the Tax Reform Act of 1984)''.

Subsec. (d)(2)(B). Pub. L. 99–514, §1846(2), substituted ''as defined in section 26(b)'' for ''as so defined in section 25(b)''.

Subsec. (d)(3). Pub. L. 99–514, §231(d)(3)(C)(i), added par. (3).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, §2012(c), Sept. 27, 2010, 124 Stat. 2554, provided that: ''The amendments made by this section [amending this section] shall apply to credits determined in taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §245(b)(2), Oct. 22, 2004, 118 Stat. 1448, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to taxable years ending after December 31, 2003.''

Amendment by section 245(b) of Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 245(e) of Pub. L. 108–357, set out as a note under section 38 of this title.

Amendment by section 341(c) of Pub. L. 108–357 applicable to production in taxable years beginning after Dec. 31, 2004, see section 341(e) of Pub. L. 108–357, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to costs paid or incurred in taxable years beginning after Dec. 31, 2001, with respect to qualified employer plans first effective after such date, see section 619(d) of Pub. L. 107–16, as amended, set out as an Effective and Termination Dates of 2001 Amendment note under section 38 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to investments made after Dec. 31, 2000, see §1(a)(7) [title I, §121(e)] of Pub. L. 106–554, set out as a note under section 38 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 1997 AMENDMENT

Section 701(d) of Pub. L. 105–34 provided that: ''Except as provided in subsection (c) [amending table of subchapters for this chapter], the amendments made by

this section [enacting subchapter W of this chapter and amending this section and section 1016 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].''

Section 1083(b) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to credits arising in taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1205(c) of Pub. L. 104–188 applicable to amounts paid or incurred in taxable years ending after June 30, 1996, see section 1205(e) of Pub. L. 104–188, set out as a note under section 45K of this title.

Section 1703(*o*) of Pub. L. 104–188 provided that: ''Any amendment made by this section [amending this section and sections 40, 59, 108, 117, 135, 143, 163, 904, 956A, 958, 1017, 1044, 1201, 1245, 1297, 1394, 1397B, 1561, 4001, 6033, 6427, 6501, 6655, and 9502 of this title, renumbering section 6714 of this title as section 6715, and amending provisions set out as notes under sections 38, 42, 197, and 1258 of this title and section 401 of Title 42, The Public Health and Welfare] shall take effect as if included in the provision of the Revenue Reconciliation Act of 1993 [Pub. L. 103–66, title XIII, ch. I, §§13001–13444] to which such amendment relates.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13322(d) of Pub. L. 103–66 applicable to wages paid or incurred after Dec. 31, 1993, see section 13322(f) of Pub. L. 103–66, set out as a note under section 38 of this title.

Amendment by section 13443(b)(2) of Pub. L. 103–66 applicable with respect to taxes paid after Dec. 31, 1993, with respect to services performed before, on, or after such date, see section 13443(d) of Pub. L. 103–66, as amended, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to taxable years ending after Dec. 31, 1992, see section 1914(e) of Pub. L. 102–486, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11511(b)(2) of Pub. L. 101–508 applicable to costs paid or incurred in taxable years beginning after Dec. 31, 1990, see section 11511(d)(1) of Pub. L. 101–508, set out as an Effective Date note under section 43 of this title.

Amendment by section 11611(b)(2) of Pub. L. 101–508 applicable to expenditures paid or incurred after Nov. 5, 1990, see section 11611(e)(1) of Pub. L. 101–508, set out as a note under section 38 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

Amendment by section 231(d)(3)(C)(i) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 1846 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

Section 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.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801(a)(2) of 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.

§ 40. Alcohol, etc., used as fuel

(a) General rule

For purposes of section 38, the alcohol fuels credit determined under this section for the taxable year is an amount equal to the sum of—

(1) the alcohol mixture credit,

(2) the alcohol credit,

(3) in the case of an eligible small ethanol producer, the small ethanol producer credit, plus

(4) the cellulosic biofuel producer credit.

(b) Definition of alcohol mixture credit, alcohol credit, and small ethanol producer credit

For purposes of this section, and except as provided in subsection (h)—

(1) Alcohol mixture credit

(A) In general

The alcohol mixture credit of any taxpayer for any taxable year is 60 cents for each gallon of alcohol used by the taxpayer in the production of a qualified mixture.

(B) Qualified mixture

The term ''qualified mixture'' means a mixture of alcohol and gasoline or of alcohol and a special fuel which—

(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

(ii) is used as a fuel by the taxpayer producing such mixture.

(C) Sale or use must be in trade or business, etc.

Alcohol used in the production of a qualified mixture shall be taken into account—

(i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and

(ii) for the taxable year in which such sale or use occurs.

(D) Casual off-farm production not eligible

No credit shall be allowed under this section with respect to any casual off-farm production of a qualified mixture.

(2) Alcohol credit

(A) In general

The alcohol credit of any taxpayer for any taxable year is 60 cents for each gallon of al-

cohol which is not in a mixture with gasoline or a special fuel (other than any denaturant) and which during the taxable year—

(i) is used by the taxpayer as a fuel in a trade or business, or

(ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle.

(B) User credit not to apply to alcohol sold at retail

No credit shall be allowed under subparagraph (A)(i) with respect to any alcohol which was sold in a retail sale described in subparagraph (A)(ii).

(3) Smaller credit for lower proof alcohol

In the case of any alcohol with a proof which is at least 150 but less than 190, paragraphs (1)(A) and (2)(A) shall be applied by substituting ''45 cents'' for ''60 cents''.

(4) Small ethanol producer credit

(A) In general

The small ethanol producer credit of any eligible small ethanol producer for any taxable year is 10 cents for each gallon of qualified ethanol fuel production of such producer.

(B) Qualified ethanol fuel production

For purposes of this paragraph, the term ''qualified ethanol fuel production'' means any alcohol which is ethanol which is produced by an eligible small ethanol producer, and which during the taxable year—

(i) is sold by such producer to another person—

(I) for use by such other person in the production of a qualified mixture in such other person's trade or business (other than casual off-farm production),

(II) for use by such other person as a fuel in a trade or business, or

(III) who sells such ethanol at retail to another person and places such ethanol in the fuel tank of such other person, or

(ii) is used or sold by such producer for any purpose described in clause (i).

(C) Limitation

The qualified ethanol fuel production of any producer for any taxable year shall not exceed 15,000,000 gallons (determined without regard to any qualified cellulosic biofuel production).

(D) Additional distillation excluded

The qualified ethanol fuel production of any producer for any taxable year shall not include any alcohol which is purchased by the producer and with respect to which such producer increases the proof of the alcohol by additional distillation.

(5) Adding of denaturants not treated as mixture

The adding of any denaturant to alcohol shall not be treated as the production of a mixture.

(6) Cellulosic biofuel producer credit

(A) In general

The cellulosic biofuel producer credit of any taxpayer is an amount equal to the applicable amount for each gallon of qualified cellulosic biofuel production.

(B) Applicable amount

For purposes of subparagraph (A), the applicable amount means $1.01, except that such amount shall, in the case of cellulosic biofuel which is alcohol, be reduced by the sum of—

(i) the amount of the credit in effect for such alcohol under subsection (b)(1) (without regard to subsection (b)(3)) at the time of the qualified cellulosic biofuel production, plus

(ii) in the case of ethanol, the amount of the credit in effect under subsection (b)(4) at the time of such production.

(C) Qualified cellulosic biofuel production

For purposes of this section, the term ''qualified cellulosic biofuel production'' means any cellulosic biofuel which is produced by the taxpayer, and which during the taxable year—

(i) is sold by the taxpayer to another person—

(I) for use by such other person in the production of a qualified cellulosic biofuel mixture in such other person's trade or business (other than casual off-farm production),

(II) for use by such other person as a fuel in a trade or business, or

(III) who sells such cellulosic biofuel at retail to another person and places such cellulosic biofuel in the fuel tank of such other person, or

(ii) is used or sold by the taxpayer for any purpose described in clause (i).

The qualified cellulosic biofuel production of any taxpayer for any taxable year shall not include any alcohol which is purchased by the taxpayer and with respect to which such producer increases the proof of the alcohol by additional distillation.

(D) Qualified cellulosic biofuel mixture

For purposes of this paragraph, the term ''qualified cellulosic biofuel mixture'' means a mixture of cellulosic biofuel and gasoline or of cellulosic biofuel and a special fuel which—

(i) is sold by the person producing such mixture to any person for use as a fuel, or

(ii) is used as a fuel by the person producing such mixture.

(E) Cellulosic biofuel

For purposes of this paragraph—

(i) In general

The term ''cellulosic biofuel'' means any liquid fuel which—

(I) is produced from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, and

(II) meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545).

(ii) Exclusion of low-proof alcohol

Such term shall not include any alcohol with a proof of less than 150. The determination of the proof of any alcohol shall be made without regard to any added denaturants.

(iii) Exclusion of certain fuels

The term ''cellulosic biofuel'' shall not include any fuel if—

(I) more than 4 percent of such fuel (determined by weight) is any combination of water and sediment,

(II) the ash content of such fuel is more than 1 percent (determined by weight), or

(III) such fuel has an acid number greater than 25.

(F) Allocation of cellulosic biofuel producer credit to patrons of cooperative

Rules similar to the rules under subsection (g)(6) shall apply for purposes of this paragraph.

(G) Registration requirement

No credit shall be determined under this paragraph with respect to any taxpayer unless such taxpayer is registered with the Secretary as a producer of cellulosic biofuel under section 4101.

(H) Application of paragraph

This paragraph shall apply with respect to qualified cellulosic biofuel production after December 31, 2008, and before January 1, 2013.

(c) Coordination with exemption from excise tax

The amount of the credit determined under this section with respect to any alcohol shall, under regulations prescribed by the Secretary, be properly reduced to take into account any benefit provided with respect to such alcohol solely by reason of the application of section 4041(b)(2), section 6426, or section 6427(e).

(d) Definitions and special rules

For purposes of this section—

(1) Alcohol defined

(A) In general

The term ''alcohol'' includes methanol and ethanol but does not include—

(i) alcohol produced from petroleum, natural gas, or coal (including peat), or

(ii) alcohol with a proof of less than 150.

(B) Determination of proof

The determination of the proof of any alcohol shall be made without regard to any added denaturants.

(2) Special fuel defined

The term ''special fuel'' includes any liquid fuel (other than gasoline) which is suitable for use in an internal combustion engine.

(3) Mixture or alcohol not used as a fuel, etc.

(A) Mixtures

If—

(i) any credit was determined under this section with respect to alcohol used in the production of any qualified mixture, and

(ii) any person—

(I) separates the alcohol from the mixture, or

(II) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to 60 cents a gallon (45 cents in the case of alcohol with a proof less than 190) for each gallon of alcohol in such mixture.

(B) Alcohol

If—

(i) any credit was determined under this section with respect to the retail sale of any alcohol, and

(ii) any person mixes such alcohol or uses such alcohol other than as a fuel,

then there is hereby imposed on such person a tax equal to 60 cents a gallon (45 cents in the case of alcohol with a proof less than 190) for each gallon of such alcohol.

(C) Small ethanol producer credit

If—

(i) any credit was determined under subsection (a)(3), and

(ii) any person does not use such fuel for a purpose described in subsection (b)(4)(B),

then there is hereby imposed on such person a tax equal to 10 cents a gallon for each gallon of such alcohol.

(D) Cellulosic biofuel producer credit

If—

(i) any credit is allowed under subsection (a)(4), and

(ii) any person does not use such fuel for a purpose described in subsection (b)(6)(C),

then there is hereby imposed on such person a tax equal to the applicable amount (as defined in subsection (b)(6)(B)) for each gallon of such cellulosic biofuel.

(E) Applicable laws

All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A), (B), (C), or (D) as if such tax were imposed by section 4081 and not by this chapter.

(4) Volume of alcohol

For purposes of determining under subsection (a) the number of gallons of alcohol with respect to which a credit is allowable under subsection (a), the volume of alcohol shall include the volume of any denaturant (including gasoline) which is added under any formulas approved by the Secretary to the extent that such denaturants do not exceed 2 percent of the volume of such alcohol (including denaturants).

(5) Pass-thru in the case of estates and trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(6) Special rule for cellulosic biofuel producer credit

No cellulosic biofuel producer credit shall be determined under subsection (a) with respect

to any cellulosic biofuel unless such cellulosic biofuel is produced in the United States and used as a fuel in the United States. For purposes of this subsection, the term ''United States'' includes any possession of the United States.

(7) Limitation to alcohol with connection to the United States

No credit shall be determined under this section with respect to any alcohol which is produced outside the United States for use as a fuel outside the United States. For purposes of this paragraph, the term ''United States'' includes any possession of the United States.

(e) Termination

(1) In general

This section shall not apply to any sale or use—

(A) for any period after December 31, 2011, or

(B) for any period before January 1, 2012, during which the rates of tax under section 4081(a)(2)(A) are 4.3 cents per gallon.

(2) No carryovers to certain years after expiration

If this section ceases to apply for any period by reason of paragraph (1) or subsection (b)(6)(H), no amount attributable to any sale or use before the first day of such period may be carried under section 39 by reason of this section (treating the amount allowed by reason of this section as the first amount allowed by this subpart) to any taxable year beginning after the 3-taxable-year period beginning with the taxable year in which such first day occurs.

(3) Exception for cellulosic biofuel producer credit

Paragraph (1) shall not apply to the portion of the credit allowed under this section by reason of subsection (a)(4).

(f) Election to have alcohol fuels credit not apply

(1) In general

A taxpayer may elect to have this section not apply for any taxable year.

(2) Time for making election

An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

(3) Manner of making election

An election under paragraph (1) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe.

(g) Definitions and special rules for eligible small ethanol producer credit

For purposes of this section—

(1) Eligible small ethanol producer

The term ''eligible small ethanol producer'' means a person who, at all times during the taxable year, has a productive capacity for alcohol (as defined in subsection (d)(1)(A) without regard to clauses (i) and (ii)) not in excess of 60,000,000 gallons.

(2) Aggregration [1] rule

For purposes of the 15,000,000 gallon limitation under subsection (b)(4)(C) and the 60,000,000 gallon limitation under paragraph (1), all members of the same controlled group of corporations (within the meaning of section 267(f)) and all persons under common control (within the meaning of section 52(b) but determined by treating an interest of more than 50 percent as a controlling interest) shall be treated as 1 person.

(3) Partnership, S corporations, and other pass-thru entities

In the case of a partnership, trust, S corporation, or other pass-thru entity, the limitations contained in subsection (b)(4)(C) and paragraph (1) shall be applied at the entity level and at the partner or similar level.

(4) Allocation

For purposes of this subsection, in the case of a facility in which more than 1 person has an interest, productive capacity shall be allocated among such persons in such manner as the Secretary may prescribe.

(5) Regulations

The Secretary may prescribe such regulations as may be necessary—

(A) to prevent the credit provided for in subsection (a)(3) from directly or indirectly benefiting any person with a direct or indirect productive capacity of more than 60,000,000 gallons of alcohol during the taxable year, or

(B) to prevent any person from directly or indirectly benefiting with respect to more than 15,000,000 gallons during the taxable year.

(6) Allocation of small ethanol producer credit to patrons of cooperative

(A) Election to allocate

(i) In general

In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a)(3) for the taxable year may, at the election of the organization, be apportioned pro rata among patrons of the organization on the basis of the quantity or value of business done with or for such patrons for the taxable year.

(ii) Form and effect of election

An election under clause (i) 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. Such election shall not take effect unless the organization designates the apportionment as such in a written notice mailed to its patrons during the payment period described in section 1382(d).

(B) Treatment of organizations and patrons

(i) Organizations

The amount of the credit not apportioned to patrons pursuant to subpara-

[1] So in original. Probably should be ''Aggregation''.

graph (A) shall be included in the amount determined under subsection (a)(3) for the taxable year of the organization.

(ii) Patrons

The amount of the credit apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under such subsection for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

(iii) Special rules for decrease in credits for taxable year

If the amount of the credit of the organization determined under such subsection for a taxable year is less than the amount of such credit shown on the return of the organization for such year, an amount equal to the excess of—

(I) such reduction, over

(II) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(h) Reduced credit for ethanol blenders

(1) In general

In the case of any alcohol mixture credit or alcohol credit with respect to any sale or use of alcohol which is ethanol during calendar years 2001 through 2011—

(A) subsections (b)(1)(A) and (b)(2)(A) shall be applied by substituting ''the blender amount'' for ''60 cents'',

(B) subsection (b)(3) shall be applied by substituting ''the low-proof blender amount'' for ''45 cents'' and ''the blender amount'' for ''60 cents'', and

(C) subparagraphs (A) and (B) of subsection (d)(3) shall be applied by substituting ''the blender amount'' for ''60 cents'' and ''the low-proof blender amount'' for ''45 cents''.

(2) Amounts

For purposes of paragraph (1), the blender amount and the low-proof blender amount shall be determined in accordance with the following table:

In the case of any sale or use during calendar year:	The blender amount is:	The low-proof blender amount is:
2001 or 2002	53 cents	39.26 cents
2003 or 2004	52 cents	38.52 cents
2005, 2006, 2007, or 2008.	51 cents	37.78 cents
2009 through 2011	45 cents	33.33 cents.

(3) Reduction delayed until annual production or importation of 7,500,000,000 gallons

(A) In general

In the case of any calendar year beginning after 2008, if the Secretary makes a determination described in subparagraph (B) with respect to all preceding calendar years beginning after 2007, the last row in the table in paragraph (2) shall be applied by substituting ''51 cents'' for ''45 cents''.

(B) Determination

A determination described in this subparagraph with respect to any calendar year is a determination, in consultation with the Administrator of the Environmental Protection Agency, that an amount less than 7,500,000,000 gallons of ethanol (including cellulosic ethanol) has been produced in or imported into the United States in such year.

(Added Pub. L. 96–223, title II, §232(b)(1), Apr. 2, 1980, 94 Stat. 273, §44E; amended Pub. L. 97–34, title II §207(c)(3), Aug. 13, 1981, 95 Stat. 225; Pub. L. 97–354, §5(a)(2), Oct. 19, 1982, 96 Stat. 1692; Pub. L. 97–424, title V, §511(b)(2), (d)(3), Jan. 6, 1983, 96 Stat. 2170, 2171; renumbered §40 and amended Pub. L. 98–369, div. A, title IV, §§471(c), 474(k), title IX, §§912(c), (f), 913(b), July 18, 1984, 98 Stat. 826, 832, 1007, 1008; Pub. L. 100–203, title X, §10502(d)(1), Dec. 22, 1987, 101 Stat. 1330–444; Pub. L. 101–508, title XI, §11502(a)–(f), Nov. 5, 1990, 104 Stat. 1388–480 to 1388–482; Pub. L. 104–188, title I, §1703(j), Aug. 20, 1996, 110 Stat. 1876; Pub. L. 105–178, title IX, §9003(a)(3), (b)(1), June 9, 1998, 112 Stat. 502; Pub. L. 108–357, title III, §§301(c)(1)–(4), 313(a), Oct. 22, 2004, 118 Stat. 1461, 1467; Pub. L. 109–58, title XIII, §1347(a), (b), Aug. 8, 2005, 119 Stat. 1056; Pub. L. 110–234, title XV, §§15321(a)–(b)(2), (3)(B), (c)–(e), 15331(a), 15332(a), May 22, 2008, 122 Stat. 1512–1516; Pub. L. 110–246, §4(a), title XV, §§15321(a)–(b)(2), (3)(B), (c)–(e), 15331(a), 15332(a), June 18, 2008, 122 Stat. 1664, 2274–2278; Pub. L. 110–343, div. B, title II, §203(a), Oct. 3, 2008, 122 Stat. 3833; Pub. L. 111–152, title I, §1408(a), Mar. 30, 2010, 124 Stat. 1067; Pub. L. 111–240, title II, §2121(a), Sept. 27, 2010, 124 Stat. 2567; Pub. L. 111–312, title VII, §708(a)(1), (2), Dec. 17, 2010, 124 Stat. 3312.)

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.

PRIOR PROVISIONS

A prior section 40, added Pub. L. 92–178, title VI, §601(a), Dec. 10, 1971, 85 Stat. 553; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to allowance as a credit of expenses of work incentive programs, prior to repeal by Pub. L. 98–369, div. A, title IV, §474(m)(1), July 18, 1984, 98 Stat. 833.

Another prior section 40 was renumbered section 37 of this title.

AMENDMENTS

2010—Subsec. (b)(6)(E)(iii). Pub. L. 111–240, §2121(a)(4), substituted ''certain'' for ''unprocessed'' in heading.

Pub. L. 111–152 added cl. (iii).

Subsec. (b)(6)(E)(iii)(III). Pub. L. 111–240, §2121(a)(1)–(3), added subcl. (III).

Subsec. (e)(1)(A). Pub. L. 111–312, §708(a)(1)(A), substituted ''December 31, 2011'' for ''December 31, 2010''.

Subsec. (e)(1)(B). Pub. L. 111–312, §708(a)(1)(B), substituted ''January 1, 2012'' for ''January 1, 2011''.

Subsec. (h)(1), (2). Pub. L. 111–312, §708(a)(2), substituted ''2011'' for ''2010''.

2008—Pub. L. 110–246, §15321(b)(3)(B), inserted '', etc.,'' after ''Alcohol'' in section catchline.

Subsec. (a)(4). Pub. L. 110–246, § 15321(a), added par. (4).

Subsec. (b)(4)(C). Pub. L. 110–246, § 15321(e), inserted ''(determined without regard to any qualified cellulosic biofuel production)'' after ''15,000,000 gallons''.

Subsec. (b)(6). Pub. L. 110–246, § 15321(b)(1), added par. (6).

Subsec. (d)(3)(C). Pub. L. 110–246, § 15321(c)(2)(A), substituted ''Small ethanol producer'' for ''Producer'' in heading.

Subsec. (d)(3)(D). Pub. L. 110–246, § 15321(c)(1), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (d)(3)(E). Pub. L. 110–246, § 15321(c)(2)(B), substituted ''(C), or (D)'' for ''or (C)''.

Pub. L. 110–246, § 15321(c)(1), redesignated subpar. (D) as (E).

Subsec. (d)(4). Pub. L. 110–246, § 15332(a), substituted ''2 percent'' for ''5 percent''.

Subsec. (d)(6). Pub. L. 110–246, § 15321(d), added par. (6).

Subsec. (d)(7). Pub. L. 110–343 added par. (7).

Subsec. (e)(2). Pub. L. 110–246, § 15321(b)(2)(A), inserted ''or subsection (b)(6)(H)'' after ''by reason of paragraph (1)''.

Subsec. (e)(3). Pub. L. 110–246, § 15321(b)(2)(B), added par. (3).

Subsec. (h)(2). Pub. L. 110–246, § 15331(a)(1), in table, substituted ''2005, 2006, 2007, or 2008'' for ''2005 through 2010'', struck out period after ''37.78 cents'', and inserted last row reading ''2009 through 2010'', ''45 cents'', and ''33.33 cents.''

Subsec. (h)(3). Pub. L. 110–246, § 15331(a)(2), added par. (3).

2005—Subsec. (g)(1), (2), (5)(A). Pub. L. 109–58, § 1347(a), substituted ''60,000,000'' for ''30,000,000''.

Subsec. (g)(6)(A)(ii). Pub. L. 109–58, § 1347(b), inserted at end ''Such election shall not take effect unless the organization designates the apportionment as such in a written notice mailed to its patrons during the payment period described in section 1382(d).''

2004—Subsec. (c). Pub. L. 108–357, § 301(c)(1), substituted ''section 4041(b)(2), section 6426, or section 6427(e)'' for ''subsection (b)(2), (k), or (m) of section 4041, section 4081(c), or section 4091(c)''.

Subsec. (d)(4). Pub. L. 108–357, § 301(c)(2), reenacted heading without change and amended text of par. (4) generally, substituting provisions relating to determination of the number of gallons of alcohol with respect to which a credit is allowable under subsec. (a) for provisions relating to determination of the number of gallons of alcohol with respect to which a credit is allowable under subsec. (a) or the percentage of any mixture which consists of alcohol under section 4041(k) or 4081(c).

Subsec. (e)(1)(A). Pub. L. 108–357, § 301(c)(3)(A), substituted ''2010'' for ''2007''.

Subsec. (e)(1)(B). Pub. L. 108–357, § 301(c)(3)(B), substituted ''2011'' for ''2008''.

Subsec. (g)(6). Pub. L. 108–357, § 313(a), added par. (6).

Subsec. (h)(1). Pub. L. 108–357, § 301(c)(4)(A), substituted ''2010'' for ''2007'' in introductory provisions.

Subsec. (h)(2). Pub. L. 108–357, § 301(c)(4)(B), substituted ''through 2010'' for '', 2006, or 2007'' in table.

1998—Subsec. (e)(1). Pub. L. 105–178, § 9003(a)(3), substituted ''December 31, 2007'' for ''December 31, 2000'' in subpar. (A) and ''January 1, 2008'' for ''January 1, 2001'' in subpar. (B).

Subsec. (h). Pub. L. 105–178, § 9003(b)(1), reenacted heading without change and amended text of subsec. (h) generally. Prior to amendment, text read as follows: ''In the case of any alcohol mixture credit or alcohol credit with respect to any alcohol which is ethanol—

''(1) subsections (b)(1)(A) and (b)(2)(A) shall be applied by substituting '54 cents' for '60 cents';

''(2) subsection (b)(3) shall be applied by substituting '40 cents' for '45 cents' and '54 cents' for '60 cents'; and

''(3) subparagraphs (A) and (B) of subsection (d)(3) shall be applied by substituting '54 cents' for '60 cents' and '40 cents' for '45 cents'.''

1996—Subsec. (e)(1)(B). Pub. L. 104–188 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''for any period before January 1, 2001, during which the Highway Trust Fund financing rate under section 4081(a)(2) is not in effect.''

1990—Subsec. (a)(2). Pub. L. 101–508, § 11502(a)(1), substituted '', plus'' for period at end.

Subsec. (a)(3). Pub. L. 101–508, § 11502(a)(2), added par. (3).

Subsec. (b). Pub. L. 101–508, § 11502(e)(2), which directed the insertion of '', and except as provided in subsection (h)'' in introductory provisions without specifying the location of such insertion, was executed after ''section'' to reflect the probable intent of Congress.

Pub. L. 101–508, § 11502(b)(3), substituted '', alcohol credit, and small ethanol producer credit'' for ''and alcohol credit'' in heading.

Subsec. (b)(4), (5). Pub. L. 101–508, § 11502(b)(1), (2), added par. (4) and redesignated former par. (4) as (5).

Subsec. (d)(3)(C), (D). Pub. L. 101–508, § 11502(d)(1), (2), added subpar. (C), redesignated former subpar. (C) as (D), and substituted ''subparagraph (A), (B), or (C)'' for ''subparagraph (A) or (B)''.

Subsec. (e). Pub. L. 101–508, § 11502(f), amended subsec. (e) generally, substituting present provisions for provisions prohibiting the applicability of this section to any sale or use after Dec. 31, 1992, and prohibiting carryovers to any taxable year beginning after Dec. 31, 1994.

Subsec. (g). Pub. L. 101–508, § 11502(c), added subsec. (g).

Subsec. (h). Pub. L. 101–508, § 11502(e)(1), added subsec. (h).

1987—Subsec. (c). Pub. L. 100–203 substituted '', section 4081(c), or section 4091(c)'' for ''or section 4081(c)''.

1984—Pub. L. 98–369, § 471(c), renumbered section 44E of this title as this section.

Subsec. (a). Pub. L. 98–369, § 474(k)(1), substituted ''For purposes of section 38, the alcohol fuels credit determined under this section for the taxable year is an amount equal to the sum of'' for ''There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of'' in introductory provisions.

Subsec. (b)(1)(A), (2)(A). Pub. L. 98–369, § 912(c)(1), substituted ''60 cents'' for ''50 cents''.

Subsec. (b)(3). Pub. L. 98–369, § 912(c), substituted ''45 cents'' for ''37.5 cents'' and ''60 cents'' for ''50 cents''.

Subsec. (c). Pub. L. 98–369, § 913(b), substituted ''(b)(2), (k), or (m)'' for ''(b)(2) or (k)''.

Pub. L. 98–369, § 474(k)(2), substituted ''the credit determined under this section'' for ''the credit allowable under this section''.

Subsec. (d)(1)(A)(i). Pub. L. 98–369, § 912(f), substituted ''coal (including peat)'' for ''coal''.

Subsec. (d)(3)(A). Pub. L. 98–369, § 912(c), substituted ''60 cents'' for ''50 cents'' and ''45 cents'' for ''37.5 cents''.

Subsec. (d)(3)(A)(i). Pub. L. 98–369, § 474(k)(3), substituted ''credit was determined'' for ''credit was allowable''.

Subsec. (d)(3)(B). Pub. L. 98–369, § 912(c), substituted ''60 cents'' for ''50 cents'' and ''45 cents'' for ''37.5 cents''.

Subsec. (d)(3)(B)(i). Pub. L. 98–369, § 474(k)(3), substituted ''credit was determined'' for ''credit was allowable''.

Subsec. (e). Pub. L. 98–369, § 474(k)(4), redesignated subsec. (f) as (e). Former subsec. (e), which had placed a limitation based on the amount of tax, was struck out.

Subsec. (e)(2). Pub. L. 98–369, § 474(k)(5), substituted ''section 39 by reason of this section (treating the amount allowed by reason of this section as the first amount allowed by this subpart)'' for ''subsection (e)(2)''.

Subsec. (f). Pub. L. 98–369, § 474(k)(6), added subsec. (f). Former subsec. (f) redesignated (e).

1983—Subsec. (b)(1)(A), (2)(A). Pub. L. 97–424, § 511(d)(3)(A), substituted ''50 cents'' for ''40 cents''.

Subsec. (b)(3). Pub. L. 97–424, § 511(d)(3), substituted ''50 cents'' for ''40 cents'' and ''37.5 cents'' for ''30 cents''.

Subsec. (c). Pub. L. 97–424, § 511(b)(2), substituted ''subsection (b)(2) or (k) of section 4041 or section 4081(c)'' for ''section 4041(k) or 4081(c)'' after ''reason of the application of''.

Subsec. (d)(3)(A), (B). Pub. L. 97–424, § 511(d)(3), substituted ''50 cents'' for ''40 cents'' and ''37.5 cents'' for ''30 cents''.

1982—Subsec. (d)(5). Pub. L. 97–354 substituted ''Pass-thru in the case of estates and trusts'' for ''Pass-through in the case of subchapter S corporations, etc.'' in par. heading, and substituted provisions relating to the applicability of rules similar to rules of subsec. (d) of section 52 for provisions relating to the applicability of rules similar to rules of subsecs. (d) and (e) of section 52.

1981—Subsec. (e)(2)(A). Pub. L. 97–34 substituted ''15'' for ''7'' in two places, and ''14'' for ''6'' in one place.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 708(a)(3), Dec. 17, 2010, 124 Stat. 3312, provided that: ''The amendments made by this subsection [amending this section] shall apply to periods after December 31, 2010.''

Pub. L. 111–240, title II, § 2121(b), Sept. 27, 2010, 124 Stat. 2567, provided that: ''The amendments made by this section [amending this section] shall apply to fuels sold or used on or after January 1, 2010.''

Pub. L. 111–152, title I, § 1408(b), Mar. 30, 2010, 124 Stat. 1067, provided that: ''The amendment made by this section [amending this section] shall apply to fuels sold or used on or after January 1, 2010.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title II, § 203(d), Oct. 3, 2008, 122 Stat. 3834, provided that: ''The amendments made by this section [amending this section and sections 40A, 6426, and 6427 of this title] shall apply to claims for credit or payment made on or after May 15, 2008.''

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, § 15321(g), May 22, 2008, 122 Stat. 1514, and Pub. L. 110–246, § 4(a), title XV, § 15321(g), June 18, 2008, 122 Stat. 1664, 2276, provided that: ''The amendments made by this section [amending this section and sections 40A and 4101 of this title] shall apply to fuel produced after December 31, 2008.''

[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.]

Pub. L. 110–234, title XV, § 15331(c), May 22, 2008, 122 Stat. 1516, and Pub. L. 110–246, § 4(a), title XV, § 15331(c), June 18, 2008, 122 Stat. 1664, 2278, provided that: ''The amendments made by this section [amending this section and section 6426 of this title] shall take effect on the date of the enactment of this Act [June 18, 2008].''

[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.]

Pub. L. 110–234, title XV, § 15332(c), May 22, 2008, 122 Stat. 1516, and Pub. L. 110–246, § 4(a), title XV, § 15332(c), June 18, 2008, 122 Stat. 1664, 2278, provided that: ''The amendments made by this section [amending this section and section 6426 of this title] shall apply to fuel sold or used after December 31, 2008.''

[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 2005 AMENDMENT

Pub. L. 109–58, title XIII, § 1347(c), Aug. 8, 2005, 119 Stat. 1056, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 8, 2005].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, § 301(d), Oct. 22, 2004, 118 Stat. 1463, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 6426 of this title and amending this section and sections 4041, 4081, 4083, 4101, 6427, and 9503 of this title] shall apply to fuel sold or used after December 31, 2004.

''(2) REGISTRATION REQUIREMENT.—The amendment made by subsection (b) [amending section 4101 of this title] shall take effect on April 1, 2005.

''(3) EXTENSION OF ALCOHOL FUELS CREDIT.—The amendments made by paragraphs (3), (4), and (14) of subsection (c) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 22, 2004].

''(4) REPEAL OF GENERAL FUND RETENTION OF CERTAIN ALCOHOL FUELS TAXES.—The amendments made by subsection (c)(12) [amending section 9503 of this title] shall apply to fuel sold or used after September 30, 2004.''

Pub. L. 108–357, title III, § 313(b), Oct. 22, 2004, 118 Stat. 1468, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–178, title IX, § 9003(b)(3), June 9, 1998, 112 Stat. 503, provided that: ''The amendments made by this subsection [amending this section and sections 4041, 4081, and 4091 of this title] shall take effect on January 1, 2001.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§ 13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11502(h) of Pub. L. 101–508 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to alcohol produced, and sold or used, in taxable years beginning after December 31, 1990.

''(2) The amendments made by subsection (g) [amending provisions not classified to the Code] shall apply to articles entered or withdrawn from warehouse on or after January 1, 1991.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10502(e) of Pub. L. 100–203 provided that: ''The amendments made by this section [enacting sections 4091 to 4093 of this title, amending this section and sections 4041, 4081, 4101, 4221, 6206, 6416, 6421, 6427, 6652, 9502, 9503, and 9508 of this title, and enacting provisions set out as notes under sections 4091 and 9502 of this title] shall apply to sales after March 31, 1988.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(k) 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 912(g) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 4041, 4081, and 6427 of this title] shall take effect on January 1, 1985.''

Amendment by section 913(b) of Pub. L. 98–369 effective Aug. 1, 1984, see section 913(c) of Pub. L. 98–369, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendments by section 511(b)(2), (d)(3) of Pub. L. 97–424 effective Apr. 1, 1983, see section 511(h) of Pub. L. 97–424, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

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.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to unused credit years ending after Sept. 30, 1980, see section 209(c)(2)(C) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE

Section 232(h)(1), (4) of Pub. L. 96–223, as amended by Pub. L. 97–448, title II, § 202(e), Jan. 12, 1983, 96 Stat. 2396, provided that:

''(1) The amendments made by subsections (b) and (c) [enacting sections 44E [now 40] and 86 of this title and amending sections 55, 381, 383, 4081, and 6096 of this title] shall apply to sales or uses after September 30, 1980, in taxable years ending after such date.

''(4) Notwithstanding paragraph (1), the provisions of section 44E(d)(4)(B) [now 40(d)(4)(B)] of such Code, as added by this section, shall take effect on April 2, 1980.''

§ 40A. Biodiesel and renewable diesel used as fuel

(a) General rule

For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the sum of—

(1) the biodiesel mixture credit, plus

(2) the biodiesel credit, plus

(3) in the case of an eligible small agri-biodiesel producer, the small agri-biodiesel producer credit.

(b) Definition of biodiesel mixture credit, biodiesel credit, and small agri-biodiesel producer credit

For purposes of this section—

(1) Biodiesel mixture credit

(A) In general

The biodiesel mixture credit of any taxpayer for any taxable year is $1.00 for each gallon of biodiesel used by the taxpayer in the production of a qualified biodiesel mixture.

(B) Qualified biodiesel mixture

The term ''qualified biodiesel mixture'' means a mixture of biodiesel and diesel fuel (as defined in section 4083(a)(3)), determined without regard to any use of kerosene, which—

(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

(ii) is used as a fuel by the taxpayer producing such mixture.

(C) Sale or use must be in trade or business, etc.

Biodiesel used in the production of a qualified biodiesel mixture shall be taken into account—

(i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and

(ii) for the taxable year in which such sale or use occurs.

(D) Casual off-farm production not eligible

No credit shall be allowed under this section with respect to any casual off-farm production of a qualified biodiesel mixture.

(2) Biodiesel credit

(A) In general

The biodiesel credit of any taxpayer for any taxable year is $1.00 for each gallon of biodiesel which is not in a mixture with diesel fuel and which during the taxable year—

(i) is used by the taxpayer as a fuel in a trade or business, or

(ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle.

(B) User credit not to apply to biodiesel sold at retail

No credit shall be allowed under subparagraph (A)(i) with respect to any biodiesel which was sold in a retail sale described in subparagraph (A)(ii).

(3) Certification for biodiesel

No credit shall be allowed under paragraph (1) or (2) of subsection (a) unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer or importer of the biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

(4) Small agri-biodiesel producer credit

(A) In general

The small agri-biodiesel producer credit of any eligible small agri-biodiesel producer for any taxable year is 10 cents for each gallon of qualified agri-biodiesel production of such producer.

(B) Qualified agri-biodiesel production

For purposes of this paragraph, the term ''qualified agri-biodiesel production'' means any agri-biodiesel which is produced by an eligible small agri-biodiesel producer, and which during the taxable year—

(i) is sold by such producer to another person—

(I) for use by such other person in the production of a qualified biodiesel mixture in such other person's trade or business (other than casual off-farm production),

(II) for use by such other person as a fuel in a trade or business, or

(III) who sells such agri-biodiesel at retail to another person and places such agri-biodiesel in the fuel tank of such other person, or

(ii) is used or sold by such producer for any purpose described in clause (i).

(C) Limitation

The qualified agri-biodiesel production of any producer for any taxable year shall not exceed 15,000,000 gallons.

(c) Coordination with credit against excise tax

The amount of the credit determined under this section with respect to any biodiesel shall be properly reduced to take into account any benefit provided with respect to such biodiesel solely by reason of the application of section 6426 or 6427(e).

(d) Definitions and special rules

For purposes of this section—

(1) Biodiesel

The term ''biodiesel'' means the monoalkyl esters of long chain fatty acids derived from plant or animal matter which meet—

(A) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

(B) the requirements of the American Society of Testing and Materials D6751.

Such term shall not include any liquid with respect to which a credit may be determined under section 40.

(2) Agri-biodiesel

The term ''agri-biodiesel'' means biodiesel derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, mustard seeds, and camelina, and from animal fats.

(3) Mixture or biodiesel not used as a fuel, etc.

(A) Mixtures

If—

(i) any credit was determined under this section with respect to biodiesel used in the production of any qualified biodiesel mixture, and

(ii) any person—

(I) separates the biodiesel from the mixture, or

(II) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(1)(A) and the number of gallons of such biodiesel in such mixture.

(B) Biodiesel

If—

(i) any credit was determined under this section with respect to the retail sale of any biodiesel, and

(ii) any person mixes such biodiesel or uses such biodiesel other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(2)(A) and the number of gallons of such biodiesel.

(C) Producer credit

If—

(i) any credit was determined under subsection (a)(3), and

(ii) any person does not use such fuel for a purpose described in subsection (b)(4)(B),

then there is hereby imposed on such person a tax equal to 10 cents a gallon for each gallon of such agri-biodiesel.

(D) Applicable laws

All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A) or (B) as if such tax were imposed by section 4081 and not by this chapter.

(4) Pass-thru in the case of estates and trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(5) Limitation to biodiesel with connection to the United States

No credit shall be determined under this section with respect to any biodiesel which is produced outside the United States for use as a fuel outside the United States. For purposes of this paragraph, the term ''United States'' includes any possession of the United States.

(e) Definitions and special rules for small agri-biodiesel producer credit

For purposes of this section—

(1) Eligible small agri-biodiesel producer

The term ''eligible small agri-biodiesel producer'' means a person who, at all times during the taxable year, has a productive capacity for agri-biodiesel not in excess of 60,000,000 gallons.

(2) Aggregation rule

For purposes of the 15,000,000 gallon limitation under subsection (b)(4)(C) and the 60,000,000 gallon limitation under paragraph (1), all members of the same controlled group of corporations (within the meaning of section 267(f)) and all persons under common control (within the meaning of section 52(b) but determined by treating an interest of more than 50 percent as a controlling interest) shall be treated as 1 person.

(3) Partnership, S corporation, and other pass-thru entities

In the case of a partnership, trust, S corporation, or other pass-thru entity, the limitations contained in subsection (b)(4)(C) and paragraph (1) shall be applied at the entity level and at the partner or similar level.

(4) Allocation

For purposes of this subsection, in the case of a facility in which more than 1 person has an interest, productive capacity shall be allocated among such persons in such manner as the Secretary may prescribe.

(5) Regulations

The Secretary may prescribe such regulations as may be necessary—

(A) to prevent the credit provided for in subsection (a)(3) from directly or indirectly benefiting any person with a direct or indirect productive capacity of more than 60,000,000 gallons of agri-biodiesel during the taxable year, or

(B) to prevent any person from directly or indirectly benefiting with respect to more than 15,000,000 gallons during the taxable year.

(6) Allocation of small agri-biodiesel credit to patrons of cooperative

(A) Election to allocate

(i) In general

In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection

(a)(3) for the taxable year may, at the election of the organization, be apportioned pro rata among patrons of the organization on the basis of the quantity or value of business done with or for such patrons for the taxable year.

(ii) Form and effect of election

An election under clause (i) 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. Such election shall not take effect unless the organization designates the apportionment as such in a written notice mailed to its patrons during the payment period described in section 1382(d).

(B) Treatment of organizations and patrons

(i) Organizations

The amount of the credit not apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under subsection (a)(3) for the taxable year of the organization.

(ii) Patrons

The amount of the credit apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under such subsection for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

(iii) Special rules for decrease in credits for taxable year

If the amount of the credit of the organization determined under such subsection for a taxable year is less than the amount of such credit shown on the return of the organization for such year, an amount equal to the excess of—

(I) such reduction, over

(II) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(f) Renewable diesel

For purposes of this title—

(1) Treatment in the same manner as biodiesel

Except as provided in paragraph (2), renewable diesel shall be treated in the same manner as biodiesel.

(2) Exception

Subsection (b)(4) shall not apply with respect to renewable diesel.

(3) Renewable diesel defined

The term ''renewable diesel'' means liquid fuel derived from biomass which meets—

(A) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

(B) the requirements of the American Society of Testing and Materials D975 or D396, or other equivalent standard approved by the Secretary.

Such term shall not include any liquid with respect to which a credit may be determined under section 40. Such term does not include any fuel derived from coprocessing biomass with a feedstock which is not biomass. For purposes of this paragraph, the term ''biomass'' has the meaning given such term by section 45K(c)(3).

(4) Certain aviation fuel

(A) In general

Except as provided in the last 3 sentences of paragraph (3), the term ''renewable diesel'' shall include fuel derived from biomass which meets the requirements of a Department of Defense specification for military jet fuel or an American Society of Testing and Materials specification for aviation turbine fuel.

(B) Application of mixture credits

In the case of fuel which is treated as renewable diesel solely by reason of subparagraph (A), subsection (b)(1) and section 6426(c) shall be applied with respect to such fuel by treating kerosene as though it were diesel fuel.

(g) Termination

This section shall not apply to any sale or use after December 31, 2011.

(Added Pub. L. 108–357, title III, § 302(a), Oct. 22, 2004, 118 Stat. 1463; amended Pub. L. 109–58, title XIII, §§ 1344(a), 1345(a)–(d), 1346(a), (b)(1), Aug. 8, 2005, 119 Stat. 1052–1055; Pub. L. 109–135, title IV, § 412(h), Dec. 21, 2005, 119 Stat. 2637; Pub. L. 110–234, title XV, § 15321(f), May 22, 2008, 122 Stat. 1514; Pub. L. 110–246, § 4(a), title XV, § 15321(f), June 18, 2008, 122 Stat. 1664, 2276; Pub. L. 110–343, div. B, title II, §§ 202(a), (b)(1), (b)(3)–(f), 203(b), Oct. 3, 2008, 122 Stat. 3832, 3833; Pub. L. 111–312, title VII, § 701(a), Dec. 17, 2010, 124 Stat. 3310.)

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

2010—Subsec. (g). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (b)(1)(A), (2)(A). Pub. L. 110–343, § 202(b)(1), substituted ''$1.00'' for ''50 cents''.

Subsec. (b)(3) to (5). Pub. L. 110–343, § 202(b)(3)(A), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out heading and text of former par. (3). Text read as follows: ''In the case of any biodiesel which is agri-biodiesel, paragraphs (1)(A) and (2)(A) shall be applied by substituting '$1.00' for '50 cents'.''

Subsec. (d)(1). Pub. L. 110–246, § 15321(f)(1), inserted concluding provisions.

Subsec. (d)(2). Pub. L. 110–343, § 202(f), substituted ''mustard seeds, and camelina'' for ''and mustard seeds''.

Subsec. (d)(3)(C)(ii). Pub. L. 110–343, §202(b)(3)(D), substituted ''subsection (b)(4)(B)'' for ''subsection (b)(5)(B)''.

Subsec. (d)(5). Pub. L. 110–343, §203(b), added par. (5).

Subsec. (e)(2), (3). Pub. L. 110–343, §202(b)(3)(C), substituted ''subsection (b)(4)(C)'' for ''subsection (b)(5)(C)''.

Subsec. (f)(2). Pub. L. 110–343, §202(b)(3)(B), amended heading and text of par. (2) generally. Prior to amendment, text read as follows:

''(A) RATE OF CREDIT.—Subsections (b)(1)(A) and (b)(2)(A) shall be applied with respect to renewable diesel by substituting '$1.00' for '50 cents'.

''(B) NONAPPLICATION OF CERTAIN CREDITS.—Subsections (b)(3) and (b)(5) shall not apply with respect to renewable diesel.''

Subsec. (f)(3). Pub. L. 110–343, §202(d), in introductory provisions, struck out ''(as defined in section 45K(c)(3))'' after ''derived from biomass'' and, in concluding provisions, inserted at end ''Such term does not include any fuel derived from coprocessing biomass with a feedstock which is not biomass. For purposes of this paragraph, the term 'biomass' has the meaning given such term by section 45K(c)(3).''

Pub. L. 110–343, §202(c)(1), (2), in introductory provisions, substituted ''liquid fuel'' for ''diesel fuel'' and struck out ''using a thermal depolymerization process'' before ''which meets—''.

Pub. L. 110–246, §15321(f)(2), inserted concluding provisions.

Subsec. (f)(3)(B). Pub. L. 110–343, §202(c)(3), inserted '', or other equivalent standard approved by the Secretary'' before period at end.

Subsec. (f)(4). Pub. L. 110–343, §202(e), added par. (4).

Subsec. (g). Pub. L. 110–343, §202(a), substituted ''December 31, 2009'' for ''December 31, 2008''.

2005—Pub. L. 109–58, §1346(b)(1), inserted ''and renewable diesel'' after ''Biodiesel'' in section catchline.

Subsec. (a). Pub. L. 109–58, §1345(a), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: ''For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the sum of—

''(1) the biodiesel mixture credit, plus

''(2) the biodiesel credit.''

Subsec. (b). Pub. L. 109–58, §1345(d)(2), substituted '', biodiesel credit, and small agri-biodiesel producer credit'' for ''and biodiesel credit'' in heading.

Subsec. (b)(4). Pub. L. 109–58, §1345(d)(1), substituted ''paragraph (1) or (2) of subsection (a)'' for ''this section''.

Subsec. (b)(5). Pub. L. 109–58, §1345(b), added par. (5).

Subsec. (b)(5)(B). Pub. L. 109–135 struck out ''(determined without regard to the last sentence of subsection (d)(2))'' after ''any agri-biodiesel'' in introductory provisions.

Subsec. (d)(3)(C),(D). Pub. L. 109–58, §1345(d)(3), added subpar. (C) and redesignated former subpar. (C) as (D). The words following ''subsection (b)(5)(B),'' in subpar. (C) are shown as a flush provision notwithstanding directory language showing them as part of cl. (ii), to reflect the probable intent of Congress.

Subsec. (e). Pub. L. 109–58, §1345(c), added subsec. (e). The words following ''subparagraph (A) for the taxable year,'' in subsec. (e)(6)(B)(iii) are shown as a flush provision notwithstanding directory language showing them as part of subcl. (II), to reflect the probable intent of Congress. Former subsec. (e) redesignated (f).

Pub. L. 109–58, §1344(a), substituted ''2008'' for ''2006''.

Subsec. (f). Pub. L. 109–58, §1346(a), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 109–58, §1345(c), redesignated subsec. (e) as (f).

Subsec. (g). Pub. L. 109–58, §1346(a), redesignated subsec. (f) as (g).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §701(d), Dec. 17, 2010, 124 Stat. 3310, provided that: ''The amendments made by this section [amending this section and sections 6426 and 6427 of this title] shall apply to fuel sold or used after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title II, §202(g), Oct. 3, 2008, 122 Stat. 3833, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 6426 and 6427 of this title] shall apply to fuel produced, and sold or used, after December 31, 2008.

''(2) COPRODUCTION OF RENEWABLE DIESEL WITH PETROLEUM FEEDSTOCK.—The amendment made by subsection (d) [amending this section] shall apply to fuel produced, and sold or used, after the date of the enactment of this Act [Oct. 3, 2008].''

Amendment by section 203(b) of Pub. L. 110–343 applicable to claims for credit or payment made on or after May 15, 2008, see section 203(d) of Pub. L. 110–343, set out as a note under section 40 of this title.

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.

Amendment by section 15321(f) of Pub. L. 110–246 applicable to fuel produced after Dec. 31, 2008, see section 15321(g) of Pub. L. 110–246, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, §1344(b), Aug. 8, 2005, 119 Stat. 1052, provided that: ''The amendments made by this section [amending this section and sections 6426 and 6427 of this title] shall take effect on the date of the enactment of this Act [Aug. 8, 2005].''

Pub. L. 109–58, title XIII, §1345(e), Aug. 8, 2005, 119 Stat. 1055, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 8, 2005].''

Pub. L. 109–58, title XIII, §1346(c), Aug. 8, 2005, 119 Stat. 1056, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to fuel sold or used after December 31, 2005.''

EFFECTIVE DATE

Section applicable to fuel produced, and sold or used, after Dec. 31, 2004, in taxable years ending after such date, see section 302(d) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendment note under section 38 of this title.

§ 41. Credit for increasing research activities

(a) General rule

For purposes of section 38, the research credit determined under this section for the taxable year shall be an amount equal to the sum of—

(1) 20 percent of the excess (if any) of—

(A) the qualified research expenses for the taxable year, over

(B) the base amount,

(2) 20 percent of the basic research payments determined under subsection (e)(1)(A), and

(3) 20 percent of the amounts paid or incurred by the taxpayer in carrying on any trade or business of the taxpayer during the taxable year (including as contributions) to an energy research consortium for energy research.

(b) Qualified research expenses

For purposes of this section—

(1) Qualified research expenses

The term ''qualified research expenses'' means the sum of the following amounts

which are paid or incurred by the taxpayer during the taxable year in carrying on any trade or business of the taxpayer—

(A) in-house research expenses, and

(B) contract research expenses.

(2) In-house research expenses

(A) In general

The term ''in-house research expenses'' means—

(i) any wages paid or incurred to an employee for qualified services performed by such employee,

(ii) any amount paid or incurred for supplies used in the conduct of qualified research, and

(iii) under regulations prescribed by the Secretary, any amount paid or incurred to another person for the right to use computers in the conduct of qualified research.

Clause (iii) shall not apply to any amount to the extent that the taxpayer (or any person with whom the taxpayer must aggregate expenditures under subsection (f)(1)) receives or accrues any amount from any other person for the right to use substantially identical personal property.

(B) Qualified services

The term ''qualified services'' means services consisting of—

(i) engaging in qualified research, or

(ii) engaging in the direct supervision or direct support of research activities which constitute qualified research.

If substantially all of the services performed by an individual for the taxpayer during the taxable year consists of services meeting the requirements of clause (i) or (ii), the term ''qualified services'' means all of the services performed by such individual for the taxpayer during the taxable year.

(C) Supplies

The term ''supplies'' means any tangible property other than—

(i) land or improvements to land, and

(ii) property of a character subject to the allowance for depreciation.

(D) Wages

(i) In general

The term ''wages'' has the meaning given such term by section 3401(a).

(ii) Self-employed individuals and owner-employees

In the case of an employee (within the meaning of section 401(c)(1)), the term ''wages'' includes the earned income (as defined in section 401(c)(2)) of such employee.

(iii) Exclusion for wages to which work opportunity credit applies

The term ''wages'' shall not include any amount taken into account in determining the work opportunity credit under section 51(a).

(3) Contract research expenses

(A) In general

The term ''contract research expenses'' means 65 percent of any amount paid or incurred by the taxpayer to any person (other than an employee of the taxpayer) for qualified research.

(B) Prepaid amounts

If any contract research expenses paid or incurred during any taxable year are attributable to qualified research to be conducted after the close of such taxable year, such amount shall be treated as paid or incurred during the period during which the qualified research is conducted.

(C) Amounts paid to certain research consortia

(i) In general

Subparagraph (A) shall be applied by substituting ''75 percent'' for ''65 percent'' with respect to amounts paid or incurred by the taxpayer to a qualified research consortium for qualified research on behalf of the taxpayer and 1 or more unrelated taxpayers. For purposes of the preceding sentence, all persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as related taxpayers.

(ii) Qualified research consortium

The term ''qualified research consortium'' means any organization which—

(I) is described in section 501(c)(3) or 501(c)(6) and is exempt from tax under section 501(a),

(II) is organized and operated primarily to conduct scientific research, and

(III) is not a private foundation.

(D) Amounts paid to eligible small businesses, universities, and Federal laboratories

(i) In general

In the case of amounts paid by the taxpayer to—

(I) an eligible small business,

(II) an institution of higher education (as defined in section 3304(f)), or

(III) an organization which is a Federal laboratory,

for qualified research which is energy research, subparagraph (A) shall be applied by substituting ''100 percent'' for ''65 percent''.

(ii) Eligible small business

For purposes of this subparagraph, the term ''eligible small business'' means a small business with respect to which the taxpayer does not own (within the meaning of section 318) 50 percent or more of—

(I) in the case of a corporation, the outstanding stock of the corporation (either by vote or value), and

(II) in the case of a small business which is not a corporation, the capital and profits interests of the small business.

(iii) Small business

For purposes of this subparagraph—

(I) In general

The term ''small business'' means, with respect to any calendar year, any

person if the annual average number of employees employed by such person during either of the 2 preceding calendar years was 500 or fewer. For purposes of the preceding sentence, a preceding calendar year may be taken into account only if the person was in existence throughout the year.

(II) Startups, controlled groups, and predecessors

Rules similar to the rules of subparagraphs (B) and (D) of section 220(c)(4) shall apply for purposes of this clause.

(iv) Federal laboratory

For purposes of this subparagraph, the term ''Federal laboratory'' has the meaning given such term by section 4(6) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(6)), as in effect on the date of the enactment of the Energy Tax Incentives Act of 2005.

(4) Trade or business requirement disregarded for in-house research expenses of certain startup ventures

In the case of in-house research expenses, a taxpayer shall be treated as meeting the trade or business requirement of paragraph (1) if, at the time such in-house research expenses are paid or incurred, the principal purpose of the taxpayer in making such expenditures is to use the results of the research in the active conduct of a future trade or business—

(A) of the taxpayer, or

(B) of 1 or more other persons who with the taxpayer are treated as a single taxpayer under subsection (f)(1).

(c) Base amount

(1) In general

The term ''base amount'' means the product of—

(A) the fixed-base percentage, and

(B) the average annual gross receipts of the taxpayer for the 4 taxable years preceding the taxable year for which the credit is being determined (hereinafter in this subsection referred to as the ''credit year'').

(2) Minimum base amount

In no event shall the base amount be less than 50 percent of the qualified research expenses for the credit year.

(3) Fixed-base percentage

(A) In general

Except as otherwise provided in this paragraph, the fixed-base percentage is the percentage which the aggregate qualified research expenses of the taxpayer for taxable years beginning after December 31, 1983, and before January 1, 1989, is of the aggregate gross receipts of the taxpayer for such taxable years.

(B) Start-up companies

(i) Taxpayers to which subparagraph applies

The fixed-base percentage shall be determined under this subparagraph if—

(I) the first taxable year in which a taxpayer had both gross receipts and qualified research expenses begins after December 31, 1983, or

(II) there are fewer than 3 taxable years beginning after December 31, 1983, and before January 1, 1989, in which the taxpayer had both gross receipts and qualified research expenses.

(ii) Fixed-base percentage

In a case to which this subparagraph applies, the fixed-base percentage is—

(I) 3 percent for each of the taxpayer's 1st 5 taxable years beginning after December 31, 1993, for which the taxpayer has qualified research expenses,

(II) in the case of the taxpayer's 6th such taxable year, ⅙ of the percentage which the aggregate qualified research expenses of the taxpayer for the 4th and 5th such taxable years is of the aggregate gross receipts of the taxpayer for such years,

(III) in the case of the taxpayer's 7th such taxable year, ⅓ of the percentage which the aggregate qualified research expenses of the taxpayer for the 5th and 6th such taxable years is of the aggregate gross receipts of the taxpayer for such years,

(IV) in the case of the taxpayer's 8th such taxable year, ½ of the percentage which the aggregate qualified research expenses of the taxpayer for the 5th, 6th, and 7th such taxable years is of the aggregate gross receipts of the taxpayer for such years,

(V) in the case of the taxpayer's 9th such taxable year, ⅔ of the percentage which the aggregate qualified research expenses of the taxpayer for the 5th, 6th, 7th, and 8th such taxable years is of the aggregate gross receipts of the taxpayer for such years,

(VI) in the case of the taxpayer's 10th such taxable year, ⅚ of the percentage which the aggregate qualified research expenses of the taxpayer for the 5th, 6th, 7th, 8th, and 9th such taxable years is of the aggregate gross receipts of the taxpayer for such years, and

(VII) for taxable years thereafter, the percentage which the aggregate qualified research expenses for any 5 taxable years selected by the taxpayer from among the 5th through the 10th such taxable years is of the aggregate gross receipts of the taxpayer for such selected years.

(iii) Treatment of de minimis amounts of gross receipts and qualified research expenses

The Secretary may prescribe regulations providing that de minimis amounts of gross receipts and qualified research expenses shall be disregarded under clauses (i) and (ii).

(C) Maximum fixed-base percentage

In no event shall the fixed-base percentage exceed 16 percent.

(D) Rounding

The percentages determined under subparagraphs (A) and (B)(ii) shall be rounded to the nearest 1/100th of 1 percent.

(4) Election of alternative incremental credit

(A) In general

At the election of the taxpayer, the credit determined under subsection (a)(1) shall be equal to the sum of—

(i) 3 percent of so much of the qualified research expenses for the taxable year as exceeds 1 percent of the average described in subsection (c)(1)(B) but does not exceed 1.5 percent of such average,

(ii) 4 percent of so much of such expenses as exceeds 1.5 percent of such average but does not exceed 2 percent of such average, and

(iii) 5 percent of so much of such expenses as exceeds 2 percent of such average.

(B) Election

An election under this paragraph shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.

(5) Election of alternative simplified credit

(A) In general

At the election of the taxpayer, the credit determined under subsection (a)(1) shall be equal to 14 percent (12 percent in the case of taxable years ending before January 1, 2009) of so much of the qualified research expenses for the taxable year as exceeds 50 percent of the average qualified research expenses for the 3 taxable years preceding the taxable year for which the credit is being determined.

(B) Special rule in case of no qualified research expenses in any of 3 preceding taxable years

(i) Taxpayers to which subparagraph applies

The credit under this paragraph shall be determined under this subparagraph if the taxpayer has no qualified research expenses in any one of the 3 taxable years preceding the taxable year for which the credit is being determined.

(ii) Credit rate

The credit determined under this subparagraph shall be equal to 6 percent of the qualified research expenses for the taxable year.

(C) Election

An election under this paragraph shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary. An election under this paragraph may not be made for any taxable year to which an election under paragraph (4) applies.

(6) Consistent treatment of expenses required

(A) In general

Notwithstanding whether the period for filing a claim for credit or refund has expired for any taxable year taken into account in determining the fixed-base percentage, the qualified research expenses taken into account in computing such percentage shall be determined on a basis consistent with the determination of qualified research expenses for the credit year.

(B) Prevention of distortions

The Secretary may prescribe regulations to prevent distortions in calculating a taxpayer's qualified research expenses or gross receipts caused by a change in accounting methods used by such taxpayer between the current year and a year taken into account in computing such taxpayer's fixed-base percentage.

(7) Gross receipts

For purposes of this subsection, gross receipts for any taxable year shall be reduced by returns and allowances made during the taxable year. In the case of a foreign corporation, there shall be taken into account only gross receipts which are effectively connected with the conduct of a trade or business within the United States, the Commonwealth of Puerto Rico, or any possession of the United States.

(d) Qualified research defined

For purposes of this section—

(1) In general

The term ''qualified research'' means research—

(A) with respect to which expenditures may be treated as expenses under section 174,

(B) which is undertaken for the purpose of discovering information—

(i) which is technological in nature, and

(ii) the application of which is intended to be useful in the development of a new or improved business component of the taxpayer, and

(C) substantially all of the activities of which constitute elements of a process of experimentation for a purpose described in paragraph (3).

Such term does not include any activity described in paragraph (4).

(2) Tests to be applied separately to each business component

For purposes of this subsection—

(A) In general

Paragraph (1) shall be applied separately with respect to each business component of the taxpayer.

(B) Business component defined

The term ''business component'' means any product, process, computer software, technique, formula, or invention which is to be—

(i) held for sale, lease, or license, or

(ii) used by the taxpayer in a trade or business of the taxpayer.

(C) Special rule for production processes

Any plant process, machinery, or technique for commercial production of a busi-

ness component shall be treated as a separate business component (and not as part of the business component being produced).

(3) Purposes for which research may qualify for credit

For purposes of paragraph (1)(C)—

(A) In general

Research shall be treated as conducted for a purpose described in this paragraph if it relates to—

(i) a new or improved function,

(ii) performance, or

(iii) reliability or quality.

(B) Certain purposes not qualified

Research shall in no event be treated as conducted for a purpose described in this paragraph if it relates to style, taste, cosmetic, or seasonal design factors.

(4) Activities for which credit not allowed

The term ''qualified research'' shall not include any of the following:

(A) Research after commercial production

Any research conducted after the beginning of commercial production of the business component.

(B) Adaptation of existing business components

Any research related to the adaptation of an existing business component to a particular customer's requirement or need.

(C) Duplication of existing business component

Any research related to the reproduction of an existing business component (in whole or in part) from a physical examination of the business component itself or from plans, blueprints, detailed specifications, or publicly available information with respect to such business component.

(D) Surveys, studies, etc.

Any—

(i) efficiency survey,

(ii) activity relating to management function or technique,

(iii) market research, testing, or development (including advertising or promotions),

(iv) routine data collection, or

(v) routine or ordinary testing or inspection for quality control.

(E) Computer software

Except to the extent provided in regulations, any research with respect to computer software which is developed by (or for the benefit of) the taxpayer primarily for internal use by the taxpayer, other than for use in—

(i) an activity which constitutes qualified research (determined with regard to this subparagraph), or

(ii) a production process with respect to which the requirements of paragraph (1) are met.

(F) Foreign research

Any research conducted outside the United States, the Commonwealth of Puerto Rico, or any possession of the United States.

(G) Social sciences, etc.

Any research in the social sciences, arts, or humanities.

(H) Funded research

Any research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity).

(e) Credit allowable with respect to certain payments to qualified organizations for basic research

For purposes of this section—

(1) In general

In the case of any taxpayer who makes basic research payments for any taxable year—

(A) the amount of basic research payments taken into account under subsection (a)(2) shall be equal to the excess of—

(i) such basic research payments, over

(ii) the qualified organization base period amount, and

(B) that portion of such basic research payments which does not exceed the qualified organization base period amount shall be treated as contract research expenses for purposes of subsection (a)(1).

(2) Basic research payments defined

For purposes of this subsection—

(A) In general

The term ''basic research payment'' means, with respect to any taxable year, any amount paid in cash during such taxable year by a corporation to any qualified organization for basic research but only if—

(i) such payment is pursuant to a written agreement between such corporation and such qualified organization, and

(ii) such basic research is to be performed by such qualified organization.

(B) Exception to requirement that research be performed by the organization

In the case of a qualified organization described in subparagraph (C) or (D) of paragraph (6), clause (ii) of subparagraph (A) shall not apply.

(3) Qualified organization base period amount

For purposes of this subsection, the term ''qualified organization base period amount'' means an amount equal to the sum of—

(A) the minimum basic research amount, plus

(B) the maintenance-of-effort amount.

(4) Minimum basic research amount

For purposes of this subsection—

(A) In general

The term ''minimum basic research amount'' means an amount equal to the greater of—

(i) 1 percent of the average of the sum of amounts paid or incurred during the base period for—

(I) any in-house research expenses, and

(II) any contract research expenses, or

(ii) the amounts treated as contract research expenses during the base period by

reason of this subsection (as in effect during the base period).

(B) Floor amount

Except in the case of a taxpayer which was in existence during a taxable year (other than a short taxable year) in the base period, the minimum basic research amount for any base period shall not be less than 50 percent of the basic research payments for the taxable year for which a determination is being made under this subsection.

(5) Maintenance-of-effort amount

For purposes of this subsection—

(A) In general

The term ''maintenance-of-effort amount'' means, with respect to any taxable year, an amount equal to the excess (if any) of—

(i) an amount equal to—

(I) the average of the nondesignated university contributions paid by the taxpayer during the base period, multiplied by

(II) the cost-of-living adjustment for the calendar year in which such taxable year begins, over

(ii) the amount of nondesignated university contributions paid by the taxpayer during such taxable year.

(B) Nondesignated university contributions

For purposes of this paragraph, the term ''nondesignated university contribution'' means any amount paid by a taxpayer to any qualified organization described in paragraph (6)(A)—

(i) for which a deduction was allowable under section 170, and

(ii) which was not taken into account—

(I) in computing the amount of the credit under this section (as in effect during the base period) during any taxable year in the base period, or

(II) as a basic research payment for purposes of this section.

(C) Cost-of-living adjustment defined

(i) In general

The cost-of-living adjustment for any calendar year is the cost-of-living adjustment for such calendar year determined under section 1(f)(3), by substituting ''calendar year 1987'' for ''calendar year 1992'' in subparagraph (B) thereof.

(ii) Special rule where base period ends in a calendar year other than 1983 or 1984

If the base period of any taxpayer does not end in 1983 or 1984, section 1(f)(3)(B) shall, for purposes of this paragraph, be applied by substituting the calendar year in which such base period ends for 1992. Such substitution shall be in lieu of the substitution under clause (i).

(6) Qualified organization

For purposes of this subsection, the term ''qualified organization'' means any of the following organizations:

(A) Educational institutions

Any educational organization which—

(i) is an institution of higher education (within the meaning of section 3304(f)), and

(ii) is described in section 170(b)(1)(A)(ii).

(B) Certain scientific research organizations

Any organization not described in subparagraph (A) which—

(i) is described in section 501(c)(3) and is exempt from tax under section 501(a),

(ii) is organized and operated primarily to conduct scientific research, and

(iii) is not a private foundation.

(C) Scientific tax-exempt organizations

Any organization which—

(i) is described in—

(I) section 501(c)(3) (other than a private foundation), or

(II) section 501(c)(6),

(ii) is exempt from tax under section 501(a),

(iii) is organized and operated primarily to promote scientific research by qualified organizations described in subparagraph (A) pursuant to written research agreements, and

(iv) currently expends—

(I) substantially all of its funds, or

(II) substantially all of the basic research payments received by it,

for grants to, or contracts for basic research with, an organization described in subparagraph (A).

(D) Certain grant organizations

Any organization not described in subparagraph (B) or (C) which—

(i) is described in section 501(c)(3) and is exempt from tax under section 501(a) (other than a private foundation),

(ii) is established and maintained by an organization established before July 10, 1981, which meets the requirements of clause (i),

(iii) is organized and operated exclusively for the purpose of making grants to organizations described in subparagraph (A) pursuant to written research agreements for purposes of basic research, and

(iv) makes an election, revocable only with the consent of the Secretary, to be treated as a private foundation for purposes of this title (other than section 4940, relating to excise tax based on investment income).

(7) Definitions and special rules

For purposes of this subsection—

(A) Basic research

The term ''basic research'' means any original investigation for the advancement of scientific knowledge not having a specific commercial objective, except that such term shall not include—

(i) basic research conducted outside of the United States, and

(ii) basic research in the social sciences, arts, or humanities.

(B) Base period

The term ''base period'' means the 3-taxable-year period ending with the taxable

year immediately preceding the 1st taxable year of the taxpayer beginning after December 31, 1983.

(C) Exclusion from incremental credit calculation

For purposes of determining the amount of credit allowable under subsection (a)(1) for any taxable year, the amount of the basic research payments taken into account under subsection (a)(2)—

(i) shall not be treated as qualified research expenses under subsection (a)(1)(A), and

(ii) shall not be included in the computation of base amount under subsection (a)(1)(B).

(D) Trade or business qualification

For purposes of applying subsection (b)(1) to this subsection, any basic research payments shall be treated as an amount paid in carrying on a trade or business of the taxpayer in the taxable year in which it is paid (without regard to the provisions of subsection (b)(3)(B)).

(E) Certain corporations not eligible

The term ''corporation'' shall not include—

(i) an S corporation,

(ii) a personal holding company (as defined in section 542), or

(iii) a service organization (as defined in section 414(m)(3)).

(f) Special rules

For purposes of this section—

(1) Aggregation of expenditures

(A) Controlled group of corporations

In determining the amount of the credit under this section—

(i) all members of the same controlled group of corporations shall be treated as a single taxpayer, and

(ii) the credit (if any) allowable by this section to each such member shall be its proportionate shares of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, giving rise to the credit.

(B) Common control

Under regulations prescribed by the Secretary, in determining the amount of the credit under this section—

(i) all trades or businesses (whether or not incorporated) which are under common control shall be treated as a single taxpayer, and

(ii) the credit (if any) allowable by this section to each such person shall be its proportionate shares of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, giving rise to the credit.

The regulations prescribed under this subparagraph shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(2) Allocations

(A) Pass-thru in the case of estates and trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(B) Allocation in the case of partnerships

In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

(3) Adjustments for certain acquisitions, etc.

Under regulations prescribed by the Secretary—

(A) Acquisitions

If, after December 31, 1983, a taxpayer acquires the major portion of a trade or business of another person (hereinafter in this paragraph referred to as the ''predecessor'') or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section for any taxable year ending after such acquisition, the amount of qualified research expenses paid or incurred by the taxpayer during periods before such acquisition shall be increased by so much of such expenses paid or incurred by the predecessor with respect to the acquired trade or business as is attributable to the portion of such trade or business or separate unit acquired by the taxpayer, and the gross receipts of the taxpayer for such periods shall be increased by so much of the gross receipts of such predecessor with respect to the acquired trade or business as is attributable to such portion.

(B) Dispositions

If, after December 31, 1983—

(i) a taxpayer disposes of the major portion of any trade or business or the major portion of a separate unit of a trade or business in a transaction to which subparagraph (A) applies, and

(ii) the taxpayer furnished the acquiring person such information as is necessary for the application of subparagraph (A),

then, for purposes of applying this section for any taxable year ending after such disposition, the amount of qualified research expenses paid or incurred by the taxpayer during periods before such disposition shall be decreased by so much of such expenses as is attributable to the portion of such trade or business or separate unit disposed of by the taxpayer, and the gross receipts of the taxpayer for such periods shall be decreased by so much of the gross receipts as is attributable to such portion.

(C) Certain reimbursements taken into account in determining fixed-base percentage

If during any of the 3 taxable years following the taxable year in which a disposition to which subparagraph (B) applies occurs, the disposing taxpayer (or a person with whom the taxpayer is required to aggregate expenditures under paragraph (1)) reimburses the acquiring person (or a person required to so aggregate expenditures with

such person) for research on behalf of the taxpayer, then the amount of qualified research expenses of the taxpayer for the taxable years taken into account in computing the fixed-base percentage shall be increased by the lesser of—

(i) the amount of the decrease under subparagraph (B) which is allocable to taxable years so taken into account, or

(ii) the product of the number of taxable years so taken into account, multiplied by the amount of the reimbursement described in this subparagraph.

(4) Short taxable years

In the case of any short taxable year, qualified research expenses and gross receipts shall be annualized in such circumstances and under such methods as the Secretary may prescribe by regulation.

(5) Controlled group of corporations

The term ''controlled group of corporations'' has the same meaning given to such term by section 1563(a), except that—

(A) ''more than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears in section 1563(a)(1), and

(B) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

(6) Energy research consortium

(A) In general

The term ''energy research consortium'' means any organization—

(i) which is—

(I) described in section 501(c)(3) and is exempt from tax under section 501(a) and is organized and operated primarily to conduct energy research, or

(II) organized and operated primarily to conduct energy research in the public interest (within the meaning of section 501(c)(3)),

(ii) which is not a private foundation,

(iii) to which at least 5 unrelated persons paid or incurred during the calendar year in which the taxable year of the organization begins amounts (including as contributions) to such organization for energy research, and

(iv) to which no single person paid or incurred (including as contributions) during such calendar year an amount equal to more than 50 percent of the total amounts received by such organization during such calendar year for energy research.

(B) Treatment of persons

All persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as related persons for purposes of subparagraph (A)(iii) and as a single person for purposes of subparagraph (A)(iv).

(C) Foreign research

For purposes of subsection (a)(3), amounts paid or incurred for any energy research conducted outside the United States, the Commonwealth of Puerto Rico, or any possession of the United States shall not be taken into account.

(D) Denial of double benefit

Any amount taken into account under subsection (a)(3) shall not be taken into account under paragraph (1) or (2) of subsection (a).

(E) Energy research

The term ''energy research'' does not include any research which is not qualified research.

(g) Special rule for pass-thru of credit

In the case of an individual who—

(1) owns an interest in an unincorporated trade or business,

(2) is a partner in a partnership,

(3) is a beneficiary of an estate or trust, or

(4) is a shareholder in an S corporation,

the amount determined under subsection (a) for any taxable year shall not exceed an amount (separately computed with respect to such person's interest in such trade or business or entity) equal to the amount of tax attributable to that portion of a person's taxable income which is allocable or apportionable to the person's interest in such trade or business or entity. If the amount determined under subsection (a) for any taxable year exceeds the limitation of the preceding sentence, such amount may be carried to other taxable years under the rules of section 39; except that the limitation of the preceding sentence shall be taken into account in lieu of the limitation of section 38(c) in applying section 39.

(h) Termination

(1) In general

This section shall not apply to any amount paid or incurred—

(A) after June 30, 1995, and before July 1, 1996, or

(B) after December 31, 2011.

(2) Termination of alternative incremental credit

No election under subsection (c)(4) shall apply to taxable years beginning after December 31, 2008.

(2)[1] Computation for taxable year in which credit terminates

In the case of any taxable year with respect to which this section applies to a number of days which is less than the total number of days in such taxable year—

(A) the amount determined under subsection (c)(1)(B) with respect to such taxable year shall be the amount which bears the same ratio to such amount (determined without regard to this paragraph) as the number of days in such taxable year to which this section applies bears to the total number of days in such taxable year, and

(B) for purposes of subsection (c)(5), the average qualified research expenses for the preceding 3 taxable years shall be the amount which bears the same ratio to such average qualified research expenses (determined without regard to this paragraph) as the number of days in such taxable year to which this section applies bears to the total number of days in such taxable year.

[1] So in original. Probably should be ''(3)''.

(Added Pub. L. 97–34, title II, § 221(a), Aug. 13, 1981, 95 Stat. 241, § 44F; amended Pub. L. 97–354, § 5(a)(3), Oct. 19, 1982, 96 Stat. 1692; Pub. L. 97–448, title I, § 102(b)(2), Jan. 12, 1983, 96 Stat. 2372; renumbered § 30 and amended Pub. L. 98–369, div. A, title IV, §§ 471(c), 474(i)(1), title VI, § 612(e)(1), July 18, 1984, 98 Stat. 826, 831, 912; renumbered § 41 and amended Pub. L. 99–514, title II, § 231(a)(1), (b), (c), (d)(2), (3)(C)(ii), (e), title XVIII, § 1847(b)(1), Oct. 22, 1986, 100 Stat. 2173, 2175, 2178–2180, 2856; Pub. L. 100–647, title I, § 1002(h)(1), title IV, §§ 4007(a), 4008(b)(1), Nov. 10, 1988, 102 Stat. 3370, 3652; Pub. L. 101–239, title VII, §§ 7110(a)(1), (b), (b)[(c)], 7814(e)(2)(C), Dec. 19, 1989, 103 Stat. 2322, 2323, 2325, 2414; Pub. L. 101–508, title XI, §§ 11101(d)(1)(C), 11402(a), Nov. 5, 1990, 104 Stat. 1388–405, 1388–473; Pub. L. 102–227, title I, § 102(a), Dec. 11, 1991, 105 Stat. 1686; Pub. L. 103–66, title XIII, §§ 13111(a)(1), 13112(a), (b), 13201(b)(3)(C), Aug. 10, 1993, 107 Stat. 420, 421, 459; Pub. L. 104–188, title I, §§ 1201(e)(1), (4), 1204(a)–(d), Aug. 20, 1996, 110 Stat. 1772–1774; Pub. L. 105–34, title VI, § 601(a), (b)(1), Aug. 5, 1997, 111 Stat. 861; Pub. L. 105–277, div. J, title I, § 1001(a), Oct. 21, 1998, 112 Stat. 2681–888; Pub. L. 106–170, title V, § 502(a)(1), (b)(1), (c)(1), Dec. 17, 1999, 113 Stat. 1919; Pub. L. 108–311, title III, § 301(a)(1), Oct. 4, 2004, 118 Stat. 1178; Pub. L. 109–58, title XIII, § 1351(a), (b), Aug. 8, 2005, 119 Stat. 1056, 1057; Pub. L. 109–135, title IV, § 402(*l*), Dec. 21, 2005, 119 Stat. 2615; Pub. L. 109–432, div. A, title I, § 104(a)(1), (b)(1), (c)(1), Dec. 20, 2006, 120 Stat. 2934, 2935; Pub. L. 110–172, §§ 6(c), 11(e)(2), Dec. 29, 2007, 121 Stat. 2479, 2489; Pub. L. 110–343, div. C, title III, § 301(a)(1), (b)–(d), Oct. 3, 2008, 122 Stat. 3865, 3866; Pub. L. 111–312, title VII, § 731(a), Dec. 17, 2010, 124 Stat. 3317.)

References in Text

The date of the enactment of the Energy Tax Incentives Act of 2005, referred to in subsec. (b)(3)(D)(iv), is the date of enactment of title XIII of Pub. L. 109–58, which was approved Aug. 8, 2005.

Prior Provisions

A prior section 41, added Pub. L. 97–34, title III, § 331(a), Aug. 13, 1981, 95 Stat. 289, § 44G; amended Pub. L. 97–448, title I, § 103(g)(1), Jan. 12, 1983, 96 Stat. 2379; renumbered § 41 and amended Pub. L. 98–369, div. A, title I, § 14, title IV, §§ 471(c), 474(*l*), 491(e)(2), (3), July 18, 1984, 98 Stat. 505, 826, 833, 852, 853, related to employee stock ownership credit, prior to repeal by Pub. L. 99–514, title XI, § 1171(a), Oct. 22, 1986, 100 Stat. 2513, applicable to compensation paid or accrued after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 1171(c) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 38 of this title. For transition rules relating to such repeal, see section 1177 of Pub. L. 99–514, set out as a Transition Rules note under section 38 of this title.

Another prior section 41 was renumbered section 24 of this title.

Amendments

2010—Subsec. (h)(1)(B). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (c)(5)(A). Pub. L. 110–343, § 301(c), substituted ''14 percent (12 percent in the case of taxable years ending before January 1, 2009)'' for ''12 percent''.

Subsec. (h)(1)(B). Pub. L. 110–343, § 301(a)(1), substituted ''December 31, 2009'' for ''December 31, 2007''.

Subsec. (h)(2). Pub. L. 110–343, § 301(d), redesignated par. (3) as (2) related to computation for taxable year in which credit terminates.

Pub. L. 110–343, § 301(b), added par. (2). Former par. (2) redesignated (3).

Subsec. (h)(3). Pub. L. 110–343, § 301(d), amended par. (3) generally, redesignating it as par. (2) related to computation for taxable year in which credit terminated and amending heading and text generally. Prior to amendment, text read as follows: ''In the case of any taxable year with respect to which this section applies to a number of days which is less than the total number of days in such taxable year, the base amount with respect to such taxable year shall be the amount which bears the same ratio to the base amount for such year (determined without regard to this paragraph) as the number of days in such taxable year to which this section applies bears to the total number of days in such taxable year.''

Pub. L. 110–343, § 301(b), redesignated par. (2) as (3).

2007—Subsec. (a)(3). Pub. L. 110–172, § 6(c)(1), inserted ''for energy research'' before period at end.

Subsec. (f)(1)(A)(ii), (B)(ii). Pub. L. 110–172, § 11(e)(2), substituted ''qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums,'' for ''qualified research expenses and basic research payments''.

Subsec. (f)(6)(E). Pub. L. 110–172, § 6(c)(2), added subpar. (E).

2006—Subsec. (c)(4)(A)(i). Pub. L. 109–432, § 104(b)(1)(A), substituted ''3 percent'' for ''2.65 percent''.

Subsec. (c)(4)(A)(ii). Pub. L. 109–432, § 104(b)(1)(B), substituted ''4 percent'' for ''3.2 percent''.

Subsec. (c)(4)(A)(iii). Pub. L. 109–432, § 104(b)(1)(C), substituted ''5 percent'' for ''3.75 percent''.

Subsec. (c)(5) to (7). Pub. L. 109–432, § 104(c)(1), added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively.

Subsec. (h)(1)(B). Pub. L. 109–432, § 104(a)(1), substituted ''2007'' for ''2005''.

2005—Subsec. (a)(3). Pub. L. 109–58, § 1351(a)(1), added par. (3).

Subsec. (b)(3)(C)(ii). Pub. L. 109–135, § 402(*l*)(2), struck out ''(other than an energy research consortium)'' after ''organization'' in introductory provisions.

Pub. L. 109–58, § 1351(a)(3), inserted ''(other than an energy research consortium)'' after ''organization'' in introductory provisions.

Subsec. (b)(3)(D). Pub. L. 109–58, § 1351(b), added subpar. (D).

Subsec. (f)(6). Pub. L. 109–58, § 1351(a)(2), added par. (6).

Subsec. (f)(6)(C), (D). Pub. L. 109–135, § 402(*l*)(1), added subpars. (C) and (D).

2004—Subsec. (h)(1)(B). Pub. L. 108–311 substituted ''December 31, 2005'' for ''June 30, 2004''.

1999—Subsec. (c)(4)(A)(i). Pub. L. 106–170, § 502(b)(1)(A), substituted ''2.65 percent'' for ''1.65 percent''.

Subsec. (c)(4)(A)(ii). Pub. L. 106–170, § 502(b)(1)(B), substituted ''3.2 percent'' for ''2.2 percent''.

Subsec. (c)(4)(A)(iii). Pub. L. 106–170, § 502(b)(1)(C), substituted ''3.75 percent'' for ''2.75 percent''.

Subsecs. (c)(6), (d)(4)(F). Pub. L. 106–170, § 502(c)(1), inserted '', the Commonwealth of Puerto Rico, or any possession of the United States'' before period at end.

Subsec. (h)(1). Pub. L. 106–170, § 502(a)(1)(B), struck out concluding provisions which read as follows: ''Notwithstanding the preceding sentence, in the case of a taxpayer making an election under subsection (c)(4) for its first taxable year beginning after June 30, 1996, and before July 1, 1997, this section shall apply to amounts paid or incurred during the 36-month period beginning with the first month of such year. The 36 months referred to in the preceding sentence shall be reduced by the number of full months after June 1996 (and before the first month of such first taxable year) during which the taxpayer paid or incurred any amount which is taken into account in determining the credit under this section.''

Subsec. (h)(1)(B). Pub. L. 106–170, § 502(a)(1)(A), substituted ''June 30, 2004'' for ''June 30, 1999''.

1998—Subsec. (h)(1). Pub. L. 105–277 substituted ''June 30, 1999'' for ''June 30, 1998'' in subpar. (B) and sub-

stituted ''36-month'' for ''24-month'' and ''36 months'' for ''24 months'' in concluding provisions.

1997—Subsec. (c)(4)(B). Pub. L. 105–34, § 601(b)(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''An election under this paragraph may be made only for the first taxable year of the taxpayer beginning after June 30, 1996. Such an election shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.''

Subsec. (h)(1). Pub. L. 105–34, § 601(a), substituted ''June 30, 1998'' for ''May 31, 1997'' in subpar. (B) and ''during the 24-month period beginning with the first month of such year. The 24 months referred to in the preceding sentence shall be reduced by the number of full months after June 1996 (and before the first month of such first taxable year) during which the taxpayer paid or incurred any amount which is taken into account in determining the credit under this section.'' for ''during the first 11 months of such taxable year.'' in concluding provisions.

1996—Subsec. (b)(2)(D)(iii). Pub. L. 104–188, § 1201(e)(1), (4), substituted ''work opportunity credit'' for ''targeted jobs credit'' in heading and text.

Subsec. (b)(3)(C). Pub. L. 104–188, § 1204(d), added subpar. (C).

Subsec. (c)(3)(B)(i). Pub. L. 104–188, § 1204(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The fixed-base percentage shall be determined under this subparagraph if there are fewer than 3 taxable years beginning after December 31, 1983, and before January 1, 1989, in which the taxpayer had both gross receipts and qualified research expenses.''

Subsec. (c)(4) to (6). Pub. L. 104–188, § 1204(c), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (h). Pub. L. 104–188, § 1204(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(1) IN GENERAL.—This section shall not apply to any amount paid or incurred after June 30, 1995.

''(2) COMPUTATION OF BASE AMOUNT.—In the case of any taxable year which begins before July 1, 1995, and ends after June 30, 1995, the base amount with respect to such taxable year shall be the amount which bears the same ratio to the base amount for such year (determined without regard to this paragraph) as the number of days in such taxable year before July 1, 1995, bears to the total number of days in such taxable year.''

1993—Subsec. (c)(3)(B)(ii). Pub. L. 103–66, § 13112(a), amended heading and text of cl. (ii) generally. Prior to amendment, text read as follows: ''In a case to which this subparagraph applies, the fixed-base percentage is 3 percent.''

Subsec. (c)(3)(B)(iii). Pub. L. 103–66, § 13112(b)(1), substituted ''clauses (i) and (ii)'' for ''clause (i)''.

Subsec. (c)(3)(D). Pub. L. 103–66, § 13112(b)(2), substituted ''subparagraphs (A) and (B)(ii)'' for ''subparagraph (A)''.

Subsec. (e)(5)(C). Pub. L. 103–66, § 13201(b)(3)(C), substituted ''1992'' for ''1989'' in cls. (i) and (ii).

Subsec. (h). Pub. L. 103–66, § 13111(a)(1), substituted ''June 30, 1995'' for ''June 30, 1992'' in pars. (1) and (2) and ''July 1, 1995'' for ''July 1, 1992'' in two places in par. (2).

1991—Subsec. (h). Pub. L. 102–227 substituted ''June 30, 1992'' for ''December 31, 1991'' in pars. (1) and (2), and ''July 1, 1992'' for ''January 1, 1992'' in two places in par. (2).

1990—Subsec. (e)(5)(C)(i). Pub. L. 101–508, § 11101(d)(1)(C)(i), inserted before period at end '', by substituting 'calendar year 1987' for 'calendar year 1989' in subparagraph (B) thereof''.

Subsec. (e)(5)(C)(ii). Pub. L. 101–508, § 11101(d)(1)(C)(ii), (iii), substituted ''1989'' for ''1987'' and inserted at end ''Such substitution shall be in lieu of the substitution under clause (i).''

Subsec. (h). Pub. L. 101–508, § 11402(a), substituted ''December 31, 1991'' for ''December 31, 1990'' wherever appearing and ''January 1, 1992'' for ''January 1, 1991'' wherever appearing.

1989—Subsec. (a)(1)(B). Pub. L. 101–239, § 7110(b)(2)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the base period research expenses, and''.

Subsec. (b)(4). Pub. L. 101–239, § 7110(b)[(c)], added par. (4).

Subsec. (c). Pub. L. 101–239, § 7110(b)(1), substituted ''Base amount'' for ''Base period research expenses'' in heading and amended text generally, substituting pars. (1) to (5) for former pars. (1) to (3) which defined ''base period research expenses'' and ''base period'' and prescribed minimum base period research expenses.

Subsec. (e)(7)(C)(ii). Pub. L. 101–239, § 7110(b)(2)(B), substituted ''base amount'' for ''base period research expenses''.

Subsec. (f)(1). Pub. L. 101–239, § 7110(b)(2)(C), substituted ''proportionate shares of the qualified research expenses and basic research payments'' for ''proportionate share of the increase in qualified research expenses'' in subpars. (A)(ii) and (B)(ii).

Subsec. (f)(3)(A). Pub. L. 101–239, § 7110(b)(2)(D), substituted ''December 31, 1983'' for ''June 30, 1980'' and inserted before period at end '', and the gross receipts of the taxpayer for such periods shall be increased by so much of the gross receipts of such predecessor with respect to the acquired trade or business as is attributable to such portion''.

Subsec. (f)(3)(B). Pub. L. 101–239, § 7110(b)(2)(E), substituted ''December 31, 1983'' for ''June 30, 1980'' in introductory provisions and inserted before period at end '', and the gross receipts of the taxpayer for such periods shall be decreased by so much of the gross receipts as is attributable to such portion''.

Subsec. (f)(3)(C). Pub. L. 101–239, § 7110(b)(2)(F), substituted ''Certain reimbursements taken into account in determining fixed-base percentage'' for ''Increase in base period'' in heading, ''for the taxable years taken into account in computing the fixed-base percentage shall be increased by the lesser of'' for ''for the base period for such taxable year shall be increased by the lesser of'' in introductory provisions, and new cls. (i) and (ii) for former cls. (i) and (ii) which read as follows:

''(i) the amount of the decrease under subparagraph (B) which is allocable to such base period, or

''(ii) the product of the number of years in the base period, multiplied by the amount of the reimbursement described in this subparagraph.''

Subsec. (f)(4). Pub. L. 101–239, § 7110(b)(2)(G), inserted ''and gross receipts'' after ''qualified research expenses''.

Subsec. (h). Pub. L. 101–239, § 7814(e)(2)(C), redesignated subsec. (i) as (h) and struck out former subsec. (h) which related to election, time for election, and manner of election by taxpayer to have research credit not apply for a taxable year.

Subsec. (h)(1). Pub. L. 101–239, § 7110(a)(1)(A), substituted ''December 31, 1990'' for ''December 31, 1989''.

Subsec. (h)(2). Pub. L. 101–239, § 7110(a)(1), substituted ''January 1, 1991'' for ''January 1, 1990'' in two places and substituted ''December 31, 1990'' for ''December 31, 1989''.

Pub. L. 101–239, § 7110(b)(2)(H), substituted ''base amount'' for ''base period expenses'' in heading and ''the base amount with respect to such taxable year shall be the amount which bears the same ratio to the base amount for such year (determined without regard to this paragraph)'' for ''any amount for any base period with respect to such taxable year shall be the amount which bears the same ratio to such amount for such base period'' in text.

Subsec. (i). Pub. L. 101–239, § 7814(e)(2)(C), redesignated subsec. (i) as (h).

1988—Subsec. (g). Pub. L. 100–647, § 1002(h)(1), inserted at end ''If the amount determined under subsection (a) for any taxable year exceeds the limitation of the preceding sentence, such amount may be carried to other taxable years under the rules of section 39; except that the limitation of the preceding sentence shall be taken

into account in lieu of the limitation of section 38(c) in applying section 39.''

Subsec. (h). Pub. L. 100–647, §4008(b)(1), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 100–647, §4008(b)(1), redesignated former subsec. (h) as (i).

Pub. L. 100–647, §4007(a), substituted ''1989'' and ''1990'' for ''1988'' and ''1989'', respectively, wherever appearing in subsec. (h), prior to redesignation as subsec. (i) by Pub. L. 100–647, §4008(b)(1).

1986—Pub. L. 99–514, §231(d)(2), renumbered section 30 of this title as this section.

Subsec. (a). Pub. L. 99–514, §231(c)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 25 percent of the excess (if any) of—

''(1) the qualified research expenses for the taxable year, over

''(2) the base period research expenses.''

Subsec. (b)(2)(A)(iii). Pub. L. 99–514, §231(e), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''any amount paid or incurred to another person for the right to use personal property in the conduct of qualified research.''

Subsec. (b)(2)(D)(iii). Pub. L. 99–514, §1847(b)(1), substituted ''targeted jobs credit'' for ''new jobs or WIN credit'' in heading.

Subsec. (d). Pub. L. 99–514, §231(b), inserted ''defined'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section the term 'qualified research' has the same meaning as the term research or experimental has under section 174, except that such term shall not include—

''(1) qualified research conducted outside the United States,

''(2) qualified research in the social sciences or humanities, and

''(3) qualified research to the extent funded by any grant, contract, or otherwise by another person (or any governmental entity).''

Subsec. (e). Pub. L. 99–514, §231(c)(2), amended subsec. (e) generally, substituting ''Credit allowable with respect to certain payments to qualified organizations for basic research'' for ''Credit available with respect to certain basic research by colleges, universities, and certain research organizations'' in heading, and restating and expanding provisions of former pars. (1) to (4) into new pars. (1) to (7).

Subsec. (g). Pub. L. 99–514, §231(d)(3)(C)(ii), amended subsec. (g) generally, substituting provisions relating to special rule for pass-thru of credit for provisions relating to limitation on amount of credit for research based on amount of tax liability.

Subsec. (h). Pub. L. 99–514, §231(a)(1), added subsec. (h).

1984—Pub. L. 98–369, §471(c), renumbered section 44F of this title as this section.

Subsec. (b)(2)(D)(iii). Pub. L. 98–369, §474(i)(1)(A), substituted ''in determining the targeted jobs credit under section 51(a)'' for ''in computing the credit under section 40 or 44B''.

Subsec. (g)(1)(A). Pub. L. 98–369, §612(e)(1), substituted ''section 26(b)'' for ''section 25(b)''.

Pub. L. 98–369, §474(i)(1)(B), amended subpar. (A) generally, substituting ''shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 25(b)), reduced by the sum of the credits allowable under subpart A and sections 27, 28, and 29'' for ''shall not exceed the amount of the tax imposed by this chapter reduced by the sum of the credits allowable under a section of this part having a lower number or letter designation than this section, other than the credits allowable by sections 31, 39, and 43. For purposes of the preceding sentence, the term 'tax imposed by this chapter' shall not include any tax treated as not imposed by this chapter under the last sentence of section 53(a)''.

1983—Subsec. (b)(2)(A). Pub. L. 97–448 inserted provision that cl. (iii) would not apply to any amount to the extent that the taxpayer (or any person with whom the taxpayer must aggregate expenditures under subsection (f)(1)) received or accrued any amount from any other person for the right to use substantially identical personal property.

1982—Subsec. (f)(2)(A). Pub. L. 97–354, §5(a)(3)(A), substituted ''Pass-thru in the case of estates and trusts'' for ''Pass-through in the case of subchapter S corporations, etc.'' in subpar. heading, and substituted provisions relating to the applicability of rules similar to rules of subsec. (d) of section 52 for provisions relating to the applicability of rules similar to rules of subsecs. (d) and (e) of section 52.

Subsec. (g)(1)(B)(iv). Pub. L. 97–354, §5(a)(3)(B), substituted ''an S corporation'' for ''an electing small business corporation (within the meaning of section 1371(b))''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §731(c), Dec. 17, 2010, 124 Stat. 3317, provided that: ''The amendments made by this section [amending this section and section 45C of this title] shall apply to amounts paid or incurred after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §301(e), Oct. 3, 2008, 122 Stat. 3866, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 45C of this title] shall apply to taxable years beginning after December 31, 2007.

''(2) EXTENSION.—The amendments made by subsection (a) [amending this section and section 45C of this title] shall apply to amounts paid or incurred after December 31, 2007.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 6(c) of Pub. L. 110–172 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 6(e) of Pub. L. 110–172, set out as a note under section 30C of this title.

Pub. L. 110–172, §11(e)(3), Dec. 29, 2007, 121 Stat. 2489, provided that: ''The amendments made by this subsection [amending this section and section 6427 of this title] shall take effect as if included in the provisions of the Energy Policy Act of 2005 [Pub. L. 109–58] to which they relate.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §104(a)(3), Dec. 20, 2006, 120 Stat. 2934, provided that: ''The amendments made by this subsection [amending this section and section 45C of this title] shall apply to amounts paid or incurred after December 31, 2005.''

Pub. L. 109–432, div. A, title I, §104(b)(2), (3), Dec. 20, 2006, 120 Stat. 2934, provided that:

''(2) EFFECTIVE DATE.—Except as provided in paragraph (3), the amendments made by this subsection [amending this section] shall apply to taxable years ending after December 31, 2006.

''(3) TRANSITION RULE.—

''(A) IN GENERAL.—In the case of a specified transitional taxable year for which an election under section 41(c)(4) of the Internal Revenue Code of 1986 applies, the credit determined under section 41(a)(1) of such Code shall be equal to the sum of—

''(i) the applicable 2006 percentage multiplied by the amount determined under section 41(c)(4)(A) of such Code (as in effect for taxable years ending on December 31, 2006), plus

''(ii) the applicable 2007 percentage multiplied by the amount determined under section 41(c)(4)(A) of such Code (as in effect for taxable years ending on January 1, 2007).

''(B) DEFINITIONS.—For purposes of subparagraph (A)—

''(i) SPECIFIED TRANSITIONAL TAXABLE YEAR.—The term 'specified transitional taxable year' means

any taxable year which ends after December 31, 2006, and which includes such date.

''(ii) APPLICABLE 2006 PERCENTAGE.—The term 'applicable 2006 percentage' means the number of days in the specified transitional taxable year before January 1, 2007, divided by the number of days in such taxable year.

''(iii) APPLICABLE 2007 PERCENTAGE.—The term 'applicable 2007 percentage' means the number of days in the specified transitional taxable year after December 31, 2006, divided by the number of days in such taxable year.''

Pub. L. 109–432, div. A, title I, §104(c)(2)–(4), Dec. 20, 2006, 120 Stat. 2935, provided that:

''(2) TRANSITION RULE FOR DEEMED REVOCATION OF ELECTION OF ALTERNATIVE INCREMENTAL CREDIT.—In the case of an election under section 41(c)(4) of the Internal Revenue Code of 1986 which applies to the taxable year which includes January 1, 2007, such election shall be treated as revoked with the consent of the Secretary of the Treasury if the taxpayer makes an election under section 41(c)(5) of such Code (as added by this subsection) for such year.

''(3) EFFECTIVE DATE.—Except as provided in paragraph (4), the amendments made by this subsection [amending this section] shall apply to taxable years ending after December 31, 2006.

''(4) TRANSITION RULE FOR NONCALENDAR TAXABLE YEARS.—

''(A) IN GENERAL.—In the case of a specified transitional taxable year for which an election under section 41(c)(5) of the Internal Revenue Code of 1986 (as added by this subsection) applies, the credit determined under section 41(a)(1) of such Code shall be equal to the sum of—

''(i) the applicable 2006 percentage multiplied by the amount determined under section 41(a)(1) of such Code (as in effect for taxable years ending on December 31, 2006), plus

''(ii) the applicable 2007 percentage multiplied by the amount determined under section 41(c)(5) of such Code (as in effect for taxable years ending on January 1, 2007).

''(B) DEFINITIONS AND SPECIAL RULES.—For purposes of subparagraph (A)—

''(i) DEFINITIONS.—Terms used in this paragraph which are also used in subsection (b)(3) [set out above] shall have the respective meanings given such terms in such subsection.

''(ii) DUAL ELECTIONS PERMITTED.—Elections under paragraphs (4) and (5) of section 41(c) of such Code may both apply for the specified transitional taxable year.

''(iii) DEFERRAL OF DEEMED ELECTION REVOCATION.—Any election under section 41(c)(4) of the Internal Revenue Code of 1986 treated as revoked under paragraph (2) shall be treated as revoked for the taxable year after the specified transitional taxable year.''

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by Pub. L. 109–135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

Pub. L. 109–58, title XIII, §1351(c), Aug. 8, 2005, 119 Stat. 1058, provided that: ''The amendments made by this section [amending this section] shall apply to amounts paid or incurred after the date of the enactment of this Act [Aug. 8, 2005], in taxable years ending after such date.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, §301(b), Oct. 4, 2004, 118 Stat. 1178, provided that: ''The amendments made by this section [amending this section and section 45C of this title] shall apply to amounts paid or incurred after June 30, 2004.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §502(a)(3), Dec. 17, 1999, 113 Stat. 1919, provided that: ''The amendments made by this subsection [amending this section and section 45C of this title] shall apply to amounts paid or incurred after June 30, 1999.''

Pub. L. 106–170, title V, §502(b)(2), Dec. 17, 1999, 113 Stat. 1919, provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years beginning after June 30, 1999.''

Pub. L. 106–170, title V, §502(c)(3), Dec. 17, 1999, 113 Stat. 1920, provided that: ''The amendments made by this subsection [amending this section and section 280C of this title] shall apply to amounts paid or incurred after June 30, 1999.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title I, §1001(c), Oct. 21, 1998, 112 Stat. 2681–888, provided that: ''The amendments made by this section [amending this section and section 45C of this title] shall apply to amounts paid or incurred after June 30, 1998.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 601(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and section 45C of this title] shall apply to amounts paid or incurred after May 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1201(e)(1), (4) of Pub. L. 104–188 applicable to individuals who begin work for the employer after Sept. 30, 1996, see section 1201(g) of Pub. L. 104–188, set out as a note under section 38 of this title.

Section 1204(f) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 28 [now 45C] of this title] shall apply to taxable years ending after June 30, 1996.

''(2) SUBSECTIONS (c) AND (d).—The amendments made by subsections (c) and (d) [amending this section] shall apply to taxable years beginning after June 30, 1996.

''(3) ESTIMATED TAX.—The amendments made by this section shall not be taken into account under section 6654 or 6655 of the Internal Revenue Code of 1986 (relating to failure to pay estimated tax) in determining the amount of any installment required to be paid for a taxable year beginning in 1997.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13111(a)(1) of Pub. L. 103–66 applicable to taxable years ending after June 30, 1992, see section 13111(c) of Pub. L. 103–66, set out as a note under section 45C of this title.

Section 13112(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1993.''

Amendment by section 13201(b)(3)(C) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103–66, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–227 applicable to taxable years ending after Dec. 31, 1991, see section 102(c) of Pub. L. 102–227, set out as a note under section 45C of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(1)(C) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

Amendment by section 11402(a) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1989, see section 11402(c) of Pub. L. 101–508, set out as a note under section 45C of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7110(e) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and sections 28, 174, 196, and 280C of this title] (other than subsection (a) [amending this section and section 28 of this title]) shall apply to taxable years beginning after December 31, 1989.''

Amendment by section 7814(e)(2)(C) 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 section 1002(h)(1) 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.

Section 4008(d) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and sections 28, 196, 280C, and 6501 of this title] shall apply to taxable years beginning after December 31, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 231(g) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in this subsection (2), the amendments made by this section [amending this section and sections 28, 38, 39, 108, 170, 280C, 381, 936, 6411, and 6511 of this title, renumbering former section 30 of this title as this section, and enacting and amending provisions set out as notes under this section] shall apply to taxable years beginning after December 31, 1985.

''(2) SUBSECTION (a).—The amendments made by subsection (a) [amending this section and provisions set out as a note under this section] shall apply to taxable years ending after December 31, 1985.

''(3) BASIC RESEARCH.—Section 41(a)(2) of the Internal Revenue Code of 1986 (as added by this section), and the amendments made by subsection (c)(2) [amending this section], shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 1847(b)(1) 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 474(i)(1) 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 612(e)(1) of Pub. L. 98–369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 102(h)(2) of Pub. L. 97–448 provided that the amendment made by that section is effective only with respect to amounts paid or incurred after March 31, 1982.

EFFECTIVE DATE OF 1982 AMENDMENT

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.

EFFECTIVE DATE

Pub. L. 97–34, title II, §221(d), Aug. 13, 1981, 95 Stat. 241, as amended by Pub. L. 99–514, §2, title II, §231(a)(2), Oct. 22, 1986, 100 Stat. 2095, 2173, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 55, 381, 383, 6096, 6411, and 6511 of this title] shall apply to amounts paid or incurred after June 30, 1981.

''(2) TRANSITIONAL RULE.—

''(A) IN GENERAL.—If, with respect to the first taxable year to which the amendments made by this section apply and which ends in 1981 or 1982, the taxpayer may only take into account qualified research expenses paid or incurred during a portion of such taxable year, the amount of the qualified research expenses taken into account for the base period of such taxable year shall be the amount which bears the same ratio to the total qualified research expenses for such base period as the number of months in such portion of such taxable year bears to the total number of months in such taxable year.

''(B) DEFINITIONS.—For purposes of the preceding sentence, the terms 'qualified research expenses' and 'base period' have the meanings given to such terms by section 44F [now 41] of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section).''

SPECIAL RULE FOR ELECTIONS UNDER EXPIRED PROVISIONS

Pub. L. 109–432, div. A, title I, §123, Dec. 20, 2006, 120 Stat. 2944, provided that:

''(a) RESEARCH CREDIT ELECTIONS.—In the case of any taxable year ending after December 31, 2005, and before the date of the enactment of this Act [Dec. 20, 2006], any election under section 41(c)(4) or section 280C(c)(3)(C) of the Internal Revenue Code of 1986 shall be treated as having been timely made for such taxable year if such election is made not later than the later of April 15, 2007, or such time as the Secretary of the Treasury, or his designee, may specify. Such election shall be made in the manner prescribed by such Secretary or designee.

''(b) OTHER ELECTIONS.—Except as otherwise provided by such Secretary or designee, a rule similar to the rule of subsection (a) shall apply with respect to elections under any other expired provision of the Internal Revenue Code of 1986 the applicability of which is extended by reason of the amendments made by this title [amending this section and sections 32, 45A, 45C, 45D, 51, 54, 62, 164, 168, 170, 198, 220, 222, 613A, 1397E, 1400, 1400A to 1400C, 1400F, 1400N, 6103, 7608, 7652, and 9812 of this title, section 1185a of Title 29, Labor, and section 300gg–5 of Title 42, The Public Health and Welfare, and repealing section 51A of this title].''

SPECIAL RULE FOR CREDIT ATTRIBUTABLE TO SUSPENSION PERIODS

Pub. L. 106–170, title V, §502(d), Dec. 17, 1999, 113 Stat. 1920, provided that:

''(1) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, the credit determined under section 41 of such Code which is otherwise allowable under such Code—

''(A) shall not be taken into account prior to October 1, 2000, to the extent such credit is attributable to the first suspension period; and

''(B) shall not be taken into account prior to October 1, 2001, to the extent such credit is attributable to the second suspension period.

On or after the earliest date that an amount of credit may be taken into account, such amount may be taken into account through the filing of an amended return, an application for expedited refund, an adjustment of estimated taxes, or other means allowed by such Code.

''(2) SUSPENSION PERIODS.—For purposes of this subsection—

''(A) the first suspension period is the period beginning on July 1, 1999, and ending on September 30, 2000; and

''(B) the second suspension period is the period beginning on October 1, 2000, and ending on September 30, 2001.

''(3) EXPEDITED REFUNDS.—

''(A) IN GENERAL.—If there is an overpayment of tax with respect to a taxable year by reason of paragraph (1), the taxpayer may file an application for a tentative refund of such overpayment. Such application shall be in such manner and form, and contain such information, as the Secretary may prescribe.

''(B) DEADLINE FOR APPLICATIONS.—Subparagraph (A) shall apply only to an application filed before the date which is 1 year after the close of the suspension period to which the application relates.

''(C) ALLOWANCE OF ADJUSTMENTS.—Not later than 90 days after the date on which an application is filed under this paragraph, the Secretary shall—

''(i) review the application;

''(ii) determine the amount of the overpayment; and

''(iii) apply, credit, or refund such overpayment,

in a manner similar to the manner provided in section 6411(b) of such Code.

''(D) CONSOLIDATED RETURNS.—The provisions of section 6411(c) of such Code shall apply to an adjustment under this paragraph in such manner as the Secretary may provide.

''(4) CREDIT ATTRIBUTABLE TO SUSPENSION PERIOD.—

''(A) IN GENERAL.—For purposes of this subsection, in the case of a taxable year which includes a portion of the suspension period, the amount of credit determined under section 41 of such Code for such taxable year which is attributable to such period is the amount which bears the same ratio to the amount of credit determined under such section 41 for such taxable year as the number of months in the suspension period which are during such taxable year bears to the number of months in such taxable year.

''(B) WAIVER OF ESTIMATED TAX PENALTIES.—No addition to tax shall be made under section 6654 or 6655 of such Code for any period before July 1, 1999, with respect to any underpayment of tax imposed by such Code to the extent such underpayment was created or increased by reason of subparagraph (A).

''(5) SECRETARY.—For purposes of this subsection, the term 'Secretary' means the Secretary of the Treasury (or such Secretary's delegate).''

SPECIAL RULES FOR TAXABLE YEARS BEGINNING BEFORE OCT. 1, 1990, AND ENDING AFTER SEPT. 30, 1990

Section 7110(a)(2) of Pub. L. 101–239, which set forth the method of determining the amount treated as qualified research expenses for taxable years beginning before Oct. 1, 1990, and ending after Sept. 30, 1990, was repealed by Pub. L. 101–508, title XI, § 11402(b)(1), Nov. 5, 1990, 104 Stat. 1388–473.

[Section 1702(d)(1) of Pub. L. 104–188 provided that: ''Notwithstanding section 11402(c) of the Revenue Reconciliation Act of 1990 [Pub. L. 101–508, set out as a note under section 45C of this title], the amendment made by section 11402(b)(1) of such Act [repealing section 7110(a)(2) of Pub. L. 101–239, formerly set out as a note above] shall apply to taxable years ending after December 31, 1989.'']

STUDY AND REPORT ON CREDIT PROVIDED BY THIS SECTION

Section 4007(b) of Pub. L. 100–647 directed Comptroller General of United States to conduct a study of credit provided by 26 U.S.C. 41 and submit a report of the study not later than Dec. 31, 1989, to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate.

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.

NEW SECTION 41 TREATED AS CONTINUATION OF OLD SECTION 44F

Section 474(i)(2) of Pub. L. 98–369 provided that: ''For purposes of determining—

''(A) whether any excess credit under old section 44F [now 41] for a taxable year beginning before January 1, 1984, is allowable as a carryover under new section 30 [now 41], and

''(B) the period during which new section 30 [now 41] is in effect,

new section 30 [now 41] shall be treated as a continuation of old section 44F (and shall apply only to the extent old section 44F would have applied).''

§ 42. Low-income housing credit

(a) In general

For purposes of section 38, the amount of the low-income housing credit determined under this section for any taxable year in the credit period shall be an amount equal to—

(1) the applicable percentage of

(2) the qualified basis of each qualified low-income building.

(b) Applicable percentage: 70 percent present value credit for certain new buildings; 30 percent present value credit for certain other buildings

(1) Determination of applicable percentage

For purposes of this section, the term ''applicable percentage'' means, with respect to any building, the appropriate percentage prescribed by the Secretary for the earlier of—

(i) the month in which such building is placed in service, or

(ii) at the election of the taxpayer—

(I) the month in which the taxpayer and the housing credit agency enter into an agreement with respect to such building (which is binding on such agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to such building, or

(II) in the case of any building to which subsection (h)(4)(B) applies, the month in which the tax-exempt obligations are issued.

A month may be elected under clause (ii) only if the election is made not later than the 5th day after the close of such month. Such an election, once made, shall be irrevocable.

(B) [1] Method of prescribing percentages

The percentages prescribed by the Secretary for any month shall be percentages which will yield over a 10-year period amounts of credit under subsection (a) which have a present value equal to—

(i) 70 percent of the qualified basis of a new building which is not federally subsidized for the taxable year, and

(ii) 30 percent of the qualified basis of a building not described in clause (i).

(C) Method of discounting

The present value under subparagraph (B) shall be determined—

[1] So in original. No subpar. (A) has been enacted.

(i) as of the last day of the 1st year of the 10-year period referred to in subparagraph (B),

(ii) by using a discount rate equal to 72 percent of the average of the annual Federal mid-term rate and the annual Federal long-term rate applicable under section 1274(d)(1) to the month applicable under clause (i) or (ii) of subparagraph (A)[1] and compounded annually, and

(iii) by assuming that the credit allowable under this section for any year is received on the last day of such year.

(2) Temporary minimum credit rate for nonfederally subsidized new buildings

In the case of any new building—

(A) which is placed in service by the taxpayer after the date of the enactment of this paragraph and before December 31, 2013, and

(B) which is not federally subsidized for the taxable year,

the applicable percentage shall not be less than 9 percent.

(3) Cross references

(A) For treatment of certain rehabilitation expenditures as separate new buildings, see subsection (e).

(B) For determination of applicable percentage for increases in qualified basis after the 1st year of the credit period, see subsection (f)(3).

(C) For authority of housing credit agency to limit applicable percentage and qualified basis which may be taken into account under this section with respect to any building, see subsection (h)(7).

(c) Qualified basis; qualified low-income building

For purposes of this section—

(1) Qualified basis

(A) Determination

The qualified basis of any qualified low-income building for any taxable year is an amount equal to—

(i) the applicable fraction (determined as of the close of such taxable year) of

(ii) the eligible basis of such building (determined under subsection (d)(5)).

(B) Applicable fraction

For purposes of subparagraph (A), the term ''applicable fraction'' means the smaller of the unit fraction or the floor space fraction.

(C) Unit fraction

For purposes of subparagraph (B), the term ''unit fraction'' means the fraction—

(i) the numerator of which is the number of low-income units in the building, and

(ii) the denominator of which is the number of residential rental units (whether or not occupied) in such building.

(D) Floor space fraction

For purposes of subparagraph (B), the term ''floor space fraction'' means the fraction—

(i) the numerator of which is the total floor space of the low-income units in such building, and

(ii) the denominator of which is the total floor space of the residential rental units (whether or not occupied) in such building.

(E) Qualified basis to include portion of building used to provide supportive services for homeless

In the case of a qualified low-income building described in subsection (i)(3)(B)(iii), the qualified basis of such building for any taxable year shall be increased by the lesser of—

(i) so much of the eligible basis of such building as is used throughout the year to provide supportive services designed to assist tenants in locating and retaining permanent housing, or

(ii) 20 percent of the qualified basis of such building (determined without regard to this subparagraph).

(2) Qualified low-income building

The term ''qualified low-income building'' means any building—

(A) which is part of a qualified low-income housing project at all times during the period—

(i) beginning on the 1st day in the compliance period on which such building is part of such a project, and

(ii) ending on the last day of the compliance period with respect to such building, and

(B) to which the amendments made by section 201(a) of the Tax Reform Act of 1986 apply.

(d) Eligible basis

For purposes of this section—

(1) New buildings

The eligible basis of a new building is its adjusted basis as of the close of the 1st taxable year of the credit period.

(2) Existing buildings

(A) In general

The eligible basis of an existing building is—

(i) in the case of a building which meets the requirements of subparagraph (B), its adjusted basis as of the close of the 1st taxable year of the credit period, and

(ii) zero in any other case.

(B) Requirements

A building meets the requirements of this subparagraph if—

(i) the building is acquired by purchase (as defined in section 179(d)(2)),

(ii) there is a period of at least 10 years between the date of its acquisition by the taxpayer and the date the building was last placed in service,

(iii) the building was not previously placed in service by the taxpayer or by any person who was a related person with respect to the taxpayer as of the time previously placed in service, and

(iv) except as provided in subsection (f)(5), a credit is allowable under subsection (a) by reason of subsection (e) with respect to the building.

(C) Adjusted basis

For purposes of subparagraph (A), the adjusted basis of any building shall not include

so much of the basis of such building as is determined by reference to the basis of other property held at any time by the person acquiring the building.

(D) Special rules for subparagraph (B)

(i) Special rules for certain transfers

For purposes of determining under subparagraph (B)(ii) when a building was last placed in service, there shall not be taken into account any placement in service—

(I) in connection with the acquisition of the building in a transaction in which the basis of the building in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such building in the hands of the person from whom acquired,

(II) by a person whose basis in such building is determined under section 1014(a) (relating to property acquired from a decedent),

(III) by any governmental unit or qualified nonprofit organization (as defined in subsection (h)(5)) if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such unit or organization and all the income from such property is exempt from Federal income taxation,

(IV) by any person who acquired such building by foreclosure (or by instrument in lieu of foreclosure) of any purchase-money security interest held by such person if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such person and such building is resold within 12 months after the date such building is placed in service by such person after such foreclosure, or

(V) of a single-family residence by any individual who owned and used such residence for no other purpose than as his principal residence.

(ii) Related person

For purposes of subparagraph (B)(iii), a person (hereinafter in this subclause referred to as the ''related person'') is related to any person if the related person bears a relationship to such person specified in section 267(b) or 707(b)(1), or the related person and such person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52).

(3) Eligible basis reduced where disproportionate standards for units

(A) In general

Except as provided in subparagraph (B), the eligible basis of any building shall be reduced by an amount equal to the portion of the adjusted basis of the building which is attributable to residential rental units in the building which are not low-income units and which are above the average quality standard of the low-income units in the building.

(B) Exception where taxpayer elects to exclude excess costs

(i) In general

Subparagraph (A) shall not apply with respect to a residential rental unit in a building which is not a low-income unit if—

(I) the excess described in clause (ii) with respect to such unit is not greater than 15 percent of the cost described in clause (ii)(II), and

(II) the taxpayer elects to exclude from the eligible basis of such building the excess described in clause (ii) with respect to such unit.

(ii) Excess

The excess described in this clause with respect to any unit is the excess of—

(I) the cost of such unit, over

(II) the amount which would be the cost of such unit if the average cost per square foot of low-income units in the building were substituted for the cost per square foot of such unit.

The Secretary may by regulation provide for the determination of the excess under this clause on a basis other than square foot costs.

(4) Special rules relating to determination of adjusted basis

For purposes of this subsection—

(A) In general

Except as provided in subparagraphs (B) and (C), the adjusted basis of any building shall be determined without regard to the adjusted basis of any property which is not residential rental property.

(B) Basis of property in common areas, etc., included

The adjusted basis of any building shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation) used in common areas or provided as comparable amenities to all residential rental units in such building.

(C) Inclusion of basis of property used to provide services for certain nontenants

(i) In general

The adjusted basis of any building located in a qualified census tract (as defined in paragraph (5)(C)) shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation and not otherwise taken into account) used throughout the taxable year in providing any community service facility.

(ii) Limitation

The increase in the adjusted basis of any building which is taken into account by reason of clause (i) shall not exceed the sum of—

(I) 25 percent of so much of the eligible basis of the qualified low-income housing project of which it is a part as does not exceed $15,000,000, plus

(II) 10 percent of so much of the eligible basis of such project as is not taken into account under subclause (I).

For purposes of the preceding sentence, all community service facilities which are part of the same qualified low-income housing project shall be treated as one facility.

(iii) Community service facility

For purposes of this subparagraph, the term ''community service facility'' means any facility designed to serve primarily individuals whose income is 60 percent or less of area median income (within the meaning of subsection (g)(1)(B)).

(D) No reduction for depreciation

The adjusted basis of any building shall be determined without regard to paragraphs (2) and (3) of section 1016(a).

(5) Special rules for determining eligible basis

(A) Federal grants not taken into account in determining eligible basis

The eligible basis of a building shall not include any costs financed with the proceeds of a federally funded grant.

(B) Increase in credit for buildings in high cost areas

(i) In general

In the case of any building located in a qualified census tract or difficult development area which is designated for purposes of this subparagraph—

(I) in the case of a new building, the eligible basis of such building shall be 130 percent of such basis determined without regard to this subparagraph, and

(II) in the case of an existing building, the rehabilitation expenditures taken into account under subsection (e) shall be 130 percent of such expenditures determined without regard to this subparagraph.

(ii) Qualified census tract

(I) In general

The term ''qualified census tract'' means any census tract which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent. If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts.

(II) Limit on MSA's designated

The portion of a metropolitan statistical area which may be designated for purposes of this subparagraph shall not exceed an area having 20 percent of the population of such metropolitan statistical area.

(III) Determination of areas

For purposes of this clause, each metropolitan statistical area shall be treated as a separate area and all nonmetropolitan areas in a State shall be treated as 1 area.

(iii) Difficult development areas

(I) In general

The term ''difficult development areas'' means any area designated by the Secretary of Housing and Urban Development as an area which has high construction, land, and utility costs relative to area median gross income.

(II) Limit on areas designated

The portions of metropolitan statistical areas which may be designated for purposes of this subparagraph shall not exceed an aggregate area having 20 percent of the population of such metropolitan statistical areas. A comparable rule shall apply to nonmetropolitan areas.

(iv) Special rules and definitions

For purposes of this subparagraph—

(I) population shall be determined on the basis of the most recent decennial census for which data are available,

(II) area median gross income shall be determined in accordance with subsection (g)(4),

(III) the term ''metropolitan statistical area'' has the same meaning as when used in section 143(k)(2)(B), and

(IV) the term ''nonmetropolitan area'' means any county (or portion thereof) which is not within a metropolitan statistical area.

(v) Buildings designated by State housing credit agency

Any building which is designated by the State housing credit agency as requiring the increase in credit under this subparagraph in order for such building to be financially feasible as part of a qualified low-income housing project shall be treated for purposes of this subparagraph as located in a difficult development area which is designated for purposes of this subparagraph. The preceding sentence shall not apply to any building if paragraph (1) of subsection (h) does not apply to any portion of the eligible basis of such building by reason of paragraph (4) of such subsection.

(6) Credit allowable for certain buildings acquired during 10-year period described in paragraph (2)(B)(ii)

(A) In general

Paragraph (2)(B)(ii) shall not apply to any federally- or State-assisted building.

(B) Buildings acquired from insured depository institutions in default

On application by the taxpayer, the Secretary may waive paragraph (2)(B)(ii) with

respect to any building acquired from an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act) or from a receiver or conservator of such an institution.

(C) Federally- or State-assisted building

For purposes of this paragraph—

(i) Federally-assisted building

The term ''federally-assisted building'' means any building which is substantially assisted, financed, or operated under section 8 of the United States Housing Act of 1937, section 221(d)(3), 221(d)(4), or 236 of the National Housing Act, section 515 of the Housing Act of 1949, or any other housing program administered by the Department of Housing and Urban Development or by the Rural Housing Service of the Department of Agriculture.

(ii) State-assisted building

The term ''State-assisted building'' means any building which is substantially assisted, financed, or operated under any State law similar in purposes to any of the laws referred to in clause (i).

(7) Acquisition of building before end of prior compliance period

(A) In general

Under regulations prescribed by the Secretary, in the case of a building described in subparagraph (B) (or interest therein) which is acquired by the taxpayer—

(i) paragraph (2)(B) shall not apply, but

(ii) the credit allowable by reason of subsection (a) to the taxpayer for any period after such acquisition shall be equal to the amount of credit which would have been allowable under subsection (a) for such period to the prior owner referred to in subparagraph (B) had such owner not disposed of the building.

(B) Description of building

A building is described in this subparagraph if—

(i) a credit was allowed by reason of subsection (a) to any prior owner of such building, and

(ii) the taxpayer acquired such building before the end of the compliance period for such building with respect to such prior owner (determined without regard to any disposition by such prior owner).

(e) Rehabilitation expenditures treated as separate new building

(1) In general

Rehabilitation expenditures paid or incurred by the taxpayer with respect to any building shall be treated for purposes of this section as a separate new building.

(2) Rehabilitation expenditures

For purposes of paragraph (1)—

(A) In general

The term ''rehabilitation expenditures'' means amounts chargeable to capital account and incurred for property (or additions or improvements to property) of a character subject to the allowance for depreciation in connection with the rehabilitation of a building.

(B) Cost of acquisition, etc,[2] not included

Such term does not include the cost of acquiring any building (or interest therein) or any amount not permitted to be taken into account under paragraph (3) or (4) of subsection (d).

(3) Minimum expenditures to qualify

(A) In general

Paragraph (1) shall apply to rehabilitation expenditures with respect to any building only if—

(i) the expenditures are allocable to 1 or more low-income units or substantially benefit such units, and

(ii) the amount of such expenditures during any 24-month period meets the requirements of whichever of the following subclauses requires the greater amount of such expenditures:

(I) The requirement of this subclause is met if such amount is not less than 20 percent of the adjusted basis of the building (determined as of the 1st day of such period and without regard to paragraphs (2) and (3) of section 1016(a)).

(II) The requirement of this subclause is met if the qualified basis attributable to such amount, when divided by the number of low-income units in the building, is $6,000 or more.

(B) Exception from 10 percent rehabilitation

In the case of a building acquired by the taxpayer from a governmental unit, at the election of the taxpayer, subparagraph (A)(ii)(I) shall not apply and the credit under this section for such rehabilitation expenditures shall be determined using the percentage applicable under subsection (b)(2)(B)(ii).

(C) Date of determination

The determination under subparagraph (A) shall be made as of the close of the 1st taxable year in the credit period with respect to such expenditures.

(D) Inflation adjustment

In the case of any expenditures which are treated under paragraph (4) as placed in service during any calendar year after 2009, the $6,000 amount in subparagraph (A)(ii)(II) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ''calendar year 2008'' for ''calendar year 1992'' in subparagraph (B) thereof.

Any increase under the preceding sentence which is not a multiple of $100 shall be rounded to the nearest multiple of $100.

(4) Special rules

For purposes of applying this section with respect to expenditures which are treated as a

[2] So in original. Probably should be ''etc.,''.

separate building by reason of this subsection—

(A) such expenditures shall be treated as placed in service at the close of the 24-month period referred to in paragraph (3)(A), and

(B) the applicable fraction under subsection (c)(1) shall be the applicable fraction for the building (without regard to paragraph (1)) with respect to which the expenditures were incurred.

Nothing in subsection (d)(2) shall prevent a credit from being allowed by reason of this subsection.

(5) No double counting

Rehabilitation expenditures may, at the election of the taxpayer, be taken into account under this subsection or subsection (d)(2)(A)(i) but not under both such subsections.

(6) Regulations to apply subsection with respect to group of units in building

The Secretary may prescribe regulations, consistent with the purposes of this subsection, treating a group of units with respect to which rehabilitation expenditures are incurred as a separate new building.

(f) Definition and special rules relating to credit period

(1) Credit period defined

For purposes of this section, the term ''credit period'' means, with respect to any building, the period of 10 taxable years beginning with—

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

(B) at the election of the taxpayer, the succeeding taxable year,

but only if the building is a qualified low-income building as of the close of the 1st year of such period. The election under subparagraph (B), once made, shall be irrevocable.

(2) Special rule for 1st year of credit period

(A) In general

The credit allowable under subsection (a) with respect to any building for the 1st taxable year of the credit period shall be determined by substituting for the applicable fraction under subsection (c)(1) the fraction—

(i) the numerator of which is the sum of the applicable fractions determined under subsection (c)(1) as of the close of each full month of such year during which such building was in service, and

(ii) the denominator of which is 12.

(B) Disallowed 1st year credit allowed in 11th year

Any reduction by reason of subparagraph (A) in the credit allowable (without regard to subparagraph (A)) for the 1st taxable year of the credit period shall be allowable under subsection (a) for the 1st taxable year following the credit period.

(3) Determination of applicable percentage with respect to increases in qualified basis after 1st year of credit period

(A) In general

In the case of any building which was a qualified low-income building as of the close of the 1st year of the credit period, if—

(i) as of the close of any taxable year in the compliance period (after the 1st year of the credit period) the qualified basis of such building exceeds

(ii) the qualified basis of such building as of the close of the 1st year of the credit period,

the applicable percentage which shall apply under subsection (a) for the taxable year to such excess shall be the percentage equal to ⅔ of the applicable percentage which (after the application of subsection (h)) would but for this paragraph apply to such basis.

(B) 1st year computation applies

A rule similar to the rule of paragraph (2)(A) shall apply to any increase in qualified basis to which subparagraph (A) applies for the 1st year of such increase.

(4) Dispositions of property

If a building (or an interest therein) is disposed of during any year for which credit is allowable under subsection (a), such credit shall be allocated between the parties on the basis of the number of days during such year the building (or interest) was held by each. In any such case, proper adjustments shall be made in the application of subsection (j).

(5) Credit period for existing buildings not to begin before rehabilitation credit allowed

(A) In general

The credit period for an existing building shall not begin before the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building.

(B) Acquisition credit allowed for certain buildings not allowed a rehabilitation credit

(i) In general

In the case of a building described in clause (ii)—

(I) subsection (d)(2)(B)(iv) shall not apply, and

(II) the credit period for such building shall not begin before the taxable year which would be the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building under the modifications described in clause (ii)(II).

(ii) Building described

A building is described in this clause if—

(I) a waiver is granted under subsection (d)(6)(C) with respect to the acquisition of the building, and

(II) a credit would be allowed for rehabilitation expenditures with respect to such building if subsection (e)(3)(A)(ii)(I) did not apply and if the dollar amount in effect under subsection (e)(3)(A)(ii)(II) were two-thirds of such amount.

(g) Qualified low-income housing project

For purposes of this section—

(1) In general

The term ''qualified low-income housing project'' means any project for residential rental property if the project meets the requirements of subparagraph (A) or (B) whichever is elected by the taxpayer:

(A) 20–50 test

The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income.

(B) 40–60 test

The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income.

Any election under this paragraph, once made, shall be irrevocable. For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

(2) Rent-restricted units

(A) In general

For purposes of paragraph (1), a residential unit is rent-restricted if the gross rent with respect to such unit does not exceed 30 percent of the imputed income limitation applicable to such unit. For purposes of the preceding sentence, the amount of the income limitation under paragraph (1) applicable for any period shall not be less than such limitation applicable for the earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified low-income housing project.

(B) Gross rent

For purposes of subparagraph (A), gross rent—

(i) does not include any payment under section 8 of the United States Housing Act of 1937 or any comparable rental assistance program (with respect to such unit or occupants thereof),

(ii) includes any utility allowance determined by the Secretary after taking into account such determinations under section 8 of the United States Housing Act of 1937,

(iii) does not include any fee for a supportive service which is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in section 501(c)(3) and exempt from tax under section 501(a)) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services, and

(iv) does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers' Home Administration under section 515 of the Housing Act of 1949.

For purposes of clause (iii), the term ''supportive service'' means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. In the case of a single-room occupancy unit or a building described in subsection (i)(3)(B)(iii), such term includes any service provided to assist tenants in locating and retaining permanent housing.

(C) Imputed income limitation applicable to unit

For purposes of this paragraph, the imputed income limitation applicable to a unit is the income limitation which would apply under paragraph (1) to individuals occupying the unit if the number of individuals occupying the unit were as follows:

(i) In the case of a unit which does not have a separate bedroom, 1 individual.

(ii) In the case of a unit which has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom.

In the case of a project with respect to which a credit is allowable by reason of this section and for which financing is provided by a bond described in section 142(a)(7), the imputed income limitation shall apply in lieu of the otherwise applicable income limitation for purposes of applying section 142(d)(4)(B)(ii).

(D) Treatment of units occupied by individuals whose incomes rise above limit

(i) In general

Except as provided in clause (ii), notwithstanding an increase in the income of the occupants of a low-income unit above the income limitation applicable under paragraph (1), such unit shall continue to be treated as a low-income unit if the income of such occupants initially met such income limitation and such unit continues to be rent-restricted.

(ii) Next available unit must be rented to low-income tenant if income rises above 140 percent of income limit

If the income of the occupants of the unit increases above 140 percent of the income limitation applicable under paragraph (1), clause (i) shall cease to apply to such unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation. In the case of a project described in section 142(d)(4)(B), the preceding sentence shall be applied by substituting ''170 percent'' for ''140 percent'' and by substituting ''any low-income unit in the building is occupied by a new resi-

dent whose income exceeds 40 percent of area median gross income'' for ''any residential unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation''.

(E) Units where Federal rental assistance is reduced as tenant's income increases

If the gross rent with respect to a residential unit exceeds the limitation under subparagraph (A) by reason of the fact that the income of the occupants thereof exceeds the income limitation applicable under paragraph (1), such unit shall, nevertheless, be treated as a rent-restricted unit for purposes of paragraph (1) if—

(i) a Federal rental assistance payment described in subparagraph (B)(i) is made with respect to such unit or its occupants, and

(ii) the sum of such payment and the gross rent with respect to such unit does not exceed the sum of the amount of such payment which would be made and the gross rent which would be payable with respect to such unit if—

(I) the income of the occupants thereof did not exceed the income limitation applicable under paragraph (1), and

(II) such units were rent-restricted within the meaning of subparagraph (A).

The preceding sentence shall apply to any unit only if the result described in clause (ii) is required by Federal statute as of the date of the enactment of this subparagraph and as of the date the Federal rental assistance payment is made.

(3) Date for meeting requirements

(A) In general

Except as otherwise provided in this paragraph, a building shall be treated as a qualified low-income building only if the project (of which such building is a part) meets the requirements of paragraph (1) not later than the close of the 1st year of the credit period for such building.

(B) Buildings which rely on later buildings for qualification

(i) In general

In determining whether a building (hereinafter in this subparagraph referred to as the ''prior building'') is a qualified low-income building, the taxpayer may take into account 1 or more additional buildings placed in service during the 12-month period described in subparagraph (A) with respect to the prior building only if the taxpayer elects to apply clause (ii) with respect to each additional building taken into account.

(ii) Treatment of elected buildings

In the case of a building which the taxpayer elects to take into account under clause (i), the period under subparagraph (A) for such building shall end at the close of the 12-month period applicable to the prior building.

(iii) Date prior building is treated as placed in service

For purposes of determining the credit period and the compliance period for the prior building, the prior building shall be treated for purposes of this section as placed in service on the most recent date any additional building elected by the taxpayer (with respect to such prior building) was placed in service.

(C) Special rule

A building—

(i) other than the 1st building placed in service as part of a project, and

(ii) other than a building which is placed in service during the 12-month period described in subparagraph (A) with respect to a prior building which becomes a qualified low-income building,

shall in no event be treated as a qualified low-income building unless the project is a qualified low-income housing project (without regard to such building) on the date such building is placed in service.

(D) Projects with more than 1 building must be identified

For purposes of this section, a project shall be treated as consisting of only 1 building unless, before the close of the 1st calendar year in the project period (as defined in subsection (h)(1)(F)(ii)), each building which is (or will be) part of such project is identified in such form and manner as the Secretary may provide.

(4) Certain rules made applicable

Paragraphs (2) (other than subparagraph (A) thereof), (3), (4), (5), (6), and (7) of section 142(d), and section 6652(j), shall apply for purposes of determining whether any project is a qualified low-income housing project and whether any unit is a low-income unit; except that, in applying such provisions for such purposes, the term ''gross rent'' shall have the meaning given such term by paragraph (2)(B) of this subsection.

(5) Election to treat building after compliance period as not part of a project

For purposes of this section, the taxpayer may elect to treat any building as not part of a qualified low-income housing project for any period beginning after the compliance period for such building.

(6) Special rule where de minimis equity contribution

Property shall not be treated as failing to be residential rental property for purposes of this section merely because the occupant of a residential unit in the project pays (on a voluntary basis) to the lessor a de minimis amount to be held toward the purchase by such occupant of a residential unit in such project if—

(A) all amounts so paid are refunded to the occupant on the cessation of his occupancy of a unit in the project, and

(B) the purchase of the unit is not permitted until after the close of the compli-

ance period with respect to the building in which the unit is located.

Any amount paid to the lessor as described in the preceding sentence shall be included in gross rent under paragraph (2) for purposes of determining whether the unit is rent-restricted.

(7) Scattered site projects

Buildings which would (but for their lack of proximity) be treated as a project for purposes of this section shall be so treated if all of the dwelling units in each of the buildings are rent-restricted (within the meaning of paragraph (2)) residential rental units.

(8) Waiver of certain de minimis errors and recertifications

On application by the taxpayer, the Secretary may waive—

(A) any recapture under subsection (j) in the case of any de minimis error in complying with paragraph (1), or

(B) any annual recertification of tenant income for purposes of this subsection, if the entire building is occupied by low-income tenants.

(9) Clarification of general public use requirement

A project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants—

(A) with special needs,

(B) who are members of a specified group under a Federal program or State program or policy that supports housing for such a specified group, or

(C) who are involved in artistic or literary activities.

(h) Limitation on aggregate credit allowable with respect to projects located in a State

(1) Credit may not exceed credit amount allocated to building

(A) In general

The amount of the credit determined under this section for any taxable year with respect to any building shall not exceed the housing credit dollar amount allocated to such building under this subsection.

(B) Time for making allocation

Except in the case of an allocation which meets the requirements of subparagraph (C), (D), (E), or (F), an allocation shall be taken into account under subparagraph (A) only if it is made not later than the close of the calendar year in which the building is placed in service.

(C) Exception where binding commitment

An allocation meets the requirements of this subparagraph if there is a binding commitment (not later than the close of the calendar year in which the building is placed in service) by the housing credit agency to allocate a specified housing credit dollar amount to such building beginning in a specified later taxable year.

(D) Exception where increase in qualified basis

(i) In general

An allocation meets the requirements of this subparagraph if such allocation is made not later than the close of the calendar year in which ends the taxable year to which it will 1st apply but only to the extent the amount of such allocation does not exceed the limitation under clause (ii).

(ii) Limitation

The limitation under this clause is the amount of credit allowable under this section (without regard to this subsection) for a taxable year with respect to an increase in the qualified basis of the building equal to the excess of—

(I) the qualified basis of such building as of the close of the 1st taxable year to which such allocation will apply, over

(II) the qualified basis of such building as of the close of the 1st taxable year to which the most recent prior housing credit allocation with respect to such building applied.

(iii) Housing credit dollar amount reduced by full allocation

Notwithstanding clause (i), the full amount of the allocation shall be taken into account under paragraph (2).

(E) Exception where 10 percent of cost incurred

(i) In general

An allocation meets the requirements of this subparagraph if such allocation is made with respect to a qualified building which is placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made.

(ii) Qualified building

For purposes of clause (i), the term ''qualified building'' means any building which is part of a project if the taxpayer's basis in such project (as of the date which is 1 year after the date that the allocation was made) is more than 10 percent of the taxpayer's reasonably expected basis in such project (as of the close of the second calendar year referred to in clause (i)). Such term does not include any existing building unless a credit is allowable under subsection (e) for rehabilitation expenditures paid or incurred by the taxpayer with respect to such building for a taxable year ending during the second calendar year referred to in clause (i) or the prior taxable year.

(F) Allocation of credit on a project basis

(i) In general

In the case of a project which includes (or will include) more than 1 building, an allocation meets the requirements of this subparagraph if—

(I) the allocation is made to the project for a calendar year during the project period,

(II) the allocation only applies to buildings placed in service during or after the calendar year for which the allocation is made, and

(III) the portion of such allocation which is allocated to any building in such project is specified not later than the close of the calendar year in which the building is placed in service.

(ii) Project period

For purposes of clause (i), the term ''project period'' means the period—

(I) beginning with the 1st calendar year for which an allocation may be made for the 1st building placed in service as part of such project, and

(II) ending with the calendar year the last building is placed in service as part of such project.

(2) Allocated credit amount to apply to all taxable years ending during or after credit allocation year

Any housing credit dollar amount allocated to any building for any calendar year—

(A) shall apply to such building for all taxable years in the compliance period ending during or after such calendar year, and

(B) shall reduce the aggregate housing credit dollar amount of the allocating agency only for such calendar year.

(3) Housing credit dollar amount for agencies

(A) In general

The aggregate housing credit dollar amount which a housing credit agency may allocate for any calendar year is the portion of the State housing credit ceiling allocated under this paragraph for such calendar year to such agency.

(B) State ceiling initially allocated to State housing credit agencies

Except as provided in subparagraphs (D) and (E), the State housing credit ceiling for each calendar year shall be allocated to the housing credit agency of such State. If there is more than 1 housing credit agency of a State, all such agencies shall be treated as a single agency.

(C) State housing credit ceiling

The State housing credit ceiling applicable to any State for any calendar year shall be an amount equal to the sum of—

(i) the unused State housing credit ceiling (if any) of such State for the preceding calendar year,

(ii) the greater of—

(I) $1.75 ($1.50 for 2001) multiplied by the State population, or

(II) $2,000,000,

(iii) the amount of State housing credit ceiling returned in the calendar year, plus

(iv) the amount (if any) allocated under subparagraph (D) to such State by the Secretary.

For purposes of clause (i), the unused State housing credit ceiling for any calendar year is the excess (if any) of the sum of the amounts described in clauses (ii) through (iv) over the aggregate housing credit dollar amount allocated for such year. For purposes of clause (iii), the amount of State housing credit ceiling returned in the calendar year equals the housing credit dollar amount previously allocated within the State to any project which fails to meet the 10 percent test under paragraph (1)(E)(ii) on a date after the close of the calendar year in which the allocation was made or which does not become a qualified low-income housing project within the period required by this section or the terms of the allocation or to any project with respect to which an allocation is cancelled by mutual consent of the housing credit agency and the allocation recipient.

(D) Unused housing credit carryovers allocated among certain States

(i) In general

The unused housing credit carryover of a State for any calendar year shall be assigned to the Secretary for allocation among qualified States for the succeeding calendar year.

(ii) Unused housing credit carryover

For purposes of this subparagraph, the unused housing credit carryover of a State for any calendar year is the excess (if any) of—

(I) the unused State housing credit ceiling for the year preceding such year, over

(II) the aggregate housing credit dollar amount allocated for such year.

(iii) Formula for allocation of unused housing credit carryovers among qualified States

The amount allocated under this subparagraph to a qualified State for any calendar year shall be the amount determined by the Secretary to bear the same ratio to the aggregate unused housing credit carryovers of all States for the preceding calendar year as such State's population for the calendar year bears to the population of all qualified States for the calendar year. For purposes of the preceding sentence, population shall be determined in accordance with section 146(j).

(iv) Qualified State

For purposes of this subparagraph, the term ''qualified State'' means, with respect to a calendar year, any State—

(I) which allocated its entire State housing credit ceiling for the preceding calendar year, and

(II) for which a request is made (not later than May 1 of the calendar year) to receive an allocation under clause (iii).

(E) Special rule for States with constitutional home rule cities

For purposes of this subsection—

(i) In general

The aggregate housing credit dollar amount for any constitutional home rule

city for any calendar year shall be an amount which bears the same ratio to the State housing credit ceiling for such calendar year as—

(I) the population of such city, bears to

(II) the population of the entire State.

(ii) Coordination with other allocations

In the case of any State which contains 1 or more constitutional home rule cities, for purposes of applying this paragraph with respect to housing credit agencies in such State other than constitutional home rule cities, the State housing credit ceiling for any calendar year shall be reduced by the aggregate housing credit dollar amounts determined for such year for all constitutional home rule cities in such State.

(iii) Constitutional home rule city

For purposes of this paragraph, the term ''constitutional home rule city'' has the meaning given such term by section 146(d)(3)(C).

(F) State may provide for different allocation

Rules similar to the rules of section 146(e) (other than paragraph (2)(B) thereof) shall apply for purposes of this paragraph.

(G) Population

For purposes of this paragraph, population shall be determined in accordance with section 146(j).

(H) Cost-of-living adjustment

(i) In general

In the case of a calendar year after 2002, the $2,000,000 and $1.75 amounts in subparagraph (C) shall each be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ''calendar year 2001'' for ''calendar year 1992'' in subparagraph (B) thereof.

(ii) Rounding

(I) In the case of the $2,000,000 amount, any increase under clause (i) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

(II) In the case of the $1.75 amount, any increase under clause (i) which is not a multiple of 5 cents shall be rounded to the next lowest multiple of 5 cents.

(I) Increase in State housing credit ceiling for 2008 and 2009

In the case of calendar years 2008 and 2009—

(i) the dollar amount in effect under subparagraph (C)(ii)(I) for such calendar year (after any increase under subparagraph (H)) shall be increased by $0.20, and

(ii) the dollar amount in effect under subparagraph (C)(ii)(II) for such calendar year (after any increase under subparagraph (H)) shall be increased by an amount equal to 10 percent of such dollar amount (rounded to the next lowest multiple of $5,000).

(4) Credit for buildings financed by tax-exempt bonds subject to volume cap not taken into account

(A) In general

Paragraph (1) shall not apply to the portion of any credit allowable under subsection (a) which is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under section 103 if—

(i) such obligation is taken into account under section 146, and

(ii) principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing or such financing is refunded as described in section 146(i)(6).

(B) Special rule where 50 percent or more of building is financed with tax-exempt bonds subject to volume cap

For purposes of subparagraph (A), if 50 percent or more of the aggregate basis of any building and the land on which the building is located is financed by any obligation described in subparagraph (A), paragraph (1) shall not apply to any portion of the credit allowable under subsection (a) with respect to such building.

(5) Portion of State ceiling set-aside for certain projects involving qualified nonprofit organizations

(A) In general

Not more than 90 percent of the State housing credit ceiling for any State for any calendar year shall be allocated to projects other than qualified low-income housing projects described in subparagraph (B).

(B) Projects involving qualified nonprofit organizations

For purposes of subparagraph (A), a qualified low-income housing project is described in this subparagraph if a qualified nonprofit organization is to own an interest in the project (directly or through a partnership) and materially participate (within the meaning of section 469(h)) in the development and operation of the project throughout the compliance period.

(C) Qualified nonprofit organization

For purposes of this paragraph, the term ''qualified nonprofit organization'' means any organization if—

(i) such organization is described in paragraph (3) or (4) of section 501(c) and is exempt from tax under section 501(a),

(ii) such organization is determined by the State housing credit agency not to be affiliated with or controlled by a for-profit organization;[3] and

(iii) 1 of the exempt purposes of such organization includes the fostering of low-income housing.

(D) Treatment of certain subsidiaries

(i) In general

For purposes of this paragraph, a qualified nonprofit organization shall be treat-

[3] So in original. The semicolon probably should be a comma.

ed as satisfying the ownership and material participation test of subparagraph (B) if any qualified corporation in which such organization holds stock satisfies such test.

(ii) Qualified corporation

For purposes of clause (i), the term ''qualified corporation'' means any corporation if 100 percent of the stock of such corporation is held by 1 or more qualified nonprofit organizations at all times during the period such corporation is in existence.

(E) State may not override set-aside

Nothing in subparagraph (F) of paragraph (3) shall be construed to permit a State not to comply with subparagraph (A) of this paragraph.

(6) Buildings eligible for credit only if minimum long-term commitment to low-income housing

(A) In general

No credit shall be allowed by reason of this section with respect to any building for the taxable year unless an extended low-income housing commitment is in effect as of the end of such taxable year.

(B) Extended low-income housing commitment

For purposes of this paragraph, the term ''extended low-income housing commitment'' means any agreement between the taxpayer and the housing credit agency—

(i) which requires that the applicable fraction (as defined in subsection (c)(1)) for the building for each taxable year in the extended use period will not be less than the applicable fraction specified in such agreement and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii),

(ii) which allows individuals who meet the income limitation applicable to the building under subsection (g) (whether prospective, present, or former occupants of the building) the right to enforce in any State court the requirement and prohibitions of clause (i),

(iii) which prohibits the disposition to any person of any portion of the building to which such agreement applies unless all of the building to which such agreement applies is disposed of to such person,

(iv) which prohibits the refusal to lease to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder,

(v) which is binding on all successors of the taxpayer, and

(vi) which, with respect to the property, is recorded pursuant to State law as a restrictive covenant.

(C) Allocation of credit may not exceed amount necessary to support commitment

(i) In general

The housing credit dollar amount allocated to any building may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building, including any increase in such fraction pursuant to the application of subsection (f)(3) if such increase is reflected in an amended low-income housing commitment.

(ii) Buildings financed by tax-exempt bonds

If paragraph (4) applies to any building the amount of credit allowed in any taxable year may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building. Such commitment may be amended to increase such fraction.

(D) Extended use period

For purposes of this paragraph, the term ''extended use period'' means the period—

(i) beginning on the 1st day in the compliance period on which such building is part of a qualified low-income housing project, and

(ii) ending on the later of—

(I) the date specified by such agency in such agreement, or

(II) the date which is 15 years after the close of the compliance period.

(E) Exceptions if foreclosure or if no buyer willing to maintain low-income status

(i) In general

The extended use period for any building shall terminate—

(I) on the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period, or

(II) on the last day of the period specified in subparagraph (I) if the housing credit agency is unable to present during such period a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building.

Subclause (II) shall not apply to the extent more stringent requirements are provided in the agreement or in State law.

(ii) Eviction, etc. of existing low-income tenants not permitted

The termination of an extended use period under clause (i) shall not be construed to permit before the close of the 3-year period following such termination—

(I) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or

(II) any increase in the gross rent with respect to such unit not otherwise permitted under this section.

(F) Qualified contract

For purposes of subparagraph (E), the term ''qualified contract'' means a bona fide con-

tract to acquire (within a reasonable period after the contract is entered into) the nonlow-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (specified in the extended low-income housing commitment) of—

(i) the sum of—

(I) the outstanding indebtedness secured by, or with respect to, the building,

(II) the adjusted investor equity in the building, plus

(III) other capital contributions not reflected in the amounts described in subclause (I) or (II), reduced by

(ii) cash distributions from (or available for distribution from) the project.

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph, including regulations to prevent the manipulation of the amount determined under the preceding sentence.

(G) Adjusted investor equity

(i) In general

For purposes of subparagraph (E), the term ''adjusted investor equity'' means, with respect to any calendar year, the aggregate amount of cash taxpayers invested with respect to the project increased by the amount equal to—

(I) such amount, multiplied by

(II) the cost-of-living adjustment for such calendar year, determined under section 1(f)(3) by substituting the base calendar year for ''calendar year 1987''.

An amount shall be taken into account as an investment in the project only to the extent there was an obligation to invest such amount as of the beginning of the credit period and to the extent such amount is reflected in the adjusted basis of the project.

(ii) Cost-of-living increases in excess of 5 percent not taken into account

Under regulations prescribed by the Secretary, if the CPI for any calendar year (as defined in section 1(f)(4)) exceeds the CPI for the preceding calendar year by more than 5 percent, the CPI for the base calendar year shall be increased such that such excess shall never be taken into account under clause (i).

(iii) Base calendar year

For purposes of this subparagraph, the term ''base calendar year'' means the calendar year with or within which the 1st taxable year of the credit period ends.

(H) Low-income portion

For purposes of this paragraph, the low-income portion of a building is the portion of such building equal to the applicable fraction specified in the extended low-income housing commitment for the building.

(I) Period for finding buyer

The period referred to in this subparagraph is the 1-year period beginning on the date (after the 14th year of the compliance period) the taxpayer submits a written request to the housing credit agency to find a person to acquire the taxpayer's interest in the low-income portion of the building.

(J) Effect of noncompliance

If, during a taxable year, there is a determination that an extended low-income housing agreement was not in effect as of the beginning of such year, such determination shall not apply to any period before such year and subparagraph (A) shall be applied without regard to such determination if the failure is corrected within 1 year from the date of the determination.

(K) Projects which consist of more than 1 building

The application of this paragraph to projects which consist of more than 1 building shall be made under regulations prescribed by the Secretary.

(7) Special rules

(A) Building must be located within jurisdiction of credit agency

A housing credit agency may allocate its aggregate housing credit dollar amount only to buildings located in the jurisdiction of the governmental unit of which such agency is a part.

(B) Agency allocations in excess of limit

If the aggregate housing credit dollar amounts allocated by a housing credit agency for any calendar year exceed the portion of the State housing credit ceiling allocated to such agency for such calendar year, the housing credit dollar amounts so allocated shall be reduced (to the extent of such excess) for buildings in the reverse of the order in which the allocations of such amounts were made.

(C) Credit reduced if allocated credit dollar amount is less than credit which would be allowable without regard to placed in service convention, etc.

(i) In general

The amount of the credit determined under this section with respect to any building shall not exceed the clause (ii) percentage of the amount of the credit which would (but for this subparagraph) be determined under this section with respect to such building.

(ii) Determination of percentage

For purposes of clause (i), the clause (ii) percentage with respect to any building is the percentage which—

(I) the housing credit dollar amount allocated to such building bears to

(II) the credit amount determined in accordance with clause (iii).

(iii) Determination of credit amount

The credit amount determined in accordance with this clause is the amount of the

credit which would (but for this subparagraph) be determined under this section with respect to the building if—

(I) this section were applied without regard to paragraphs (2)(A) and (3)(B) of subsection (f), and

(II) subsection (f)(3)(A) were applied without regard to ''the percentage equal to ⅔ of''.

(D) Housing credit agency to specify applicable percentage and maximum qualified basis

In allocating a housing credit dollar amount to any building, the housing credit agency shall specify the applicable percentage and the maximum qualified basis which may be taken into account under this section with respect to such building. The applicable percentage and maximum qualified basis so specified shall not exceed the applicable percentage and qualified basis determined under this section without regard to this subsection.

(8) Other definitions

For purposes of this subsection—

(A) Housing credit agency

The term ''housing credit agency'' means any agency authorized to carry out this subsection.

(B) Possessions treated as States

The term ''State'' includes a possession of the United States.

(i) Definitions and special rules

For purposes of this section—

(1) Compliance period

The term ''compliance period'' means, with respect to any building, the period of 15 taxable years beginning with the 1st taxable year of the credit period with respect thereto.

(2) Determination of whether building is federally subsidized

(A) In general

Except as otherwise provided in this paragraph, for purposes of subsection (b)(1), a new building shall be treated as federally subsidized for any taxable year if, at any time during such taxable year or any prior taxable year, there is or was outstanding any obligation the interest on which is exempt from tax under section 103 the proceeds of which[4] are or were used (directly or indirectly) with respect to such building or the operation thereof.

(B) Election to reduce eligible basis by proceeds of obligations

A tax-exempt obligation shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude from the eligible basis of the building for purposes of subsection (d) the proceeds of such obligation.

(C) Special rule for subsidized construction financing

Subparagraph (A) shall not apply to any tax-exempt obligation used to provide construction financing for any building if—

(i) such obligation (when issued) identified the building for which the proceeds of such obligation would be used, and

(ii) such obligation is redeemed before such building is placed in service.

(3) Low-income unit

(A) In general

The term ''low-income unit'' means any unit in a building if—

(i) such unit is rent-restricted (as defined in subsection (g)(2)), and

(ii) the individuals occupying such unit meet the income limitation applicable under subsection (g)(1) to the project of which such building is a part.

(B) Exceptions

(i) In general

A unit shall not be treated as a low-income unit unless the unit is suitable for occupancy and used other than on a transient basis.

(ii) Suitability for occupancy

For purposes of clause (i), the suitability of a unit for occupancy shall be determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes.

(iii) Transitional housing for homeless

For purposes of clause (i), a unit shall be considered to be used other than on a transient basis if the unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building—

(I) which is used exclusively to facilitate the transition of homeless individuals (within the meaning of section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302), as in effect on the date of the enactment of this clause) to independent living within 24 months, and

(II) in which a governmental entity or qualified nonprofit organization (as defined in subsection (h)(5)) provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

(iv) Single-room occupancy units

For purposes of clause (i), a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.

(C) Special rule for buildings having 4 or fewer units

In the case of any building which has 4 or fewer residential rental units, no unit in such building shall be treated as a low-income unit if the units in such building are owned by—

(i) any individual who occupies a residential unit in such building, or

(ii) any person who is related (as defined in subsection (d)(2)(D)(iii)) to such individual.

(D) Certain students not to disqualify unit

A unit shall not fail to be treated as a low-income unit merely because it is occupied—

[4] So in original. See 2008 Amendment note below.

(i) by an individual who is—

(I) a student and receiving assistance under title IV of the Social Security Act,

(II) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act, or

(III) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws, or

(ii) entirely by full-time students if such students are—

(I) single parents and their children and such parents are not dependents (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual and such children are not dependents (as so defined) of another individual other than a parent of such children, or.[5]

(II) married and file a joint return.

(E) Owner-occupied buildings having 4 or fewer units eligible for credit where development plan

(i) In general

Subparagraph (C) shall not apply to the acquisition or rehabilitation of a building pursuant to a development plan of action sponsored by a State or local government or a qualified nonprofit organization (as defined in subsection (h)(5)(C)).

(ii) Limitation on credit

In the case of a building to which clause (i) applies, the applicable fraction shall not exceed 80 percent of the unit fraction.

(iii) Certain unrented units treated as owner-occupied

In the case of a building to which clause (i) applies, any unit which is not rented for 90 days or more shall be treated as occupied by the owner of the building as of the 1st day it is not rented.

(4) New building

The term ''new building'' means a building the original use of which begins with the taxpayer.

(5) Existing building

The term ''existing building'' means any building which is not a new building.

(6) Application to estates and trusts

In the case of an estate or trust, the amount of the credit determined under subsection (a) and any increase in tax under subsection (j) shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(7) Impact of tenant's right of 1st refusal to acquire property

(A) In general

No Federal income tax benefit shall fail to be allowable to the taxpayer with respect to any qualified low-income building merely by reason of a right of 1st refusal held by the tenants (in cooperative form or otherwise) or resident management corporation of such building or by a qualified nonprofit organization (as defined in subsection (h)(5)(C)) or government agency to purchase the property after the close of the compliance period for a price which is not less than the minimum purchase price determined under subparagraph (B).

(B) Minimum purchase price

For purposes of subparagraph (A), the minimum purchase price under this subparagraph is an amount equal to the sum of—

(i) the principal amount of outstanding indebtedness secured by the building (other than indebtedness incurred within the 5-year period ending on the date of the sale to the tenants), and

(ii) all Federal, State, and local taxes attributable to such sale.

Except in the case of Federal income taxes, there shall not be taken into account under clause (ii) any additional tax attributable to the application of clause (ii).

(8) Treatment of rural projects

For purposes of this section, in the case of any project for residential rental property located in a rural area (as defined in section 520 of the Housing Act of 1949), any income limitation measured by reference to area median gross income shall be measured by reference to the greater of area median gross income or national non-metropolitan median income. The preceding sentence shall not apply with respect to any building if paragraph (1) of section 42(h) does not apply by reason of paragraph (4) thereof to any portion of the credit determined under this section with respect to such building.

(9) Coordination with low-income housing grants

(A) Reduction in State housing credit ceiling for low-income housing grants received in 2009

For purposes of this section, the amounts described in clauses (i) through (iv) of subsection (h)(3)(C) with respect to any State for 2009 shall each be reduced by so much of such amount as is taken into account in determining the amount of any grant to such State under section 1602 of the American Recovery and Reinvestment Tax Act of 2009.

(B) Special rule for basis

Basis of a qualified low-income building shall not be reduced by the amount of any grant described in subparagraph (A).

(j) Recapture of credit

(1) In general

If—

(A) as of the close of any taxable year in the compliance period, the amount of the qualified basis of any building with respect to the taxpayer is less than

(B) the amount of such basis as of the close of the preceding taxable year,

[5] So in original. The period probably should not appear.

then the taxpayer's tax under this chapter for the taxable year shall be increased by the credit recapture amount.

(2) Credit recapture amount

For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of—

(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if the accelerated portion of the credit allowable by reason of this section were not allowed for all prior taxable years with respect to the excess of the amount described in paragraph (1)(B) over the amount described in paragraph (1)(A), plus

(B) interest at the overpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

(3) Accelerated portion of credit

For purposes of paragraph (2), the accelerated portion of the credit for the prior taxable years with respect to any amount of basis is the excess of—

(A) the aggregate credit allowed by reason of this section (without regard to this subsection) for such years with respect to such basis, over

(B) the aggregate credit which would be allowable by reason of this section for such years with respect to such basis if the aggregate credit which would (but for this subsection) have been allowable for the entire compliance period were allowable ratably over 15 years.

(4) Special rules

(A) Tax benefit rule

The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

(B) Only basis for which credit allowed taken into account

Qualified basis shall be taken into account under paragraph (1)(B) only to the extent such basis was taken into account in determining the credit under subsection (a) for the preceding taxable year referred to in such paragraph.

(C) No recapture of additional credit allowable by reason of subsection (f)(3)

Paragraph (1) shall apply to a decrease in qualified basis only to the extent such decrease exceeds the amount of qualified basis with respect to which a credit was allowable for the taxable year referred to in paragraph (1)(B) by reason of subsection (f)(3).

(D) No credits against tax

Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter.

(E) No recapture by reason of casualty loss

The increase in tax under this subsection shall not apply to a reduction in qualified basis by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

(F) No recapture where de minimis changes in floor space

The Secretary may provide that the increase in tax under this subsection shall not apply with respect to any building if—

(i) such increase results from a de minimis change in the floor space fraction under subsection (c)(1), and

(ii) the building is a qualified low-income building after such change.

(5) Certain partnerships treated as the taxpayer

(A) In general

For purposes of applying this subsection to a partnership to which this paragraph applies—

(i) such partnership shall be treated as the taxpayer to which the credit allowable under subsection (a) was allowed,

(ii) the amount of such credit allowed shall be treated as the amount which would have been allowed to the partnership were such credit allowable to such partnership,

(iii) paragraph (4)(A) shall not apply, and

(iv) the amount of the increase in tax under this subsection for any taxable year shall be allocated among the partners of such partnership in the same manner as such partnership's taxable income for such year is allocated among such partners.

(B) Partnerships to which paragraph applies

This paragraph shall apply to any partnership which has 35 or more partners unless the partnership elects not to have this paragraph apply.

(C) Special rules

(i) Husband and wife treated as 1 partner

For purposes of subparagraph (B)(i), a husband and wife (and their estates) shall be treated as 1 partner.

(ii) Election irrevocable

Any election under subparagraph (B), once made, shall be irrevocable.

(6) No recapture on disposition of building which continues in qualified use

(A) In general

The increase in tax under this subsection shall not apply solely by reason of the disposition of a building (or an interest therein) if it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.

(B) Statute of limitations

If a building (or an interest therein) is disposed of during any taxable year and there is

any reduction in the qualified basis of such building which results in an increase in tax under this subsection for such taxable or any subsequent taxable year, then—

(i) the statutory period for the assessment of any deficiency with respect to such increase in tax shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of such reduction in qualified basis, and

(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(k) Application of at-risk rules

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, rules similar to the rules of section 49(a)(1) (other than subparagraphs (D)(ii)(II) and (D)(iv)(I) thereof), section 49(a)(2), and section 49(b)(1) shall apply in determining the qualified basis of any building in the same manner as such sections apply in determining the credit base of property.

(2) Special rules for determining qualified person

For purposes of paragraph (1)—

(A) In general

If the requirements of subparagraphs (B), (C), and (D) are met with respect to any financing borrowed from a qualified nonprofit organization (as defined in subsection (h)(5)), the determination of whether such financing is qualified commercial financing with respect to any qualified low-income building shall be made without regard to whether such organization—

(i) is actively and regularly engaged in the business of lending money, or

(ii) is a person described in section 49(a)(1)(D)(iv)(II).

(B) Financing secured by property

The requirements of this subparagraph are met with respect to any financing if such financing is secured by the qualified low-income building, except that this subparagraph shall not apply in the case of a federally assisted building described in subsection (d)(6)(B) if—

(i) a security interest in such building is not permitted by a Federal agency holding or insuring the mortgage secured by such building, and

(ii) the proceeds from the financing (if any) are applied to acquire or improve such building..[6]

(C) Portion of building attributable to financing

The requirements of this subparagraph are met with respect to any financing for any taxable year in the compliance period if, as of the close of such taxable year, not more than 60 percent of the eligible basis of the qualified low-income building is attributable to such financing (reduced by the principal and interest of any governmental financing which is part of a wrap-around mortgage involving such financing).

(D) Repayment of principal and interest

The requirements of this subparagraph are met with respect to any financing if such financing is fully repaid on or before the earliest of—

(i) the date on which such financing matures,

(ii) the 90th day after the close of the compliance period with respect to the qualified low-income building, or

(iii) the date of its refinancing or the sale of the building to which such financing relates.

In the case of a qualified nonprofit organization which is not described in section 49(a)(1)(D)(iv)(II) with respect to a building, clause (ii) of this subparagraph shall be applied as if the date described therein were the 90th day after the earlier of the date the building ceases to be a qualified low-income building or the date which is 15 years after the close of a compliance period with respect thereto.

(3) Present value of financing

If the rate of interest on any financing described in paragraph (2)(A) is less than the rate which is 1 percentage point below the applicable Federal rate as of the time such financing is incurred, then the qualified basis (to which such financing relates) of the qualified low-income building shall be the present value of the amount of such financing, using as the discount rate such applicable Federal rate. For purposes of the preceding sentence, the rate of interest on any financing shall be determined by treating interest to the extent of government subsidies as not payable.

(4) Failure to fully repay

(A) In general

To the extent that the requirements of paragraph (2)(D) are not met, then the taxpayer's tax under this chapter for the taxable year in which such failure occurs shall be increased by an amount equal to the applicable portion of the credit under this section with respect to such building, increased by an amount of interest for the period—

(i) beginning with the due date for the filing of the return of tax imposed by chapter 1 for the 1st taxable year for which such credit was allowable, and

(ii) ending with the due date for the taxable year in which such failure occurs,

determined by using the underpayment rate and method under section 6621.

(B) Applicable portion

For purposes of subparagraph (A), the term ''applicable portion'' means the aggregate decrease in the credits allowed to a taxpayer under section 38 for all prior taxable years

[6] So in original.

which would have resulted if the eligible basis of the building were reduced by the amount of financing which does not meet requirements of paragraph (2)(D).

(C) Certain rules to apply

Rules similar to the rules of subparagraphs (A) and (D) of subsection (j)(4) shall apply for purposes of this subsection.

(*l*) Certifications and other reports to Secretary

(1) Certification with respect to 1st year of credit period

Following the close of the 1st taxable year in the credit period with respect to any qualified low-income building, the taxpayer shall certify to the Secretary (at such time and in such form and in such manner as the Secretary prescribes)—

(A) the taxable year, and calendar year, in which such building was placed in service,

(B) the adjusted basis and eligible basis of such building as of the close of the 1st year of the credit period,

(C) the maximum applicable percentage and qualified basis permitted to be taken into account by the appropriate housing credit agency under subsection (h),

(D) the election made under subsection (g) with respect to the qualified low-income housing project of which such building is a part, and

(E) such other information as the Secretary may require.

In the case of a failure to make the certification required by the preceding sentence on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, no credit shall be allowable by reason of subsection (a) with respect to such building for any taxable year ending before such certification is made.

(2) Annual reports to the Secretary

The Secretary may require taxpayers to submit an information return (at such time and in such form and manner as the Secretary prescribes) for each taxable year setting forth—

(A) the qualified basis for the taxable year of each qualified low-income building of the taxpayer,

(B) the information described in paragraph (1)(C) for the taxable year, and

(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the return required by the Secretary under the preceding sentence on the date prescribed therefor.

(3) Annual reports from housing credit agencies

Each agency which allocates any housing credit amount to any building for any calendar year shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual report specifying—

(A) the amount of housing credit amount allocated to each building for such year,

(B) sufficient information to identify each such building and the taxpayer with respect thereto, and

(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the report required by the preceding sentence on the date prescribed therefor.

(m) Responsibilities of housing credit agencies

(1) Plans for allocation of credit among projects

(A) In general

Notwithstanding any other provision of this section, the housing credit dollar amount with respect to any building shall be zero unless—

(i) such amount was allocated pursuant to a qualified allocation plan of the housing credit agency which is approved by the governmental unit (in accordance with rules similar to the rules of section 147(f)(2) (other than subparagraph (B)(ii) thereof)) of which such agency is a part,

(ii) such agency notifies the chief executive officer (or the equivalent) of the local jurisdiction within which the building is located of such project and provides such individual a reasonable opportunity to comment on the project,

(iii) a comprehensive market study of the housing needs of low-income individuals in the area to be served by the project is conducted before the credit allocation is made and at the developer's expense by a disinterested party who is approved by such agency, and

(iv) a written explanation is available to the general public for any allocation of a housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the housing credit agency.

(B) Qualified allocation plan

For purposes of this paragraph, the term ''qualified allocation plan'' means any plan—

(i) which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions,

(ii) which also gives preference in allocating housing credit dollar amounts among selected projects to—

(I) projects serving the lowest income tenants,

(II) projects obligated to serve qualified tenants for the longest periods, and

(III) projects which are located in qualified census tracts (as defined in subsection (d)(5)(C)) and the development of which contributes to a concerted community revitalization plan, and

(iii) which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompli-

ance with habitability standards through regular site visits.

(C) Certain selection criteria must be used

The selection criteria set forth in a qualified allocation plan must include

(i) project location,

(ii) housing needs characteristics,

(iii) project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan,

(iv) sponsor characteristics,

(v) tenant populations with special housing needs,

(vi) public housing waiting lists,

(vii) tenant populations of individuals with children,

(viii) projects intended for eventual tenant ownership,

(ix) the energy efficiency of the project, and

(x) the historic nature of the project.

(D) Application to bond financed projects

Subsection (h)(4) shall not apply to any project unless the project satisfies the requirements for allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the project is located.

(2) Credit allocated to building not to exceed amount necessary to assure project feasibility

(A) In general

The housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

(B) Agency evaluation

In making the determination under subparagraph (A), the housing credit agency shall consider—

(i) the sources and uses of funds and the total financing planned for the project,

(ii) any proceeds or receipts expected to be generated by reason of tax benefits,

(iii) the percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries, and

(iv) the reasonableness of the developmental and operational costs of the project.

Clause (iii) shall not be applied so as to impede the development of projects in hard-to-develop areas. Such a determination shall not be construed to be a representation or warranty as to the feasibility or viability of the project.

(C) Determination made when credit amount applied for and when building placed in service

(i) In general

A determination under subparagraph (A) shall be made as of each of the following times:

(I) The application for the housing credit dollar amount.

(II) The allocation of the housing credit dollar amount.

(III) The date the building is placed in service.

(ii) Certification as to amount of other subsidies

Prior to each determination under clause (i), the taxpayer shall certify to the housing credit agency the full extent of all Federal, State, and local subsidies which apply (or which the taxpayer expects to apply) with respect to the building.

(D) Application to bond financed projects

Subsection (h)(4) shall not apply to any project unless the governmental unit which issued the bonds (or on behalf of which the bonds were issued) makes a determination under rules similar to the rules of subparagraphs (A) and (B).

(n) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

(1) dealing with—

(A) projects which include more than 1 building or only a portion of a building,

(B) buildings which are placed in service in portions,

(2) providing for the application of this section to short taxable years,

(3) preventing the avoidance of the rules of this section, and

(4) providing the opportunity for housing credit agencies to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after their discovery, taking into account the availability of regulations and other administrative guidance from the Secretary.

(Added Pub. L. 99–514, title II, § 252(a), Oct. 22, 1986, 100 Stat. 2189; amended Pub. L. 99–509, title VIII, § 8072(a), Oct. 21, 1986, 100 Stat. 1964; Pub. L. 100–647, title I, §§ 1002(*l*)(1)–(25), (32), 1007(g)(3)(B), title IV, §§ 4003(a), (b)(1), (3), 4004(a), Nov. 10, 1988, 102 Stat. 3373–3381, 3435, 3643, 3644; Pub. L. 101–239, title VII, §§ 7108(a)(1), (b)–(e)(2), (f)–(m), (n)(2)–(q), 7811(a), 7831(c), 7841(d)(13)–(15), Dec. 19, 1989, 103 Stat. 2306–2321, 2406, 2426, 2429; Pub. L. 101–508, title XI, §§ 11407(a)(1), (b)(1)–(9), 11701(a)(1)–(3)(A), (4), (5)(A), (6)–(10), 11812(b)(3), 11813(b)(3), Nov. 5, 1990, 104 Stat. 1388–474, 1388–475, 1388–505 to 1388–507, 1388–535, 1388–551; Pub. L. 102–227, title I, § 107(a), Dec. 11, 1991, 105 Stat. 1687; Pub. L. 103–66, title XIII, § 13142(a)(1), (b)(1)–(5), Aug. 10, 1993, 107 Stat. 437–439; Pub. L. 104–188, title I, § 1704(t)(53), (64), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 105–206, title VI, § 6004(g)(5), July 22, 1998, 112 Stat. 796; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 106–554, § 1(a)(7) [title I, §§ 131(a)–(c), 132–136], Dec. 21, 2000, 114 Stat. 2763, 2763A–610 to 2763A–613; Pub. L. 107–147, title IV, § 417(2), (3), Mar. 9, 2002, 116 Stat. 56; Pub. L. 108–311, title II, § 207(8), title IV, § 408(a)(3), Oct. 4, 2004, 118 Stat. 1177, 1191; Pub. L. 110–142, § 6(a), Dec. 20, 2007, 121 Stat. 1806; Pub. L.

110–289, div. C, title I, §§ 3001–3002(b), 3003(a)–(g), 3004(a)–(g), 3007(b), July 30, 2008, 122 Stat. 2878–2884, 2886; Pub. L. 111–5, div. B, title I, § 1404, Feb. 17, 2009, 123 Stat. 352.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (b)(2)(A), is the date of enactment of Pub. L. 110–289, which was approved July 30, 2008.

Section 201(a) of the Tax Reform Act of 1986, referred to in subsec. (c)(2)(B), is section 201(a) of Pub. L. 99–514, which amended section 168 of this title generally.

Section 3 of the Federal Deposit Insurance Act, referred to in subsec. (d)(6)(B), is classified to section 1813 of Title 12, Banks and Banking.

Section 8 of the United States Housing Act of 1937, referred to in subsecs. (d)(6)(C)(i), (g)(2)(B), and (h)(6)(B)(iv), is classified to section 1437f of Title 42, The Public Health and Welfare. Section 8(e)(2) of the Act was repealed by Pub. L. 101–625, title II, § 289(b)(1), Nov. 28, 1990, 104 Stat. 4128, effective Oct. 1, 1991, but to remain in effect with respect to single room occupancy dwellings as authorized by subchapter IV (§ 11361 et seq.) of chapter 119 of Title 42. See section 12839(b) of Title 42.

Sections 221(d)(3), (4) and 236 of the National Housing Act, referred to in subsec. (d)(6)(C)(i), are classified to sections 1715*l*(d)(3), (4) and 1715z–1, respectively, of Title 12, Banks and Banking.

Sections 515, 502(c), and 520 of the Housing Act of 1949, referred to in subsecs. (d)(6)(C)(i), (g)(2)(B)(iv), and (i)(8), are classified to sections 1485, 1472(c), and 1490, respectively, of Title 42, The Public Health and Welfare.

The date of the enactment of this subparagraph, referred to in subsec. (g)(2)(E), is the date of enactment of Pub. L. 100–647, which was approved Nov. 10, 1988.

The date of the enactment of this clause, referred to in subsec. (i)(3)(B)(iii)(I), is date of enactment of Pub. L. 101–239, which was approved Dec. 19, 1989.

The Social Security Act, referred to in subsec. (i)(3)(D)(i)(I), (II), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title IV of the Act is classified generally to subchapter IV (§ 601 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Parts B and E of title IV of the Act are classified generally to parts B (§ 620 et seq.) and E (§ 670 et seq.), respectively, of subchapter IV of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Job Training Partnership Act, referred to in subsec. (i)(3)(D)(i)(III), is Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322, which was classified generally to chapter 19 (§ 1501 et seq.) of Title 29, Labor, and was repealed by Pub. L. 105–220, title I, § 199(b)(2), (c)(2)(B), Aug. 7, 1998, 112 Stat. 1059, effective July 1, 2000. Pursuant to section 2940(b) of Title 29, references to a provision of the Job Training Partnership Act, effective Aug. 7, 1998, are deemed to refer to that provision or the corresponding provision of the Workforce Investment Act of 1998, Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, and effective July 1, 2000, are deemed to refer to the corresponding provision of the Workforce Investment Act of 1998. For complete classification of the Job Training Partnership Act to the Code, see Tables. For complete classification of the Workforce Investment Act of 1998 to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

Section 1602 of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (i)(9)(A), is section 1602 of Pub. L. 111–5, which is set out as a note below.

PRIOR PROVISIONS

A prior section 42, added Pub. L. 94–12, title II, § 203(a), Mar. 29, 1975, 89 Stat. 29; amended Pub. L. 94–164, § 3(a)(1), Dec. 23, 1975, 89 Stat. 972; Pub. L. 94–455, title IV, § 401(a)(2)(A), (B), title V, § 503(b)(4), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1555, 1562, 1834; Pub. L. 95–30, title I, § 101(c), May 23, 1977, 91 Stat. 132, which related to general tax credit allowed to individuals in an amount equal to the greater of (1) 2% of taxable income not exceeding $9,000 or (2) $35 multiplied by each exemption the taxpayer was entitled to, expired Dec. 31, 1978, pursuant to the terms of: (1) Pub. L. 94–12, § 209(a) as amended by Pub. L. 94–164, § 2(e), set out as an Effective and Termination Dates of 1975 Amendment note under section 56 of this title; (2) Pub. L. 94–164, § 3(b), as amended by Pub. L. 94–455, § 401(a)(1) and Pub. L. 95–30, § 103(a); and (3) Pub. L. 94–455, § 401(e), as amended by Pub. L. 95–30, § 103(c) and Pub. L. 95–600, title I, § 103(b), Nov. 6, 1978, 92 Stat. 2771, set out as an Effective and Termination Dates of 1976 Amendment note under section 32 of this title.

Another prior section 42 was renumbered section 37 of this title.

AMENDMENTS

2009—Subsec. (i). Pub. L. 111–5 added par. (9).

2008—Subsec. (b). Pub. L. 110–289, § 3002(a), redesignated par. (2) as (1), in heading, substituted ''Determination of applicable percentage'' for ''Buildings placed in service after 1987'', in text, substituted ''For purposes of this section, the term 'applicable percentage' means, with respect to any building, the appropriate percentage'' for ''(A) IN GENERAL.—In the case of any qualified low-income building placed in service by the taxpayer after 1987, the term 'applicable percentage' means the appropriate percentage'', ''a new building which is not federally subsidized for the taxable year'' for ''a building described in paragraph (1)(A)'', and ''a building not described in clause (i)'' for ''a building described in paragraph (1)(B)'', added par. (2), and struck out ''For purposes of this section—'' after subsec. heading and former par. (1) which related to buildings placed in service during 1987.

Subsec. (c)(2). Pub. L. 110–289, § 3004(a), struck out concluding provisions which read as follows: ''Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) of the United States Housing Act of 1937 (other than assistance under the McKinney-Vento Homeless Assistance Act (as in effect on the date of the enactment of this sentence)).''

Subsec. (d)(2)(B)(ii). Pub. L. 110–289, § 3003(g)(1), substituted ''the date the building was last placed in service,'' for ''the later of—

''(I) the date the building was last placed in service, or

''(II) the date of the most recent nonqualified substantial improvement of the building,''.

Subsec. (d)(2)(D). Pub. L. 110–289, § 3003(e), (g)(2), redesignated cls. (ii) and (iii)(II) as (i) and (ii), respectively, in cl. (ii) struck out at end ''For purposes of the preceding sentence, in applying section 267(b) or 707(b)(1), '10 percent' shall be substituted for '50 percent'.'', and struck out former cls. (i) and (iii)(I) which related to the term ''nonqualified substantial improvement'' and application of section 179 for purposes of subpar. (B)(i).

Subsec. (d)(4)(C)(ii). Pub. L. 110–289, § 3003(c), substituted ''shall not exceed the sum of—'' for ''shall not exceed 10 percent of the eligible basis of the qualified low-income housing project of which it is a part.'' and added subcls. (I) and (II).

Subsec. (d)(5)(A). Pub. L. 110–289, § 3003(d), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: ''If, during any taxable year of the compliance period, a grant is made with respect to any building or the operation thereof and any portion of such grant is funded with Federal funds (whether or not includible in gross income), the eligible basis of such building for such taxable year and all succeeding taxable years shall be reduced by the portion of such grant which is so funded.''

Subsec. (d)(5)(B), (C). Pub. L. 110–289, § 3003(g)(3), redesignated subpar. (C) as (B) and struck out heading and text of former subpar. (B). Text read as follows: ''The eligible basis of any building shall not include any portion of its adjusted basis which is attributable to amounts with respect to which an election is made under section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).''

Subsec. (d)(5)(C)(v). Pub. L. 110–289, § 3003(a), added cl. (v).

Subsec. (d)(6). Pub. L. 110–289, § 3003(f), amended par. (6) generally. Prior to amendment, par. (6) consisted of subpars. (A) to (E) relating to general rule for waiver of par. (2)(B)(ii) with respect to any federally-assisted building, definition of ''federally-assisted building'', waiver for buildings with low-income occupancy, waiver for buildings acquired from insured depository institutions in default, and definition of ''appropriate Federal official''.

Subsec. (e)(3)(A)(ii)(I). Pub. L. 110–289, § 3003(b)(1)(A), substituted ''20 percent'' for ''10 percent''.

Subsec. (e)(3)(A)(ii)(II). Pub. L. 110–289, § 3003(b)(1)(B), substituted ''$6,000'' for ''$3,000''.

Subsec. (e)(3)(D). Pub. L. 110–289, § 3003(b)(2), added subpar. (D).

Subsec. (f)(5)(B)(ii)(II). Pub. L. 110–289, § 3003(b)(3), substituted ''if the dollar amount in effect under subsection (e)(3)(A)(ii)(II) were two-thirds of such amount.'' for ''if subsection (e)(3)(A)(ii)(II) were applied by substituting '$2,000' for '$3,000'.''

Subsec. (g)(9). Pub. L. 110–289, § 3004(g), added par. (9).

Subsec. (h)(1)(E)(ii). Pub. L. 110–289, § 3004(b), substituted ''(as of the date which is 1 year after the date that the allocation was made)'' for ''(as of the later of the date which is 6 months after the date that the allocation was made or the close of the calendar year in which the allocation is made)''.

Subsec. (h)(3)(I). Pub. L. 110–289, § 3001, added subpar. (I).

Subsec. (h)(4)(A)(ii). Pub. L. 110–289, § 3007(b), inserted ''or such financing is refunded as described in section 146(i)(6)'' before period at end.

Subsec. (i)(2)(A). Pub. L. 110–289, § 3002(b)(1), struck out '', or any below market Federal loan,'' before ''the proceeds of which''.

Subsec. (i)(2)(B). Pub. L. 110–289, § 3002(b)(2)(A), in heading, struck out ''balance of loan or'' before ''proceeds'' and in text, struck out ''loan or'' before ''tax-exempt obligation'' and substituted ''for purposes of subsection (d) the proceeds of such obligation.'' for ''for purposes of subsection (d)—

''(i) in the case of a loan, the principal amount of such loan, and

''(ii) in the case of a tax-exempt obligation, the proceeds of such obligation.''

Subsec. (i)(2)(C). Pub. L. 110–289, § 3002(b)(2)(B)(i), struck out ''or below market Federal loan'' after ''tax-exempt obligation'' in introductory provisions.

Subsec. (i)(2)(C)(i). Pub. L. 110–289, § 3002(b)(2)(B)(ii), substituted ''(when issued)'' for ''or loan (when issued or made)'' and ''the proceeds of such obligation'' for ''the proceeds of such obligation or loan''.

Subsec. (i)(2)(C)(ii). Pub. L. 110–289, § 3002(b)(2)(B)(iii), struck out '', and such loan is repaid,'' after ''redeemed''.

Subsec. (i)(2)(D), (E). Pub. L. 110–289, § 3002(b)(2)(C), struck out subpars. (D) and (E) which related to below market Federal loan and buildings receiving HOME assistance or Native American housing assistance, respectively.

Subsec. (i)(3)(D)(i)(II), (III). Pub. L. 110–289, § 3004(e), added subcl. (II) and redesignated former subcl. (II) as (III).

Subsec. (i)(8). Pub. L. 110–289, § 3004(f), added par. (8).

Subsec. (j)(6). Pub. L. 110–289, § 3004(c), amended par. (6) generally. Prior to amendment, text read as follows: ''In the case of a disposition of a building or an interest therein, the taxpayer shall be discharged from liability for any additional tax under this subsection by reason of such disposition if—

''(A) the taxpayer furnishes to the Secretary a bond in an amount satifactory to the Secretary and for the period required by the Secretary, and

''(B) it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.''

Subsec. (m)(1)(C)(ix), (x). Pub. L. 110–289, § 3004(d), added cls. (ix) and (x).

2007—Subsec. (i)(3)(D)(ii)(I). Pub. L. 110–142 amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''single parents and their children and such parents and children are not dependents (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual, or''.

2004—Subsec. (d)(2)(D)(iii)(I). Pub. L. 108–311, § 408(a)(3), substituted ''section 179(d)(7)'' for ''section 179(b)(7)''.

Subsec. (i)(3)(D)(ii)(I). Pub. L. 108–311, § 207(8), inserted '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

2002—Subsec. (h)(3)(C). Pub. L. 107–147, § 417(2), substituted ''the amounts described in clauses (ii) through (iv) over the aggregate housing credit dollar amount allocated for such year'' for ''the amounts described in clauses (ii) and (iii) over the aggregate housing credit dollar amount allocated for such year'' in concluding provisions.

Subsec. (m)(1)(B)(ii)(II), (III). Pub. L. 107–147, § 417(3), struck out second ''and'' at end of subcl. (II) and inserted ''and'' at end of subcl. (III).

2000—Subsec. (c)(2). Pub. L. 106–400 substituted ''McKinney-Vento Homeless Assistance Act'' for ''Stewart B. McKinney Homeless Assistance Act'' in concluding provisions.

Subsec. (d)(4)(A). Pub. L. 106–554, § 1(a)(7) [title I, § 134(a)(1)], substituted ''subparagraphs (B) and (C)'' for ''subparagraph (B)''.

Subsec. (d)(4)(C), (D). Pub. L. 106–554, § 1(a)(7) [title I, § 134(a)(2), (3)], added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (d)(5)(C)(ii)(I). Pub. L. 106–554, § 1(a)(7) [title I, § 135(b)], in first sentence, inserted ''either'' before ''in which 50 percent'' and ''or which has a poverty rate of at least 25 percent'' before period at end.

Subsec. (h)(1)(E)(ii). Pub. L. 106–554, § 1(a)(7) [title I, § 135(a)(1)], in first sentence, substituted ''(as of the later of the date which is 6 months after the date that the allocation was made or the close of the calendar year in which the allocation'' for ''(as of the close of the calendar year in which the allocation''.

Subsec. (h)(3)(C). Pub. L. 106–554, § 1(a)(7) [title I, § 136(b)], which directed the substitution of ''clauses (i) through (iv)'' for ''clauses (i) and (iii)'' in the first sentence of concluding provisions, could not be executed because the words ''clauses (i) and (iii)'' did not appear subsequent to the amendment by Pub. L. 106–554, § 1(a)(7) [title I, § 131(c)(1)(B)]. See below.

Pub. L. 106–554, § 1(a)(7) [title I, § 135(a)(2)], in last sentence of concluding provisions, substituted ''project which fails to meet the 10 percent test under paragraph (1)(E)(ii) on a date after the close of the calendar year in which the allocation was made or which'' for ''project which''.

Pub. L. 106–554, § 1(a)(7) [title I, § 131(c)(1)], in first sentence of concluding provisions, substituted ''clause (i)'' for ''clause (ii)'' and ''clauses (ii)'' for ''clauses (i)''.

Subsec. (h)(3)(C)(i), (ii). Pub. L. 106–554, § 1(a)(7) [title I, § 131(a)], amended cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) read as follows:

''(i) $1.25 multiplied by the State population,

''(ii) the unused State housing credit ceiling (if any) of such State for the preceding calendar year,''.

Subsec. (h)(3)(D)(ii). Pub. L. 106–554, § 1(a)(7) [title I, § 136(a)], substituted ''the excess (if any) of—'' for ''the excess (if any) of the unused State housing credit ceiling for such year (as defined in subparagraph (C)(i)) over the excess (if any) of—'' in introductory provisions, added subcls. (I) and (II), and struck out former subcls. (I) and (II) which read as follows:

''(I) the aggregate housing credit dollar amount allocated for such year, over

''(II) the sum of the amounts described in clauses (ii) and (iii) of subparagraph (C).''

Pub. L. 106–554, §1(a)(7) [title I, §131(c)(2)], substituted ''subparagraph (C)(i)'' for ''subparagraph (C)(ii)'' in introductory provisions and ''clauses (ii)'' for ''clauses (i)'' in subcl. (II).

Subsec. (h)(3)(H). Pub. L. 106–554, §1(a)(7) [title I, §131(b)], added subpar. (H).

Subsec. (i)(2)(E). Pub. L. 106–554, §1(a)(7) [title I, §134(b)(2)], inserted ''or Native American housing assistance'' after ''HOME assistance'' in heading.

Subsec. (i)(2)(E)(i). Pub. L. 106–554, §1(a)(7) [title I, §134(b)(1)], inserted ''or the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) (as in effect on October 1, 1997)'' after ''this subparagraph)''.

Subsec. (i)(3)(B)(iii)(I). Pub. L. 106–400 substituted ''McKinney-Vento Homeless Assistance Act'' for ''Stewart B. McKinney Homeless Assistance Act''.

Subsec. (m)(1)(A)(iii), (iv). Pub. L. 106–554, §1(a)(7) [title I, §133(a)], added cls. (iii) and (iv).

Subsec. (m)(1)(B)(ii)(III). Pub. L. 106–554, §1(a)(7) [title I, §132(b)], added subcl. (III).

Subsec. (m)(1)(B)(iii). Pub. L. 106–554, §1(a)(7) [title I, §133(b)], inserted ''and in monitoring for noncompliance with habitability standards through regular site visits'' before period at end.

Subsec. (m)(1)(C)(iii). Pub. L. 106–554, §1(a)(7) [title I, §132(a)(1)], inserted '', including whether the project includes the use of existing housing as part of a community revitalization plan'' before comma at end.

Subsec. (m)(1)(C)(v) to (viii). Pub. L. 106–554, §1(a)(7) [title I, §132(a)(2)], added cls. (v) to (viii) and struck out former cls. (v) to (vii) which read as follows:

''(v) participation of local tax-exempt organizations,

''(vi) tenant populations with special housing needs, and

''(vii) public housing waiting lists.''

1998—Subsec. (j)(4)(D). Pub. L. 105–206 substituted ''this chapter'' for ''subpart A, B, D, or G of this part''.

1996—Subsec. (c)(2). Pub. L. 104–188, §1704(t)(64), struck out ''of 1988'' after ''Homeless Assistance Act''.

Subsec. (d)(5)(B). Pub. L. 104–188, §1704(t)(53), provided that section 11812(b)(3) of Pub. L. 101–508 shall be applied by not executing the amendment therein to the heading of subsec. (d)(5)(B) of this section. See 1990 Amendment note below.

1993—Subsec. (g)(8). Pub. L. 103–66, §13142(b)(3), added par. (8).

Subsec. (h)(6)(B)(iv) to (vi). Pub. L. 103–66, §13142(b)(4), added cl. (iv) and redesignated former cls. (iv) and (v) as (v) and (vi), respectively.

Subsec. (i)(2)(E). Pub. L. 103–66, §13142(b)(5), added subpar. (E).

Subsec. (i)(3)(D). Pub. L. 103–66, §13142(b)(2), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: ''A unit shall not fail to be treated as a low-income unit merely because it is occupied by an individual who is—

''(i) a student and receiving assistance under title IV of the Social Security Act, or

''(ii) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws.''

Subsec. (m)(2)(B)(iv). Pub. L. 103–66, §13142(b)(1), added cl. (iv).

Subsec. (*o*). Pub. L. 103–66, §13142(a)(1), struck out subsec. (*o*) which provided that subsec. (h)(3)(C)(i) would not apply to any amount allocated after June 30, 1992, and that subsec. (h)(4) would not apply to any building placed in service after June 30, 1992, with an exception for bond-financed buildings in progress.

1991—Subsec. (*o*)(1). Pub. L. 102–227, §107(a)(1), struck out '', for any calendar year after 1991'' after ''paragraph (2)'' in introductory provisions, inserted ''to any amount allocated after June 30, 1992'' before comma at end of subpar. (A), and substituted ''June 30, 1992'' for ''1991'' in subpar. (B).

Subsec. (*o*)(2). Pub. L. 102–227, §107(a)(2), substituted ''July 1, 1992'' for ''1992'' in introductory provisions and subpar. (A), ''June 30, 1992'' for ''December 31, 1991'' and ''June 30, 1994'' for ''December 31, 1993'' in subpar. (B), and ''July 1, 1994'' for ''January 1, 1994'' in subpar. (C).

1990—Subsec. (b)(1). Pub. L. 101–508, §11701(a)(1)(B), struck out at end ''A building shall not be treated as described in subparagraph (B) if, at any time during the credit period, moderate rehabilitation assistance is provided with respect to such building under section 8(e)(2) of the United States Housing Act of 1937.''

Subsec. (c)(2). Pub. L. 101–508, §11701(a)(1)(A), inserted at end ''Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) of the United States Housing Act of 1937.''

Pub. L. 101–508, §11407(b)(5)(A), inserted before period at end of last sentence ''(other than assistance under the Stewart B. McKinney Homeless Assistance Act of 1988 (as in effect on the date of the enactment of this sentence))''.

Subsec. (d)(2)(D)(i)(I). Pub. L. 101–508, §11812(b)(3), inserted ''(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)'' after ''section 167(k).''

Subsec. (d)(2)(D)(ii)(V). Pub. L. 101–508, §11407(b)(8), added subcl. (V).

Subsec. (d)(5)(B). Pub. L. 101–508, §11812(b)(3), which directed the insertion of ''(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)'' after ''section 167(k)'', was executed to the text, and not the heading, of subpar. (B). See 1996 Amendment note above.

Subsec. (d)(5)(C)(ii)(I). Pub. L. 101–508, §11407(b)(4), inserted at end ''If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts.''

Pub. L. 101–508, §11701(a)(2)(B), inserted before period at end ''for such year''.

Pub. L. 101–508, §11701(a)(2)(A), which directed the insertion of ''which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract,'' after ''census tract'', was executed by making the insertion after ''any census tract'' to reflect the probable intent of Congress.

Subsec. (g)(2)(B)(iv). Pub. L. 101–508, §11407(b)(3), added cl. (iv).

Subsec. (g)(2)(D)(i). Pub. L. 101–508, §11701(a)(3)(A), inserted before period at end ''and such unit continues to be rent-restricted''.

Subsec. (g)(2)(D)(ii). Pub. L. 101–508, §11701(a)(4), inserted at end ''In the case of a project described in section 142(d)(4)(B), the preceding sentence shall be applied by substituting '170 percent' for '140 percent' and by substituting 'any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income' for 'any residential unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation'.''

Subsec. (g)(3)(A). Pub. L. 101–508, §11701(a)(5)(A), substituted ''the 1st year of the credit period for such building'' for ''the 12-month period beginning on the date the building is placed in service''.

Subsec. (h)(3)(C). Pub. L. 101–508, §11701(a)(6)(A), substituted ''the sum of the amounts described in clauses (i) and (iii)'' for ''the amount described in clause (i)'' in second sentence.

Subsec. (h)(3)(D)(ii)(II). Pub. L. 101–508, §11701(a)(6)(B), substituted ''the sum of the amounts described in clauses (i) and (iii)'' for ''the amount described in clause (i)''.

Subsec. (h)(5)(B). Pub. L. 101–508, §11407(b)(9)(A), inserted ''own an interest in the project (directly or through a partnership) and'' after ''nonprofit organization is to''.

Subsec. (h)(5)(C)(i) to (iii). Pub. L. 101–508, §11407(b)(9)(B), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (h)(5)(D)(i). Pub. L. 101–508, §11407(b)(9)(C), inserted ''ownership and'' before ''material participation''.

Subsec. (h)(6)(B)(i). Pub. L. 101–508, §11701(a)(7)(A), inserted before comma at end ''and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii)''.

Subsec. (h)(6)(B)(ii). Pub. L. 101–508, §11701(a)(7)(B), substituted ''requirement and prohibitions'' for ''requirement''.

Subsec. (h)(6)(B)(iii) to (v). Pub. L. 101–508, §11701(a)(8)(A), added cl. (iii) and redesignated former cls. (iii) and (iv) as (iv) and (v), respectively.

Subsec. (h)(6)(E)(i)(I). Pub. L. 101–508, §11701(a)(9), inserted before comma ''unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period''.

Subsec. (h)(6)(E)(ii)(II). Pub. L. 101–508, §11701(a)(8)(C), inserted before period at end ''not otherwise permitted under this section''.

Subsec. (h)(6)(F). Pub. L. 101–508, §11701(a)(8)(D), inserted ''the nonlow-income portion of the building for fair market value and'' before ''the low-income portion'' in introductory provisions.

Subsec. (h)(6)(J) to (L). Pub. L. 101–508, §11701(a)(8)(B), redesignated subpars. (K) and (L) as (J) and (K), respectively, and struck out former subpar. (J) which related to sales of less than the low-income portions of a building.

Subsec. (i)(3)(D). Pub. L. 101–508, §11407(b)(6), substituted ''Certain students'' for ''Students in government-supported job training programs'' in heading and amended text generally. Prior to amendment, text read as follows: ''A unit shall not fail to be treated as a low-income unit merely because it is occupied by an individual who is enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws.''

Subsec. (i)(7). Pub. L. 101–508, §11701(a)(10), redesignated par. (8) as (7).

Subsec. (i)(7)(A). Pub. L. 101–508, §11407(b)(1), substituted ''the tenants (in cooperative form or otherwise) or resident management corporation of such building or by a qualified nonprofit organization (as defined in subsection (h)(5)(C)) or government agency'' for ''the tenants of such building''.

Subsec. (i)(8). Pub. L. 101–508, §11701(a)(10), redesignated par. (8) as (7).

Subsec. (k)(1). Pub. L. 101–508, §11813(b)(3)(A), substituted ''49(a)(1)'' for ''46(c)(8)'', ''49(a)(2)'' for ''46(c)(9)'', and ''49(b)(1)'' for ''47(d)(1)''.

Subsec. (k)(2)(A)(ii), (D). Pub. L. 101–508, §11813(b)(3)(B), substituted ''49(a)(1)(D)(iv)(II)'' for ''46(c)(8)(D)(iv)(II)''.

Subsec. (m)(1)(B)(ii) to (iv). Pub. L. 101–508, §11407(b)(7)(B), redesignated cls. (iii) and (iv) as (ii) and (iii), respectively, and struck out former cl. (ii) which read as follows: ''which gives the highest priority to those projects as to which the highest percentage of the housing credit dollar amount is to be used for project costs other than the cost of intermediaries unless granting such priority would impede the development of projects in hard-to-develop areas,''.

Pub. L. 101–508, §11407(b)(2), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: ''which provides a procedure that the agency will follow in notifying the Internal Revenue Service of noncompliance with the provisions of this section which such agency becomes aware of.''

Subsec. (m)(2)(B). Pub. L. 101–508, §11407(b)(7)(A), added cl. (iii) and inserted provision that cl. (iii) not be applied so as to impede the development of projects in hard-to-develop areas.

Subsec. (*o*)(1). Pub. L. 101–508, §11407(a)(1)(A), substituted ''1991'' for ''1990'' wherever appearing.

Subsec. (*o*)(2). Pub. L. 101–508, §11407(a)(1)(B), added par. (2) and struck out former par. (2) which read as follows: ''For purposes of paragraph (1)(B), a building shall be treated as placed in service before 1990 if—

''(A) the bonds with respect to such building are issued before 1990,

''(B) such building is constructed, reconstructed, or rehabilitated by the taxpayer,

''(C) more than 10 percent of the reasonably anticipated cost of such construction, reconstruction, or rehabilitation has been incurred as of January 1, 1990, and some of such cost is incurred on or after such date, and

''(D) such building is placed in service before January 1, 1992.''

1989—Subsec. (b)(1). Pub. L. 101–239, §7108(h)(5), inserted at end ''A building shall not be treated as described in subparagraph (B) if, at any time during the credit period, moderate rehabilitation assistance is provided with respect to such building under section 8(e)(2) of the United States Housing Act of 1937.''

Subsec. (b)(3)(C). Pub. L. 101–239, §7108(c)(2), which directed amendment of subpar. (C) by substituting ''subsection (h)(7)'' for ''subsection (h)(6))'', was executed by substituting ''subsection (h)(7)'' for ''subsection (h)(6)'', as the probable intent of Congress.

Subsec. (c)(1)(E). Pub. L. 101–239, §7108(i)(2), added subpar. (E).

Subsec. (d)(1). Pub. L. 101–239, §7108(*l*)(1), inserted ''as of the close of the 1st taxable year of the credit period'' before period at end.

Subsec. (d)(2)(A). Pub. L. 101–239, §7108(*l*)(2), substituted ''subparagraph (B), its adjusted basis as of the close of the 1st taxable year of the credit period, and'' for ''subparagraph (B), the sum of—

''(I) the portion of its adjusted basis attributable to its acquisition cost, plus

''(II) amounts chargeable to capital account and incurred by the taxpayer (before the close of the 1st taxable year of the credit period for such building) for property (or additions or improvements to property) of a character subject to the allowance for depreciation, and''.

Subsec. (d)(2)(B)(iv). Pub. L. 101–239, §7108(d)(1), added cl. (iv).

Subsec. (d)(2)(C). Pub. L. 101–239, §7108(*l*)(3)(A), substituted ''Adjusted basis'' for ''Acquisition cost'' in heading and ''adjusted basis'' for ''cost'' in text.

Subsec. (d)(5). Pub. L. 101–239, §7108(*l*)(3)(B), substituted ''Special rules for determining eligible basis'' for ''Eligible basis determined when building placed in service'' in heading.

Subsec. (d)(5)(A). Pub. L. 101–239, §7108(*l*)(3)(B), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: ''Except as provided in subparagraphs (B) and (C), the eligible basis of any building for the entire compliance period for such building shall be its eligible basis on the date such building is placed in service (increased, in the case of an existing building which meets the requirements of paragraph (2)(B), by the amounts described in paragraph (2)(A)(i)(II)).''

Subsec. (d)(5)(B). Pub. L. 101–239, §7108(*l*)(3)(B), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Subsec. (d)(5)(C). Pub. L. 101–239, §7108(*l*)(3)(B), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Pub. L. 101–239, §7811(a)(1), inserted ''section'' before ''167(k)'' in heading.

Subsec. (d)(5)(D). Pub. L. 101–239, §7108(*l*)(3)(B), redesignated subpar. (D) as (C).

Pub. L. 101–239, §7108(g), added subpar. (D).

Subsec. (d)(6)(A)(i). Pub. L. 101–239, §7841(d)(13), substituted ''Farmers Home Administration'' for ''Farmers' Home Administration''.

Subsec. (d)(6)(C) to (E). Pub. L. 101–239, §7108(f), added subpars. (C) and (D) and redesignated former subpar. (C) as (E).

Subsec. (d)(7)(A). Pub. L. 101–239, §7831(c)(6), inserted ''(or interest therein)'' after ''subparagraph (B)'' in introductory provisions.

Subsec. (d)(7)(A)(ii). Pub. L. 101–239, §7841(d)(14), substituted ''under subsection (a)'' for ''under sebsection (a)''.

Subsec. (e)(2)(A). Pub. L. 101–239, §7841(d)(15), substituted ''to capital account'' for ''to captial account''.

Subsec. (e)(3). Pub. L. 101–239, §7108(d)(3), substituted ''Minimum expenditures to qualify'' for ''Average of rehabilitation expenditures must be $2,000 or more'' in heading, added subpars. (A) and (B), redesignated former subpar. (B) as (C), and struck out former subpar. (A) which read as follows: ''Paragraph (1) shall apply to rehabilitation expenditures with respect to any building only if the qualified basis attributable to such expenditures incurred during any 24-month period, when divided by the low-income units in the building, is $2,000 or more.''

Subsec. (e)(5). Pub. L. 101–239, §7108(*l*)(3)(C), substituted ''subsection (d)(2)(A)(i)'' for ''subsection (d)(2)(A)(i)(II)''.

Subsec. (f)(4). Pub. L. 101–239, §7831(c)(4), added par. (4).

Subsec. (f)(5). Pub. L. 101–239, §7108(d)(2), added par. (5).

Subsec. (g)(2)(A). Pub. L. 101–239, §7108(e)(2), inserted at end ''For purposes of the preceding sentence, the amount of the income limitation under paragraph (1) applicable for any period shall not be less than such limitation applicable for the earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified low-income housing project.''

Pub. L. 101–239, §7108(e)(1)(B), substituted ''the imputed income limitation applicable to such unit'' for ''the income limitation under paragraph (1) applicable to individuals occupying such unit''.

Subsec. (g)(2)(B). Pub. L. 101–239, §7108(h)(2), added cl. (iii) and concluding provisions which defined ''supportive service''.

Subsec. (g)(2)(C) to (E). Pub. L. 101–239, §7108(e)(1)(A), added subpars. (C) and (D) and redesignated former subpar. (C) as (E).

Subsec. (g)(3)(D). Pub. L. 101–239, §7108(m)(3), added subpar. (D).

Subsec. (g)(4). Pub. L. 101–239, §7108(n)(2), struck out ''(other than section 142(d)(4)(B)(iii))'' after ''in applying such provisions''.

Subsec. (g)(7). Pub. L. 101–239, §7108(h)(3), added par. (7).

Subsec. (h)(1)(B). Pub. L. 101–239, §7108(m)(2), substituted ''(E), or (F)'' for ''or (E)''.

Subsec. (h)(1)(F). Pub. L. 101–239, §7108(m)(1), added subpar. (F).

Subsec. (h)(3)(C) to (G). Pub. L. 101–239, §7108(b)(1), added subpars. (C) and (D), redesignated former subpars. (D) to (F) as (E) to (G), respectively, and struck out former subpar. (C) which read as follows: ''The State housing credit ceiling applicable to any State for any calendar year shall be an amount equal to $1.25 multiplied by the State population.''

Subsec. (h)(4)(B). Pub. L. 101–239, §7108(j), substituted ''50 percent'' for ''70 percent'' in heading and in text.

Subsec. (h)(5)(D)(ii). Pub. L. 101–239, §7811(a)(2), substituted ''clause (i)'' for ''clause (ii)''.

Subsec. (h)(5)(E). Pub. L. 101–239, §7108(b)(2)(A), substituted ''subparagraph (F)'' for ''subparagraph (E)''.

Subsec. (h)(6). Pub. L. 101–239, §7108(c)(1), added par. (6). Former par. (6) redesignated (7).

Subsec. (h)(6)(B) to (E). Pub. L. 101–239, §7108(b)(2)(B), redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out former subpar. (B) which provided that the housing credit dollar amount could not be carried over to any other calendar year.

Subsec. (h)(7), (8). Pub. L. 101–239, §7108(c)(1), redesignated pars. (6) and (7) as (7) and (8), respectively.

Subsec. (i)(2)(D). Pub. L. 101–239, §7108(k), inserted at end ''Such term shall not include any loan which would be a below market Federal loan solely by reason of assistance provided under section 106, 107, or 108 of the Housing and Community Development Act of 1974 (as in effect on the date of the enactment of this sentence).''

Subsec. (i)(3)(B). Pub. L. 101–239, §7108(i)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''A unit shall not be treated as a low-income unit unless the unit is suitable for occupancy (as determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes) and used other than on a transient basis. For purposes of the preceding sentence, a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.''

Pub. L. 101–239, §7831(c)(1), inserted ''(as determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes)'' after ''suitable for occupancy''.

Pub. L. 101–239, §7108(h)(1), inserted at end ''For purposes of the preceding sentence, a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.''

Subsec. (i)(3)(D). Pub. L. 101–239, §7831(c)(2), added subpar. (D).

Subsec. (i)(3)(E). Pub. L. 101–239, §7108(h)(4), added subpar. (E).

Subsec. (i)(6). Pub. L. 101–239, §7831(c)(3), added par. (6).

Subsec. (i)(8). Pub. L. 101–239, §7108(q), added par. (8).

Subsec. (k)(2)(D). Pub. L. 101–239, §7108(*o*), added provision at end relating to the applicability of cl. (ii) to qualified nonprofit organizations not described in section 46(c)(8)(D)(iv)(II) with respect to a building.

Subsec. (*l*)(1). Pub. L. 101–239, §7108(p), in introductory provisions, substituted ''Following'' for ''Not later than the 90th day following'' and inserted ''at such time and'' before ''in such form''.

Subsec. (m). Pub. L. 101–239, §7108(*o*), added subsec. (m). Former subsec. (m) redesignated (n).

Subsec. (m)(4). Pub. L. 101–239, §7831(c)(5), added par. (4).

Subsec. (n). Pub. L. 101–239, §7108(*o*), redesignated subsec. (m) as (n). Former subsec. (n) redesignated (*o*).

Pub. L. 101–239, §7108(a)(1), amended subsec. (n) generally. Prior to amendment, subsec. (n) read as follows: ''The State housing credit ceiling under subsection (h) shall be zero for any calendar year after 1989 and subsection (h)(4) shall not apply to any building placed in service after 1989.''

Subsec. (*o*). Pub. L. 101–239, §7108(*o*), redesignated subsec. (n) as (*o*).

1988—Subsec. (b)(2)(A). Pub. L. 100–647, §1002(*l*)(1)(A), substituted ''for the earlier of—'' for ''for the month in which such building is placed in service'' and added cls. (i) and (ii) and concluding provisions.

Subsec. (b)(2)(C)(ii). Pub. L. 100–647, §1002(*l*)(1)(B), substituted ''the month applicable under clause (i) or (ii) of subparagraph (A)'' for ''the month in which the building was placed in service''.

Subsec. (b)(3). Pub. L. 100–647, §1002(*l*)(9)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For treatment of certain rehabilitation expenditures as separate new buildings, see subsection (e).''

Subsec. (c)(2)(A). Pub. L. 100–647, §1002(*l*)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''which at all times during the compliance period with respect to such building is part of a qualified low-income housing project, and''.

Subsec. (d)(2)(D)(ii). Pub. L. 100–647, §1002(*l*)(3), substituted ''Special rules for certain transfers'' for ''Special rule for nontaxable exchanges'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of determining under subparagraph (B)(ii) when a building was last placed in service, there shall not be taken into account any placement in service in connection with the acquisition of the building in a transaction in which the basis of the building in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such building in the hands of the person from whom aquired [sic].''

Subsec. (d)(3). Pub. L. 100–647, §1002(*l*)(4), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The eligible basis of any building shall be reduced by an amount equal to the portion of the adjusted basis of the building which is attributable to residential rental units in the building which are not low-income units and which are above the average quality standard of the low-income units in the building.''

Subsec. (d)(5)(A). Pub. L. 100–647, §1002(*l*)(6)(B), substituted ''subparagraphs (B) and (C)'' for ''subparagraph (B)''.

Pub. L. 100–647, §1002(*l*)(5), inserted ''(increased, in the case of an existing building which meets the requirements of paragraph (2)(B), by the amounts described in paragraph (2)(A)(i)(II))'' before period at end.

Subsec. (d)(5)(C). Pub. L. 100–647, §1002(*l*)(6)(A), added subpar. (C).

Subsec. (d)(6)(A)(iii). Pub. L. 100–647, §1002(*l*)(7), struck out cl. (iii) which related to other circumstances of financial distress.

Subsec. (d)(6)(B)(ii). Pub. L. 100–647, §1002(*l*)(8), struck out ''of 1934'' after ''Act''.

Subsec. (f)(1). Pub. L. 100–647, §1002(*l*)(2)(B), substituted ''beginning with—'' for ''beginning with'' and subpars. (A) and (B) and concluding provisions for ''the taxable year in which the building is placed in service or, at the election of the taxpayer, the succeeding taxable year. Such an election, once made, shall be irrevocable.''

Subsec. (f)(3). Pub. L. 100–647, §1002(*l*)(9)(A), amended par. (3) generally. Prior to amendment, par. (3) ''Special rule where increase in qualified basis after 1st year of credit period'' read as follows:

''(A) CREDIT INCREASED.—If—

''(i) as of the close of any taxable year in the compliance period (after the 1st year of the credit period) the qualified basis of any building exceeds

''(ii) the qualified basis of such building as of the close of the 1st year of the credit period,

the credit allowable under subsection (a) for the taxable year (determined without regard to this paragraph) shall be increased by an amount equal to the product of such excess and the percentage equal to ⅔ of the applicable percentage for such building.

''(B) 1ST YEAR COMPUTATION APPLIES.—A rule similar to the rule of paragraph (2)(A) shall apply to the additional credit allowable by reason of this paragraph for the 1st year in which such additional credit is allowable.''

Subsec. (g)(2)(B)(i). Pub. L. 100–647, §1002(*l*)(10), struck out ''Federal'' after ''comparable''.

Subsec. (g)(2)(C). Pub. L. 100–647, §1002(*l*)(11), added subpar. (C).

Subsec. (g)(3). Pub. L. 100–647, §1002(*l*)(12), amended par. (3) generally, substituting subpars. (A) to (C) for former subpars. (A) and (B).

Subsec. (g)(4). Pub. L. 100–647, §1002(*l*)(13), inserted ''; except that, in applying such provisions (other than section 142(d)(4)(B)(iii)) for such purposes, the term 'gross rent' shall have the meaning given such term by paragraph (2)(B) of this subsection'' before period at end.

Subsec. (g)(6). Pub. L. 100–647, §1002(*l*)(32), added par. (6).

Subsec. (h)(1). Pub. L. 100–647, §1002(*l*)(14)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''No credit shall be allowed by reason of this section for any taxable year with respect to any building in excess of the housing credit dollar amount allocated to such building under this subsection. An allocation shall be taken into account under the preceding sentence only if it occurs not later than the earlier of—

''(A) the 60th day after the close of the taxable year, or

''(B) the close of the calendar year in which such taxable year ends.''

Subsec. (h)(1)(B). Pub. L. 100–647, §4003(b)(1), substituted ''(C), (D), or (E)'' for ''(C) or (D)''.

Subsec. (h)(1)(E). Pub. L. 100–647, §4003(a), added subpar. (E).

Subsec. (h)(4)(A). Pub. L. 100–647, §1002(*l*)(15), substituted ''if—'' for ''and which is taken into account under section 146'' and added cls. (i) and (ii).

Subsec. (h)(5)(D), (E). Pub. L. 100–647, §1002(*l*)(16), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (h)(6)(B)(ii). Pub. L. 100–647, §1002(*l*)(14)(B), struck out cl. (ii) which read as follows:

''(ii) ALLOCATION MAY NOT BE EARLIER THAN YEAR IN WHICH BUILDING PLACED IN SERVICE.—A housing credit agency may allocate its housing credit dollar amount for any calendar year only to buildings placed in service before the close of such calendar year.''

Subsec. (h)(6)(D). Pub. L. 100–647, §1002(*l*)(17), amended subpar. (D) generally. Prior to amendment, subpar. (D) ''Credit allowable determined without regard to averaging convention, etc.'' read as follows: ''For purposes of this subsection, the credit allowable under subsection (a) with respect to any building shall be determined—

''(i) without regard to paragraphs (2)(A) and (3)(B) of subsection (f), and

''(ii) by applying subsection (f)(3)(A) without regard to 'the percentage equal to ⅔ of'.''

Subsec. (h)(6)(E). Pub. L. 100–647, §1002(*l*)(18), added subpar. (E).

Subsec. (i)(2)(A). Pub. L. 100–647, §1002(*l*)(19)(A), inserted ''or any prior taxable year'' after ''such taxable year'' and substituted ''is or was outstanding'' for ''is outstanding'' and ''are or were used'' for ''are used''.

Subsec. (i)(2)(B). Pub. L. 100–647, §1002(*l*)(19)(B), substituted ''balance of loan or proceeds of obligations'' for ''outstanding balance of loan'' in heading and amended text generally. Prior to amendment, text read as follows: ''A loan shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude an amount equal to the outstanding balance of such loan from the eligible basis of the building for purposes of subsection (d).''

Subsec. (i)(2)(C). Pub. L. 100–647, §1002(*l*)(19)(C), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (i)(2)(D). Pub. L. 100–647, §1002(*l*)(19)(C), (D), redesignated former subpar. (C) as (D) and substituted ''this paragraph'' for ''subparagraph (A)''.

Subsec. (j)(4)(D). Pub. L. 100–647, §1007(g)(3)(B), substituted ''D, or G'' for ''or D''.

Subsec. (j)(4)(F). Pub. L. 100–647, §1002(*l*)(20), added subpar. (F).

Subsec. (j)(5)(B). Pub. L. 100–647, §4004(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''This paragraph shall apply to any partnership—

''(i) more than ½ the capital interests, and more than ½ the profit interests, in which are owned by a group of 35 or more partners each of whom is a natural person or an estate, and

''(ii) which elects the application of this paragraph.''

Subsec. (j)(5)(B)(i). Pub. L. 100–647, §1002(*l*)(21), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''which has 35 or more partners each of whom is a natural person or an estate, and''.

Subsec. (j)(6). Pub. L. 100–647, §1002(*l*)(22), inserted ''(or interest therein)'' after ''disposition of building'' in heading, and in text inserted ''or an interest therein'' after ''of a building''.

Subsec. (k)(2)(B). Pub. L. 100–647, §1002(*l*)(23), inserted before period at end '', except that this subparagraph shall not apply in the case of a federally assisted building described in subsection (d)(6)(B) if—'' and cls. (i) and (ii).

Subsec. (*l*). Pub. L. 100–647, §1002(*l*)(24)(B), substituted ''Certifications and other reports to Secretary'' for ''Certifications to Secretary'' in heading.

Subsec. (*l*)(2), (3). Pub. L. 100–647, §1002(*l*)(24)(A), added par. (2) and redesignated former par. (2) as (3).

Subsec. (n). Pub. L. 100–647, §4003(b)(3), amended subsec. (n) generally, substituting a single par. for former pars. (1) and (2).

Subsec. (n)(1). Pub. L. 100–647, §1002(*l*)(25), inserted '', and, except for any building described in paragraph

(2)(B), subsection (h)(4) shall not apply to any building placed in service after 1989'' after ''year after 1989''.

1986—Subsec. (k)(1). Pub. L. 99–509 substituted ''subparagraphs (D)(ii)(II) and (D)(iv)(I)'' for ''subparagraph (D)(iv)(I)''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title I, §3002(c), July 30, 2008, 122 Stat. 2880, provided that: ''The amendments made by this subsection [probably means this section, amending this section] shall apply to buildings placed in service after the date of the enactment of this Act [July 30, 2008].''

Pub. L. 110–289, div. C, title I, §3003(h), July 30, 2008, 122 Stat. 2882, provided that:

''(1) IN GENERAL.—Except as otherwise provided in paragraph (2), the amendments made by this subsection [probably means this section, amending this section] shall apply to buildings placed in service after the date of the enactment of this Act [July 30, 2008].

''(2) REHABILITATION REQUIREMENTS.—

''(A) IN GENERAL.—The amendments made by subsection (b) [amending this section] shall apply to buildings with respect to which housing credit dollar amounts are allocated after the date of the enactment of this Act [July 30, 2008].

''(B) BUILDINGS NOT SUBJECT TO ALLOCATION LIMITS.—To the extent paragraph (1) of section 42(h) of the Internal Revenue Code of 1986 does not apply to any building by reason of paragraph (4) thereof, the amendments made by subsection (b) [amending this section] shall apply [to] buildings financed with bonds issued pursuant to allocations made after the date of the enactment of this Act [July 30, 2008].''

Pub. L. 110–289, div. C, title I, §3004(i), July 30, 2008, 122 Stat. 2884, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to buildings placed in service after the date of the enactment of this Act [July 30, 2008].

''(2) REPEAL OF BONDING REQUIREMENT ON DISPOSITION OF BUILDING.—The amendment made by subsection (c) [amending this section] shall apply to—

''(A) interests in buildings disposed [of] after the date of the enactment of this Act [July 30, 2008], and

''(B) interests in buildings disposed of on or before such date if—

''(i) it is reasonably expected that such building will continue to be operated as a qualified low-income building (within the meaning of section 42 of the Internal Revenue Code of 1986) for the remaining compliance period (within the meaning of such section) with respect to such building, and

''(ii) the taxpayer elects the application of this subparagraph with respect to such disposition.

''(3) ENERGY EFFICIENCY AND HISTORIC NATURE TAKEN INTO ACCOUNT IN MAKING ALLOCATIONS.—The amendments made by subsection (d) [amending this section] shall apply to allocations made after December 31, 2008.

''(4) CONTINUED ELIGIBILITY FOR STUDENTS WHO RECEIVED FOSTER CARE ASSISTANCE.—The amendments made by subsection (e) [amending this section] shall apply to determinations made after the date of the enactment of this Act [July 30, 2008].

''(5) TREATMENT OF RURAL PROJECTS.—The amendment made by subsection (f) [amending this section] shall apply to determinations made after the date of the enactment of this Act [July 30, 2008].

''(6) CLARIFICATION OF GENERAL PUBLIC USE REQUIREMENT.—The amendment made by subsection (g) [amending this section] shall apply to buildings placed in service before, on, or after the date of the enactment of this Act [July 30, 2008].''

Pub. L. 110–289, div. C, title I, §3007(c), July 30, 2008, 122 Stat. 2886, provided that: ''The amendments made by this section [amending this section and section 146 of this title] shall apply to repayments of loans received after the date of the enactment of this Act [July 30, 2008].''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–142, §6(b), Dec. 20, 2007, 121 Stat. 1806, provided that: ''The amendment made by this section [amending this section] shall apply to—

''(1) housing credit amounts allocated before, on, or after the date of the enactment of this Act [Dec. 20, 2007], and

''(2) buildings placed in service before, on, or after such date to the extent paragraph (1) of section 42(h) of the Internal Revenue Code of 1986 does not apply to any building by reason of paragraph (4) thereof.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 207(8) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title I, subtitle D, §131(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–611, provided that: ''The amendments made by this section [amending this section] shall apply to calendar years after 2000.''

Pub. L. 106–554, §1(a)(7) [title I, subtitle D, §137], Dec. 21, 2000, 114 Stat. 2763, 2763A–613, provided that: ''Except as otherwise provided in this subtitle [amending this section and enacting provisions set out above], the amendments made by this subtitle shall apply to—

''(1) housing credit dollar amounts allocated after December 31, 2000; and

''(2) buildings placed in service after such date to the extent paragraph (1) of section 42(h) of the Internal Revenue Code of 1986 does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.''

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 1993 AMENDMENT

Section 13142(a)(2) of Pub. L. 103–66 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to periods ending after June 30, 1992.''

Section 13142(b)(6) of Pub. L. 103–66, as amended by Pub. L. 104–188, title I, §1703(b), Aug. 20, 1996, 110 Stat. 1875, provided that:

''(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the amendments made by this subsection [amending this section] shall apply to—

''(i) determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings after June 30, 1992, or

''(ii) buildings placed in service after June 30, 1992, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

''(B) FULL-TIME STUDENTS, WAIVER AUTHORITY, AND PROHIBITED DISCRIMINATION.—The amendments made by paragraphs (2), (3), and (4) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 10, 1993].

''(C) HOME ASSISTANCE.—The amendment made by paragraph (5) [amending this section] shall apply to periods after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 107(b) of Pub. L. 102–227 provided that: ''The amendments made by this section [amending this section] shall apply to calendar years after 1991.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11407(a)(3) of Pub. L. 101–508 provided that: ''The amendments made by this subsection [amending

this section and repealing provisions set out below] shall apply to calendar years after 1989.''

Section 11407(b)(10) of Pub. L. 101–508 provided that:

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this subsection [amending this section] shall apply to—

''(i) determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1990, or

''(ii) buildings placed in service after December 31, 1990, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

''(B) TENANT RIGHTS, ETC.—The amendments made by paragraphs (1), (6), (8), and (9) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].

''(C) MONITORING.—The amendment made by paragraph (2) [amending this section] shall take effect on January 1, 1992, and shall apply to buildings placed in service before, on, or after such date.

''(D) STUDY.—The Inspector General of the Department of Housing and Urban Development and the Secretary of the Treasury shall jointly conduct a study of the effectiveness of the amendment made by paragraph (5) [amending this section] in carrying out the purposes of section 42 of the Internal Revenue Code of 1986. The report of such study shall be submitted not later than January 1, 1993, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.''

Section 11701(a)(3)(B) of Pub. L. 101–508 provided that: ''In the case of a building to which (but for this subparagraph) the amendment made by subparagraph (A) [amending this section] does not apply, such amendment shall apply to—

''(i) determinations of qualified basis for taxable years beginning after the date of the enactment of this Act [Nov. 5, 1990], and

''(ii) determinations of qualified basis for taxable years beginning on or before such date except that determinations for such taxable years shall be made without regard to any reduction in gross rent after August 3, 1990, for any period before August 4, 1990.''

Section 11701(n) of Pub. L. 101–508 provided that: ''Except as otherwise provided in this section, any amendment made by this section [amending this section and sections 148, 163, 172, 403, 1031, 1253, 2056, 4682, 4975, 4978B and 6038 of this title, and provisions set out as notes under this section and section 2040 of this title] shall take effect as if included in the provision of the Revenue Reconciliation Act of 1989 [Pub. L. 101–239, title VII] to which such amendment relates.''

Section 11812(c) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 56, 167, 168, 312, 381, 404, 460, 642, 1016, 1250, and 7701 of this title] shall apply to property placed in service after the date of the enactment of this Act [Nov. 5, 1990].

''(2) EXCEPTION.—The amendments made by this section shall not apply to any property to which section 168 of the Internal Revenue Code of 1986 does not apply by reason of subsection (f)(5) thereof.

''(3) EXCEPTION FOR PREVIOUSLY GRANDFATHER EXPENDITURES.—The amendments made by this section shall not apply to rehabilitation expenditures described in section 252(f)(5) of the Tax Reform Act of 1986 [Pub. L. 99–514] (as added by section 1002(*l*)(31) of the Technical and Miscellaneous Revenue Act of 1988 [see Transitional Rules note below]).''

Amendment by section 11813(b)(3) 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

Section 7108(r) of Pub. L. 101–239, as amended by Pub. L. 101–508, title XI, § 11701(a)(11), (12), Nov. 5, 1990, 104 Stat. 1388–507; Pub. L. 104–188, title I, § 1702(g)(5)(A), Aug. 20, 1996, 110 Stat. 1873, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 142 of this title] shall apply to determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1989.

''(2) BUILDINGS NOT SUBJECT TO ALLOCATION LIMITS.—Except as otherwise provided in this subsection, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, the amendments made by this section shall apply to buildings placed in service after December 31, 1989.

''(3) ONE-YEAR CARRYOVER OF UNUSED CREDIT AUTHORITY, ETC.—The amendments made by subsection (b) [amending this section] shall apply to calendar years after 1989, but clauses (ii), (iii), and (iv) of section 42(h)(3)(C) of such Code (as added by this section) shall be applied without regard to allocations for 1989 or any preceding year.

''(4) ADDITIONAL BUILDINGS ELIGIBLE FOR WAIVER OF 10-YEAR RULE.—The amendments made by subsection (f) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].

''(5) CERTIFICATIONS WITH RESPECT TO 1ST YEAR OF CREDIT PERIOD.—The amendment made by subsection (p) [amending this section] shall apply to taxable years ending on or after December 31, 1989.

''(6) CERTAIN RULES WHICH APPLY TO BONDS.—Paragraphs (1)(D) and (2)(D) of section 42(m) of such Code, as added by this section, shall apply to obligations issued after December 31, 1989.

''(7) CLARIFICATIONS.—The amendments made by the following provisions of this section shall apply as if included in the amendments made by section 252 of the Tax Reform Act of 1986 [Pub. L. 99–514, enacting this section and amending sections 38 and 55 of this title]:

''(A) Paragraph (1) of subsection (h) (relating to units rented on a monthly basis) [amending this section].

''(B) Subsection (*l*) (relating to eligible basis for new buildings to include expenditures before close of 1st year of credit period) [amending this section].

''(8) GUIDANCE ON DIFFICULT DEVELOPMENT AREAS AND POSTING OF BOND TO AVOID RECAPTURE.—Not later than 180 days after the date of the enactment of this Act [Dec. 19, 1989]—

''(A) the Secretary of Housing and Urban Development shall publish initial guidance on the designation of difficult development areas under section 42(d)(5)(C) of such Code, as added by this section, and

''(B) the Secretary of the Treasury shall publish initial guidance under section 42(j)(6) of such Code (relating to no recapture on disposition of building (or interest therein) where bond posted).''

[Pub. L. 104–188, title I, § 1702(g)(5), Aug. 20, 1996, 110 Stat. 1873, provided that:

[''(A) Paragraph (11) of section 11701(a) of the Revenue Reconciliation Act of 1990 (and the amendment made by such paragraph) [Pub. L. 101–508, which amended section 7108(r)(2) of Pub. L. 101–239, set out above, by inserting ''but only with respect to bonds issued after such date'' before the period at the end of such section 7108(r)(2)] are hereby repealed, and section 7108(r)(2) of the Revenue Reconciliation Act of 1989 [Pub. L. 101–239] shall be applied as if such paragraph (and amendment) had never been enacted.

[''(B) Subparagraph (A) shall not apply to any building if the owner of such building establishes to the satisfaction of the Secretary of the Treasury or his dele-

gate that such owner reasonably relied on the amendment made by such paragraph (11).'']

Amendment by section 7811(a) 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.

Amendment by section 7831(c) of Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7831(g) 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(*l*)(1)–(25), (32) and 1007(g)(3)(B) 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.

Section 4003(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and provisions set out as a note under section 469 of this title] shall apply to amounts allocated in calendar years after 1987.''

Section 4004(b) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 252 of the Reform Act [section 252 of Pub. L. 99–514, enacting this section and amending sections 38 and 55 of this title].

''(2) PERIOD FOR ELECTION.—The period for electing not to have section 42(j)(5) of the 1986 Code apply to any partnership shall not expire before the date which is 6 months after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 8072(b) of Pub. L. 99–509 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendment made by section 252(a) of the Tax Reform Act of 1986 [enacting this section].''

EFFECTIVE DATE

Section 252(e) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 38 and 55 of this title] shall apply to buildings placed in service after December 31, 1986, in taxable years ending after such date.

''(2) SPECIAL RULE FOR REHABILITATION EXPENDITURES.—Subsection (e) of section 42 of the Internal Revenue Code of 1986 (as added by this section) shall apply for purposes of paragraph (1).''

SAVINGS PROVISION

For provisions that nothing in amendment by sections 11812(b)(3) and 11813(b)(3) of 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.

GRANTS TO STATES FOR LOW-INCOME HOUSING PROJECTS IN LIEU OF LOW-INCOME HOUSING CREDIT ALLOCATIONS FOR 2009

Pub. L. 111–5, div. B, title I, §1602, Feb. 17, 2009, 123 Stat. 362, provided that:

''(a) IN GENERAL.—The Secretary of the Treasury shall make a grant to the housing credit agency of each State in an amount equal to such State's low-income housing grant election amount.

''(b) LOW-INCOME HOUSING GRANT ELECTION AMOUNT.—For purposes of this section, the term 'low-income housing grant election amount' means, with respect to any State, such amount as the State may elect which does not exceed 85 percent of the product of—

''(1) the sum of—

''(A) 100 percent of the State housing credit ceiling for 2009 which is attributable to amounts described in clauses (i) and (iii) of section 42(h)(3)(C) of the Internal Revenue Code of 1986, and

''(B) 40 percent of the State housing credit ceiling for 2009 which is attributable to amounts described in clauses (ii) and (iv) of such section, multiplied by

''(2) 10.

''(c) SUBAWARDS FOR LOW-INCOME BUILDINGS.—

''(1) IN GENERAL.—A State housing credit agency receiving a grant under this section shall use such grant to make subawards to finance the construction or acquisition and rehabilitation of qualified low-income buildings. A subaward under this section may be made to finance a qualified low-income building with or without an allocation under section 42 of the Internal Revenue Code of 1986, except that a State housing credit agency may make subawards to finance qualified low-income buildings without an allocation only if it makes a determination that such use will increase the total funds available to the State to build and rehabilitate affordable housing. In complying with such determination requirement, a State housing credit agency shall establish a process in which applicants that are allocated credits are required to demonstrate good faith efforts to obtain investment commitments for such credits before the agency makes such subawards.

''(2) SUBAWARDS SUBJECT TO SAME REQUIREMENTS AS LOW-INCOME HOUSING CREDIT ALLOCATIONS.—Any such subaward with respect to any qualified low-income building shall be made in the same manner and shall be subject to the same limitations (including rent, income, and use restrictions on such building) as an allocation of housing credit dollar amount allocated by such State housing credit agency under section 42 of the Internal Revenue Code of 1986, except that such subawards shall not be limited by, or otherwise affect (except as provided in subsection (h)(3)(J) of such section [section 42(h)(3) has no subpar. (J)]), the State housing credit ceiling applicable to such agency.

''(3) COMPLIANCE AND ASSET MANAGEMENT.—The State housing credit agency shall perform asset management functions to ensure compliance with section 42 of the Internal Revenue Code of 1986 and the long-term viability of buildings funded by any subaward under this section. The State housing credit agency may collect reasonable fees from a subaward recipient to cover expenses associated with the performance of its duties under this paragraph. The State housing credit agency may retain an agent or other private contractor to satisfy the requirements of this paragraph.

''(4) RECAPTURE.—The State housing credit agency shall impose conditions or restrictions, including a requirement providing for recapture, on any subaward under this section so as to assure that the building with respect to which such subaward is made remains a qualified low-income building during the compliance period. Any such recapture shall be payable to the Secretary of the Treasury for deposit in the general fund of the Treasury and may be enforced by means of liens or such other methods as the Secretary of the Treasury determines appropriate.

''(d) RETURN OF UNUSED GRANT FUNDS.—Any grant funds not used to make subawards under this section before January 1, 2011, shall be returned to the Secretary of the Treasury on such date. Any subawards returned to the State housing credit agency on or after such date shall be promptly returned to the Secretary of the Treasury. Any amounts returned to the Secretary of the Treasury under this subsection shall be deposited in the general fund of the Treasury.

''(e) DEFINITIONS.—Any term used in this section which is also used in section 42 of the Internal Revenue Code of 1986 shall have the same meaning for purposes

of this section as when used in such section 42. Any reference in this section to the Secretary of the Treasury shall be treated as including the Secretary's delegate.

''(f) APPROPRIATIONS.—There is hereby appropriated to the Secretary of the Treasury such sums as may be necessary to carry out this section.''

ELECTION TO DETERMINE RENT LIMITATION BASED ON NUMBER OF BEDROOMS AND DEEP RENT SKEWING

Section 13142(c) of Pub. L. 103–66 provided that:

''(1) In the case of a building to which the amendments made by subsection (e)(1) or (n)(2) of section 7108 of the Revenue Reconciliation Act of 1989 [Pub. L. 101–239, amending this section] did not apply, the taxpayer may elect to have such amendments apply to such building if the taxpayer has met the requirements of the procedures described in section 42(m)(1)(B)(iii) of the Internal Revenue Code of 1986.

''(2) In the case of the amendment made by such subsection (e)(1), such election shall apply only with respect to tenants first occupying any unit in the building after the date of the election.

''(3) In the case of the amendment made by such subsection (n)(2), such election shall apply only if rents of low-income tenants in such building do not increase as a result of such election.

''(4) An election under this subsection may be made only during the 180-day period beginning on the date of the enactment of this Act [Aug. 10, 1993] and, once made, shall be irrevocable.''

ELECTION TO ACCELERATE CREDIT INTO 1990

Section 11407(c) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—At the election of an individual, the credit determined under section 42 of the Internal Revenue Code of 1986 for the taxpayer's first taxable year ending on or after October 25, 1990, shall be 150 percent of the amount which would (but for this paragraph) be so allowable with respect to investments held by such individual on or before October 25, 1990.

''(2) REDUCTION IN AGGREGATE CREDIT TO REFLECT INCREASED 1990 CREDIT.—The aggregate credit allowable to any person under section 42 of such Code with respect to any investment for taxable years after the first taxable year referred to in paragraph (1) shall be reduced on a pro rata basis by the amount of the increased credit allowable by reason of paragraph (1) with respect to such first taxable year. The preceding sentence shall not be construed to affect whether any taxable year is part of the credit, compliance, or extended use periods.

''(3) ELECTION.—The election under paragraph (1) shall be made at the time and in the manner prescribed by the Secretary of the Treasury or his delegate, and, once made, shall be irrevocable. In the case of a partnership, such election shall be made by the partnership.''

EXCEPTION TO TIME PERIOD FOR MEETING PROJECT REQUIREMENTS IN ORDER TO QUALIFY AS LOW-INCOME HOUSING

Section 11701(a)(5)(B) of Pub. L. 101–508 provided that: ''In the case of a building to which the amendment made by subparagraph (A) [amending this section] does not apply, the period specified in section 42(g)(3)(A) of the Internal Revenue Code of 1986 (as in effect before the amendment made by subparagraph (A)) shall not expire before the close of the taxable year following the taxable year in which the building is placed in service.''

STATE HOUSING CREDIT CEILING FOR CALENDAR YEAR 1990

Section 7108(a)(2) of Pub. L. 101–239 provided that in the case of calendar year 1990, section 42(h)(3)(C)(i) of the Internal Revenue Code of 1986 be applied by substituting ''$.9375'' for ''$1.25'', prior to repeal by Pub. L. 101–508, title XI, § 11407(a)(2), (3), Nov. 5, 1990, 104 Stat. 1388–474, applicable to calendar years after 1989.

TRANSITIONAL RULES

Section 252(f) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1002(*l*)(28)–(31), Nov. 10, 1988, 102 Stat. 3381, provided that:

''(1) LIMITATION TO NON-ACRS BUILDINGS NOT TO APPLY TO CERTAIN BUILDINGS, ETC.—

''(A) IN GENERAL.—In the case of a building which is part of a project described in subparagraph (B)—

''(i) section 42(c)(2)(B) of the Internal Revenue Code of 1986 (as added by this section) shall not apply,

''(ii) such building shall be treated as not federally subsidized for purposes of section 42(b)(1)(A) of such Code,

''(iii) the eligible basis of such building shall be treated, for purposes of section 42(h)(4)(A) of such Code, as if it were financed by an obligation the interest on which is exempt from tax under section 103 of such Code and which is taken into account under section 146 of such Code, and

''(iv) the amendments made by section 803 [enacting section 263A of this title, amending sections 48, 267, 312, 447, 464, and 471 of this title, and repealing sections 189, 278, and 280 of this title] shall not apply.

''(B) PROJECT DESCRIBED.—A project is described in this subparagraph if—

''(i) an urban development action grant application with respect to such project was submitted on September 13, 1984,

''(ii) a zoning commission map amendment related to such project was granted on July 17, 1985, and

''(iii) the number assigned to such project by the Federal Housing Administration is 023–36602.

''(C) ADDITIONAL UNITS ELIGIBLE FOR CREDIT.—In the case of a building to which subparagraph (A) applies and which is part of a project which meets the requirements of subparagraph (D), for each low-income unit in such building which is occupied by individuals whose income is 30 percent or less of area median gross income, one additional unit (not otherwise a low-income unit) in such building shall be treated as a low-income unit for purposes of such section 42.

''(D) PROJECT DESCRIBED.—A project is described in this subparagraph if—

''(i) rents charged for units in such project are restricted by State regulations,

''(ii) the annual cash flow of such project is restricted by State law,

''(iii) the project is located on land owned by or ground leased from a public housing authority,

''(iv) construction of such project begins on or before December 31, 1986, and units within such project are placed in service on or before June 1, 1990, and

''(v) for a 20-year period, 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income.

''(E) MAXIMUM ADDITIONAL CREDIT.—The maximum present value of additional credits allowable under section 42 of such Code by reason of subparagraph (C) shall not exceed 25 percent of the eligible basis of the building.

''(2) ADDITIONAL ALLOCATION OF HOUSING CREDIT CEILING.—

''(A) IN GENERAL.—There is hereby allocated to each housing credit agency described in subparagraph (B) an additional housing credit dollar amount determined in accordance with the following table:

"For calendar year:	**The additional allocation is:**
1987	$3,900,000
1988	$7,600,000
1989	$1,300,000.

''(B) HOUSING CREDIT AGENCIES DESCRIBED.—The housing credit agencies described in this subparagraph are:

''(i) A corporate governmental agency constituted as a public benefit corporation and established in

1971 under the provisions of Article XII of the Private Housing Finance Law of the State.

''(ii) A city department established on December 20, 1979, pursuant to chapter XVIII of a municipal code of such city for the purpose of supervising and coordinating the formation and execution of projects and programs affecting housing within such city.

''(iii) The State housing finance agency referred to in subparagraph (C), but only with respect to projects described in subparagraph (C).

''(C) PROJECT DESCRIBED.—A project is described in this subparagraph if such project is a qualified low-income housing project which—

''(i) receives financing from a State housing finance agency from the proceeds of bonds issued pursuant to chapter 708 of the Acts of 1966 of such State pursuant to loan commitments from such agency made between May 8, 1984, and July 8, 1986, and

''(ii) is subject to subsidy commitments issued pursuant to a program established under chapter 574 of the Acts of 1983 of such State having award dates from such agency between May 31, 1984, and June 11, 1985.

''(D) SPECIAL RULES.—

''(i) Any building—

''(I) which is allocated any housing credit dollar amount by a housing credit agency described in clause (iii) of subparagraph (B), and

''(II) which is placed in service after June 30, 1986, and before January 1, 1987,

shall be treated for purposes of the amendments made by this section as placed in service on January 1, 1987.

''(ii) Section 42(c)(2)(B) of the Internal Revenue Code of 1986 shall not apply to any building which is allocated any housing credit dollar amount by any agency described in subparagraph (B).

''(E) ALL UNITS TREATED AS LOW INCOME UNITS IN CERTAIN CASES.—In the case of any building—

''(i) which is allocated any housing credit dollar amount by any agency described in subparagraph (B), and

''(ii) which after the application of subparagraph (D)(ii) is a qualified low-income building at all times during any taxable year,

such building shall be treated as described in section 42(b)(1)(B) of such Code and having an applicable fraction for such year of 1. The preceding sentence shall apply to any building only to the extent of the portion of the additional housing credit dollar amount (allocated to such agency under subparagraph (A)) allocated to such building.

''(3) CERTAIN PROJECTS PLACED IN SERVICE BEFORE 1987.—

''(A) IN GENERAL.—In the case of a building which is part of a project described in subparagraph (B)—

''(i) section 42(c)(2)(B) of such Code shall not apply,

''(ii) such building shall be treated as placed in service during the first calendar year after 1986 and before 1990 in which such building is a qualified low-income building (determined after the application of clause (i)), and

''(iii) for purposes of section 42(h) of such Code, such building shall be treated as having allocated to it a housing credit dollar amount equal to the dollar amount appearing in the clause of subparagraph (B) in which such building is described.

''(B) PROJECT DESCRIBED.—A project is described in this subparagraph if the code number assigned to such project by the Farmers' Home Administration appears in the following table:

"The code number is:	The housing credit dollar amount is:
(i) 49284553664	$16,000
(ii) 4927742022446	$22,000
(iii) 49270742276087	$64,000
(iv) 490270742387293	$48,000
(v) 4927074218234	$32,000
(vi) 49270742274019	$36,000
(vii) 51460742345074	$53,000.

''(C) DETERMINATION OF ADJUSTED BASIS.—The adjusted basis of any building to which this paragraph applies for purposes of section 42 of such Code shall be its adjusted basis as of the close of the taxable year ending before the first taxable year of the credit period for such building.

''(D) CERTAIN RULES TO APPLY.—Rules similar to the rules of subparagraph (E) of paragraph (2) shall apply for purposes of this paragraph.

''(4) DEFINITIONS.—For purposes of this subsection, terms used in such subsection which are also used in section 42 of the Internal Revenue Code of 1986 (as added by this section) shall have the meanings given such terms by such section 42.

''(5) TRANSITIONAL RULE.—In the case of any rehabilitation expenditures incurred with respect to units located in the neighborhood strategy area within the community development block grant program in Ft. Wayne, Indiana—

''(A) the amendments made by this section [enacting this section and amending sections 38 and 55 of this title] shall not apply, and

''(B) paragraph (1) of section 167(k) of the Internal Revenue Code of 1986, shall be applied as if it did not contain the phrase 'and before January 1, 1987'.

The number of units to which the preceding sentence applies shall not exceed 150.''

§ 43. Enhanced oil recovery credit

(a) General rule

For purposes of section 38, the enhanced oil recovery credit for any taxable year is an amount equal to 15 percent of the taxpayer's qualified enhanced oil recovery costs for such taxable year.

(b) Phase-out of credit as crude oil prices increase

(1) In general

The amount of the credit determined under subsection (a) for any taxable year shall be reduced by an amount which bears the same ratio to the amount of such credit (determined without regard to this paragraph) as—

(A) the amount by which the reference price for the calendar year preceding the calendar year in which the taxable year begins exceeds $28, bears to

(B) $6.

(2) Reference price

For purposes of this subsection, the term ''reference price'' means, with respect to any calendar year, the reference price determined for such calendar year under section 45K(d)(2)(C).

(3) Inflation adjustment

(A) In general

In the case of any taxable year beginning in a calendar year after 1991, there shall be substituted for the $28 amount under paragraph (1)(A) an amount equal to the product of—

(i) $28, multiplied by

(ii) the inflation adjustment factor for such calendar year.

(B) Inflation adjustment factor

The term ''inflation adjustment factor'' means, with respect to any calendar year, a

fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990. For purposes of the preceding sentence, the term ''GNP implicit price deflator'' means the first revision of the implicit price deflator for the gross national product as computed and published by the Secretary of Commerce. Not later than April 1 of any calendar year, the Secretary shall publish the inflation adjustment factor for the preceding calendar year.

(c) Qualified enhanced oil recovery costs

For purposes of this section—

(1) In general

The term ''qualified enhanced oil recovery costs'' means any of the following:

(A) Any amount paid or incurred during the taxable year for tangible property—

(i) which is an integral part of a qualified enhanced oil recovery project, and

(ii) with respect to which depreciation (or amortization in lieu of depreciation) is allowable under this chapter.

(B) Any intangible drilling and development costs—

(i) which are paid or incurred in connection with a qualified enhanced oil recovery project, and

(ii) with respect to which the taxpayer may make an election under section 263(c) for the taxable year.

(C) Any qualified tertiary injectant expenses (as defined in section 193(b)) which are paid or incurred in connection with a qualified enhanced oil recovery project and for which a deduction is allowable for the taxable year.

(D) Any amount which is paid or incurred during the taxable year to construct a gas treatment plant which—

(i) is located in the area of the United States (within the meaning of section 638(1)) lying north of 64 degrees North latitude,

(ii) prepares Alaska natural gas for transportation through a pipeline with a capacity of at least 2,000,000,000,000 Btu of natural gas per day, and

(iii) produces carbon dioxide which is injected into hydrocarbon-bearing geological formations.

(2) Qualified enhanced oil recovery project

For purposes of this subsection—

(A) In general

The term ''qualified enhanced oil recovery project'' means any project—

(i) which involves the application (in accordance with sound engineering principles) of 1 or more tertiary recovery methods (as defined in section 193(b)(3)) which can reasonably be expected to result in more than an insignificant increase in the amount of crude oil which will ultimately be recovered,

(ii) which is located within the United States (within the meaning of section 638(1)), and

(iii) with respect to which the first injection of liquids, gases, or other matter commences after December 31, 1990.

(B) Certification

A project shall not be treated as a qualified enhanced oil recovery project unless the operator submits to the Secretary (at such times and in such manner as the Secretary provides) a certification from a petroleum engineer that the project meets (and continues to meet) the requirements of subparagraph (A).

(3) At-risk limitation

For purposes of determining qualified enhanced oil recovery costs, rules similar to the rules of section 49(a)(1), section 49(a)(2), and section 49(b) shall apply.

(4) Special rule for certain gas displacement projects

For purposes of this section, immiscible nonhydrocarbon gas displacement shall be treated as a tertiary recovery method under section 193(b)(3).

(5) Alaska natural gas

For purposes of paragraph (1)(D)—

(A) In general

The term ''Alaska natural gas'' means natural gas entering the Alaska natural gas pipeline (as defined in section 168(i)(16) (determined without regard to subparagraph (B) thereof)) which is produced from a well—

(i) located in the area of the State of Alaska lying north of 64 degrees North latitude, determined by excluding the area of the Alaska National Wildlife Refuge (including the continental shelf thereof within the meaning of section 638(1)), and

(ii) pursuant to the applicable State and Federal pollution prevention, control, and permit requirements from such area (including the continental shelf thereof within the meaning of section 638(1)).

(B) Natural gas

The term ''natural gas'' has the meaning given such term by section 613A(e)(2).

(d) Other rules

(1) Disallowance of deduction

Any deduction allowable under this chapter for any costs taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such costs.

(2) Basis adjustments

For purposes of this subtitle, if a credit is determined under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

(e) Election to have credit not apply

(1) In general

A taxpayer may elect to have this section not apply for any taxable year.

(2) Time for making election

An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

(3) Manner of making election

An election under paragraph (1) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe.

(Added Pub. L. 101–508, title XI, §11511(a), Nov. 5, 1990, 104 Stat. 1388–483; amended Pub. L. 106–554, §1(a)(7) [title III, §317(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645; Pub. L. 108–357, title VII, §707(a), (b), Oct. 22, 2004, 118 Stat. 1550; Pub. L. 109–58, title XIII, §1322(a)(3)(B), Aug. 8, 2005, 119 Stat. 1011; Pub. L. 109–135, title IV, §412(i), Dec. 21, 2005, 119 Stat. 2637.)

INFLATION ADJUSTED ITEMS FOR CERTAIN TAX YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table below.

PRIOR PROVISIONS

A prior section 43 was renumbered section 32 of this title.

Another prior section 43 was renumbered section 37 of this title.

AMENDMENTS

2005—Subsec. (b)(2). Pub. L. 109–58 substituted ''section 45K(d)(2)(C)'' for ''section 29(d)(2)(C)''.

Subsec. (c)(5). Pub. L. 109–135 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of paragraph (1)(D)—

''(1) IN GENERAL.—The term 'Alaska natural gas' means natural gas entering the Alaska natural gas pipeline (as defined in section 168(i)(16) (determined without regard to subparagraph (B) thereof)) which is produced from a well—

''(A) located in the area of the State of Alaska lying north of 64 degrees North latitude, determined by excluding the area of the Alaska National Wildlife Refuge (including the continental shelf thereof within the meaning of section 638(1)), and

''(B) pursuant to the applicable State and Federal pollution prevention, control, and permit requirements from such area (including the continental shelf thereof within the meaning of section 638(1)).

''(2) NATURAL GAS.—The term 'natural gas' has the meaning given such term by section 613A(e)(2).''

2004—Subsec. (c)(1)(D). Pub. L. 108–357, §707(a), added subpar. (D).

Subsec. (c)(5). Pub. L. 108–357, §707(b), added par. (5).

2000—Subsec. (c)(1)(C). Pub. L. 106–554 inserted ''(as defined in section 193(b))'' after ''expenses'' and struck out ''under section 193'' after ''allowable''.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VII, §707(c), Oct. 22, 2004, 118 Stat. 1550, provided that: ''The amendment made by this section [amending this section] shall apply to costs paid or incurred in taxable years beginning after December 31, 2004.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title III, §317(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in section 11511 of the Revenue Reconciliation Act of 1990 [Pub. L. 101–508].''

EFFECTIVE DATE

Section 11511(d) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 38, 39, 196, and 6501 of this title] shall apply to costs paid or incurred in taxable years beginning after December 31, 1990.

''(2) SPECIAL RULE FOR SIGNIFICANT EXPANSION OF PROJECTS.—For purposes of section 43(c)(2)(A)(iii) of the Internal Revenue Code of 1986 (as added by subsection (a)), any significant expansion after December 31, 1990, of a project begun before January 1, 1991, shall be treated as a project with respect to which the first injection commences after December 31, 1990.''

INFLATION ADJUSTED ITEMS FOR CERTAIN TAX YEARS

Provisions relating to inflation adjustment of items in this section for certain tax years were contained in the following:

2011—Internal Revenue Notice 2011–57.
2010—Internal Revenue Notice 2010–72.
2009—Internal Revenue Notice 2009–73.
2008—Internal Revenue Notice 2008–72.
2007—Internal Revenue Notice 2007–64.
2006—Internal Revenue Notice 2006–62.
2005—Internal Revenue Notice 2005–56.
2004—Internal Revenue Notice 2004–49.
2003—Internal Revenue Notice 2003–43.
2002—Internal Revenue Notice 2002–53.
2001—Internal Revenue Notice 2001–54.
2000—Internal Revenue Notice 2000–51.
1999—Internal Revenue Notice 99–45.
1998—Internal Revenue Notice 98–41.
1997—Internal Revenue Notice 97–39.
1996—Internal Revenue Notice 96–41.

§44. Expenditures to provide access to disabled individuals

(a) General rule

For purposes of section 38, in the case of an eligible small business, the amount of the disabled access credit determined under this section for any taxable year shall be an amount equal to 50 percent of so much of the eligible access expenditures for the taxable year as exceed $250 but do not exceed $10,250.

(b) Eligible small business

For purposes of this section, the term ''eligible small business'' means any person if—

(1) either—

(A) the gross receipts of such person for the preceding taxable year did not exceed $1,000,000, or

(B) in the case of a person to which subparagraph (A) does not apply, such person employed not more than 30 full-time employees during the preceding taxable year, and

(2) such person elects the application of this section for the taxable year.

For purposes of paragraph (1)(B), an employee shall be considered full-time if such employee is employed at least 30 hours per week for 20 or more calendar weeks in the taxable year.

(c) Eligible access expenditures

For purposes of this section—

(1) In general

The term ''eligible access expenditures'' means amounts paid or incurred by an eligible small business for the purpose of enabling such eligible small business to comply with applicable requirements under the Americans With Disabilities Act of 1990 (as in effect on the date of the enactment of this section).

(2) Certain expenditures included

The term ''eligible access expenditures'' includes amounts paid or incurred—

(A) for the purpose of removing architectural, communication, physical, or transportation barriers which prevent a business from being accessible to, or usable by, individuals with disabilities,

(B) to provide qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments,

(C) to provide qualified readers, taped texts, and other effective methods of making visually delivered materials available to individuals with visual impairments,

(D) to acquire or modify equipment or devices for individuals with disabilities, or

(E) to provide other similar services, modifications, materials, or equipment.

(3) Expenditures must be reasonable

Amounts paid or incurred for the purposes described in paragraph (2) shall include only expenditures which are reasonable and shall not include expenditures which are unnecessary to accomplish such purposes.

(4) Expenses in connection with new construction are not eligible

The term ''eligible access expenditures'' shall not include amounts described in paragraph (2)(A) which are paid or incurred in connection with any facility first placed in service after the date of the enactment of this section.

(5) Expenditures must meet standards

The term ''eligible access expenditures'' shall not include any amount unless the taxpayer establishes, to the satisfaction of the Secretary, that the resulting removal of any barrier (or the provision of any services, modifications, materials, or equipment) meets the standards promulgated by the Secretary with the concurrence of the Architectural and Transportation Barriers Compliance Board and set forth in regulations prescribed by the Secretary.

(d) Definition of disability; special rules

For purposes of this section—

(1) Disability

The term ''disability'' has the same meaning as when used in the Americans With Disabilities Act of 1990 (as in effect on the date of the enactment of this section).

(2) Controlled groups

(A) In general

All members of the same controlled group of corporations (within the meaning of section 52(a)) and all persons under common control (within the meaning of section 52(b)) shall be treated as 1 person for purposes of this section.

(B) Dollar limitation

The Secretary shall apportion the dollar limitation under subsection (a) among the members of any group described in subparagraph (A) in such manner as the Secretary shall by regulations prescribe.

(3) Partnerships and S corporations

In the case of a partnership, the limitation under subsection (a) shall apply with respect to the partnership and each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

(4) Short years

The Secretary shall prescribe such adjustments as may be appropriate for purposes of paragraph (1) of subsection (b) if the preceding taxable year is a taxable year of less than 12 months.

(5) Gross receipts

Gross receipts for any taxable year shall be reduced by returns and allowances made during such year.

(6) Treatment of predecessors

The reference to any person in paragraph (1) of subsection (b) shall be treated as including a reference to any predecessor.

(7) Denial of double benefit

In the case of the amount of the credit determined under this section—

(A) no deduction or credit shall be allowed for such amount under any other provision of this chapter, and

(B) no increase in the adjusted basis of any property shall result from such amount.

(e) Regulations

The Secretary shall prescribe regulations necessary to carry out the purposes of this section.

(Added Pub. L. 101–508, title XI, §11611(a), Nov. 5, 1990, 104 Stat. 1388–501.)

REFERENCES IN TEXT

The Americans With Disabilities Act of 1990, referred to in subsecs. (c)(1) and (d)(1) is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§12101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables.

The date of the enactment of this section, referred to in subsecs. (c)(1), (4) and (d)(1), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

PRIOR PROVISIONS

A prior section 44, added Pub. L. 94–12, title II, §208(a), Mar. 29, 1975, 89 Stat. 32; amended Pub. L. 94–45, title IV, §401(a), June 30, 1975, 89 Stat. 243; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to purchase of new principal residence, prior to repeal by Pub. L. 98–369, div. A, title IV, §474(m)(1), July 18, 1984, 98 Stat. 833, applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years.

Another prior section 44 was renumbered section 37 of this title.

EFFECTIVE DATE

Section applicable to expenditures paid or incurred after Nov. 5, 1990, see section 11611(e)(1) of Pub. L.

101–508, set out as an Effective Date of 1990 Amendment note under section 38 of this title.

[§ 44A. Renumbered § 21]

[§ 44B. Repealed. Pub. L. 98–369, div. A, title IV, § 474(m)(1), July 18, 1984, 98 Stat. 833]

Section, added Pub. L. 95–30, title II, § 202(a), May 23, 1977, 91 Stat. 141; amended Pub. L. 95–600, title III, § 321(b)(1), Nov. 6, 1978, 92 Stat. 2834; Pub. L. 96–222, title I, § 103(a)(6)(G)(i), (ii), Apr. 1, 1980, 94 Stat. 210, related to credit for employment of certain new employees.

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.

[§ 44C. Renumbered § 23]

[§ 44D. Renumbered § 29]

[§ 44E. Renumbered § 40]

[§ 44F. Renumbered § 30]

[§ 44G. Renumbered § 41]

[§ 44H. Renumbered § 45C]

§ 45. Electricity produced from certain renewable resources, etc.

(a) General rule

For purposes of section 38, the renewable electricity production credit for any taxable year is an amount equal to the product of—

(1) 1.5 cents, multiplied by

(2) the kilowatt hours of electricity—

(A) produced by the taxpayer—

(i) from qualified energy resources, and

(ii) at a qualified facility during the 10-year period beginning on the date the facility was originally placed in service, and

(B) sold by the taxpayer to an unrelated person during the taxable year.

(b) Limitations and adjustments

(1) Phaseout of credit

The amount of the credit determined under subsection (a) shall be reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to this paragraph) as—

(A) the amount by which the reference price for the calendar year in which the sale occurs exceeds 8 cents, bears to

(B) 3 cents.

(2) Credit and phaseout adjustment based on inflation

The 1.5 cent amount in subsection (a), the 8 cent amount in paragraph (1), the $4.375 amount in subsection (e)(8)(A), the $3 amount in subsection (e)(8)(D)(ii)(I), and in subsection (e)(8)(B)(i) the reference price of fuel used as a feedstock (within the meaning of subsection (c)(7)(A)) in 2002 shall each be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, such amount shall be rounded to the nearest multiple of 0.1 cent.

(3) Credit reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits

The amount of the credit determined under subsection (a) with respect to any project for any taxable year (determined after the application of paragraphs (1) and (2)) shall be reduced by the amount which is the product of the amount so determined for such year and the lesser of ½ or a fraction—

(A) the numerator of which is the sum, for the taxable year and all prior taxable years, of—

(i) grants provided by the United States, a State, or a political subdivision of a State for use in connection with the project,

(ii) proceeds of an issue of State or local government obligations used to provide financing for the project the interest on which is exempt from tax under section 103,

(iii) the aggregate amount of subsidized energy financing provided (directly or indirectly) under a Federal, State, or local program provided in connection with the project, and

(iv) the amount of any other credit allowable with respect to any property which is part of the project, and

(B) the denominator of which is the aggregate amount of additions to the capital account for the project for the taxable year and all prior taxable years.

The amounts under the preceding sentence for any taxable year shall be determined as of the close of the taxable year. This paragraph shall not apply with respect to any facility described in subsection (d)(2)(A)(ii).

(4) Credit rate and period for electricity produced and sold from certain facilities

(A) Credit rate

In the case of electricity produced and sold in any calendar year after 2003 at any qualified facility described in paragraph (3), (5), (6), (7), (9), or (11) of subsection (d), the amount in effect under subsection (a)(1) for such calendar year (determined before the application of the last sentence of paragraph (2) of this subsection) shall be reduced by one-half.

(B) Credit period

(i) In general

Except as provided in clause (ii) or clause (iii), in the case of any facility described in paragraph (3), (4), (5), (6), or (7) of subsection (d), the 5-year period beginning on the date the facility was originally placed in service shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

(ii) Certain open-loop biomass facilities

In the case of any facility described in subsection (d)(3)(A)(ii) placed in service before the date of the enactment of this

paragraph, the 5-year period beginning on January 1, 2005, shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

(iii) Termination

Clause (i) shall not apply to any facility placed in service after the date of the enactment of this clause.

(c) Resources

For purposes of this section:

(1) In general

The term ''qualified energy resources'' means—

(A) wind,
(B) closed-loop biomass,
(C) open-loop biomass,
(D) geothermal energy,
(E) solar energy,
(F) small irrigation power,
(G) municipal solid waste,
(H) qualified hydropower production, and
(I) marine and hydrokinetic renewable energy.

(2) Closed-loop biomass

The term ''closed-loop biomass'' means any organic material from a plant which is planted exclusively for purposes of being used at a qualified facility to produce electricity.

(3) Open-loop biomass

(A) In general

The term ''open-loop biomass'' means—

(i) any agricultural livestock waste nutrients, or

(ii) any solid, nonhazardous, cellulosic waste material or any lignin material which is derived from—

(I) any of the following forest-related resources: mill and harvesting residues, precommercial thinnings, slash, and brush,

(II) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste, gas derived from the biodegradation of solid waste, or paper which is commonly recycled, or

(III) agriculture sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

Such term shall not include closed-loop biomass or biomass burned in conjunction with fossil fuel (cofiring) beyond such fossil fuel required for startup and flame stabilization.

(B) Agricultural livestock waste nutrients

(i) In general

The term ''agricultural livestock waste nutrients'' means agricultural livestock manure and litter, including wood shavings, straw, rice hulls, and other bedding material for the disposition of manure.

(ii) Agricultural livestock

The term ''agricultural livestock'' includes bovine, swine, poultry, and sheep.

(4) Geothermal energy

The term ''geothermal energy'' means energy derived from a geothermal deposit (within the meaning of section 613(e)(2)).

(5) Small irrigation power

The term ''small irrigation power'' means power—

(A) generated without any dam or impoundment of water through an irrigation system canal or ditch, and

(B) the nameplate capacity rating of which is not less than 150 kilowatts but is less than 5 megawatts.

(6) Municipal solid waste

The term ''municipal solid waste'' has the meaning given the term ''solid waste'' under section 2(27)[1] of the Solid Waste Disposal Act (42 U.S.C. 6903).

(7) Refined coal

(A) In general

The term ''refined coal'' means a fuel—

(i) which—

(I) is a liquid, gaseous, or solid fuel produced from coal (including lignite) or high carbon fly ash, including such fuel used as a feedstock,

(II) is sold by the taxpayer with the reasonable expectation that it will be used for purpose[2] of producing steam, and

(III) is certified by the taxpayer as resulting (when used in the production of steam) in a qualified emission reduction.[3]

(ii) which is steel industry fuel.

(B) Qualified emission reduction

The term ''qualified emission reduction'' means a reduction of at least 20 percent of the emissions of nitrogen oxide and at least 40 percent of the emissions of either sulfur dioxide or mercury released when burning the refined coal (excluding any dilution caused by materials combined or added during the production process), as compared to the emissions released when burning the feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2003.

(C) Steel industry fuel

(i) In general

The term ''steel industry fuel'' means a fuel which—

(I) is produced through a process of liquifying coal waste sludge and distributing it on coal, and

(II) is used as a feedstock for the manufacture of coke.

(ii) Coal waste sludge

The term ''coal waste sludge'' means the tar decanter sludge and related byproducts

[1] See References in Text note below.
[2] So in original. Probably should be preceded by ''the''.
[3] So in original. The period probably should be '', or''.

of the coking process, including such materials that have been stored in ground, in tanks and in lagoons, that have been treated as hazardous wastes under applicable Federal environmental rules absent liquefaction and processing with coal into a feedstock for the manufacture of coke.

(8) Qualified hydropower production

(A) In general

The term ''qualified hydropower production'' means—

(i) in the case of any hydroelectric dam which was placed in service on or before the date of the enactment of this paragraph, the incremental hydropower production for the taxable year, and

(ii) in the case of any nonhydroelectric dam described in subparagraph (C), the hydropower production from the facility for the taxable year.

(B) Determination of incremental hydropower production

(i) In general

For purposes of subparagraph (A), incremental hydropower production for any taxable year shall be equal to the percentage of average annual hydropower production at the facility attributable to the efficiency improvements or additions of capacity placed in service after the date of the enactment of this paragraph, determined by using the same water flow information used to determine an historic average annual hydropower production baseline for such facility. Such percentage and baseline shall be certified by the Federal Energy Regulatory Commission.

(ii) Operational changes disregarded

For purposes of clause (i), the determination of incremental hydropower production shall not be based on any operational changes at such facility not directly associated with the efficiency improvements or additions of capacity.

(C) Nonhydroelectric dam

For purposes of subparagraph (A), a facility is described in this subparagraph if—

(i) the hydroelectric project installed on the nonhydroelectric dam is licensed by the Federal Energy Regulatory Commission and meets all other applicable environmental, licensing, and regulatory requirements,

(ii) the nonhydroelectric dam was placed in service before the date of the enactment of this paragraph and operated for flood control, navigation, or water supply purposes and did not produce hydroelectric power on the date of the enactment of this paragraph, and

(iii) the hydroelectric project is operated so that the water surface elevation at any given location and time that would have occurred in the absence of the hydroelectric project is maintained, subject to any license requirements imposed under applicable law that change the water surface elevation for the purpose of improving environmental quality of the affected waterway.

The Secretary, in consultation with the Federal Energy Regulatory Commission, shall certify if a hydroelectric project licensed at a nonhydroelectric dam meets the criteria in clause (iii). Nothing in this section shall affect the standards under which the Federal Energy Regulatory Commission issues licenses for and regulates hydropower projects under part I of the Federal Power Act.

(9) Indian coal

(A) In general

The term ''Indian coal'' means coal which is produced from coal reserves which, on June 14, 2005—

(i) were owned by an Indian tribe, or

(ii) were held in trust by the United States for the benefit of an Indian tribe or its members.

(B) Indian tribe

For purposes of this paragraph, the term ''Indian tribe'' has the meaning given such term by section 7871(c)(3)(E)(ii).

(10) Marine and hydrokinetic renewable energy

(A) In general

The term ''marine and hydrokinetic renewable energy'' means energy derived from—

(i) waves, tides, and currents in oceans, estuaries, and tidal areas,

(ii) free flowing water in rivers, lakes, and streams,

(iii) free flowing water in an irrigation system, canal, or other man-made channel, including projects that utilize nonmechanical structures to accelerate the flow of water for electric power production purposes, or

(iv) differentials in ocean temperature (ocean thermal energy conversion).

(B) Exceptions

Such term shall not include any energy which is derived from any source which utilizes a dam, diversionary structure (except as provided in subparagraph (A)(iii)), or impoundment for electric power production purposes.

(d) Qualified facilities

For purposes of this section:

(1) Wind facility

In the case of a facility using wind to produce electricity, the term ''qualified facility'' means any facility owned by the taxpayer which is originally placed in service after December 31, 1993, and before January 1, 2013. Such term shall not include any facility with respect to which any qualified small wind energy property expenditure (as defined in subsection (d)(4) of section 25D) is taken into account in determining the credit under such section.

(2) Closed-loop biomass facility

(A) In general

In the case of a facility using closed-loop biomass to produce electricity, the term ''qualified facility'' means any facility—

(i) owned by the taxpayer which is originally placed in service after December 31, 1992, and before January 1, 2014, or

(ii) owned by the taxpayer which before January 1, 2014, is originally placed in service and modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation as described in 65 Fed. Reg. 63052.

(B) Expansion of facility

Such term shall include a new unit placed in service after the date of the enactment of this subparagraph in connection with a facility described in subparagraph (A)(i), but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

(C) Special rules

In the case of a qualified facility described in subparagraph (A)(ii)—

(i) the 10-year period referred to in subsection (a) shall be treated as beginning no earlier than the date of the enactment of this clause, and

(ii) if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

(3) Open-loop biomass facilities

(A) In general

In the case of a facility using open-loop biomass to produce electricity, the term ''qualified facility'' means any facility owned by the taxpayer which—

(i) in the case of a facility using agricultural livestock waste nutrients—

(I) is originally placed in service after the date of the enactment of this subclause and before January 1, 2014, and

(II) the nameplate capacity rating of which is not less than 150 kilowatts, and

(ii) in the case of any other facility, is originally placed in service before January 1, 2014.

(B) Expansion of facility

Such term shall include a new unit placed in service after the date of the enactment of this subparagraph in connection with a facility described in subparagraph (A), but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

(C) Credit eligibility

In the case of any facility described in subparagraph (A), if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

(4) Geothermal or solar energy facility

In the case of a facility using geothermal or solar energy to produce electricity, the term ''qualified facility'' means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before January 1, 2014 (January 1, 2006, in the case of a facility using solar energy). Such term shall not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48.

(5) Small irrigation power facility

In the case of a facility using small irrigation power to produce electricity, the term ''qualified facility'' means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before October 3, 2008.

(6) Landfill gas facilities

In the case of a facility producing electricity from gas derived from the biodegradation of municipal solid waste, the term ''qualified facility'' means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before January 1, 2014.

(7) Trash facilities

In the case of a facility (other than a facility described in paragraph (6)) which uses municipal solid waste to produce electricity, the term ''qualified facility'' means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before January 1, 2014. Such term shall include a new unit placed in service in connection with a facility placed in service on or before the date of the enactment of this paragraph, but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

(8) Refined coal production facility

In the case of a facility that produces refined coal, the term ''refined coal production facility'' means—

(A) with respect to a facility producing steel industry fuel, any facility (or any modification to a facility) which is placed in service before January 1, 2010, and

(B) with respect to any other facility producing refined coal, any facility placed in service after the date of the enactment of the American Jobs Creation Act of 2004 and before January 1, 2012.

(9) Qualified hydropower facility

In the case of a facility producing qualified hydroelectric production described in subsection (c)(8), the term ''qualified facility'' means—

(A) in the case of any facility producing incremental hydropower production, such facility but only to the extent of its incremental hydropower production attributable to efficiency improvements or additions to capacity described in subsection (c)(8)(B) placed in service after the date of the enactment of this paragraph and before January 1, 2014, and

(B) any other facility placed in service after the date of the enactment of this paragraph and before January 1, 2014.

(C) CREDIT PERIOD.—In the case of a qualified facility described in subparagraph (A), the 10-year period referred to in subsection (a) shall be treated as beginning on the date the efficiency improvements or additions to capacity are placed in service.

(10) Indian coal production facility

In the case of a facility that produces Indian coal, the term ''Indian coal production facility'' means a facility which is placed in service before January 1, 2009.

(11) Marine and hydrokinetic renewable energy facilities

In the case of a facility producing electricity from marine and hydrokinetic renewable energy, the term ''qualified facility'' means any facility owned by the taxpayer—

(A) which has a nameplate capacity rating of at least 150 kilowatts, and

(B) which is originally placed in service on or after the date of the enactment of this paragraph and before January 1, 2014.

(e) Definitions and special rules

For purposes of this section—

(1) Only production in the United States taken into account

Sales shall be taken into account under this section only with respect to electricity the production of which is within—

(A) the United States (within the meaning of section 638(1)), or

(B) a possession of the United States (within the meaning of section 638(2)).

(2) Computation of inflation adjustment factor and reference price

(A) In general

The Secretary shall, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor and the reference price for such calendar year in accordance with this paragraph.

(B) Inflation adjustment factor

The term ''inflation adjustment factor'' means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 1992. The term ''GDP implicit price deflator'' means the most recent revision of the implicit price deflator for the gross domestic product as computed and published by the Department of Commerce before March 15 of the calendar year.

(C) Reference price

The term ''reference price'' means, with respect to a calendar year, the Secretary's determination of the annual average contract price per kilowatt hour of electricity generated from the same qualified energy resource and sold in the previous year in the United States. For purposes of the preceding sentence, only contracts entered into after December 31, 1989, shall be taken into account.

(3) Production attributable to the taxpayer

In the case of a facility in which more than 1 person has an ownership interest, except to the extent provided in regulations prescribed by the Secretary, production from the facility shall be allocated among such persons in proportion to their respective ownership interests in the gross sales from such facility.

(4) Related persons

Persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b). In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to such a person by another member of such group.

(5) Pass-thru in the case of estates and trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

[(6) Repealed. Pub. L. 109–58, title XIII, § 1301(f)(3), Aug. 8, 2005, 119 Stat. 990]

(7) Credit not to apply to electricity sold to utilities under certain contracts

(A) In general

The credit determined under subsection (a) shall not apply to electricity—

(i) produced at a qualified facility described in subsection (d)(1) which is originally placed in service after June 30, 1999, and

(ii) sold to a utility pursuant to a contract originally entered into before January 1, 1987 (whether or not amended or restated after that date).

(B) Exception

Subparagraph (A) shall not apply if—

(i) the prices for energy and capacity from such facility are established pursuant to an amendment to the contract referred to in subparagraph (A)(ii),

(ii) such amendment provides that the prices set forth in the contract which exceed avoided cost prices determined at the time of delivery shall apply only to annual quantities of electricity (prorated for partial years) which do not exceed the greater of—

(I) the average annual quantity of electricity sold to the utility under the contract during calendar years 1994, 1995, 1996, 1997, and 1998, or

(II) the estimate of the annual electricity production set forth in the contract, or, if there is no such estimate, the greatest annual quantity of electricity sold to the utility under the contract in any of the calendar years 1996, 1997, or 1998, and

(iii) such amendment provides that energy and capacity in excess of the limitation in clause (ii) may be—

(I) sold to the utility only at prices that do not exceed avoided cost prices determined at the time of delivery, or

(II) sold to a third party subject to a mutually agreed upon advance notice to the utility.

For purposes of this subparagraph, avoided cost prices shall be determined as provided for in 18 CFR 292.304(d)(1) or any successor regulation.

(8) Refined coal production facilities

(A) Determination of credit amount

In the case of a producer of refined coal, the credit determined under this section (without regard to this paragraph) for any taxable year shall be increased by an amount equal to $4.375 per ton of qualified refined coal—

(i) produced by the taxpayer at a refined coal production facility during the 10-year period beginning on the date the facility was originally placed in service, and

(ii) sold by the taxpayer—

(I) to an unrelated person, and

(II) during such 10-year period and such taxable year.

(B) Phaseout of credit

The amount of the increase determined under subparagraph (A) shall be reduced by an amount which bears the same ratio to the amount of the increase (determined without regard to this subparagraph) as—

(i) the amount by which the reference price of fuel used as a feedstock (within the meaning of subsection (c)(7)(A)) for the calendar year in which the sale occurs exceeds an amount equal to 1.7 multiplied by the reference price for such fuel in 2002, bears to

(ii) $8.75.

(C) Application of rules

Rules similar to the rules of the subsection (b)(3) and paragraphs (1) through (5) of this subsection shall apply for purposes of determining the amount of any increase under this paragraph.

(D) Special rule for steel industry fuel

(i) In general

In the case of a taxpayer who produces steel industry fuel—

(I) this paragraph shall be applied separately with respect to steel industry fuel and other refined coal, and

(II) in applying this paragraph to steel industry fuel, the modifications in clause (ii) shall apply.

(ii) Modifications

(I) Credit amount

Subparagraph (A) shall be applied by substituting ''$2 per barrel-of-oil equivalent'' for ''$4.375 per ton''.

(II) Credit period

In lieu of the 10-year period referred to in clauses (i) and (ii)(II) of subparagraph (A), the credit period shall be the period beginning on the later of the date such facility was originally placed in service, the date the modifications described in clause (iii) were placed in service, or October 1, 2008, and ending on the later of December 31, 2009, or the date which is 1 year after the date such facility or the modifications described in clause (iii) were placed in service.

(III) No phaseout

Subparagraph (B) shall not apply.

(iii) Modifications

The modifications described in this clause are modifications to an existing facility which allow such facility to produce steel industry fuel.

(iv) Barrel-of-oil equivalent

For purposes of this subparagraph, a barrel-of-oil equivalent is the amount of steel industry fuel that has a Btu content of 5,800,000 Btus.

(9) Coordination with credit for producing fuel from a nonconventional source

(A) In general

The term ''qualified facility'' shall not include any facility which produces electricity from gas derived from the biodegradation of municipal solid waste if such biodegradation occurred in a facility (within the meaning of section 45K) the production from which is allowed as a credit under section 45K for the taxable year or any prior taxable year.

(B) Refined coal facilities

(i) In general

The term ''refined coal production facility'' shall not include any facility the production from which is allowed as a credit under section 45K for the taxable year or any prior taxable year (or under section 29,[1] as in effect on the day before the date of enactment of the Energy Tax Incentives Act of 2005, for any prior taxable year).

(ii) Exception for steel industry coal

In the case of a facility producing steel industry fuel, clause (i) shall not apply to so much of the refined coal produced at such facility as is steel industry fuel.

(10) Indian coal production facilities

(A) Determination of credit amount

In the case of a producer of Indian coal, the credit determined under this section (without regard to this paragraph) for any taxable year shall be increased by an amount equal to the applicable dollar amount per ton of Indian coal—

(i) produced by the taxpayer at an Indian coal production facility during the 7-year period beginning on January 1, 2006, and

(ii) sold by the taxpayer—

(I) to an unrelated person, and

(II) during such 7-year period and such taxable year.

(B) Applicable dollar amount

(i) In general

The term ''applicable dollar amount'' for any taxable year beginning in a calendar year means—

(I) $1.50 in the case of calendar years 2006 through 2009, and

(II) $2.00 in the case of calendar years beginning after 2009.

(ii) Inflation adjustment

In the case of any calendar year after 2006, each of the dollar amounts under clause (i) shall be equal to the product of such dollar amount and the inflation adjustment factor determined under paragraph (2)(B) for the calendar year, except that such paragraph shall be applied by substituting ''2005'' for ''1992''.

(C) Application of rules

Rules similar to the rules of the subsection (b)(3) and paragraphs (1), (3), (4), and (5) of this subsection shall apply for purposes of determining the amount of any increase under this paragraph.

(D) Treatment as specified credit

The increase in the credit determined under subsection (a) by reason of this paragraph with respect to any facility shall be treated as a specified credit for purposes of section 38(c)(4)(A) during the 4-year period beginning on the later of January 1, 2006, or the date on which such facility is placed in service by the taxpayer.

(11) Allocation of credit to patrons of agricultural cooperative

(A) Election to allocate

(i) In general

In the case of an eligible cooperative organization, any portion of the credit determined under subsection (a) for the taxable year may, at the election of the organization, be apportioned among patrons of the organization on the basis of the amount of business done by the patrons during the taxable year.

(ii) Form and effect of election

An election under clause (i) 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. Such election shall not take effect unless the organization designates the apportionment as such in a written notice mailed to its patrons during the payment period described in section 1382(d).

(B) Treatment of organizations and patrons

The amount of the credit apportioned to any patrons under subparagraph (A)—

(i) shall not be included in the amount determined under subsection (a) with respect to the organization for the taxable year, and

(ii) shall be included in the amount determined under subsection (a) for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

(C) Special rules for decrease in credits for taxable year

If the amount of the credit of a cooperative organization determined under subsection (a) for a taxable year is less than the amount of such credit shown on the return of the cooperative organization for such year, an amount equal to the excess of—

(i) such reduction, over

(ii) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter.

(D) Eligible cooperative defined

For purposes of this section the term ''eligible cooperative'' means a cooperative organization described in section 1381(a) which is owned more than 50 percent by agricultural producers or by entities owned by agricultural producers. For this purpose an entity owned by an agricultural producer is one that is more than 50 percent owned by agricultural producers.

(Added Pub. L. 102–486, title XIX, §1914(a), Oct. 24, 1992, 106 Stat. 3020; amended Pub. L. 106–170, title V, §507(a)–(c), Dec. 17, 1999, 113 Stat. 1922; Pub. L. 106–554, §1(a)(7) [title III, §319(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 107–147, title VI, §603(a), Mar. 9, 2002, 116 Stat. 59; Pub. L. 108–311, title III, §313(a), Oct. 4, 2004, 118 Stat. 1181; Pub. L. 108–357, title VII, §710(a)–(d), (f), Oct. 22, 2004, 118 Stat. 1552–1557; Pub. L. 109–58, title XIII, §§1301(a)–(f)(4), 1302(a), 1322(a)(3)(C), Aug. 8, 2005, 119 Stat. 986–990, 1011; Pub. L. 109–135, title IV, §§402(b), 403(t), 412(j), Dec. 21, 2005, 119 Stat. 2610, 2628, 2637; Pub. L. 109–432, div. A, title II, §201, Dec. 20, 2006, 120 Stat. 2944; Pub. L. 110–172, §§7(b), 9(a), Dec. 29, 2007, 121 Stat. 2482, 2484; Pub. L. 110–343, div. B, title I, §§101(a)–(e), 102(a)–(e), 106(c)(3)(B), 108(a)–(d)(1), Oct. 3, 2008, 122 Stat. 3808–3810, 3815, 3819–3821; Pub. L. 111–5, div. B, title I, §1101(a), (b), Feb. 17, 2009, 123 Stat. 319; Pub. L. 111–312, title VII, §702(a), Dec. 17, 2010, 124 Stat. 3311.)

INFLATION ADJUSTED ITEMS FOR CERTAIN TAX YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table below.

REFERENCES IN TEXT

The date of the enactment of this paragraph, the date of the enactment of this clause, the date of the enactment of this subclause, and the date of the enactment of the American Jobs Creation Act of 2004, referred to in subsecs. (b)(4)(B)(ii) and (d)(2)(C)(i), (3)(A)(i), (4) to (8), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

The date of the enactment of this clause and the date of the enactment of this paragraph, referred to in subsecs. (b)(4)(B)(iii), (c)(8), and (d)(9)(A), (B), are the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

Section 2(27) of the Solid Waste Disposal Act, referred to in subsec. (c)(6), probably should be section 1004(27)

of such Act which is classified to section 6903(27) of Title 42, The Public Health and Welfare.

The Federal Power Act, referred to in subsec. (c)(8)(C), is act June 10, 1920, ch. 285, 41 Stat. 1063. Part I of the Act is classified generally to subchapter I (§ 791a et seq.) of chapter 12 of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The date of the enactment of this subparagraph and the date of the enactment of this paragraph, referred to in subsec. (d)(2)(B), (3)(B), (11), are the date of enactment of Pub. L. 110–343, which was approved Oct. 3, 2008.

Section 29, referred to in subsec. (e)(9)(B)(i), was redesignated section 45K of this title by Pub. L. 109–58, title XIII, § 1322(a)(1), Aug. 8, 2005, 119 Stat. 1011.

The date of enactment of the Energy Tax Incentives Act of 2005, referred to in subsec. (e)(9)(B)(i), is the date of enactment of title XIII of Pub. L. 109–58, which was approved Aug. 8, 2005.

PRIOR PROVISIONS

A prior section 45 was renumbered section 37 of this title.

AMENDMENTS

2010—Subsec. (d)(8)(B). Pub. L. 111–312 substituted ''January 1, 2012'' for ''January 1, 2010''.

2009—Subsec. (d)(1). Pub. L. 111–5, § 1101(a)(1), substituted ''2013'' for ''2010''.

Subsec. (d)(2)(A)(i), (ii), (3)(A)(i)(I), (ii), (4). Pub. L. 111–5, § 1101(a)(2), substituted ''2014'' for ''2011''.

Subsec. (d)(5). Pub. L. 111–5, § 1101(b), substituted ''and before October 3, 2008.'' for ''and before the date of the enactment of paragraph (11).''

Subsec. (d)(6), (7), (9)(A), (B). Pub. L. 111–5, § 1101(a)(2), substituted ''2014'' for ''2011''.

Subsec. (d)(11)(B). Pub. L. 111–5, § 1101(a)(3), substituted ''2014'' for ''2012''.

2008—Subsec. (b)(2). Pub. L. 110–343, § 108(b)(2), inserted ''the $3 amount in subsection (e)(8)(D)(ii)(I),'' after ''subsection (e)(8)(A),''.

Subsec. (b)(4)(A). Pub. L. 110–343, § 102(d), substituted ''(9), or (11)'' for ''or (9)''.

Subsec. (c)(1)(I). Pub. L. 110–343, § 102(a), added subpar. (I).

Subsec. (c)(7)(A). Pub. L. 110–343, § 108(a)(1), reenacted heading without change and amended text generally. Prior to amendment, subpar. (A) defined ''refined coal''.

Subsec. (c)(7)(A)(i). Pub. L. 110–343, § 101(b)(1), amended subsec. (c)(7)(A)(i) as amended by Pub. L. 110–348, § 108(a)(1), by inserting ''and'' at end of subcl. (II), substituting period for '', and'' at end of subcl. (III), and striking out subcl. (IV) which read as follows: ''is produced in such a manner as to result in an increase of at least 50 percent in the market value of the refined coal (excluding any increase caused by materials combined or added during the production process), as compared to the value of the feedstock coal, or''.

Subsec. (c)(7)(B). Pub. L. 110–343, § 101(b)(2), inserted ''at least 40 percent of the emissions of'' after ''nitrogen oxide and''.

Subsec. (c)(7)(C). Pub. L. 110–343, § 108(a)(2), added subpar. (C).

Subsec. (c)(8)(C). Pub. L. 110–343, § 101(e), reenacted heading without change and amended text generally. Prior to amendment, subpar. (C) described a nonhydroelectric dam facility for purposes of subpar. (A).

Subsec. (c)(10). Pub. L. 110–343, § 102(b), added par. (10).

Subsec. (d)(1). Pub. L. 110–343, § 106(c)(3)(B), inserted at end ''Such term shall not include any facility with respect to which any qualified small wind energy property expenditure (as defined in subsection (d)(4) of section 25D) is taken into account in determining the credit under such section.''

Pub. L. 110–343, § 101(a)(1), substituted ''January 1, 2010'' for ''January 1, 2009''.

Subsec. (d)(2)(A). Pub. L. 110–343, § 101(a)(2)(A), substituted ''January 1, 2011'' for ''January 1, 2009'' in cls. (i) and (ii).

Subsec. (d)(2)(B), (C). Pub. L. 110–343, § 101(d)(2), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (d)(3)(A). Pub. L. 110–343, § 101(a)(2)(B), substituted ''January 1, 2011'' for ''January 1, 2009'' in cls. (i)(I) and (ii).

Subsec. (d)(3)(B), (C). Pub. L. 110–343, § 101(d)(1), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (d)(4). Pub. L. 110–343, § 101(a)(2)(C), substituted ''January 1, 2011'' for ''January 1, 2009''.

Subsec. (d)(5). Pub. L. 110–343, § 102(e), which directed amendment of par. (5) by substituting ''the date of the enactment of paragraph (11)'' for ''January 1, 2012'', was executed by making the substitution for ''January 1, 2011'' to reflect the probable intent of Congress. See below.

Pub. L. 110–343, § 101(a)(2)(D), substituted ''January 1, 2011'' for ''January 1, 2009''.

Subsec. (d)(6). Pub. L. 110–343, § 101(a)(2)(E), substituted ''January 1, 2011'' for ''January 1, 2009''.

Subsec. (d)(7). Pub. L. 110–343, § 101(c), struck out ''combustion'' before ''facilities'' in heading and substituted ''facility (other than a facility described in paragraph (6)) which uses'' for ''facility which burns''.

Pub. L. 110–343, § 101(a)(2)(F), substituted ''January 1, 2011'' for ''January 1, 2009''.

Subsec. (d)(8). Pub. L. 110–343, § 108(c), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In the case of a facility that produces refined coal, the term 'refined coal production facility' means a facility which is placed in service after the date of the enactment of this paragraph and before January 1, 2010.''

Pub. L. 110–343, § 101(a)(1), substituted ''January 1, 2010'' for ''January 1, 2009''.

Subsec. (d)(9)(A), (B). Pub. L. 110–343, § 101(a)(2)(G), substituted ''January 1, 2011'' for ''January 1, 2009''.

Subsec. (d)(11). Pub. L. 110–343, § 102(c), added par. (11).

Subsec. (e)(8)(D). Pub. L. 110–343, § 108(b)(1), added subpar. (D).

Subsec. (e)(9)(B). Pub. L. 110–343, § 108(d)(1), designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

2007—Subsec. (c)(3)(A)(ii). Pub. L. 110–172, § 7(b)(1), struck out ''which is segregated from other waste materials and'' after ''lignin material''.

Subsec. (d)(2)(B)(i) to (iii). Pub. L. 110–172, § 7(b)(2), inserted ''and'' at the end of cl. (i), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: ''the amount of the credit determined under subsection (a) with respect to the facility shall be an amount equal to the amount determined without regard to this clause multiplied by the ratio of the thermal content of the closed-loop biomass used in such facility to the thermal content of all fuels used in such facility, and''.

Subsec. (e)(7)(A)(i). Pub. L. 110–172, § 9(a), substituted ''originally placed in service'' for ''placed in service by the taxpayer''.

2006—Subsec. (d)(1) to (7), (9). Pub. L. 109–432 substituted ''January 1, 2009'' for ''January 1, 2008'' wherever appearing.

2005—Subsec. (b)(4)(A). Pub. L. 109–58, § 1301(c)(2), substituted ''(7), or (9)'' for ''or (7)''.

Subsec. (b)(4)(B)(i). Pub. L. 109–58, § 1301(b)(1), inserted ''or clause (iii)'' after ''clause (ii)''.

Subsec. (b)(4)(B)(ii). Pub. L. 109–58, § 1301(f)(1), substituted ''January 1, 2005,'' for ''the date of the enactment of this Act''.

Subsec. (b)(4)(B)(iii). Pub. L. 109–58, § 1301(b)(2), added cl. (iii).

Subsec. (c). Pub. L. 109–58, § 1301(d)(4), substituted ''Resources'' for ''Qualified energy resources and refined coal'' in heading.

Subsec. (c)(1)(H). Pub. L. 109–58, § 1301(c)(1), added subpar. (H).

Subsec. (c)(3)(A)(ii). Pub. L. 109–135, § 402(b), substituted ''lignin material'' for ''nonhazardous lignin waste material''.

Pub. L. 109–58, § 1301(f)(2), inserted ''or any nonhazardous lignin waste material'' after ''cellulosic waste material''.

Subsec. (c)(7)(A)(i). Pub. L. 109–135, § 403(t), struck out ''synthetic'' after ''solid''.

Subsec. (c)(8). Pub. L. 109–58, § 1301(c)(3), added par. (8).

Subsec. (c)(9). Pub. L. 109–58, § 1301(d)(2), added par. (9).

Subsec. (d)(1) to (3). Pub. L. 109–58, § 1301(a)(1), substituted ''January 1, 2008'' for ''January 1, 2006'' wherever appearing.

Subsec. (d)(4). Pub. L. 109–58, § 1301(a)(2), substituted ''January 1, 2008 (January 1, 2006, in the case of a facility using solar energy)'' for ''January 1, 2006''.

Subsec. (d)(5), (6). Pub. L. 109–58, § 1301(a)(1), substituted ''January 1, 2008'' for ''January 1, 2006''.

Subsec. (d)(7). Pub. L. 109–58, § 1301(e), inserted at end ''Such term shall include a new unit placed in service in connection with a facility placed in service on or before the date of the enactment of this paragraph, but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.''

Pub. L. 109–58, § 1301(a)(1), substituted ''January 1, 2008'' for ''January 1, 2006''.

Subsec. (d)(8). Pub. L. 109–135, § 412(j)(1), substituted ''In the case of a facility that produces refined coal, the term'' for ''The term''.

Subsec. (d)(9). Pub. L. 109–58, § 1301(c)(4), added par. (9).

Subsec. (d)(10). Pub. L. 109–135, § 412(j)(2), substituted ''In the case of a facility that produces Indian coal, the term'' for ''The term''.

Pub. L. 109–58, § 1301(d)(3), added par. (10).

Subsec. (e)(6). Pub. L. 109–58, § 1301(f)(3), struck out heading and text of par. (6). Text read as follows: ''In the case of a facility using poultry waste to produce electricity and owned by a governmental unit, the person eligible for the credit under subsection (a) is the lessee or the operator of such facility.''

Subsec. (e)(8)(C). Pub. L. 109–58, § 1301(f)(4)(B), struck out ''and (9)'' after ''paragraphs (1) through (5)''.

Subsec. (e)(9). Pub. L. 109–58, § 1322(a)(3)(C)(i), substituted ''section 45K'' for ''section 29'' wherever appearing.

Pub. L. 109–58, § 1301(f)(4)(A), reenacted heading without change and amended text of par. (9) generally. Prior to amendment, text read as follows: ''The term 'qualified facility' shall not include any facility the production from which is allowed as a credit under section 29 for the taxable year or any prior taxable year.''

Subsec. (e)(9)(B). Pub. L. 109–58, § 1322(a)(3)(C)(ii), inserted ''(or under section 29, as in effect on the day before the date of enactment of the Energy Tax Incentives Act of 2005, for any prior taxable year)'' before period at end.

Subsec. (e)(10). Pub. L. 109–58, § 1301(d)(1), added par. (10).

Subsec. (e)(11). Pub. L. 109–58, § 1302(a), added par. (11).

2004—Pub. L. 108–357, § 710(b)(3)(B), inserted '', etc'' after ''resources'' in section catchline.

Subsec. (b)(2). Pub. L. 108–357, § 710(b)(3)(C), substituted ''The 1.5 cent amount in subsection (a), the 8 cent amount in paragraph (1), the $4.375 amount in subsection (e)(8)(A), and in subsection (e)(8)(B)(i) the reference price of fuel used as a feedstock (within the meaning of subsection (c)(7)(A)) in 2002'' for ''The 1.5 cent amount in subsection (a) and the 8 cent amount in paragraph (1)''.

Subsec. (b)(3). Pub. L. 108–357, § 710(f), inserted ''the lesser of ½ or'' before ''a fraction'' in introductory provisions and ''This paragraph shall not apply with respect to any facility described in subsection (d)(2)(A)(ii)'' in concluding provisions.

Subsec. (b)(4). Pub. L. 108–357, § 710(c), added par. (4).

Subsec. (c). Pub. L. 108–357, § 710(a), amended heading and text of subsec. (c) generally. Prior to amendment, subsec. (c) defined ''qualified energy resources'', ''closed-loop biomass'', ''qualified facility'', and ''poultry waste'' for purposes of this section.

Subsec. (c)(3). Pub. L. 108–311 substituted ''January 1, 2006'' for ''January 1, 2004'' in subpars. (A) to (C).

Subsec. (d). Pub. L. 108–357, § 710(b)(1), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 108–357, § 710(b)(1), redesignated subsec. (d) as (e).

Subsec. (e)(7)(A)(i). Pub. L. 108–357, § 710(b)(3)(A), substituted ''subsection (d)(1)'' for ''subsection (c)(3)(A)''.

Subsec. (e)(8). Pub. L. 108–357, § 710(b)(2), added par. (8).

Subsec. (e)(9). Pub. L. 108–357, § 710(d), added par. (9).

2002—Subsec. (c)(3). Pub. L. 107–147 substituted ''2004'' for ''2002'' in subpars. (A) to (C).

2000—Subsec. (d)(7)(A)(i). Pub. L. 106–554 substituted ''subsection (c)(3)(A)'' for ''paragraph (3)(A)''.

1999—Subsec. (c)(1)(C). Pub. L. 106–170, § 507(b)(1), added subpar. (C).

Subsec. (c)(3). Pub. L. 106–170, § 507(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after December 31, 1993 (December 31, 1992, in the case of a facility using closed-loop biomass to produce electricity), and before July 1, 1999.''

Subsec. (c)(4). Pub. L. 106–170, § 507(b)(2), added par. (4).

Subsec. (d)(6), (7). Pub. L. 106–170, § 507(c), added pars. (6) and (7).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 702(b), Dec. 17, 2010, 124 Stat. 3311, provided that: ''The amendment made by this section [amending this section] shall apply to facilities placed in service after December 31, 2009.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, § 1101(c), Feb. 17, 2009, 123 Stat. 319, provided that:

''(1) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Feb. 17, 2009].

''(2) TECHNICAL AMENDMENT.—The amendment made by subsection (b) [amending this section] shall take effect as if included in section 102 of the Energy Improvement and Extension Act of 2008 [Pub. L. 110–343].''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title I, § 101(f), Oct. 3, 2008, 122 Stat. 3810, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to property originally placed in service after December 31, 2008.

''(2) REFINED COAL.—The amendments made by subsection (b) [amending this section] shall apply to coal produced and sold from facilities placed in service after December 31, 2008.

''(3) TRASH FACILITY CLARIFICATION.—The amendments made by subsection (c) [amending this section] shall apply to electricity produced and sold after the date of the enactment of this Act [Oct. 3, 2008].

''(4) EXPANSION OF BIOMASS FACILITIES.—The amendments made by subsection (d) [amending this section] shall apply to property placed in service after the date of the enactment of this Act.''

Pub. L. 110–343, div. B, title I, § 102(f), Oct. 3, 2008, 122 Stat. 3811, provided that: ''The amendments made by this section [amending this section] shall apply to electricity produced and sold after the date of the enactment of this Act [Oct. 3, 2008], in taxable years ending after such date.''

Amendment by section 106(c)(3)(B) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2007, see section 106(f)(1) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 23 of this title.

Pub. L. 110–343, div. B, title I, § 108(e), Oct. 3, 2008, 122 Stat. 3821, provided that: ''The amendments made by this section [amending this section and section 45K of

this title] shall apply to fuel produced and sold after September 30, 2008.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 7(b) of 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.

Pub. L. 110–172, § 9(c), Dec. 29, 2007, 121 Stat. 2484, provided that: ''The amendments made by this section [amending this section and section 856 of this title] shall take effect as if included in the provisions of the Tax Relief Extension Act of 1999 [Pub. L. 106–170] to which they relate.''

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by section 402(b) of Pub. L. 109–135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

Amendment by section 403(t) of Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Pub. L. 109–58, title XIII, § 1301(g), Aug. 8, 2005, 119 Stat. 990, as amended by Pub. L. 110–172, § 11(a)(45), Dec. 29, 2007, 121 Stat. 2488, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 168 of this title and amending provisions set out as a note under this section] shall take effect on the date of the enactment of this Act [Aug. 8, 2005].

''(2) TECHNICAL AMENDMENTS.—The amendments made by subsections (e) and (f) [amending this section and section 168 of this title and amending provisions set out as a note under this section] shall take effect as if included in the amendments made by section 710 of the American Jobs Creation Act of 2004 [Pub. L. 108–357].''

Pub. L. 109–58, title XIII, § 1302(c), Aug. 8, 2005, 119 Stat. 991, provided that: ''The amendments made by this section [amending this section and section 55 of this title] shall apply to taxable years of cooperative organizations ending after the date of the enactment of this Act [Aug. 8, 2005].''

Amendment by section 1322(a)(3)(C) of Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–357, title VII, § 710(g), Oct. 22, 2004, 118 Stat. 1557, as amended by Pub. L. 109–58, title XIII, § 1301(f)(6), Aug. 8, 2005, 119 Stat. 990, 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 electricity produced and sold after the date of the enactment of this Act [Oct. 22, 2004], in taxable years ending after such date.

''(2) CERTAIN BIOMASS FACILITIES.—With respect to any facility described in section 45(d)(3)(A)(ii) of the Internal Revenue Code of 1986, as added by subsection (b)(1), which is placed in service before the date of the enactment of this Act, the amendments made by this section shall apply to electricity produced and sold after December 31, 2004, in taxable years ending after such date.

''(3) CREDIT RATE AND PERIOD FOR NEW FACILITIES.—The amendments made by subsection (c) [amending this section] shall apply to electricity produced and sold after December 31, 2004, in taxable years ending after such date.

''(4) NONAPPLICATION OF AMENDMENTS TO PREEFFECTIVE DATE POULTRY WASTE FACILITIES.—The amendments made by this section shall not apply with respect to any poultry waste facility (within the meaning of section 45(c)(3)(C), as in effect on the day before the date of the enactment of this Act) placed in service before January 1, 2005.

''(5) REFINED COAL PRODUCTION FACILITIES.—Section 45(e)(8) of the Internal Revenue Code of 1986, as added by this section, shall apply to refined coal produced and sold after the date of the enactment of this Act.''

Pub. L. 108–311, title III, § 313(b), Oct. 4, 2004, 118 Stat. 1181, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to facilities placed in service after December 31, 2003.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, § 603(b), Mar. 9, 2002, 116 Stat. 59, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to facilities placed in service after December 31, 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, § 507(d), Dec. 17, 1999, 113 Stat. 1923, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 17, 1999].''

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1992, see section 1914(e) of Pub. L. 102–486, set out as an Effective Date of 1992 Amendment note under section 38 of this title.

INFLATION ADJUSTED ITEMS FOR CERTAIN TAX YEARS

Provisions relating to inflation adjustment of items in this section for certain tax years were contained in the following:

2011—Internal Revenue Notice 2011–40.
2010—Internal Revenue Notice 2010–37.
2009—Internal Revenue Notice 2009–40.
2008—Internal Revenue Notice 2008–48.
2007—Internal Revenue Notice 2007–40.
2006—Internal Revenue Notice 2006–51.
2005—Internal Revenue Notice 2005–37.
2004—Internal Revenue Notice 2004–29.
2003—Internal Revenue Notice 2003–29.
2002—Internal Revenue Notice 2002–39.
2001—Internal Revenue Notice 2001–33.
2000—Internal Revenue Notice 2000–52.
1999—Internal Revenue Notice 99–26.
1998—Internal Revenue Notice 98–27.
1997—Internal Revenue Notice 97–30.
1996—Internal Revenue Notice 96–25.

§ 45A. Indian employment credit

(a) Amount of credit

For purposes of section 38, the amount of the Indian employment credit determined under this section with respect to any employer for any taxable year is an amount equal to 20 percent of the excess (if any) of—

(1) the sum of—

(A) the qualified wages paid or incurred during such taxable year, plus

(B) qualified employee health insurance costs paid or incurred during such taxable year, over

(2) the sum of the qualified wages and qualified employee health insurance costs (determined as if this section were in effect) which were paid or incurred by the employer (or any predecessor) during calendar year 1993.

(b) Qualified wages; qualified employee health insurance costs

For purposes of this section—

(1) Qualified wages

(A) In general

The term ''qualified wages'' means any wages paid or incurred by an employer for services performed by an employee while such employee is a qualified employee.

(B) Coordination with work opportunity credit

The term ''qualified wages'' shall not include wages attributable to service rendered during the 1-year period beginning with the day the individual begins work for the employer if any portion of such wages is taken into account in determining the credit under section 51.

(2) Qualified employee health insurance costs

(A) In general

The term ''qualified employee health insurance costs'' means any amount paid or incurred by an employer for health insurance to the extent such amount is attributable to coverage provided to any employee while such employee is a qualified employee.

(B) Exception for amounts paid under salary reduction arrangements

No amount paid or incurred for health insurance pursuant to a salary reduction arrangement shall be taken into account under subparagraph (A).

(3) Limitation

The aggregate amount of qualified wages and qualified employee health insurance costs taken into account with respect to any employee for any taxable year (and for the base period under subsection (a)(2)) shall not exceed $20,000.

(c) Qualified employee

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term ''qualified employee'' means, with respect to any period, any employee of an employer if—

(A) the employee is an enrolled member of an Indian tribe or the spouse of an enrolled member of an Indian tribe,

(B) substantially all of the services performed during such period by such employee for such employer are performed within an Indian reservation, and

(C) the principal place of abode of such employee while performing such services is on or near the reservation in which the services are performed.

(2) Individuals receiving wages in excess of $30,000 not eligible

An employee shall not be treated as a qualified employee for any taxable year of the employer if the total amount of the wages paid or incurred by such employer to such employee during such taxable year (whether or not for services within an Indian reservation) exceeds the amount determined at an annual rate of $30,000.

(3) Inflation adjustment

The Secretary shall adjust the $30,000 amount under paragraph (2) for years beginning after 1994 at the same time and in the same manner as under section 415(d), except that the base period taken into account for purposes of such adjustment shall be the calendar quarter beginning October 1, 1993.

(4) Employment must be trade or business employment

An employee shall be treated as a qualified employee for any taxable year of the employer only if more than 50 percent of the wages paid or incurred by the employer to such employee during such taxable year are for services performed in a trade or business of the employer. Any determination as to whether the preceding sentence applies with respect to any employee for any taxable year shall be made without regard to subsection (e)(2).

(5) Certain employees not eligible

The term ''qualified employee'' shall not include—

(A) any individual described in subparagraph (A), (B), or (C) of section 51(i)(1),

(B) any 5-percent owner (as defined in section 416(i)(1)(B)), and

(C) any individual if the services performed by such individual for the employer involve the conduct of class I, II, or III gaming as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703), or are performed in a building housing such gaming activity.

(6) Indian tribe defined

The term ''Indian tribe'' means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(7) Indian reservation defined

The term ''Indian reservation'' has the meaning given such term by section 168(j)(6).

(d) Early termination of employment by employer

(1) In general

If the employment of any employee is terminated by the taxpayer before the day 1 year after the day on which such employee began work for the employer—

(A) no wages (or qualified employee health insurance costs) with respect to such employee shall be taken into account under subsection (a) for the taxable year in which such employment is terminated, and

(B) the tax under this chapter for the taxable year in which such employment is terminated shall be increased by the aggregate credits (if any) allowed under section 38(a) for prior taxable years by reason of wages (or qualified employee health insurance costs) taken into account with respect to such employee.

(2) Carrybacks and carryovers adjusted

In the case of any termination of employment to which paragraph (1) applies, the

carrybacks and carryovers under section 39 shall be properly adjusted.

(3) Subsection not to apply in certain cases

(A) In general

Paragraph (1) shall not apply to—

(i) a termination of employment of an employee who voluntarily leaves the employment of the taxpayer,

(ii) a termination of employment of an individual who before the close of the period referred to in paragraph (1) becomes disabled to perform the services of such employment unless such disability is removed before the close of such period and the taxpayer fails to offer reemployment to such individual, or

(iii) a termination of employment of an individual if it is determined under the applicable State unemployment compensation law that the termination was due to the misconduct of such individual.

(B) Changes in form of business

For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated—

(i) by a transaction to which section 381(a) applies if the employee continues to be employed by the acquiring corporation, or

(ii) by reason of a mere change in the form of conducting the trade or business of the taxpayer if the employee continues to be employed in such trade or business and the taxpayer retains a substantial interest in such trade or business.

(4) Special rule

Any increase in tax under paragraph (1) shall not be treated as a tax imposed by this chapter for purposes of—

(A) determining the amount of any credit allowable under this chapter, and

(B) determining the amount of the tax imposed by section 55.

(e) Other definitions and special rules

For purposes of this section—

(1) Wages

The term ''wages'' has the same meaning given to such term in section 51.

(2) Controlled groups

(A) All employers treated as a single employer under section (a) or (b) of section 52 shall be treated as a single employer for purposes of this section.

(B) The credit (if any) determined under this section with respect to each such employer shall be its proportionate share of the wages and qualified employee health insurance costs giving rise to such credit.

(3) Certain other rules made applicable

Rules similar to the rules of section 51(k) and subsections (c), (d), and (e) of section 52 shall apply.

(4) Coordination with nonrevenue laws

Any reference in this section to a provision not contained in this title shall be treated for purposes of this section as a reference to such provision as in effect on the date of the enactment of this paragraph.

(5) Special rule for short taxable years

For any taxable year having less than 12 months, the amount determined under subsection (a)(2) shall be multiplied by a fraction, the numerator of which is the number of days in the taxable year and the denominator of which is 365.

(f) Termination

This section shall not apply to taxable years beginning after December 31, 2011.

(Added Pub. L. 103–66, title XIII, § 13322(b), Aug. 10, 1993, 107 Stat. 559; amended Pub. L. 104–188, title I, § 1201(e)(1), Aug. 20, 1996, 110 Stat. 1772; Pub. L. 105–206, title VI, § 6023(1), July 22, 1998, 112 Stat. 824; Pub. L. 107–147, title VI, § 613(a), Mar. 9, 2002, 116 Stat. 61; Pub. L. 108–311, title III, § 315, title IV, § 404(b)(1), Oct. 4, 2004, 118 Stat. 1181, 1188; Pub. L. 109–432, div. A, title I, § 111(a), Dec. 20, 2006, 120 Stat. 2940; Pub. L. 110–343, div. C, title III, § 314(a), Oct. 3, 2008, 122 Stat. 3872; Pub. L. 111–312, title VII, § 732(a), Dec. 17, 2010, 124 Stat. 3317.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (c)(6), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The date of the enactment of this paragraph, referred to in subsec. (e)(4), is the date of enactment of Pub. L. 103–66, which was approved Aug. 10, 1993.

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (f). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2007''.

2006—Subsec. (f). Pub. L. 109–432 substituted ''2007'' for ''2005''.

2004—Subsec. (c)(3). Pub. L. 108–311, § 404(b)(1), inserted '', except that the base period taken into account for purposes of such adjustment shall be the calendar quarter beginning October 1, 1993'' before period at end.

Subsec. (f). Pub. L. 108–311, § 315, substituted ''December 31, 2005'' for ''December 31, 2004''.

2002—Subsec. (f). Pub. L. 107–147 substituted ''December 31, 2004'' for ''December 31, 2003''.

1998—Subsec. (b)(1)(B). Pub. L. 105–206 substituted ''work opportunity credit'' for ''targeted jobs credit'' in heading.

1996—Subsec. (b)(1)(B). Pub. L. 104–188, which directed that subsec. (b)(1)(B) of this section be amended in the text by substituting ''work opportunity credit'' for ''targeted jobs credit'', could not be executed because the words ''targeted jobs credit'' did not appear in the text.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 732(b), Dec. 17, 2010, 124 Stat. 3317, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §314(b), Oct. 3, 2008, 122 Stat. 3872, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §111(b), Dec. 20, 2006, 120 Stat. 2940, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title IV, §404(f), Oct. 4, 2004, 118 Stat. 1188, provided that: ''The amendments made by this section [amending this section and sections 403, 408, 415, 530, and 4972 of this title] shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16] to which they relate.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to individuals who begin work for the employer after Sept. 30, 1996, see section 1201(g) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE

Section applicable to wages paid or incurred after Dec. 31, 1993, see section 13322(f) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 38 of this title.

§ 45B. Credit for portion of employer social security taxes paid with respect to employee cash tips

(a) General rule

For purposes of section 38, the employer social security credit determined under this section for the taxable year is an amount equal to the excess employer social security tax paid or incurred by the taxpayer during the taxable year.

(b) Excess employer social security tax

For purposes of this section—

(1) In general

The term ''excess employer social security tax'' means any tax paid by an employer under section 3111 with respect to tips received by an employee during any month, to the extent such tips—

(A) are deemed to have been paid by the employer to the employee pursuant to section 3121(q) (without regard to whether such tips are reported under section 6053), and

(B) exceed the amount by which the wages (excluding tips) paid by the employer to the employee during such month are less than the total amount which would be payable (with respect to such employment) at the minimum wage rate applicable to such individual under section 6(a)(1) of the Fair Labor Standards Act of 1938 (as in effect on January 1, 2007, and determined without regard to section 3(m) of such Act).

(2) Only tips received for food or beverages taken into account

In applying paragraph (1), there shall be taken into account only tips received from customers in connection with the providing, delivering, or serving of food or beverages for consumption if the tipping of employees delivering or serving food or beverages by customers is customary.

(c) Denial of double benefit

No deduction shall be allowed under this chapter for any amount taken into account in determining the credit under this section.

(d) Election not to claim credit

This section shall not apply to a taxpayer for any taxable year if such taxpayer elects to have this section not apply for such taxable year.

(Added Pub. L. 103–66, title XIII, §13443(a), Aug. 10, 1993, 107 Stat. 568; amended Pub. L. 104–188, title I, §1112(a)(1), (b)(1), Aug. 20, 1996, 110 Stat. 1759; Pub. L. 110–28, title VIII, §8213(a), May 25, 2007, 121 Stat. 193.)

REFERENCES IN TEXT

Sections 3(m) and 6(a)(1) of the Fair Labor Standards Act of 1938, referred to in subsec. (b)(1)(B), are classified to sections 203(m) and 206(a)(1), respectively, of Title 29, Labor.

AMENDMENTS

2007—Subsec. (b)(1)(B). Pub. L. 110–28 inserted ''as in effect on January 1, 2007, and'' before ''determined without regard to''.

1996—Subsec. (b)(1)(A). Pub. L. 104–188, §1112(a)(1), inserted ''(without regard to whether such tips are reported under section 6053)'' after ''section 3121(q)''.

Subsec. (b)(2). Pub. L. 104–188, §1112(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''ONLY TIPS RECEIVED AT FOOD AND BEVERAGE ESTABLISHMENTS TAKEN INTO ACCOUNT.—In applying paragraph (1), there shall be taken into account only tips received from customers in connection with the provision of food or beverages for consumption on the premises of an establishment with respect to which the tipping of employees serving food or beverages by customers is customary.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, §8213(b), May 25, 2007, 121 Stat. 193, provided that: ''The amendment made by this section [amending this section] shall apply to tips received for services performed after December 31, 2006.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1112(a)(3) of Pub. L. 104–188 provided that: ''The amendments made by this subsection [amending this section and provisions set out as a note under section 38 of this title] shall take effect as if included in the amendments made by, and the provisions of, section 13443 of the Revenue Reconciliation Act of 1993 [Pub. L. 103–66].''

Section 1112(b)(2) of Pub. L. 104–188 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to tips received for services performed after December 31, 1996.''

EFFECTIVE DATE

Section applicable with respect to taxes paid after Dec. 31, 1993, with respect to services performed before, on, or after such date, see section 13443(d) of Pub. L. 103–66, as amended, set out as an Effective Date of 1993 Amendment note under section 38 of this title.

§ 45C. Clinical testing expenses for certain drugs for rare diseases or conditions

(a) General rule

For purposes of section 38, the credit determined under this section for the taxable year is an amount equal to 50 percent of the qualified clinical testing expenses for the taxable year.

(b) Qualified clinical testing expenses

For purposes of this section—

(1) Qualified clinical testing expenses

(A) In general

Except as otherwise provided in this paragraph, the term ''qualified clinical testing expenses'' means the amounts which are paid or incurred by the taxpayer during the taxable year which would be described in subsection (b) of section 41 if such subsection were applied with the modifications set forth in subparagraph (B).

(B) Modifications

For purposes of subparagraph (A), subsection (b) of section 41 shall be applied—

(i) by substituting ''clinical testing'' for ''qualified research'' each place it appears in paragraphs (2) and (3) of such subsection, and

(ii) by substituting ''100 percent'' for ''65 percent'' in paragraph (3)(A) of such subsection.

(C) Exclusion for amounts funded by grants, etc.

The term ''qualified clinical testing expenses'' shall not include any amount to the extent such amount is funded by any grant, contract, or otherwise by another person (or any governmental entity).

(D) Special rule

For purposes of this paragraph, section 41 shall be deemed to remain in effect for periods after June 30, 1995, and before July 1, 1996, and periods after December 31, 2011.

(2) Clinical testing

(A) In general

The term ''clinical testing'' means any human clinical testing—

(i) which is carried out under an exemption for a drug being tested for a rare disease or condition under section 505(i) of the Federal Food, Drug, and Cosmetic Act (or regulations issued under such section),

(ii) which occurs—

(I) after the date such drug is designated under section 526 of such Act, and

(II) before the date on which an application with respect to such drug is approved under section 505(b) of such Act or, if the drug is a biological product, before the date on which a license for such drug is issued under section 351 of the Public Health Service Act;[1] and

(iii) which is conducted by or on behalf of the taxpayer to whom the designation under such section 526 applies.

(B) Testing must be related to use for rare disease or condition

Human clinical testing shall be taken into account under subparagraph (A) only to the extent such testing is related to the use of a drug for the rare disease or condition for which it was designated under section 526 of the Federal Food, Drug, and Cosmetic Act.

(c) Coordination with credit for increasing research expenditures

(1) In general

Except as provided in paragraph (2), any qualified clinical testing expenses for a taxable year to which an election under this section applies shall not be taken into account for purposes of determining the credit allowable under section 41 for such taxable year.

(2) Expenses included in determining base period research expenses

Any qualified clinical testing expenses for any taxable year which are qualified research expenses (within the meaning of section 41(b)) shall be taken into account in determining base period research expenses for purposes of applying section 41 to subsequent taxable years.

(d) Definition and special rules

(1) Rare disease or condition

For purposes of this section, the term ''rare disease or condition'' means any disease or condition which—

(A) affects less than 200,000 persons in the United States, or

(B) affects more than 200,000 persons in the United States but for which there is no reasonable expectation that the cost of developing and making available in the United States a drug for such disease or condition will be recovered from sales in the United States of such drug.

Determinations under the preceding sentence with respect to any drug shall be made on the basis of the facts and circumstances as of the date such drug is designated under section 526 of the Federal Food, Drug, and Cosmetic Act.

(2) Special limitations on foreign testing

(A) In general

No credit shall be allowed under this section with respect to any clinical testing conducted outside the United States unless—

(i) such testing is conducted outside the United States because there is an insufficient testing population in the United States, and

(ii) such testing is conducted by a United States person or by any other person who is not related to the taxpayer to whom the designation under section 526 of the Federal Food, Drug, and Cosmetic Act applies.

(B) Special limitation for corporations to which section 936 applies

No credit shall be allowed under this section with respect to any clinical testing conducted by a corporation to which an election under section 936 applies.

(3) Certain rules made applicable

Rules similar to the rules of paragraphs (1) and (2) of section 41(f) shall apply for purposes of this section.

(4) Election

This section shall apply to any taxpayer for any taxable year only if such taxpayer elects

[1] So in original. The semicolon probably should be a comma.

(at such time and in such manner as the Secretary may by regulations prescribe) to have this section apply for such taxable year.

(Added Pub. L. 97–414, § 4(a), Jan. 4, 1983, 96 Stat. 2053, § 44H; renumbered § 28 and amended Pub. L. 98–369, div. A, title IV, §§ 471(c), 474(g), title VI, § 612(e)(1), July 18, 1984, 98 Stat. 826, 831, 912; Pub. L. 99–514, title II, §§ 231(d)(3)(A), 232, title VII, § 701(c)(2), title XII, § 1275(c)(4), title XVIII, § 1879(b)(1), (2), Oct. 22, 1986, 100 Stat. 2178, 2180, 2340, 2599, 2905; Pub. L. 100–647, title I, § 1018(q)(1), title IV, § 4008(c)(1), Nov. 10, 1988, 102 Stat. 3585, 3653; Pub. L. 101–239, title VII, § 7110(a)(3), Dec. 19, 1989, 103 Stat. 2323; Pub. L. 101–508, title XI, §§ 11402(b)(2), 11411, Nov. 5, 1990, 104 Stat. 1388–473, 1388–479; Pub. L. 102–227, title I, §§ 102(b), 111(a), Dec. 11, 1991, 105 Stat. 1686, 1688; Pub. L. 103–66, title XIII, § 13111(a)(2), (b), Aug. 10, 1993, 107 Stat. 420; renumbered § 45C and amended Pub. L. 104–188, title I, §§ 1204(e), 1205(a)(1), (b), (d)(1), (2), Aug. 20, 1996, 110 Stat. 1775, 1776; Pub. L. 105–34, title VI, §§ 601(b)(2), 604(a), Aug. 5, 1997, 111 Stat. 862, 863; Pub. L. 105–115, title I, § 125(b)(2)(O), Nov. 21, 1997, 111 Stat. 2326; Pub. L. 105–277, div. J, title I, § 1001(b), Oct. 21, 1998, 112 Stat. 2681–888; Pub. L. 106–170, title V, § 502(a)(2), Dec. 17, 1999, 113 Stat. 1919; Pub. L. 108–311, title III, § 301(a)(2), Oct. 4, 2004, 118 Stat. 1178; Pub. L. 109–432, div. A, title I, § 104(a)(2), Dec. 20, 2006, 120 Stat. 2934; Pub. L. 110–343, div. C, title III, § 301(a)(2), Oct. 3, 2008, 122 Stat. 3865; Pub. L. 111–312, title VII, § 731(b), Dec. 17, 2010, 124 Stat. 3317.)

REFERENCES IN TEXT

Sections 505(b), (i) and 526 of the Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (b)(2)(A) and (d)(1), (2)(A)(ii), are classified to sections 355(b), (i) and 360bb, respectively, of Title 21, Food and Drugs.

Section 351 of the Public Health Service Act, referred to in subsec. (b)(2)(A)(ii)(II), is classified to section 262 of Title 42, The Public Health and Welfare.

AMENDMENTS

2010—Subsec. (b)(1)(D). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (b)(1)(D). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2007''.

2006—Subsec. (b)(1)(D). Pub. L. 109–432 substituted ''2007'' for ''2005''.

2004—Subsec. (b)(1)(D). Pub. L. 108–311 substituted ''December 31, 2005'' for ''June 30, 2004''.

1999—Subsec. (b)(1)(D). Pub. L. 106–170 substituted ''June 30, 2004'' for ''June 30, 1999''.

1998—Subsec. (b)(1)(D). Pub. L. 105–277 substituted ''June 30, 1999'' for ''June 30, 1998''.

1997—Subsec. (b)(1)(D). Pub. L. 105–34, § 601(b)(2), substituted ''June 30, 1998'' for ''May 31, 1997''.

Subsec. (b)(2)(A)(ii)(II). Pub. L. 105–115 struck out ''or 507'' after ''505(b)''.

Subsec. (e). Pub. L. 105–34, § 604(a), struck out subsec. (e) which read as follows:

''(e) TERMINATION.—This section shall not apply to any amount paid or incurred—

''(1) after December 31, 1994, and before July 1, 1996, or

''(2) after May 31, 1997.''

1996—Pub. L. 104–188, § 1205(a)(1), renumbered section 28 of this title as this section.

Subsec. (a). Pub. L. 104–188, § 1205(d)(1), substituted ''For purposes of section 38, the credit determined under this section for the taxable year is'' for ''There shall be allowed as a credit against the tax imposed by this chapter for the taxable year''.

Subsec. (b)(1)(D). Pub. L. 104–188, § 1204(e), inserted '', and before July 1, 1996, and periods after May 31, 1997'' after ''June 30, 1995''.

Subsec. (d)(2) to (5). Pub. L. 104–188, § 1205(d)(2), redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which read as follows: ''LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed by this section for any taxable year shall not exceed the excess (if any) of—

''(A) the regular tax (reduced by the sum of the credits allowable under subpart A and section 27), over

''(B) the tentative minimum tax for the taxable year.''

Subsec. (e). Pub. L. 104–188, § 1205(b), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''TERMINATION.—This section shall not apply to any amount paid or incurred after December 31, 1994.''

1993—Subsec. (b)(1)(D). Pub. L. 103–66, § 13111(a)(2), substituted ''June 30, 1995'' for ''June 30, 1992''.

Subsec. (e). Pub. L. 103–66, § 13111(b), substituted ''December 31, 1994'' for ''June 30, 1992''.

1991—Subsec. (b)(1)(D). Pub. L. 102–227, § 102(b), substituted ''June 30, 1992'' for ''December 31, 1991''.

Subsec. (e). Pub. L. 102–227, § 111(a), substituted ''June 30, 1992'' for ''December 31, 1991''.

1990—Subsec. (b)(1)(D). Pub. L. 101–508, § 11402(b)(2), substituted ''December 31, 1991'' for ''December 31, 1990''.

Subsec. (e). Pub. L. 101–508, § 11411, substituted ''December 31, 1991'' for ''December 31, 1990''.

1989—Subsec. (b)(1)(D). Pub. L. 101–239 substituted ''1990'' for ''1989''.

1988—Subsec. (b)(1)(D). Pub. L. 100–647, § 4008(c)(1), substituted ''1989'' for ''1988''.

Subsec. (b)(2)(A)(ii)(II). Pub. L. 100–647, § 1018(q)(1), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''before the date on which an application with respect to such drug is approved under section 505(b) of such Act or, if the drug is a biological product, before the date on which a license for such drug is issued under section 351 of the Public Health Services Act, and''.

1986—Subsec. (b)(1). Pub. L. 99–514, § 231(d)(3)(A)(i), (iv), substituted ''41'' for ''30'' in subpars. (A), (B), and (D), and substituted ''1988'' for ''1985'' in subpar. (D).

Subsec. (b)(2)(A)(ii)(I). Pub. L. 99–514, § 1879(b)(1)(A), substituted ''the date such drug'' for ''the date of such drug''.

Subsec. (b)(2)(A)(ii)(II). Pub. L. 99–514, § 1879(b)(1)(B), inserted ''or, if the drug is a biological product, before the date on which a license for such drug is issued under section 351 of the Public Health Services Act''.

Subsec. (c). Pub. L. 99–514, § 231(d)(3)(A)(i), (ii), substituted ''41'' for ''30'' in pars. (1) and (2) and ''41(b)'' for ''30(b)'' in par. (2).

Subsec. (d)(1). Pub. L. 99–514, § 1879(b)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For purposes of this section, the term 'rare disease or condition' means any disease or condition which occurs so infrequently in the United States that there is no reasonable expectation that the cost of developing and making available in the United States a drug for such disease or condition will be recovered from sales in the United States of such drug. Determinations under the preceding sentence with respect to any drug shall be made on the basis of the facts and circumstances as of the date such drug is designated under section 526 of the Federal Food, Drug, and Cosmetic Act.''

Subsec. (d)(2). Pub. L. 99–514, § 701(c)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The credit allowed by this section for any taxable year shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 26(b)), reduced by the sum of the credits allowable under subpart A and section 27.''

Subsec. (d)(3)(B). Pub. L. 99–514, § 1275(c)(4), struck out ''934(b) or'' before ''936'' in heading and amended text generally. Prior to amendment, text read as follows: ''No credit shall be allowed under this section with respect to any clinical testing conducted by a corporation to which section 934(b) applies or to which an election under section 936 applies.''

Subsec. (d)(4). Pub. L. 99–514, § 231(d)(3)(A)(iii), substituted ''section 41(f)'' for ''section 30(f)''.

Subsec. (e). Pub. L. 99–514, § 232, substituted ''1990'' for ''1987''.

1984—Pub. L. 98–369, § 471(c), renumbered section 44H of this title as this section.

Subsec. (b)(1)(A), (B), (D). Pub. L. 98–369, § 474(g)(1)(A), substituted ''section 30'' for ''section 44F''.

Subsec. (c)(1). Pub. L. 98–369, § 474(g)(1)(A), substituted ''section 30'' for ''section 44F''.

Subsec. (c)(2). Pub. L. 98–369, § 474(g)(1)(A), (B), substituted ''section 30'' for ''section 44F'' and ''section 30(b)'' for ''section 44F(b)''.

Subsec. (d)(2). Pub. L. 98–369, § 612(e)(1), substituted ''section 26(b)'' for ''section 25(b)''.

Pub. L. 98–369, § 474(g)(2), amended par. (2) generally, substituting ''shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 25(b), reduced by the sum of the credits allowable under subpart A and section 27'' for ''shall not exceed the amount of the tax imposed by this chapter for the taxable year reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than the credits allowable by sections 31, 39, and 43. For purposes of the preceding sentence, the term 'tax imposed by this chapter' shall not include any tax treated as not imposed by this chapter under the last sentence of section 53(a)''.

Subsec. (d)(4). Pub. L. 98–369, § 474(g)(1)(C), substituted ''section 30(f)'' for ''section 44F(f)''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to amounts paid or incurred after Dec. 31, 2009, see section 731(c) of Pub. L. 111–312, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable to amounts paid or incurred after Dec. 31, 2007, see section 301(e)(2) of Pub. L. 110–343, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to amounts paid or incurred after Dec. 31, 2005, see section 104(a)(3) of Pub. L. 109–432, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to amounts paid or incurred after June 30, 2004, see section 301(b) of Pub. L. 108–311, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to amounts paid or incurred after June 30, 1999, see section 502(a)(3) of Pub. L. 106–170, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 applicable to amounts paid or incurred after June 30, 1998, see section 1001(c) of Pub. L. 105–277, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 601(b)(2) of Pub. L. 105–34 applicable to amounts paid or incurred after May 31, 1997, see section 601(c) of Pub. L. 105–34, set out as a note under section 41 of this title.

Section 604(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to amounts paid or incurred after May 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1204(e) of Pub. L. 104–188 applicable to taxable years ending after June 30, 1996, and not to be taken into account under section 6654 or 6655 of this title in determining amount of any installment required to be paid for a taxable year beginning in 1997, see section 1204(f) of Pub. L. 104–188, set out as a note under section 41 of this title.

Amendment by section 1205(a)(1), (b), (d)(1), (2) of Pub. L. 104–188 applicable to amounts paid or incurred in taxable years ending after June 30, 1996, see section 1205(e) of Pub. L. 104–188, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13111(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and section 41 of this title] shall apply to taxable years ending after June 30, 1992.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 102(c) of Pub. L. 102–227 provided that: ''The amendments made by this section [amending this section and section 41 of this title] shall apply to taxable years ending after December 31, 1991.''

Section 111(b) of Pub. L. 102–227 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 1991.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11402(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 41 of this title and repealing provisions set out as a note under section 41 of this title] shall apply to taxable years beginning after December 31, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1018(q)(1) 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 4008(c)(1) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, see section 4008(d) of Pub. L. 100–647, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 231(d)(3)(A) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 701(c)(2) 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 1275(c)(4) 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.

Section 1879(b)(3) of Pub. L. 99–514 provided that: ''The amendments made by this subsection [amending this section] shall apply to amounts paid or incurred after December 31, 1982, in taxable years ending after such date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(g) 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 612(e)(1) of Pub. L. 98–369, applicable to interest paid or accrued after December 31, 1984, on indebtedness incurred after December 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

EFFECTIVE DATE

Section 4(d) of Pub. L. 97–414 provided that: ''The amendments made by this section [enacting this section and amending sections 280C and 6096 of this title] shall apply to amounts paid or incurred after December 31, 1982, in taxable years ending after such date.''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUBLIC LAW 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(c)(2) 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.

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.

§ 45D. New markets tax credit

(a) Allowance of credit

(1) In general

For purposes of section 38, in the case of a taxpayer who holds a qualified equity investment on a credit allowance date of such investment which occurs during the taxable year, the new markets tax credit determined under this section for such taxable year is an amount equal to the applicable percentage of the amount paid to the qualified community development entity for such investment at its original issue.

(2) Applicable percentage

For purposes of paragraph (1), the applicable percentage is—

(A) 5 percent with respect to the first 3 credit allowance dates, and

(B) 6 percent with respect to the remainder of the credit allowance dates.

(3) Credit allowance date

For purposes of paragraph (1), the term ''credit allowance date'' means, with respect to any qualified equity investment—

(A) the date on which such investment is initially made, and

(B) each of the 6 anniversary dates of such date thereafter.

(b) Qualified equity investment

For purposes of this section—

(1) In general

The term ''qualified equity investment'' means any equity investment in a qualified community development entity if—

(A) such investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash,

(B) substantially all of such cash is used by the qualified community development entity to make qualified low-income community investments, and

(C) such investment is designated for purposes of this section by the qualified community development entity.

Such term shall not include any equity investment issued by a qualified community development entity more than 5 years after the date that such entity receives an allocation under subsection (f). Any allocation not used within such 5-year period may be reallocated by the Secretary under subsection (f).

(2) Limitation

The maximum amount of equity investments issued by a qualified community development entity which may be designated under paragraph (1)(C) by such entity shall not exceed the portion of the limitation amount allocated under subsection (f) to such entity.

(3) Safe harbor for determining use of cash

The requirement of paragraph (1)(B) shall be treated as met if at least 85 percent of the aggregate gross assets of the qualified community development entity are invested in qualified low-income community investments.

(4) Treatment of subsequent purchasers

The term ''qualified equity investment'' includes any equity investment which would (but for paragraph (1)(A)) be a qualified equity investment in the hands of the taxpayer if such investment was a qualified equity investment in the hands of a prior holder.

(5) Redemptions

A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this subsection.

(6) Equity investment

The term ''equity investment'' means—

(A) any stock (other than nonqualified preferred stock as defined in section 351(g)(2)) in an entity which is a corporation, and

(B) any capital interest in an entity which is a partnership.

(c) Qualified community development entity

For purposes of this section—

(1) In general

The term ''qualified community development entity'' means any domestic corporation or partnership if—

(A) the primary mission of the entity is serving, or providing investment capital for, low-income communities or low-income persons,

(B) the entity maintains accountability to residents of low-income communities through their representation on any governing board of the entity or on any advisory board to the entity, and

(C) the entity is certified by the Secretary for purposes of this section as being a qualified community development entity.

(2) Special rules for certain organizations

The requirements of paragraph (1) shall be treated as met by—

(A) any specialized small business investment company (as defined in section 1044(c)(3)), and

(B) any community development financial institution (as defined in section 103 of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702)).

(d) Qualified low-income community investments

For purposes of this section—

(1) In general

The term ''qualified low-income community investment'' means—

(A) any capital or equity investment in, or loan to, any qualified active low-income community business,

(B) the purchase from another qualified community development entity of any loan made by such entity which is a qualified low-income community investment,

(C) financial counseling and other services specified in regulations prescribed by the Secretary to businesses located in, and residents of, low-income communities, and

(D) any equity investment in, or loan to, any qualified community development entity.

(2) Qualified active low-income community business

(A) In general

For purposes of paragraph (1), the term ''qualified active low-income community business'' means, with respect to any taxable year, any corporation (including a nonprofit corporation) or partnership if for such year—

(i) at least 50 percent of the total gross income of such entity is derived from the active conduct of a qualified business within any low-income community,

(ii) a substantial portion of the use of the tangible property of such entity (whether owned or leased) is within any low-income community,

(iii) a substantial portion of the services performed for such entity by its employees are performed in any low-income community,

(iv) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

(v) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property (as defined in section 1397C(e)).

(B) Proprietorship

Such term shall include any business carried on by an individual as a proprietor if such business would meet the requirements of subparagraph (A) were it incorporated.

(C) Portions of business may be qualified active low-income community business

The term ''qualified active low-income community business'' includes any trades or businesses which would qualify as a qualified active low-income community business if such trades or businesses were separately incorporated.

(3) Qualified business

For purposes of this subsection, the term ''qualified business'' has the meaning given to such term by section 1397C(d); except that—

(A) in lieu of applying paragraph (2)(B) thereof, the rental to others of real property located in any low-income community shall be treated as a qualified business if there are substantial improvements located on such property, and

(B) paragraph (3) thereof shall not apply.

(e) Low-income community

For purposes of this section—

(1) In general

The term ''low-income community'' means any population census tract if—

(A) the poverty rate for such tract is at least 20 percent, or

(B)(i) in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income, or

(ii) in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income.

Subparagraph (B) shall be applied using possessionwide median family income in the case of census tracts located within a possession of the United States.

(2) Targeted populations

The Secretary shall prescribe regulations under which 1 or more targeted populations (within the meaning of section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702(20))) may be treated as low-income communities. Such regulations shall include procedures for determining which entities are qualified active low-income community businesses with respect to such populations.

(3) Areas not within census tracts

In the case of an area which is not tracted for population census tracts, the equivalent county divisions (as defined by the Bureau of the Census for purposes of defining poverty areas) shall be used for purposes of determining poverty rates and median family income.

(4) Tracts with low population

A population census tract with a population of less than 2,000 shall be treated as a low-income community for purposes of this section if such tract—

(A) is within an empowerment zone the designation of which is in effect under section 1391, and

(B) is contiguous to 1 or more low-income communities (determined without regard to this paragraph).

(5) Modification of income requirement for census tracts within high migration rural counties

(A) In general

In the case of a population census tract located within a high migration rural county, paragraph (1)(B)(i) shall be applied by substituting ''85 percent'' for ''80 percent''.

(B) High migration rural county

For purposes of this paragraph, the term ''high migration rural county'' means any county which, during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.

(f) National limitation on amount of investments designated

(1) In general

There is a new markets tax credit limitation for each calendar year. Such limitation is—

(A) $1,000,000,000 for 2001,

(B) $1,500,000,000 for 2002 and 2003,

(C) $2,000,000,000 for 2004 and 2005,

(D) $3,500,000,000 for 2006 and 2007,

(E) $5,000,000,000 for 2008,

(F) $5,000,000,000 for 2009[1]

(G) $3,500,000,000 for 2010 and 2011.

(2) Allocation of limitation

The limitation under paragraph (1) shall be allocated by the Secretary among qualified community development entities selected by the Secretary. In making allocations under the preceding sentence, the Secretary shall give priority to any entity—

(A) with a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities, or

(B) which intends to satisfy the requirement under subsection (b)(1)(B) by making qualified low-income community investments in 1 or more businesses in which persons unrelated to such entity (within the meaning of section 267(b) or 707(b)(1)) hold the majority equity interest.

(3) Carryover of unused limitation

If the new markets tax credit limitation for any calendar year exceeds the aggregate amount allocated under paragraph (2) for such year, such limitation for the succeeding calendar year shall be increased by the amount of such excess. No amount may be carried under the preceding sentence to any calendar year after 2016.

(g) Recapture of credit in certain cases

(1) In general

If, at any time during the 7-year period beginning on the date of the original issue of a qualified equity investment in a qualified community development entity, there is a recapture event with respect to such investment, then the tax imposed by this chapter for the taxable year in which such event occurs shall be increased by the credit recapture amount.

(2) Credit recapture amount

For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of—

(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if no credit had been determined under this section with respect to such investment, plus

(B) interest at the underpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

(3) Recapture event

For purposes of paragraph (1), there is a recapture event with respect to an equity investment in a qualified community development entity if—

(A) such entity ceases to be a qualified community development entity,

(B) the proceeds of the investment cease to be used as required of subsection (b)(1)(B), or

(C) such investment is redeemed by such entity.

(4) Special rules

(A) Tax benefit rule

The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

(B) No credits against tax

Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(h) Basis reduction

The basis of any qualified equity investment shall be reduced by the amount of any credit determined under this section with respect to such investment. This subsection shall not apply for purposes of sections 1202, 1400B, and 1400F.

(i) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out this section, including regulations—

(1) which limit the credit for investments which are directly or indirectly subsidized by other Federal tax benefits (including the credit under section 42 and the exclusion from gross income under section 103),

(2) which prevent the abuse of the purposes of this section,

(3) which provide rules for determining whether the requirement of subsection (b)(1)(B) is treated as met,

[1] So in original. Probably should be followed by '', and''.

(4) which impose appropriate reporting requirements,

(5) which apply the provisions of this section to newly formed entities, and

(6) which ensure that non-metropolitan counties receive a proportional allocation of qualified equity investments.

(Added Pub. L. 106–554, §1(a)(7) [title I, §121(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–605; amended Pub. L. 108–357, title II, §§221(a), (b), 223(a), Oct. 22, 2004, 118 Stat. 1431, 1432; Pub. L. 109–432, div. A, title I, §102(a), (b), Dec. 20, 2006, 120 Stat. 2934; Pub. L. 110–343, div. C, title III, §302, Oct. 3, 2008, 122 Stat. 3866; Pub. L. 111–5, div. B, title I, §1403(a), Feb. 17, 2009, 123 Stat. 352; Pub. L. 111–312, title VII, §733(a), (b), Dec. 17, 2010, 124 Stat. 3317, 3318.)

AMENDMENTS

2010—Subsec. (f)(1)(G). Pub. L. 111–312, §733(a), added subpar. (G).

Subsec. (f)(3). Pub. L. 111–312, §733(b), substituted ''2016'' for ''2014''.

2009—Subsec. (f)(1)(D). Pub. L. 111–5, §1403(a)(2), substituted ''and 2007,'' for '', 2007, 2008, and 2009.''

Subsec. (f)(1)(E), (F). Pub. L. 111–5, §1403(a)(1), (3), added subpars. (E) and (F).

2008—Subsec. (f)(1)(D). Pub. L. 110–343 substituted ''2008, and 2009'' for ''and 2008''.

2006—Subsec. (f)(1)(D). Pub. L. 109–432, §102(a), substituted '', 2007, and 2008'' for ''and 2007''.

Subsec. (i)(6). Pub. L. 109–432, §102(b), added par. (6).

2004—Subsec. (e)(2). Pub. L. 108–357, §221(a), amended heading and text of par. (2) generally, substituting provisions relating to regulations under which 1 or more targeted populations could be treated as low-income communities for provisions authorizing Secretary to designate any area within any census tract as a low-income community if certain conditions were met.

Subsec. (e)(4). Pub. L. 108–357, §221(b), added par. (4).

Subsec. (e)(5). Pub. L. 108–357, §223(a), added par. (5).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §733(c), Dec. 17, 2010, 124 Stat. 3318, provided that: ''The amendments made by this section [amending this section] shall apply to calendar years beginning after 2009.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §102(c), Dec. 20, 2006, 120 Stat. 2934, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 20, 2006].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §221(c), Oct. 22, 2004, 118 Stat. 1431, provided that:

''(1) TARGETED AREAS.—The amendment made by subsection (a) [amending this section] shall apply to designations made by the Secretary of the Treasury after the date of the enactment of this Act [Oct. 22, 2004].

''(2) TRACTS WITH LOW POPULATION.—The amendment made by subsection (b) [amending this section] shall apply to investments made after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title II, §223(b), Oct. 22, 2004, 118 Stat. 1432, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendment made by section 121(a) of the Community Renewal Tax Relief Act of 2000 [Pub. L. 106–554, §1(a)(7) [title I, §121(a)], enacting this section].''

EFFECTIVE DATE

Section applicable to investments made after Dec. 31, 2000, see §1(a)(7) [title I, §121(e)] of Pub. L. 106–554, set out as a Effective Date of 2000 Amendment note under section 38 of this title.

SPECIAL RULE FOR ALLOCATION OF INCREASED 2008 LIMITATION

Pub. L. 111–5, div. B, title I, §1403(b), Feb. 17, 2009, 123 Stat. 352, provided that: ''The amount of the increase in the new markets tax credit limitation for calendar year 2008 by reason of the amendments made by subsection (a) [amending this section] shall be allocated in accordance with section 45D(f)(2) of the Internal Revenue Code of 1986 to qualified community development entities (as defined in section 45D(c) of such Code) which—

''(1) submitted an allocation application with respect to calendar year 2008, and

''(2)(A) did not receive an allocation for such calendar year, or

''(B) received an allocation for such calendar year in an amount less than the amount requested in the allocation application.''

GUIDANCE ON ALLOCATION OF NATIONAL LIMITATION

Pub. L. 106–554, §1(a)(7) [title I, §121(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–610, provided that: ''Not later than 120 days after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of the Treasury or the Secretary's delegate shall issue guidance which specifies—

''(1) how entities shall apply for an allocation under section 45D(f)(2) of the Internal Revenue Code of 1986, as added by this section;

''(2) the competitive procedure through which such allocations are made; and

''(3) the actions that such Secretary or delegate shall take to ensure that such allocations are properly made to appropriate entities.''

AUDIT AND REPORT

Pub. L. 106–554, §1(a)(7) [title I, §121(g)], Dec. 21, 2000, 114 Stat. 2763, 2763A–610, provided that: ''Not later than January 31 of 2004, 2007, and 2010, the Comptroller General of the United States shall, pursuant to an audit of the new markets tax credit program established under section 45D of the Internal Revenue Code of 1986 (as added by subsection (a)), report to Congress on such program, including all qualified community development entities that receive an allocation under the new markets credit under such section.''

§ 45E. Small employer pension plan startup costs

(a) General rule

For purposes of section 38, in the case of an eligible employer, the small employer pension plan startup cost credit determined under this section for any taxable year is an amount equal to 50 percent of the qualified startup costs paid or incurred by the taxpayer during the taxable year.

(b) Dollar limitation

The amount of the credit determined under this section for any taxable year shall not exceed—

(1) $500 for the first credit year and each of the 2 taxable years immediately following the first credit year, and

(2) zero for any other taxable year.

(c) Eligible employer

For purposes of this section—

(1) In general

The term ''eligible employer'' has the meaning given such term by section 408(p)(2)(C)(i).

(2) Requirement for new qualified employer plans

Such term shall not include an employer if, during the 3-taxable year period immediately

preceding the 1st taxable year for which the credit under this section is otherwise allowable for a qualified employer plan of the employer, the employer or any member of any controlled group including the employer (or any predecessor of either) established or maintained a qualified employer plan with respect to which contributions were made, or benefits were accrued, for substantially the same employees as are in the qualified employer plan.

(d) Other definitions

For purposes of this section—

(1) Qualified startup costs

(A) In general

The term ''qualified startup costs'' means any ordinary and necessary expenses of an eligible employer which are paid or incurred in connection with—

(i) the establishment or administration of an eligible employer plan, or

(ii) the retirement-related education of employees with respect to such plan.

(B) Plan must have at least 1 participant

Such term shall not include any expense in connection with a plan that does not have at least 1 employee eligible to participate who is not a highly compensated employee.

(2) Eligible employer plan

The term ''eligible employer plan'' means a qualified employer plan within the meaning of section 4972(d).

(3) First credit year

The term ''first credit year'' means—

(A) the taxable year which includes the date that the eligible employer plan to which such costs relate becomes effective, or

(B) at the election of the eligible employer, the taxable year preceding the taxable year referred to in subparagraph (A).

(e) Special rules

For purposes of this section—

(1) Aggregation rules

All persons treated as a single employer under subsection (a) or (b) of section 52, or subsection (m) or (*o*) of section 414, shall be treated as one person. All eligible employer plans shall be treated as 1 eligible employer plan.

(2) Disallowance of deduction

No deduction shall be allowed for that portion of the qualified startup costs paid or incurred for the taxable year which is equal to the credit determined under subsection (a).

(3) Election not to claim credit

This section shall not apply to a taxpayer for any taxable year if such taxpayer elects to have this section not apply for such taxable year.

(Added Pub. L. 107–16, title VI, §619(a), June 7, 2001, 115 Stat. 108; amended Pub. L. 107–147, title IV, §411(n)(1), Mar. 9, 2002, 116 Stat. 48.)

AMENDMENTS

2002—Subsec. (e)(1). Pub. L. 107–147 substituted ''subsection (m)'' for ''subsection (n)''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE

Section applicable to costs paid or incurred in taxable years beginning after Dec. 31, 2001, with respect to qualified employer plans first effective after such date, see section 619(d) of Pub. L. 107–16, as amended, set out as an Effective and Termination Dates of 2001 Amendment note under section 38 of this title.

§ 45F. Employer-provided child care credit

(a) In general

For purposes of section 38, the employer-provided child care credit determined under this section for the taxable year is an amount equal to the sum of—

(1) 25 percent of the qualified child care expenditures, and

(2) 10 percent of the qualified child care resource and referral expenditures,

of the taxpayer for such taxable year.

(b) Dollar limitation

The credit allowable under subsection (a) for any taxable year shall not exceed $150,000.

(c) Definitions

For purposes of this section—

(1) Qualified child care expenditure

(A) In general

The term ''qualified child care expenditure'' means any amount paid or incurred—

(i) to acquire, construct, rehabilitate, or expand property—

(I) which is to be used as part of a qualified child care facility of the taxpayer,

(II) with respect to which a deduction for depreciation (or amortization in lieu of depreciation) is allowable, and

(III) which does not constitute part of the principal residence (within the meaning of section 121) of the taxpayer or any employee of the taxpayer,

(ii) for the operating costs of a qualified child care facility of the taxpayer, including costs related to the training of employees, to scholarship programs, and to the providing of increased compensation to employees with higher levels of child care training, or

(iii) under a contract with a qualified child care facility to provide child care services to employees of the taxpayer.

(B) Fair market value

The term ''qualified child care expenditures'' shall not include expenses in excess of the fair market value of such care.

(2) Qualified child care facility

(A) In general

The term ''qualified child care facility'' means a facility—

(i) the principal use of which is to provide child care assistance, and

(ii) which meets the requirements of all applicable laws and regulations of the State or local government in which it is located, including the licensing of the facility as a child care facility.

Clause (i) shall not apply to a facility which is the principal residence (within the meaning of section 121) of the operator of the facility.

(B) Special rules with respect to a taxpayer

A facility shall not be treated as a qualified child care facility with respect to a taxpayer unless—

(i) enrollment in the facility is open to employees of the taxpayer during the taxable year,

(ii) if the facility is the principal trade or business of the taxpayer, at least 30 percent of the enrollees of such facility are dependents of employees of the taxpayer, and

(iii) the use of such facility (or the eligibility to use such facility) does not discriminate in favor of employees of the taxpayer who are highly compensated employees (within the meaning of section 414(q)).

(3) Qualified child care resource and referral expenditure

(A) In general

The term ''qualified child care resource and referral expenditure'' means any amount paid or incurred under a contract to provide child care resource and referral services to an employee of the taxpayer.

(B) Nondiscrimination

The services shall not be treated as qualified unless the provision of such services (or the eligibility to use such services) does not discriminate in favor of employees of the taxpayer who are highly compensated employees (within the meaning of section 414(q)).

(d) Recapture of acquisition and construction credit

(1) In general

If, as of the close of any taxable year, there is a recapture event with respect to any qualified child care facility of the taxpayer, then the tax of the taxpayer under this chapter for such taxable year shall be increased by an amount equal to the product of—

(A) the applicable recapture percentage, and

(B) the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted if the qualified child care expenditures of the taxpayer described in subsection (c)(1)(A) with respect to such facility had been zero.

(2) Applicable recapture percentage

(A) In general

For purposes of this subsection, the applicable recapture percentage shall be determined from the following table:

If the recapture event occurs in:	The applicable recapture percentage is:
Years 1–3	100
Year 4	85
Year 5	70
Year 6	55
Year 7	40
Year 8	25
Years 9 and 10	10
Years 11 and thereafter	0.

(B) Years

For purposes of subparagraph (A), year 1 shall begin on the first day of the taxable year in which the qualified child care facility is placed in service by the taxpayer.

(3) Recapture event defined

For purposes of this subsection, the term ''recapture event'' means—

(A) Cessation of operation

The cessation of the operation of the facility as a qualified child care facility.

(B) Change in ownership

(i) In general

Except as provided in clause (ii), the disposition of a taxpayer's interest in a qualified child care facility with respect to which the credit described in subsection (a) was allowable.

(ii) Agreement to assume recapture liability

Clause (i) shall not apply if the person acquiring such interest in the facility agrees in writing to assume the recapture liability of the person disposing of such interest in effect immediately before such disposition. In the event of such an assumption, the person acquiring the interest in the facility shall be treated as the taxpayer for purposes of assessing any recapture liability (computed as if there had been no change in ownership).

(4) Special rules

(A) Tax benefit rule

The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

(B) No credits against tax

Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(C) No recapture by reason of casualty loss

The increase in tax under this subsection shall not apply to a cessation of operation of the facility as a qualified child care facility by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

(e) Special rules

For purposes of this section—

(1) Aggregation rules

All persons which are treated as a single employer under subsections (a) and (b) of section 52 shall be treated as a single taxpayer.

(2) Pass-thru in the case of estates and trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(3) Allocation in the case of partnerships

In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

(f) No double benefit

(1) Reduction in basis

For purposes of this subtitle—

(A) In general

If a credit is determined under this section with respect to any property by reason of expenditures described in subsection (c)(1)(A), the basis of such property shall be reduced by the amount of the credit so determined.

(B) 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 subparagraph (A), 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 (d).

(2) Other deductions and credits

No deduction or credit shall be allowed under any other provision of this chapter with respect to the amount of the credit determined under this section.

(Added Pub. L. 107–16, title II, §205(a), June 7, 2001, 115 Stat. 50; amended Pub. L. 107–147, title IV, §411(d)(1), Mar. 9, 2002, 116 Stat. 46.)

TERMINATION OF SECTION

For termination of section by section 901 of Pub. L. 107–16, see Effective and Termination Dates note below.

AMENDMENTS

2002—Subsec. (d)(4)(B). Pub. L. 107–147 substituted ''this chapter or for purposes of section 55'' for ''subpart A, B, or D of this part''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE AND TERMINATION DATES

Section applicable to taxable years beginning after Dec. 31, 2001, see section 205(c) of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 38 of this title.

Section inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if it had never been enacted, see section 901 of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

§ 45G. Railroad track maintenance credit

(a) General rule

For purposes of section 38, the railroad track maintenance credit determined under this section for the taxable year is an amount equal to 50 percent of the qualified railroad track maintenance expenditures paid or incurred by an eligible taxpayer during the taxable year.

(b) Limitation

(1) In general

The credit allowed under subsection (a) for any taxable year shall not exceed the product of—

(A) $3,500, multiplied by

(B) the sum of—

(i) the number of miles of railroad track owned or leased by the eligible taxpayer as of the close of the taxable year, and

(ii) the number of miles of railroad track assigned for purposes of this subsection to the eligible taxpayer by a Class II or Class III railroad which owns or leases such railroad track as of the close of the taxable year.

(2) Assignments

With respect to any assignment of a mile of railroad track under paragraph (1)(B)(ii)—

(A) such assignment may be made only once per taxable year of the Class II or Class III railroad and shall be treated as made as of the close of such taxable year,

(B) such mile may not be taken into account under this section by such railroad for such taxable year, and

(C) such assignment shall be taken into account for the taxable year of the assignee which includes the date that such assignment is treated as effective.

(c) Eligible taxpayer

For purposes of this section, the term ''eligible taxpayer'' means—

(1) any Class II or Class III railroad, and

(2) any person who transports property using the rail facilities of a Class II or Class III railroad or who furnishes railroad-related property or services to a Class II or Class III railroad, but only with respect to miles of railroad track assigned to such person by such Class II or Class III railroad for purposes of subsection (b).

(d) Qualified railroad track maintenance expenditures

For purposes of this section, the term ''qualified railroad track maintenance expenditures'' means gross expenditures (whether or not otherwise chargeable to capital account) for maintaining railroad track (including roadbed, bridges, and related track structures) owned or leased as of January 1, 2005, by a Class II or Class III railroad (determined without regard to

any consideration for such expenditures given by the Class II or Class III railroad which made the assignment of such track).

(e) Other definitions and special rules

(1) Class II or Class III railroad

For purposes of this section, the terms ''Class II railroad'' and ''Class III railroad'' have the respective meanings given such terms by the Surface Transportation Board.

(2) Controlled groups

Rules similar to the rules of paragraph (1) of section 41(f) shall apply for purposes of this section.

(3) Basis adjustment

For purposes of this subtitle, if a credit is allowed under this section with respect to any railroad track, the basis of such track shall be reduced by the amount of the credit so allowed.

(f) Application of section

This section shall apply to qualified railroad track maintenance expenditures paid or incurred during taxable years beginning after December 31, 2004, and before January 1, 2012.

(Added Pub. L. 108–357, title II, § 245(a), Oct. 22, 2004, 118 Stat. 1447; amended Pub. L. 109–135, title IV, § 403(f), Dec. 21, 2005, 119 Stat. 2623; Pub. L. 109–432, div. A, title IV, § 423(a), Dec. 20, 2006, 120 Stat. 2973; Pub. L. 110–343, div. C, title III, § 316(a), Oct. 3, 2008, 122 Stat. 3872; Pub. L. 111–312, title VII, § 734(a), Dec. 17, 2010, 124 Stat. 3318.)

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–312 substituted ''January 1, 2012'' for ''January 1, 2010''.

2008—Subsec. (f). Pub. L. 110–343 substituted ''January 1, 2010'' for ''January 1, 2008''.

2006—Subsec. (d). Pub. L. 109–432 inserted ''gross'' after ''means'' and ''(determined without regard to any consideration for such expenditures given by the Class II or Class III railroad which made the assignment of such track)'' before period at end.

2005—Subsec. (b). Pub. L. 109–135, § 403(f)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The credit allowed under subsection (a) for any taxable year shall not exceed the product of—

''(1) $3,500, and

''(2) the number of miles of railroad track owned or leased by the eligible taxpayer as of the close of the taxable year.

A mile of railroad track may be taken into account by a person other than the owner only if such mile is assigned to such person by the owner for purposes of this subsection. Any mile which is so assigned may not be taken into account by the owner for purposes of this subsection.''

Subsec. (c)(2). Pub. L. 109–135, § 403(f)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''any person who transports property using the rail facilities of a person described in paragraph (1) or who furnishes railroad-related property or services to such a person.''

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 734(b), Dec. 17, 2010, 124 Stat. 3318, provided that: ''The amendment made by this section [amending this section] shall apply to expenditures paid or incurred in taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, § 316(c)(1), Oct. 3, 2008, 122 Stat. 3872, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to expenditures paid or incurred during taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, § 423(b), Dec. 20, 2006, 120 Stat. 2973, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendment made by section 245(a) of the American Jobs Creation Act of 2004 [Pub. L. 108–357].''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 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 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2004, see section 245(e) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendment note under section 38 of this title.

§ 45H. Credit for production of low sulfur diesel fuel

(a) In general

For purposes of section 38, the amount of the low sulfur diesel fuel production credit determined under this section with respect to any facility of a small business refiner is an amount equal to 5 cents for each gallon of low sulfur diesel fuel produced during the taxable year by such small business refiner at such facility.

(b) Maximum credit

(1) In general

The aggregate credit determined under subsection (a) for any taxable year with respect to any facility shall not exceed—

(A) 25 percent of the qualified costs incurred by the small business refiner with respect to such facility, reduced by

(B) the aggregate credits determined under this section for all prior taxable years with respect to such facility.

(2) 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 paragraph (1) shall be reduced (not below zero) by the product of such number (before the application of this paragraph) and the ratio of such excess to 50,000 barrels.

(c) Definitions and special rule

For purposes of this section—

(1) Small business refiner

The term ''small business refiner'' means, with respect to any taxable year, a refiner of crude oil—

(A) with respect to which not more than 1,500 individuals are engaged in the refinery operations of the business on any day during such taxable year, and

(B) the average daily domestic refinery run or average retained production of which for all facilities of the taxpayer for the 1-year period ending on December 31, 2002, did not exceed 205,000 barrels.

(2) Qualified costs

The term ''qualified costs'' means, with respect to any facility, those costs paid or incurred during the applicable period for compliance with the applicable EPA regulations with respect to such facility, including expenditures for the construction of new process operation units or the dismantling and reconstruction of existing process units to be used in the production of low sulfur diesel fuel, associated adjacent or offsite equipment (including tankage, catalyst, and power supply), engineering, construction period interest, and sitework.

(3) Applicable EPA regulations

The term ''applicable EPA regulations'' means the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency.

(4) Applicable period

The term ''applicable period'' means, with respect to any facility, the period beginning on January 1, 2003, and ending on the earlier of the date which is 1 year after the date on which the taxpayer must comply with the applicable EPA regulations with respect to such facility or December 31, 2009.

(5) Low sulfur diesel fuel

The term ''low sulfur diesel fuel'' means diesel fuel with a sulfur content of 15 parts per million or less.

(d) Special rule for determination of refinery runs

For purposes[1] this section and section 179B(b), in the calculation of average daily domestic refinery run or retained production, only refineries which on April 1, 2003, were refineries of the refiner or a related person (within the meaning of section 613A(d)(3)), shall be taken into account.

(e) Certification

(1) Required

No credit shall be allowed unless, not later than the date which is 30 months after the first day of the first taxable year in which the low sulfur diesel fuel production credit is determined with respect to a facility, the small business refiner obtains certification from the Secretary, after consultation with the Administrator of the Environmental Protection Agency, that the taxpayer's qualified costs with respect to such facility will result in compliance with the applicable EPA regulations.

(2) Contents of application

An application for certification shall include relevant information regarding unit capacities and operating characteristics sufficient for the Secretary, after consultation with the Administrator of the Environmental Protection Agency, to determine that such qualified costs are necessary for compliance with the applicable EPA regulations.

(3) Review period

Any application shall be reviewed and notice of certification, if applicable, shall be made within 60 days of receipt of such application. In the event the Secretary does not notify the taxpayer of the results of such certification within such period, the taxpayer may presume the certification to be issued until so notified.

(4) Statute of limitations

With respect to the credit allowed under this section—

(A) the statutory period for the assessment of any deficiency attributable to such credit shall not expire before the end of the 3-year period ending on the date that the review period described in paragraph (3) ends with respect to the taxpayer, and

(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(f) Cooperative organizations

(1) Apportionment of credit

(A) In general

In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a) for the taxable year may, at the election of the organization, be apportioned among patrons eligible to share in patronage dividends on the basis of the quantity or value of business done with or for such patrons for the taxable year.

(B) Form and effect of election

An election under subparagraph (A) 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.

(2) Treatment of organizations and patrons

(A) Organizations

The amount of the credit not apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the taxable year of the organization.

(B) Patrons

The amount of the credit apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

(3) Special rule

If the amount of a credit which has been apportioned to any patron under this subsection is decreased for any reason—

[1] So in original. Probably should be followed by ''of''.

(A) such amount shall not increase the tax imposed on such patron, and

(B) the tax imposed by this chapter on such organization shall be increased by such amount.

The increase under subparagraph (B) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(g) Election to not take credit

No credit shall be determined under subsection (a) for the taxable year if the taxpayer elects not to have subsection (a) apply to such taxable year.

(Added Pub. L. 108–357, title III, § 339(a), Oct. 22, 2004, 118 Stat. 1481; amended Pub. L. 110–172, § 7(a)(1)(A), (2)(A), (3)(A), (B), Dec. 29, 2007, 121 Stat. 2481, 2482.)

AMENDMENTS

2007—Subsec. (b)(1)(A). Pub. L. 110–172, § 7(a)(3)(A), substituted ''qualified costs'' for ''qualified capital costs''.

Subsec. (c)(2). Pub. L. 110–172, § 7(a)(3)(B), struck out ''capital'' before ''costs'' in heading.

Pub. L. 110–172, § 7(a)(3)(A), substituted ''qualified costs'' for ''qualified capital costs''.

Subsec. (d). Pub. L. 110–172, § 7(a)(1)(A), redesignated subsec. (e) as (d) and struck out heading and text of former subsec. (d). Text read as follows: ''For purposes of this subtitle, if a credit is determined under this section for any expenditure with respect to any property, the increase in basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so determined.''

Subsec. (e). Pub. L. 110–172, § 7(a)(1)(A), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (e)(1), (2). Pub. L. 110–172, § 7(a)(3)(A), substituted ''qualified costs'' for ''qualified capital costs''.

Subsec. (f). Pub. L. 110–172, § 7(a)(1)(A), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 110–172, § 7(a)(2)(A), added subsec. (g). Former subsec. (g) redesignated (f).

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

Section applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 339(f) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendment note under section 38 of this title.

§ 45I. Credit for producing oil and gas from marginal wells

(a) General rule

For purposes of section 38, the marginal well production credit for any taxable year is an amount equal to the product of—

(1) the credit amount, and

(2) the qualified crude oil production and the qualified natural gas production which is attributable to the taxpayer.

(b) Credit amount

For purposes of this section—

(1) In general

The credit amount is—

(A) $3 per barrel of qualified crude oil production, and

(B) 50 cents per 1,000 cubic feet of qualified natural gas production.

(2) Reduction as oil and gas prices increase

(A) In general

The $3 and 50 cents amounts under paragraph (1) shall each be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as—

(i) the excess (if any) of the applicable reference price over $15 ($1.67 for qualified natural gas production), bears to

(ii) $3 ($0.33 for qualified natural gas production).

The applicable reference price for a taxable year is the reference price of the calendar year preceding the calendar year in which the taxable year begins.

(B) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2005, each of the dollar amounts contained in subparagraph (A) shall be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year (determined under section 43(b)(3)(B) by substituting ''2004'' for ''1990'').

(C) Reference price

For purposes of this paragraph, the term ''reference price'' means, with respect to any calendar year—

(i) in the case of qualified crude oil production, the reference price determined under section 45K(d)(2)(C), and

(ii) in the case of qualified natural gas production, the Secretary's estimate of the annual average wellhead price per 1,000 cubic feet for all domestic natural gas.

(c) Qualified crude oil and natural gas production

For purposes of this section—

(1) In general

The terms ''qualified crude oil production'' and ''qualified natural gas production'' mean domestic crude oil or natural gas which is produced from a qualified marginal well.

(2) Limitation on amount of production which may qualify

(A) In general

Crude oil or natural gas produced during any taxable year from any well shall not be treated as qualified crude oil production or qualified natural gas production to the extent production from the well during the taxable year exceeds 1,095 barrels or barrel-of-oil equivalents (as defined in section 45K(d)(5)).

(B) Proportionate reductions

(i) Short taxable years

In the case of a short taxable year, the limitations under this paragraph shall be proportionately reduced to reflect the ratio which the number of days in such taxable year bears to 365.

(ii) Wells not in production entire year

In the case of a well which is not capable of production during each day of a taxable year, the limitations under this paragraph applicable to the well shall be proportionately reduced to reflect the ratio which the number of days of production bears to the total number of days in the taxable year.

(3) Definitions

(A) Qualified marginal well

The term ''qualified marginal well'' means a domestic well—

(i) the production from which during the taxable year is treated as marginal production under section 613A(c)(6), or

(ii) which, during the taxable year—

(I) has average daily production of not more than 25 barrel-of-oil equivalents (as so defined), and

(II) produces water at a rate not less than 95 percent of total well effluent.

(B) Crude oil, etc.

The terms ''crude oil'', ''natural gas'', ''domestic'', and ''barrel'' have the meanings given such terms by section 613A(e).

(d) Other rules

(1) Production attributable to the taxpayer

In the case of a qualified marginal well in which there is more than one owner of operating interests in the well and the crude oil or natural gas production exceeds the limitation under subsection (c)(2), qualifying crude oil production or qualifying natural gas production attributable to the taxpayer shall be determined on the basis of the ratio which taxpayer's revenue interest in the production bears to the aggregate of the revenue interests of all operating interest owners in the production.

(2) Operating interest required

Any credit under this section may be claimed only on production which is attributable to the holder of an operating interest.

(3) Production from nonconventional sources excluded

In the case of production from a qualified marginal well which is eligible for the credit allowed under section 45K for the taxable year, no credit shall be allowable under this section unless the taxpayer elects not to claim the credit under section 45K with respect to the well.

(Added Pub. L. 108–357, title III, § 341(a), Oct. 22, 2004, 118 Stat. 1485; amended Pub. L. 109–58, title XIII, § 1322(a)(3)(B), (D), Aug. 8, 2005, 119 Stat. 1011; Pub. L. 109–135, title IV, § 412(k), Dec. 21, 2005, 119 Stat. 2637.)

AMENDMENTS

2005—Subsec. (a)(2). Pub. L. 109–135 substituted ''qualified crude oil production'' for ''qualified credit oil production''.

Subsec. (b)(2)(C)(i). Pub. L. 109–58, § 1322(a)(3)(B), substituted ''section 45K(d)(2)(C)'' for ''section 29(d)(2)(C)''.

Subsec. (c)(2)(A). Pub. L. 109–58, § 1322(a)(3)(D)(i), substituted ''section 45K(d)(5))'' for ''section 29(d)(5))''.

Subsec. (d)(3). Pub. L. 109–58, § 1322(a)(3)(D)(ii), substituted ''section 45K'' for ''section 29'' in two places.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

EFFECTIVE DATE

Section applicable to production in taxable years beginning after Dec. 31, 2004, see section 341(e) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendment note under section 38 of this title.

§ 45J. Credit for production from advanced nuclear power facilities

(a) General rule

For purposes of section 38, the advanced nuclear power facility production credit of any taxpayer for any taxable year is equal to the product of—

(1) 1.8 cents, multiplied by

(2) the kilowatt hours of electricity—

(A) produced by the taxpayer at an advanced nuclear power facility during the 8-year period beginning on the date the facility was originally placed in service, and

(B) sold by the taxpayer to an unrelated person during the taxable year.

(b) National limitation

(1) In general

The amount of credit which would (but for this subsection and subsection (c)) be allowed with respect to any facility for any taxable year shall not exceed the amount which bears the same ratio to such amount of credit as—

(A) the national megawatt capacity limitation allocated to the facility, bears to

(B) the total megawatt nameplate capacity of such facility.

(2) Amount of national limitation

The aggregate amount of national megawatt capacity limitation allocated by the Secretary under paragraph (3) shall not exceed 6,000 megawatts.

(3) Allocation of limitation

The Secretary shall allocate the national megawatt capacity limitation in such manner as the Secretary may prescribe.

(4) Regulations

Not later than 6 months after the date of the enactment of this section, the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations shall provide a certification process under which the Secretary, after consultation with the Secretary of Energy, shall approve and allocate the national megawatt capacity limitation.

(c) Other limitations

(1) Annual limitation

The amount of the credit allowable under subsection (a) (after the application of subsection (b)) for any taxable year with respect to any facility shall not exceed an amount which bears the same ratio to $125,000,000 as—

(A) the national megawatt capacity limitation allocated under subsection (b) to the facility, bears to

(B) 1,000.

(2) Phaseout of credit

(A) In general

The amount of the credit determined under subsection (a) shall be reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to this paragraph) as—

(i) the amount by which the reference price (as defined in section 45(e)(2)(C)) for the calendar year in which the sale occurs exceeds 8 cents, bears to

(ii) 3 cents.

(B) Phaseout adjustment based on inflation

The 8 cent amount in subparagraph (A) shall be adjusted by multiplying such amount by the inflation adjustment factor (as defined in section 45(e)(2)(B)) for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, such amount shall be rounded to the nearest multiple of 0.1 cent.

(d) Advanced nuclear power facility

For purposes of this section—

(1) In general

The term ''advanced nuclear power facility'' means any advanced nuclear facility—

(A) which is owned by the taxpayer and which uses nuclear energy to produce electricity, and

(B) which is placed in service after the date of the enactment of this paragraph and before January 1, 2021.

(2) Advanced nuclear facility

For purposes of paragraph (1), the term ''advanced nuclear facility'' means any nuclear facility the reactor design for which is approved after December 31, 1993, by the Nuclear Regulatory Commission (and such design or a substantially similar design of comparable capacity was not approved on or before such date).

(e) Other rules to apply

Rules similar to the rules of paragraphs (1), (3), (4), and (5) of section 45(e) shall apply for purposes of this section.

(Added Pub. L. 109–58, title XIII, § 1306(a), Aug. 8, 2005, 119 Stat. 997; amended Pub. L. 109–135, title IV, § 402(d), Dec. 21, 2005, 119 Stat. 2610; Pub. L. 110–172, § 6(a), Dec. 29, 2007, 121 Stat. 2479.)

REFERENCES IN TEXT

The date of the enactment of this section and the date of the enactment of this paragraph, referred to in subsecs. (b)(4) and (d)(1)(B), are the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

AMENDMENTS

2007—Subsec. (b)(2). Pub. L. 110–172 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The national megawatt capacity limitation shall be 6,000 megawatts.''

2005—Subsec. (c)(2). Pub. L. 109–135, § 402(d)(1), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''Rules similar to the rules of section 45(b)(1) shall apply for purposes of this section.''

Subsec. (e). Pub. L. 109–135, § 402(d)(2), struck out ''(2),'' after ''(1),''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 6(e) of Pub. L. 110–172, set out as a note under section 30C of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109–135, set out as a note under section 23 of this title.

EFFECTIVE DATE

Section applicable to production in taxable years beginning after Aug. 8, 2005, see section 1306(d) of Pub. L. 109–58, set out as an Effective Date of 2005 Amendment note under section 38 of this title.

§ 45K. Credit for producing fuel from a nonconventional source

(a) Allowance of credit

For purposes of section 38, the nonconventional source production credit determined under this section for the taxable year is an amount equal to—

(1) $3, multiplied by

(2) the barrel-of-oil equivalent of qualified fuels—

(A) sold by the taxpayer to an unrelated person during the taxable year, and

(B) the production of which is attributable to the taxpayer.

(b) Limitations and adjustments

(1) Phaseout of credit

The amount of the credit allowable under subsection (a) shall be reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to this paragraph) as—

(A) the amount by which the reference price for the calendar year in which the sale occurs exceeds $23.50, bears to

(B) $6.

(2) Credit and phaseout adjustment based on inflation

The $3 amount in subsection (a) and the $23.50 and $6 amounts in paragraph (1) shall each be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. In the case of gas from a tight formation, the $3 amount in subsection (a) shall not be adjusted.

(3) Credit reduced for grants, tax-exempt bonds, and subsidized energy financing

(A) In general

The amount of the credit allowable under subsection (a) with respect to any project for any taxable year (determined after the application of paragraphs (1) and (2)) shall be reduced by the amount which is the product of the amount so determined for such year and a fraction—

(i) the numerator of which is the sum, for the taxable year and all prior taxable years, of—

(I) grants provided by the United States, a State, or a political subdivision of a State for use in connection with the project,

(II) proceeds of any issue of State or local government obligations used to provide financing for the project the interest on which is exempt from tax under section 103, and

(III) the aggregate amount of subsidized energy financing (within the meaning of section 48(a)(4)(C)) provided in connection with the project, and

(ii) the denominator of which is the aggregate amount of additions to the capital account for the project for the taxable year and all prior taxable years.

(B) Amounts determined at close of year

The amounts under subparagraph (A) for any taxable year shall be determined as of the close of the taxable year.

(4) Credit reduced for energy credit

The amount allowable as a credit under subsection (a) with respect to any project for any taxable year (determined after the application of paragraphs (1), (2), and (3)) shall be reduced by the excess of—

(A) the aggregate amount allowed under section 38 for the taxable year or any prior taxable year by reason of the energy percentage with respect to property used in the project, over

(B) the aggregate amount recaptured with respect to the amount described in subparagraph (A)—

(i) under section 49(b) or 50(a) for the taxable year or any prior taxable year, or

(ii) under this paragraph for any prior taxable year.

The amount recaptured under section 49(b) or 50(a) with respect to any property shall be appropriately reduced to take into account any reduction in the credit allowed by this section by reason of the preceding sentence.

(5) Credit reduced for enhanced oil recovery credit

The amount allowable as a credit under subsection (a) with respect to any project for any taxable year (determined after application of paragraphs (1), (2), (3), and (4)) shall be reduced by the excess (if any) of—

(A) the aggregate amount allowed under section 38 for the taxable year and any prior taxable year by reason of any enhanced oil recovery credit determined under section 43 with respect to such project, over

(B) the aggregate amount recaptured with respect to the amount described in subparagraph (A) under this paragraph for any prior taxable year.

(c) Definition of qualified fuels

For purposes of this section—

(1) In general

The term ''qualified fuels'' means—

(A) oil produced from shale and tar sands,

(B) gas produced from—

(i) geopressured brine, Devonian shale, coal seams, or a tight formation, or

(ii) biomass, and

(C) liquid, gaseous, or solid synthetic fuels produced from coal (including lignite), including such fuels when used as feedstocks.

(2) Gas from geopressured brine, etc.

(A) In general

Except as provided in subparagraph (B), the determination of whether any gas is produced from geopressured brine, Devonian shale, coal seams, or a tight formation shall be made in accordance with section 503 of the Natural Gas Policy Act of 1978 (as in effect before the repeal of such section).

(B) Special rules for gas from tight formations

The term ''gas produced from a tight formation'' shall only include gas from a tight formation—

(i) which, as of April 20, 1977, was committed or dedicated to interstate commerce (as defined in section 2(18) of the Natural Gas Policy Act of 1978, as in effect on the date of the enactment of this clause), or

(ii) which is produced from a well drilled after such date of enactment.

(3) Biomass

The term ''biomass'' means any organic material other than—

(A) oil and natural gas (or any product thereof), and

(B) coal (including lignite) or any product thereof.

(d) Other definitions and special rules

For purposes of this section—

(1) Only production within the United States taken into account

Sales shall be taken into account under this section only with respect to qualified fuels the production of which is within—

(A) the United States (within the meaning of section 638(1)), or

(B) a possession of the United States (within the meaning of section 638(2)).

(2) Computation of inflation adjustment factor and reference price

(A) In general

The Secretary shall, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor and the reference price for the preceding calendar year in accordance with this paragraph.

(B) Inflation adjustment factor

The term ''inflation adjustment factor'' means, with respect to a calendar year, a fraction the numerator of which is the GNP implicit price deflator for the calendar year and the denominator of which is the GNP implicit price deflator for calendar year 1979. The term ''GNP implicit price deflator''

means the first revision of the implicit price deflator for the gross national product as computed and published by the Department of Commerce.

(C) Reference price

The term ''reference price'' means with respect to a calendar year the Secretary's estimate of the annual average wellhead price per barrel for all domestic crude oil the price of which is not subject to regulation by the United States.

(3) Production attributable to the taxpayer

In the case of a property or facility in which more than 1 person has an interest, except to the extent provided in regulations prescribed by the Secretary, production from the property or facility (as the case may be) shall be allocated among such persons in proportion to their respective interests in the gross sales from such property or facility.

(4) Gas from geopressured brine, Devonian shale, coal seams, or a tight formation

The amount of the credit allowable under subsection (a) shall be determined without regard to any production attributable to a property from which gas from Devonian shale, coal seams, geopressured brine, or a tight formation was produced in marketable quantities before January 1, 1980.

(5) Barrel-of-oil equivalent

The term ''barrel-of-oil equivalent'' with respect to any fuel means that amount of such fuel which has a Btu content of 5.8 million; except that in the case of qualified fuels described in subparagraph (C) of subsection (c)(1), the Btu content shall be determined without regard to any material from a source not described in such subparagraph.

(6) Barrel defined

The term ''barrel'' means 42 United States gallons.

(7) Related persons

Persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b). In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling qualified fuels to an unrelated person if such fuels are sold to such a person by another member of such group.

(8) Pass-thru in the case of estates and trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(e) Application of section

This section shall apply with respect to qualified fuels—

(1) which are—

(A) produced from a well drilled after December 31, 1979, and before January 1, 1993, or

(B) produced in a facility placed in service after December 31, 1979, and before January 1, 1993, and

(2) which are sold before January 1, 2003.

(f) Extension for certain facilities

(1) In general

In the case of a facility for producing qualified fuels described in subparagraph (B)(ii) or (C) of subsection (c)(1)—

(A) for purposes of subsection (e)(1)(B), such facility shall be treated as being placed in service before January 1, 1993, if such facility is placed in service before July 1, 1998, pursuant to a binding written contract in effect before January 1, 1997, and

(B) if such facility is originally placed in service after December 31, 1992, paragraph (2) of subsection (e) shall be applied with respect to such facility by substituting ''January 1, 2008'' for ''January 1, 2003''.

(2) Special rule

Paragraph (1) shall not apply to any facility which produces coke or coke gas unless the original use of the facility commences with the taxpayer.

(g) Extension for facilities producing coke or coke gas

Notwithstanding subsection (e)—

(1) In general

In the case of a facility for producing coke or coke gas (other than from petroleum based products) which was placed in service before January 1, 1993, or after June 30, 1998, and before January 1, 2010, this section shall apply with respect to coke and coke gas produced in such facility and sold during the period—

(A) beginning on the later of January 1, 2006, or the date that such facility is placed in service, and

(B) ending on the date which is 4 years after the date such period began.

(2) Special rules

In determining the amount of credit allowable under this section solely by reason of this subsection—

(A) Daily limit

The amount of qualified fuels sold during any taxable year which may be taken into account by reason of this subsection with respect to any facility shall not exceed an average barrel-of-oil equivalent of 4,000 barrels per day. Days before the date the facility is placed in service shall not be taken into account in determining such average.

(B) Extension period to commence with unadjusted credit amount

For purposes of applying subsection (b)(2) to the $3 amount in subsection (a), in the case of fuels sold after 2005, subsection (d)(2)(B) shall be applied by substituting ''2004'' for ''1979''.

(C) Denial of double benefit

This subsection shall not apply to any facility producing qualified fuels for which a credit was allowed under this section for the taxable year or any preceding taxable year by reason of subsection (f).

(D) Nonapplication of phaseout

Subsection (b)(1) shall not apply.

(E) Coordination with section 45

No credit shall be allowed with respect to any qualified fuel which is steel industry fuel (as defined in section 45(c)(7)) if a credit is allowed to the taxpayer for such fuel under section 45.

(Added Pub. L. 96–223, title II, §231(a), Apr. 2, 1980, 94 Stat. 268, §44D; amended Pub. L. 97–34, title VI §611(a), Aug. 13, 1981, 95 Stat. 339; Pub. L. 97–354, §5(a)(1), Oct. 19, 1982, 96 Stat. 1692; Pub. L. 97–448, title II, §202(a), Jan. 12, 1983, 96 Stat. 2396; renumbered §29 and amended Pub. L. 98–369, div. A, title IV, §§471(c), 474(h), title VI, §612(e)(1), title VII, §722(d)(1), (2), July 18, 1984, 98 Stat. 826, 831, 912, 973; Pub. L. 99–514, title VII, §701(c)(3), title XVIII, §1879(c)(1), Oct. 22, 1986, 100 Stat. 2340, 2906; Pub. L. 100–647, title VI, §6302, Nov. 10, 1988, 102 Stat. 3755; Pub. L. 101–508, title XI, §§11501(a), (b)(1), (c)(1), 11813(b)(1), 11816, Nov. 5, 1990, 104 Stat. 1388–479, 1388–550, 1388–558; Pub. L. 102–486, title XIX, §1918, Oct. 24, 1992, 106 Stat. 3025; Pub. L. 104–188, title I, §§1205(d)(3), 1207(a), Aug. 20, 1996, 110 Stat. 1776; renumbered §45K and amended Pub. L. 109–58, title XIII, §§1321(a), 1322(a)(1), (3)(E), (F), (b), Aug. 8, 2005, 119 Stat. 1010–1012; Pub. L. 109–135, title IV, §§402(g), 412(*l*), Dec. 21, 2005, 119 Stat. 2611, 2637; Pub. L. 109–432, div. A, title II, §211(a), (b), Dec. 20, 2006, 120 Stat. 2947, 2948; Pub. L. 110–343, div. B, title I, §108(d)(2), Oct. 3, 2008, 122 Stat. 3821.)

INFLATION ADJUSTED ITEMS FOR CERTAIN TAX YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table below.

REFERENCES IN TEXT

Section 503 of the Natural Gas Policy Act of 1978 (as in effect before the repeal of such section), referred to in subsec. (c)(2)(A), was classified to section 3413 of Title 15, Commerce and Trade, prior to repeal by Pub. L. 101–60, §3(b)(5), July 26, 1989, 103 Stat. 159, effective Jan. 1, 1993.

Section 2(18) of the Natural Gas Policy Act of 1978, referred to in subsec. (c)(2)(B)(i), is classified to section 3301(18) of Title 15, Commerce and Trade.

The date of the enactment of this clause, and such date of enactment, referred to in subsec. (c)(2)(B), probably mean the date of enactment of Pub. L. 101–508, which amended subsec. (c)(2)(B) of this section generally, and which was approved Nov. 5, 1990.

AMENDMENTS

2008—Subsec. (g)(2)(E). Pub. L. 110–343 added subpar. (E).

2006—Subsec. (g)(1). Pub. L. 109–432, §211(b), inserted ''(other than from petroleum based products)'' after ''producing coke or coke gas'' in introductory provisions.

Subsec. (g)(2)(D). Pub. L. 109–432, §211(a), added subpar. (D).

2005—Pub. L. 109–58, §1322(a)(1), renumbered section 29 of this title as this section.

Subsec. (a). Pub. L. 109–135, §402(g), struck out ''if the taxpayer elects to have this section apply,'' after ''For purposes of section 38,'' in introductory provisions.

Pub. L. 109–58, §1322(a)(3)(E), substituted ''For purposes of section 38, if the taxpayer elects to have this section apply, the nonconventional source production credit determined under this section for the taxable year is'' for ''There shall be allowed as a credit against the tax imposed by this chapter for the taxable year'' in introductory provisions.

Subsec. (b)(6). Pub. L. 109–58, §1322(a)(3)(F), struck out heading and text of par. (6). Text read as follows: ''The credit allowed by subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(A) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and section 27, over

''(B) the tentative minimum tax for the taxable year.''

Subsec. (c)(2)(A). Pub. L. 109–58, §1322(b)(1)(A), inserted ''(as in effect before the repeal of such section)'' after ''1978''.

Subsecs. (e), (f). Pub. L. 109–58, §1322(b)(1)(B), redesignated subsecs. (f) and (g) as (e) and (f), respectively, and struck out former subsec. (e), which related to application of section with the Natural Gas Policy Act of 1978.

Subsec. (g). Pub. L. 109–135, §412(*l*)(1), substituted ''subsection (e)'' for ''subsection (f)'' in introductory provisions.

Pub. L. 109–58, §1322(b)(1)(B), redesignated subsec. (h) as (g).

Subsec. (g)(1)(A). Pub. L. 109–58, §1322(b)(2)(A), substituted ''subsection (e)(1)(B)'' for ''subsection (f)(1)(B)''.

Subsec. (g)(1)(B). Pub. L. 109–58, §1322(b)(2)(B), substituted ''subsection (e)'' for ''subsection (f)''.

Subsec. (g)(2)(C). Pub. L. 109–135, §412(*l*)(2), substituted ''subsection (f)'' for ''subsection (g)''.

Subsec. (h). Pub. L. 109–58, §1322(b)(1)(B), redesignated subsec. (h) as (g).

Pub. L. 109–58, §1321(a), added subsec. (h).

1996—Subsec. (b)(6)(A). Pub. L. 104–188, §1205(d)(3), substituted ''section 27'' for ''sections 27 and 28''.

Subsec. (g)(1)(A). Pub. L. 104–188, §1207(a), substituted ''July 1, 1998'' for ''January 1, 1997'' and ''January 1, 1997'' for ''January 1, 1996''.

1992—Subsec. (g). Pub. L. 102–486 added subsec. (g).

1990—Subsec. (b)(3)(A)(i)(III). Pub. L. 101–508, §11813(b)(1)(A), substituted ''section 48(a)(4)(C)'' for ''section 48(*l*)(11)(C)''.

Subsec. (b)(4). Pub. L. 101–508, §11813(b)(1)(B), substituted ''section 49(b) or 50(a)'' for ''section 47'' in two places.

Subsec. (b)(5), (6). Pub. L. 101–508, §11501(c)(1), added par. (5) and redesignated former par. (5) as (6).

Subsec. (c)(1)(B) to (E). Pub. L. 101–508, §11816(a), inserted ''and'' at end of subpar. (B), substituted a period for a comma at end of subpar. (C), and struck out subpar. (D) which related to qualifying processed wood fuels, and subpar. (E) which related to steam produced from solid agricultural byproducts (not including timber byproducts).

Subsec. (c)(2)(B). Pub. L. 101–508, §11501(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The term 'gas produced from a tight formation' shall only include—

''(i) gas the price of which is regulated by the United States, and

''(ii) gas for which the maximum lawful price applicable under the Natural Gas Policy Act of 1978 is at least 150 percent of the then applicable price under section 103 of such Act.''

Subsec. (c)(3). Pub. L. 101–508, §11813(b)(1)(C), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The term 'biomass' means any organic material which is an alternate substance (as defined in section 48(*l*)(3)(B)) other than coal (including lignite) or any product of such coal.''

Subsec. (c)(4). Pub. L. 101–508, §11816(b)(1), struck out par. (4) ''Qualifying processed wood fuel'' which read as follows:

''(A) IN GENERAL.—The term 'qualifying processed wood fuel' means any processed solid wood fuel (other than charcoal, fireplace products, or a product used for ornamental or recreational purposes) which has a Btu content per unit of volume or weight, determined without regard to any nonwood elements, which is at least 40 percent greater per unit of volume or weight than the Btu content of the wood from which it is produced (determined immediately before the processing).

''(B) ELECTION.—A taxpayer shall elect, at such time and in such manner as the Secretary by regulations may prescribe, as to whether Btu content per unit shall be determined for purposes of this paragraph on a volume or weight basis. Any such election—

''(i) shall apply to all production from a facility; and

''(ii) shall be effective for the taxable year with respect to which it is made and for all subsequent taxable years and, once made, may be revoked only with the consent of the Secretary.''

Subsec. (c)(5). Pub. L. 101–508, §11816(b)(1), struck out par. (5) ''Agricultural byproduct steam'' which read as follows: ''Steam produced from solid agricultural byproducts which is used by the taxpayer in his trade or business shall be treated as having been sold by the taxpayer to an unrelated person on the date on which it is used.''

Subsec. (d)(4). Pub. L. 101–508, §11816(b)(2), amended par. (4) generally, striking out ''Special rules applicable to'' before ''Gas'' in heading, redesignating former subpar. (A) as par. (4), striking out subpar. (B) which related to the reference price and application of phaseout for Devonian shale, and making minor changes in phraseology.

Subsec. (d)(5), (6). Pub. L. 101–508, §11816(b)(3), (4), redesignated par. (6) as (5), substituted ''subparagraph (C)'' for ''subparagraph (C), (D), or (E)'', and struck out former par. (5) which read as follows: ''In the case of a facility for the production of—

''(A) qualifying processed wood fuel,

or

''(B) steam from solid agricultural byproducts,

paragraph (1) of subsection (b) shall not apply with respect to the amount of the credit allowable under subsection (a) for fuels sold during the 3-year period beginning on the date the facility is placed in service.''

Subsec. (d)(7) to (9). Pub. L. 101–508, §11816(b)(3), redesignated pars. (7) to (9) as (6) to (8), respectively.

Subsec. (f). Pub. L. 101–508, §11816(b)(5), amended subsec. (f) generally, redesignating former par. (1) as subsec. (f), making minor changes in phraseology, substituting par. (2) for former par. (1)(B) which read as follows: ''which are sold after December 31, 1979, and before January 1, 2003.'', and striking out former par. (2) which related to special rules applicable to qualified processed wood and solid agricultural byproduct steam.

Subsec. (f)(1)(A)(i), (ii). Pub. L. 101–508, §11501(a)(1), substituted ''1993'' for ''1991''.

Subsec. (f)(1)(B). Pub. L. 101–508, §11501(a)(2), substituted ''2003'' for ''2001''.

1988—Subsec. (f)(1)(A)(i), (ii). Pub. L. 100–647 substituted ''1991'' for ''1990''.

1986—Subsec. (b)(5). Pub. L. 99–514, §701(c)(3), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''The credit allowed by subsection (a) for a taxable year shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 26(b)), reduced by the sum of the credits allowable under subpart A and sections 27 and 28.''

Subsec. (d)(8). Pub. L. 99–514, §1879(c)(1), inserted provision directing that a corporation which is a member of an affiliated group of corporations filing a consolidated return shall be treated as selling qualified fuels to an unrelated person if such fuels are sold to such person by another member of such group.

1984—Pub. L. 98–369, §471(c), renumbered section 44D of this title as this section.

Subsec. (b)(1)(A). Pub. L. 98–369, §722(d)(1), substituted ''in which the sale occurs'' for ''in which the taxable year begins''.

Subsec. (b)(2). Pub. L. 98–369, §722(d)(2), substituted ''in which the sale occurs'' for ''in which a taxable year begins''.

Subsec. (b)(5). Pub. L. 98–369, §612(e)(1), substituted ''section 26(b)'' for ''section 25(b)''.

Pub. L. 98–369, §474(h), amended par. (5) generally, substituting ''shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 25(b)), reduced by the sum of the credits allowable under subpart A and sections 27 and 28'' for ''shall not exceed the tax imposed by this chapter for such taxable year, reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than the credits allowable by sections 31, 39, and 43. For purposes of the preceding sentence, the term 'tax imposed by this chapter' shall not include any tax treated as not imposed by this chapter under the last sentence of section 53(a)''.

1983—Subsec. (f)(1)(B), (2)(A)(i). Pub. L. 97–448 substituted ''December 31, 1979'' for ''December 3, 1979''.

1982—Subsec. (d)(9). Pub. L. 97–354 substituted ''Pass-thru in the case of estates and trusts'' for ''Pass-through in the case of subchapter S corporations, etc.'' in par. heading, and substituted provisions relating to the applicability of rules similar to rules of subsec. (d) of section 52 for provisions relating to the applicability of rules similar to rules of subsecs. (d) and (e) of section 52.

1981—Subsec. (e). Pub. L. 97–34 substituted provisions respecting application with the Natural Gas Policy Act of 1978 for prior provision reading ''If the taxpayer makes an election under section 107(d) of the Natural Gas Policy Act of 1978 to have subsections (a) and (b) of section 107 of that Act, and subtitle B of title I of that Act, apply with respect to gas described in subsection (c)(1)(B)(i) produced from any well on a property, then the credit allowable by subsection (a) shall not be allowed with respect to any gas produced on that property.''

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable to fuel produced and sold after Sept. 30, 2008, see section 108(e) of Pub. L. 110–343, set out as a note under section 45 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title II, §211(c), Dec. 20, 2006, 120 Stat. 2948, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in section 1321 of the Energy Policy Act of 2005 [Pub. L. 109–58].''

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by section 402(g) of Pub. L. 109–135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

Pub. L. 109–58, title XIII, §1321(b), Aug. 8, 2005, 119 Stat. 1011, provided that: ''The amendment made by this section [amending this section] shall apply to fuel produced and sold after December 31, 2005, in taxable years ending after such date.''

Pub. L. 109–58, title XIII, §1322(c), Aug. 8, 2005, 119 Stat. 1012, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 30, 38, 43, 45, 45I, 53, 55, 613A, and 772 of this title and renumbering section 29 of this title as this section] shall apply to credits determined under the Internal Revenue Code of 1986 for taxable years ending after December 31, 2005.

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 8, 2005].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1205(e) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and sections 30, 38, 39, 45C, 53, 55, and 280C of this title] shall apply to amounts paid or incurred in taxable years ending after June 30, 1996.''

Section 1207(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 20, 1996].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11501(b)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to gas produced after December 31, 1990.''

Section 11501(c)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1990.''

Section 11813(c) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 50 of this title and amending this section and sections 38, 42, 46 to 49, 52, 55, 108, 145, 147, 168, 170, 179, 196, 280F, 312, 465, 469, 861, 865, 1016, 1033, 1245, 1274A, 1371, 1388 and 1503 of this title] shall apply to property placed in service after December 31, 1990.

''(2) EXCEPTIONS.—The amendments made by this section shall not apply to—

''(A) any transition property (as defined in section 49(e) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act [Nov. 5, 1990]),

''(B) any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of such Code (as so in effect), and

''(C) any property described in section 46(b)(2)(C) of such Code (as so in effect).''

Section 11821(a) of Pub. L. 101–508 provided that: ''Except as otherwise provided in this part, the amendments made by this part [part I (§§ 11801–11821) of subtitle H of title XI of Pub. L. 101–508, see Tables for classification] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 701(c)(3) 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.

Section 1879(c)(2) of Pub. L. 99–514 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 231 of Public Law 96–223 [see Effective Date note below].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(h) 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 612(e)(1) of Pub. L. 98–369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

Section 722(d)(3) of Pub. L. 98–369 provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years ending after December 31, 1979.''

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 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.

EFFECTIVE DATE OF 1982 AMENDMENT

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.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 611(b) of Pub. L. 97–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 1979.''

EFFECTIVE DATE

Section 231(c) of Pub. L. 96–223 provided that: ''The amendments made by this section [enacting this section and amending section 6096 of this title] shall apply to taxable years ending after December 31, 1979.''

SAVINGS PROVISION

Section 11821(b) of Pub. L. 101–508 provided that: ''If—

''(1) any provision amended or repealed by this part [part I (§§ 11801–11821) of subtitle H of title XI of Pub. L. 101–508, see Tables for classification] applied to—

''(A) any transaction occurring before the date of the enactment of this Act [Nov. 5, 1990],

''(B) any property acquired before such date of enactment, or

''(C) any item of income, loss, deduction, or credit taken into account before such date of enactment, and

''(2) the treatment of such transaction, property, or item under such provision would (without regard to the amendments made by this part) affect liability for tax for periods ending after such date of enactment,

nothing in the amendments made by this part shall be construed to affect the treatment of such transaction, property, or item for purposes of determining liability for tax for periods ending after such date of enactment.''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(c)(3) 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.

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.

INFLATION ADJUSTED ITEMS FOR CERTAIN TAX YEARS

Provisions relating to inflation adjustment of items in this section for certain tax years were contained in the following:

2011—Internal Revenue Notice 2012–30.
2010—Internal Revenue Notice 2011–30.
2009—Internal Revenue Notice 2010–31.
2008—Internal Revenue Notice 2009–32.
2007—Internal Revenue Notice 2008–44.
2006—Internal Revenue Notice 2007–38.

§ 45L. New energy efficient home credit

(a) Allowance of credit

(1) In general

For purposes of section 38, in the case of an eligible contractor, the new energy efficient home credit for the taxable year is the applicable amount for each qualified new energy efficient home which is—

(A) constructed by the eligible contractor, and

(B) acquired by a person from such eligible contractor for use as a residence during the taxable year.

(2) Applicable amount

For purposes of paragraph (1), the applicable amount is an amount equal to—

(A) in the case of a dwelling unit described in paragraph (1) or (2) of subsection (c), $2,000, and

(B) in the case of a dwelling unit described in paragraph (3) of subsection (c), $1,000.

(b) Definitions

For purposes of this section—

(1) Eligible contractor

The term ''eligible contractor'' means—

(A) the person who constructed the qualified new energy efficient home, or

(B) in the case of a qualified new energy efficient home which is a manufactured home, the manufactured home producer of such home.

(2) Qualified new energy efficient home

The term ''qualified new energy efficient home'' means a dwelling unit—

(A) located in the United States,

(B) the construction of which is substantially completed after the date of the enactment of this section, and

(C) which meets the energy saving requirements of subsection (c).

(3) Construction

The term ''construction'' includes substantial reconstruction and rehabilitation.

(4) Acquire

The term ''acquire'' includes purchase.

(c) Energy saving requirements

A dwelling unit meets the energy saving requirements of this subsection if such unit is—

(1) certified—

(A) to have a level of annual heating and cooling energy consumption which is at least 50 percent below the annual level of heating and cooling energy consumption of a comparable dwelling unit—

(i) which is constructed in accordance with the standards of chapter 4 of the 2003 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of this section, and

(ii) for which the heating and cooling equipment efficiencies correspond to the minimum allowed under the regulations established by the Department of Energy pursuant to the National Appliance Energy Conservation Act of 1987 and in effect at the time of completion of construction, and

(B) to have building envelope component improvements account for at least ⅕ of such 50 percent,

(2) a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (part 3280 of title 24, Code of Federal Regulations) and which meets the requirements of paragraph (1), or

(3) a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (part 3280 of title 24, Code of Federal Regulations) and which—

(A) meets the requirements of paragraph (1) applied by substituting ''30 percent'' for ''50 percent'' both places it appears therein and by substituting ''⅓'' for ''⅕'' in subparagraph (B) thereof, or

(B) meets the requirements established by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program.

(d) Certification

(1) Method of certification

A certification described in subsection (c) shall be made in accordance with guidance prescribed by the Secretary, after consultation with the Secretary of Energy. Such guidance shall specify procedures and methods for calculating energy and cost savings.

(2) Form

Any certification described in subsection (c) shall be made in writing in a manner which specifies in readily verifiable fashion the energy efficient building envelope components and energy efficient heating or cooling equipment installed and their respective rated energy efficiency performance.

(e) Basis adjustment

For purposes of this subtitle, if a credit is allowed under this section in connection with any expenditure for any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so determined.

(f) Coordination with investment credit

For purposes of this section, expenditures taken into account under section 47 or 48(a) shall not be taken into account under this section.

(g) Termination

This section shall not apply to any qualified new energy efficient home acquired after December 31, 2011.

(Added Pub. L. 109–58, title XIII, § 1332(a), Aug. 8, 2005, 119 Stat. 1024; amended Pub. L. 109–432, div. A, title II, § 205, Dec. 20, 2006, 120 Stat. 2945; Pub. L. 110–172, § 11(a)(7), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 110–343, div. B, title III, § 304, Oct. 3, 2008, 122 Stat. 3845; Pub. L. 111–312, title VII, § 703(a), Dec. 17, 2010, 124 Stat. 3311.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (b)(2)(B) and (c)(1)(A)(i), is the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

The National Appliance Energy Conservation Act of 1987, referred to in subsec. (c)(1)(A)(ii), is Pub. L. 100–12, Mar. 17, 1987, 101 Stat. 103. For complete classification of this Act to the Code, see Short Title of 1987 Amendment note set out under section 6201 of Title 42, The Public Health and Welfare, and Tables.

AMENDMENTS

2010—Subsec. (g). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (g). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2008''.

2007—Subsec. (c)(2), (3). Pub. L. 110–172 substituted ''part 3280'' for ''section 3280'' in par. (2) and in introductory provisions of par. (3).

2006—Subsec. (g). Pub. L. 109–432 substituted ''2008'' for ''2007''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §703(b), Dec. 17, 2010, 124 Stat. 3311, provided that: ''The amendment made by this section [amending this section] shall apply to homes acquired after December 31, 2009.''

EFFECTIVE DATE

Section applicable to qualified new energy efficient homes acquired after Dec. 31, 2005, in taxable years ending after such date, see section 1332(f) of Pub. L. 109–58, set out as an Effective Date of 2005 Amendments note under section 38 of this title.

§ 45M. Energy efficient appliance credit

(a) General rule

(1) In general

For purposes of section 38, the energy efficient appliance credit determined under this section for any taxable year is an amount equal to the sum of the credit amounts determined under paragraph (2) for each type of qualified energy efficient appliance produced by the taxpayer during the calendar year ending with or within the taxable year.

(2) Credit amounts

The credit amount determined for any type of qualified energy efficient appliance is—

(A) the applicable amount determined under subsection (b) with respect to such type, multiplied by

(B) the eligible production for such type.

(b) Applicable amount

For purposes of subsection (a)—

(1) Dishwashers

The applicable amount is—

(A) $45 in the case of a dishwasher which is manufactured in calendar year 2008 or 2009 and which uses no more than 324 kilowatt hours per year and 5.8 gallons per cycle,

(B) $75 in the case of a dishwasher which is manufactured in calendar year 2008, 2009, or 2010 and which uses no more than 307 kilowatt hours per year and 5.0 gallons per cycle (5.5 gallons per cycle for dishwashers designed for greater than 12 place settings),

(C) $25 in the case of a dishwasher which is manufactured in calendar year 2011 and which uses no more than 307 kilowatt hours per year and 5.0 gallons per cycle (5.5 gallons per cycle for dishwashers designed for greater than 12 place settings),

(D) $50 in the case of a dishwasher which is manufactured in calendar year 2011 and which uses no more than 295 kilowatt hours per year and 4.25 gallons per cycle (4.75 gallons per cycle for dishwashers designed for greater than 12 place settings), and

(E) $75 in the case of a dishwasher which is manufactured in calendar year 2011 and which uses no more than 280 kilowatt hours per year and 4 gallons per cycle (4.5 gallons per cycle for dishwashers designed for greater than 12 place settings).

(2) Clothes washers

The applicable amount is—

(A) $75 in the case of a residential top-loading clothes washer manufactured in calendar year 2008 which meets or exceeds a 1.72 modified energy factor and does not exceed a 8.0 water consumption factor,

(B) $125 in the case of a residential top-loading clothes washer manufactured in calendar year 2008 or 2009 which meets or exceeds a 1.8 modified energy factor and does not exceed a 7.5 water consumption factor,

(C) $150 in the case of a residential or commercial clothes washer manufactured in calendar year 2008, 2009, or 2010 which meets or exceeds[1] 2.0 modified energy factor and does not exceed a 6.0 water consumption factor,

(D) $250 in the case of a residential or commercial clothes washer manufactured in calendar year 2008, 2009, or 2010 which meets or exceeds[1] 2.2 modified energy factor and does not exceed a 4.5 water consumption factor,

(E) $175 in the case of a top-loading clothes washer manufactured in calendar year 2011 which meets or exceeds a 2.2 modified energy factor and does not exceed a 4.5 water consumption factor, and

(F) $225 in the case of a clothes washer manufactured in calendar year 2011—

(i) which is a top-loading clothes washer and which meets or exceeds a 2.4 modified energy factor and does not exceed a 4.2 water consumption factor, or

(ii) which is a front-loading clothes washer and which meets or exceeds a 2.8 modified energy factor and does not exceed a 3.5 water consumption factor.

(3) Refrigerators

The applicable amount is—

(A) $50 in the case of a refrigerator which is manufactured in calendar year 2008, and consumes at least 20 percent but not more than 22.9 percent less kilowatt hours per year than the 2001 energy conservation standards,

(B) $75 in the case of a refrigerator which is manufactured in calendar year 2008 or 2009, and consumes at least 23 percent but no more than 24.9 percent less kilowatt hours per year than the 2001 energy conservation standards,

(C) $100 in the case of a refrigerator which is manufactured in calendar year 2008, 2009, or 2010, and consumes at least 25 percent but not more than 29.9 percent less kilowatt hours per year than the 2001 energy conservation standards,

(D) $200 in the case of a refrigerator manufactured in calendar year 2008, 2009, or 2010 and which consumes at least 30 percent less energy than the 2001 energy conservation standards,

(E) $150 in the case of a refrigerator manufactured in calendar year 2011 which consumes at least 30 percent less energy than the 2001 energy conservation standards, and

(F) $200 in the case of a refrigerator manufactured in calendar year 2011 which con-

[1] So in original. Probably should be followed by ''a''.

sumes at least 35 percent less energy than the 2001 energy conservation standards.

(c) Eligible production

The eligible production in a calendar year with respect to each type of energy efficient appliance is the excess of—

(1) the number of appliances of such type which are produced by the taxpayer in the United States during such calendar year, over

(2) the average number of appliances of such type which were produced by the taxpayer (or any predecessor) in the United States during the preceding 2-calendar year period.

(d) Types of energy efficient appliance

For purposes of this section, the types of energy efficient appliances are—

(1) dishwashers described in subsection (b)(1),

(2) clothes washers described in subsection (b)(2), and

(3) refrigerators described in subsection (b)(3).

(e) Limitations

(1) Aggregate credit amount allowed

The aggregate amount of credit allowed under subsection (a) with respect to a taxpayer for any taxable year shall not exceed $25,000,000 reduced by the amount of the credit allowed under subsection (a) to the taxpayer (or any predecessor) for all prior taxable years beginning after December 31, 2010.

(2) Amount allowed for certain refrigerators and clothes washers

Refrigerators described in subsection (b)(3)(F) and clothes washers described in subsection (b)(2)(F) shall not be taken into account under paragraph (1).

(3) Limitation based on gross receipts

The credit allowed under subsection (a) with respect to a taxpayer for the taxable year shall not exceed an amount equal to 4 percent of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the credit is determined.

(4) Gross receipts

For purposes of this subsection, the rules of paragraphs (2) and (3) of section 448(c) shall apply.

(f) Definitions

For purposes of this section—

(1) Qualified energy efficient appliance

The term ''qualified energy efficient appliance'' means—

(A) any dishwasher described in subsection (b)(1),

(B) any clothes washer described in subsection (b)(2), and

(C) any refrigerator described in subsection (b)(3).

(2) Dishwasher

The term ''dishwasher'' means a residential dishwasher subject to the energy conservation standards established by the Department of Energy.

(3) Clothes washer

The term ''clothes washer'' means a residential model clothes washer, including a commercial residential style coin operated washer.

(4) Top-loading clothes washer

The term ''top-loading clothes washer'' means a clothes washer which has the clothes container compartment access located on the top of the machine and which operates on a vertical axis.

(5) Refrigerator

The term ''refrigerator'' means a residential model automatic defrost refrigerator-freezer which has an internal volume of at least 16.5 cubic feet.

(6) Modified energy factor

The term ''modified energy factor'' means the modified energy factor established by the Department of Energy for compliance with the Federal energy conservation standard.

(7) Produced

The term ''produced'' includes manufactured.

(8) 2001 energy conservation standard

The term ''2001 energy conservation standard'' means the energy conservation standards promulgated by the Department of Energy and effective July 1, 2001.

(9) Gallons per cycle

The term ''gallons per cycle'' means, with respect to a dishwasher, the amount of water, expressed in gallons, required to complete a normal cycle of a dishwasher.

(10) Water consumption factor

The term ''water consumption factor'' means, with respect to a clothes washer, the quotient of the total weighted per-cycle water consumption divided by the cubic foot (or liter) capacity of the clothes washer.

(g) Special rules

For purposes of this section—

(1) In general

Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply.

(2) Controlled group

(A) In general

All persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (*o*) of section 414 shall be treated as a single producer.

(B) Inclusion of foreign corporations

For purposes of subparagraph (A), in applying subsections (a) and (b) of section 52 to this section, section 1563 shall be applied without regard to subsection (b)(2)(C) thereof.

(3) Verification

No amount shall be allowed as a credit under subsection (a) with respect to which the taxpayer has not submitted such information or certification as the Secretary, in consultation with the Secretary of Energy, determines necessary.

(Added Pub. L. 109–58, title XIII, §1334(a), Aug. 8, 2005, 119 Stat. 1030; amended Pub. L. 110–343, div. B, title III, §305(a)–(e), Oct. 3, 2008, 122 Stat. 3845–3847; Pub. L. 111–312, title VII, §709(a)–(d), Dec. 17, 2010, 124 Stat. 3312, 3313.)

AMENDMENTS

2010—Subsec. (b)(1)(C) to (E). Pub. L. 111–312, §709(a), added subpars. (C) to (E).

Subsec. (b)(2)(E), (F). Pub. L. 111–312, §709(b), added subpars. (E) and (F).

Subsec. (b)(3)(E), (F). Pub. L. 111–312, §709(c), added subpars. (E) and (F).

Subsec. (e)(1). Pub. L. 111–312, §709(d)(1), substituted ''$25,000,000'' for ''$75,000,000'' and ''December 31, 2010'' for ''December 31, 2007''.

Subsec. (e)(2). Pub. L. 111–312, §709(d)(2), substituted ''subsection (b)(3)(F)'' for ''subsection (b)(3)(D)'' and ''subsection (b)(2)(F)'' for ''subsection (b)(2)(D)''.

Subsec. (e)(3). Pub. L. 111–312, §709(d)(3), substituted ''4 percent'' for ''2 percent''.

2008—Subsec. (b). Pub. L. 110–343, §305(a), reenacted heading without change and amended text generally. Prior to amendment, subsec. (b) provided applicable credit amounts and energy savings amounts for dishwashers, clothes washers, and refrigerators.

Subsec. (c). Pub. L. 110–343, §305(b)(1), struck out par. (1) designation and heading, substituted ''The eligible'' for ''Except as provided in paragraphs (2), the eligible'', redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, and realigned margins, and struck out former par. (2) which provided a special rule for eligible production of refrigerators.

Subsec. (c)(2). Pub. L. 110–343, §305(b)(2), substituted ''2-calendar year'' for ''3-calendar year''.

Subsec. (d). Pub. L. 110–343, §305(c), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section, the types of energy efficient appliances are—

''(1) dishwashers described in subsection (b)(1)(A),

''(2) clothes washers described in subsection (b)(1)(B),

''(3) refrigerators described in subsection (b)(1)(C)(i),

''(4) refrigerators described in subsection (b)(1)(C)(ii), and

''(5) refrigerators described in subsection (b)(1)(C)(iii).''

Subsec. (e)(1). Pub. L. 110–343, §305(d)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The aggregate amount of credit allowed under subsection (a) with respect to a taxpayer for any taxable year shall not exceed $75,000,000 reduced by the amount of the credit allowed under subsection (a) to the taxpayer (or any predecessor) for all prior taxable years.''

Subsec. (e)(2). Pub. L. 110–343, §305(d)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''In the case of refrigerators described in subsection (b)(1)(C)(i), the aggregate amount of the credit allowed under subsection (a) with respect to a taxpayer for any taxable year shall not exceed $20,000,000.''

Subsec. (f)(1). Pub. L. 110–343, §305(e)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'qualified energy efficient appliance' means—

''(A) any dishwasher described in subsection (b)(1)(A),

''(B) any clothes washer described in subsection (b)(1)(B), and

''(C) any refrigerator described in subsection (b)(1)(C).''

Subsec. (f)(3). Pub. L. 110–343, §305(e)(2), inserted ''commercial'' after ''including a''.

Subsec. (f)(4), (5). Pub. L. 110–343, §305(e)(3), added par. (4) and redesignated former par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (f)(6). Pub. L. 110–343, §305(e)(4), amended heading and text of par. (6) generally. Prior to amendment, text read as follows: ''The term 'EF' means the energy factor established by the Department of Energy for compliance with the Federal energy conservation standards.''

Pub. L. 110–343, §305(e)(3), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (f)(7), (8). Pub. L. 110–343, §305(e)(3), redesignated pars. (6) and (7) as (7) and (8), respectively.

Subsec. (f)(9), (10). Pub. L. 110–343, §305(e)(5), added pars. (9) and (10).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §709(e), Dec. 17, 2010, 124 Stat. 3314, provided that:

''(1) IN GENERAL.—The amendments made by subsections (a), (b), and (c) [amending this section] shall apply to appliances produced after December 31, 2010.

''(2) LIMITATIONS.—The amendments made by subsection (d) [amending this section] shall apply to taxable years beginning after December 31, 2010.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title III, §305(f), Oct. 3, 2008, 122 Stat. 3848, provided that: ''The amendments made by this section [amending this section] shall apply to appliances produced after December 31, 2007.''

EFFECTIVE DATE

Section applicable to appliances produced after Dec. 31, 2005, see section 1334(d) of Pub. L. 109–58, set out as an Effective Date of 2005 Amendments note under section 38 of this title.

§ 45N. Mine rescue team training credit

(a) Amount of credit

For purposes of section 38, the mine rescue team training credit determined under this section with respect to each qualified mine rescue team employee of an eligible employer for any taxable year is an amount equal to the lesser of—

(1) 20 percent of the amount paid or incurred by the taxpayer during the taxable year with respect to the training program costs of such qualified mine rescue team employee (including wages of such employee while attending such program), or

(2) $10,000.

(b) Qualified mine rescue team employee

For purposes of this section, the term ''qualified mine rescue team employee'' means with respect to any taxable year any full-time employee of the taxpayer who is—

(1) a miner eligible for more than 6 months of such taxable year to serve as a mine rescue team member as a result of completing, at a minimum, an initial 20-hour course of instruction as prescribed by the Mine Safety and Health Administration's Office of Educational Policy and Development, or

(2) a miner eligible for more than 6 months of such taxable year to serve as a mine rescue team member by virtue of receiving at least 40 hours of refresher training in such instruction.

(c) Eligible employer

For purposes of this section, the term ''eligible employer'' means any taxpayer which employs individuals as miners in underground mines in the United States.

(d) Wages

For purposes of this section, the term ''wages'' has the meaning given to such term by sub-

section (b) of section 3306 (determined without regard to any dollar limitation contained in such section).

(e) Termination

This section shall not apply to taxable years beginning after December 31, 2011.

(Added Pub. L. 109–432, div. A, title IV, § 405(a), Dec. 20, 2006, 120 Stat. 2957; amended Pub. L. 110–343, div. C, title III, § 310, Oct. 3, 2008, 122 Stat. 3869; Pub. L. 111–312, title VII, § 735(a), Dec. 17, 2010, 124 Stat. 3318.)

AMENDMENTS

2010—Subsec. (e). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (e). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2008''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 735(b), Dec. 17, 2010, 124 Stat. 3318, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2005, see section 405(e) of Pub. L. 109–432, set out as an Effective Date of 2006 Amendment note under section 38 of this title.

§ 45O. Agricultural chemicals security credit

(a) In general

For purposes of section 38, in the case of an eligible agricultural business, the agricultural chemicals security credit determined under this section for the taxable year is 30 percent of the qualified security expenditures for the taxable year.

(b) Facility limitation

The amount of the credit determined under subsection (a) with respect to any facility for any taxable year shall not exceed—

(1) $100,000, reduced by

(2) the aggregate amount of credits determined under subsection (a) with respect to such facility for the 5 prior taxable years.

(c) Annual limitation

The amount of the credit determined under subsection (a) with respect to any taxpayer for any taxable year shall not exceed $2,000,000.

(d) Qualified chemical security expenditure

For purposes of this section, the term ''qualified chemical security expenditure'' means, with respect to any eligible agricultural business for any taxable year, any amount paid or incurred by such business during such taxable year for—

(1) employee security training and background checks,

(2) limitation and prevention of access to controls of specified agricultural chemicals stored at the facility,

(3) tagging, locking tank valves, and chemical additives to prevent the theft of specified agricultural chemicals or to render such chemicals unfit for illegal use,

(4) protection of the perimeter of specified agricultural chemicals,

(5) installation of security lighting, cameras, recording equipment, and intrusion detection sensors,

(6) implementation of measures to increase computer or computer network security,

(7) conducting a security vulnerability assessment,

(8) implementing a site security plan, and

(9) such other measures for the protection of specified agricultural chemicals as the Secretary may identify in regulation.

Amounts described in the preceding sentence shall be taken into account only to the extent that such amounts are paid or incurred for the purpose of protecting specified agricultural chemicals.

(e) Eligible agricultural business

For purposes of this section, the term ''eligible agricultural business'' means any person in the trade or business of—

(1) selling agricultural products, including specified agricultural chemicals, at retail predominantly to farmers and ranchers, or

(2) manufacturing, formulating, distributing, or aerially applying specified agricultural chemicals.

(f) Specified agricultural chemical

For purposes of this section, the term ''specified agricultural chemical'' means—

(1) any fertilizer commonly used in agricultural operations which is listed under—

(A) section 302(a)(2) of the Emergency Planning and Community Right-to-Know Act of 1986,

(B) section 101 of part 172 of title 49, Code of Federal Regulations, or

(C) part 126, 127, or 154 of title 33, Code of Federal Regulations, and

(2) any pesticide (as defined in section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act), including all active and inert ingredients thereof, which is customarily used on crops grown for food, feed, or fiber.

(g) Controlled groups

Rules similar to the rules of paragraphs (1) and (2) of section 41(f) shall apply for purposes of this section.

(h) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations which—

(1) provide for the proper treatment of amounts which are paid or incurred for purpose of protecting any specified agricultural chemical and for other purposes, and

(2) provide for the treatment of related properties as one facility for purposes of subsection (b).

(i) Termination

This section shall not apply to any amount paid or incurred after December 31, 2012.

(Added Pub. L. 110–234, title XV, § 15343(a), May 22, 2008, 122 Stat. 1518, and Pub. L. 110–246, § 4(a), title XV, § 15343(a), June 18, 2008, 122 Stat. 1664, 2280.)

REFERENCES IN TEXT

Section 302(a)(2) of the Emergency Planning and Community Right-to-Know Act of 1986, referred to in

subsec. (f)(1)(A), is classified to section 11002(a)(2) of Title 42, The Public Health and Welfare.

Section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (f)(2), is classified to section 136(u) of Title 7, Agriculture.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

EFFECTIVE DATE

Enactment 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 a note under section 8701 of Title 7, Agriculture.

Section applicable to amounts paid or incurred after June 18, 2008, see section 15343(e) of Pub. L. 110–246, set out as an Effective Date of 2008 Amendment note under section 38 of this title.

§ 45P. Employer wage credit for employees who are active duty members of the uniformed services

(a) General rule

For purposes of section 38, in the case of an eligible small business employer, the differential wage payment credit for any taxable year is an amount equal to 20 percent of the sum of the eligible differential wage payments for each of the qualified employees of the taxpayer during such taxable year.

(b) Definitions

For purposes of this section—

(1) Eligible differential wage payments

The term ''eligible differential wage payments'' means, with respect to each qualified employee, so much of the differential wage payments (as defined in section 3401(h)(2)) paid to such employee for the taxable year as does not exceed $20,000.

(2) Qualified employee

The term ''qualified employee'' means a person who has been an employee of the taxpayer for the 91-day period immediately preceding the period for which any differential wage payment is made.

(3) Eligible small business employer

(A) In general

The term ''eligible small business employer'' means, with respect to any taxable year, any employer which—

(i) employed an average of less than 50 employees on business days during such taxable year, and

(ii) under a written plan of the employer, provides eligible differential wage payments to every qualified employee of the employer.

(B) Controlled groups

For purposes of subparagraph (A), all persons treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 shall be treated as a single employer.

(c) Coordination with other credits

The amount of credit otherwise allowable under this chapter with respect to compensation paid to any employee shall be reduced by the credit determined under this section with respect to such employee.

(d) Disallowance for failure to comply with employment or reemployment rights of members of the reserve components of the Armed Forces of the United States

No credit shall be allowed under subsection (a) to a taxpayer for—

(1) any taxable year, beginning after the date of the enactment of this section, in which the taxpayer is under a final order, judgment, or other process issued or required by a district court of the United States under section 4323 of title 38 of the United States Code with respect to a violation of chapter 43 of such title, and

(2) the 2 succeeding taxable years.

(e) Certain rules to apply

For purposes of this section, rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply.

(f) Termination

This section shall not apply to any payments made after December 31, 2011.

(Added Pub. L. 110–245, title I, § 111(a), June 17, 2008, 122 Stat. 1634; amended Pub. L. 111–312, title VII, § 736(a), Dec. 17, 2010, 124 Stat. 3318.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (d)(1), is the date of the enactment of Pub. L. 110–245, which was approved June 17, 2008.

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 736(b), Dec. 17, 2010, 124 Stat. 3318, provided that: ''The amendment made by this section [amending this section] shall apply to payments made after December 31, 2009.''

EFFECTIVE DATE

Section applicable to amounts paid after June 17, 2008, see section 111(e) of Pub. L. 110–245, set out as an Effective Date of 2008 Amendment note under section 38 of this title.

§ 45Q. Credit for carbon dioxide sequestration

(a) General rule

For purposes of section 38, the carbon dioxide sequestration credit for any taxable year is an amount equal to the sum of—

(1) $20 per metric ton of qualified carbon dioxide which is—

(A) captured by the taxpayer at a qualified facility, and

(B) disposed of by the taxpayer in secure geological storage and not used by the taxpayer as described in paragraph (2)(B), and

(2) $10 per metric ton of qualified carbon dioxide which is—

(A) captured by the taxpayer at a qualified facility,

(B) used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project, and

(C) disposed of by the taxpayer in secure geological storage.

(b) Qualified carbon dioxide

For purposes of this section—

(1) In general

The term ''qualified carbon dioxide'' means carbon dioxide captured from an industrial source which—

(A) would otherwise be released into the atmosphere as industrial emission of greenhouse gas, and

(B) is measured at the source of capture and verified at the point of disposal or injection.

(2) Recycled carbon dioxide

The term ''qualified carbon dioxide'' includes the initial deposit of captured carbon dioxide used as a tertiary injectant. Such term does not include carbon dioxide that is re-captured, recycled, and re-injected as part of the enhanced oil and natural gas recovery process.

(c) Qualified facility

For purposes of this section, the term ''qualified facility'' means any industrial facility—

(1) which is owned by the taxpayer,

(2) at which carbon capture equipment is placed in service, and

(3) which captures not less than 500,000 metric tons of carbon dioxide during the taxable year.

(d) Special rules and other definitions

For purposes of this section—

(1) Only carbon dioxide captured and disposed of or used within the United States taken into account

The credit under this section shall apply only with respect to qualified carbon dioxide the capture and disposal or use of which is within—

(A) the United States (within the meaning of section 638(1)), or

(B) a possession of the United States (within the meaning of section 638(2)).

(2) Secure geological storage

The Secretary, in consultation with the Administrator of the Environmental Protection Agency[1] the Secretary of Energy, and the Secretary of the Interior,,[2] shall establish regulations for determining adequate security measures for the geological storage of carbon dioxide under paragraph (1)(B) or (2)(C) of subsection (a) such that the carbon dioxide does not escape into the atmosphere. Such term shall include storage at deep saline formations, oil and gas reservoirs, and unminable coal seams under such conditions as the Secretary may determine under such regulations.

(3) Tertiary injectant

The term ''tertiary injectant'' has the same meaning as when used within section 193(b)(1).

(4) Qualified enhanced oil or natural gas recovery project

The term ''qualified enhanced oil or natural gas recovery project'' has the meaning given the term ''qualified enhanced oil recovery project'' by section 43(c)(2), by substituting ''crude oil or natural gas'' for ''crude oil'' in subparagraph (A)(i) thereof.

(5) Credit attributable to taxpayer

Any credit under this section shall be attributable to the person that captures and physically or contractually ensures the disposal of or the use as a tertiary injectant of the qualified carbon dioxide, except to the extent provided in regulations prescribed by the Secretary.

(6) Recapture

The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any qualified carbon dioxide which ceases to be captured, disposed of, or used as a tertiary injectant in a manner consistent with the requirements of this section.

(7) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2009, there shall be substituted for each dollar amount contained in subsection (a) an amount equal to the product of—

(A) such dollar amount, multiplied by

(B) the inflation adjustment factor for such calendar year determined under section 43(b)(3)(B) for such calendar year, determined by substituting ''2008'' for ''1990''.

(e) Application of section

The credit under this section shall apply with respect to qualified carbon dioxide before the end of the calendar year in which the Secretary, in consultation with the Administrator of the Environmental Protection Agency, certifies that 75,000,000 metric tons of qualified carbon dioxide have been taken into account in accordance with subsection (a).

(Added Pub. L. 110–343, div. B, title I, § 115(a), Oct. 3, 2008, 122 Stat. 3829; amended Pub. L. 111–5, div. B, title I, § 1131(a), (b), Feb. 17, 2009, 123 Stat. 325.)

INFLATION ADJUSTED ITEMS FOR CERTAIN TAX YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table below.

AMENDMENTS

2009—Subsec. (a)(1)(B). Pub. L. 111–5, § 1131(b)(2), inserted ''and not used by the taxpayer as described in paragraph (2)(B)'' after ''storage''.

Subsec. (a)(2)(C). Pub. L. 111–5, § 1131(a), added subpar. (C).

Subsec. (d)(2). Pub. L. 111–5, § 1131(b)(1), inserted ''the Secretary of Energy, and the Secretary of the Interior,'' after ''Environmental Protection Agency'' and substituted ''paragraph (1)(B) or (2)(C) of subsection (a)'' for ''subsection (a)(1)(B)'' and '', oil and gas reservoirs, and unminable coal seams'' for ''and unminable coal seems''.

Subsec. (e). Pub. L. 111–5, § 1131(b)(3), substituted ''taken into account in accordance with subsection (a)'' 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

[1] So in original. A comma probably should appear.

[2] So in original.

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.

INFLATION ADJUSTED ITEMS FOR CERTAIN TAX YEARS

Provisions relating to inflation adjustment of items in this section for certain tax years were contained in the following:
2011—Internal Revenue Notice 2011–50.
2010—Internal Revenue Notice 2010–75.

§ 45R. Employee health insurance expenses of small employers

(a) General rule

For purposes of section 38, in the case of an eligible small employer, the small employer health insurance credit determined under this section for any taxable year in the credit period is the amount determined under subsection (b).

(b) Health insurance credit amount

Subject to subsection (c), the amount determined under this subsection with respect to any eligible small employer is equal to 50 percent (35 percent in the case of a tax-exempt eligible small employer) of the lesser of—

(1) the aggregate amount of nonelective contributions the employer made on behalf of its employees during the taxable year under the arrangement described in subsection (d)(4) for premiums for qualified health plans offered by the employer to its employees through an Exchange, or

(2) the aggregate amount of nonelective contributions which the employer would have made during the taxable year under the arrangement if each employee taken into account under paragraph (1) had enrolled in a qualified health plan which had a premium equal to the average premium (as determined by the Secretary of Health and Human Services) for the small group market in the rating area in which the employee enrolls for coverage.

(c) Phaseout of credit amount based on number of employees and average wages

The amount of the credit determined under subsection (b) without regard to this subsection shall be reduced (but not below zero) by the sum of the following amounts:

(1) Such amount multiplied by a fraction the numerator of which is the total number of full-time equivalent employees of the employer in excess of 10 and the denominator of which is 15.

(2) Such amount multiplied by a fraction the numerator of which is the average annual wages of the employer in excess of the dollar amount in effect under subsection (d)(3)(B) and the denominator of which is such dollar amount.

(d) Eligible small employer

For purposes of this section—

(1) In general

The term ''eligible small employer'' means, with respect to any taxable year, an employer—

(A) which has no more than 25 full-time equivalent employees for the taxable year,

(B) the average annual wages of which do not exceed an amount equal to twice the dollar amount in effect under paragraph (3)(B) for the taxable year, and

(C) which has in effect an arrangement described in paragraph (4).

(2) Full-time equivalent employees

(A) In general

The term ''full-time equivalent employees'' means a number of employees equal to the number determined by dividing—

(i) the total number of hours of service for which wages were paid by the employer to employees during the taxable year, by

(ii) 2,080.

Such number shall be rounded to the next lowest whole number if not otherwise a whole number.

(B) Excess hours not counted

If an employee works in excess of 2,080 hours of service during any taxable year, such excess shall not be taken into account under subparagraph (A).

(C) Hours of service

The Secretary, in consultation with the Secretary of Labor, shall prescribe such regulations, rules, and guidance as may be necessary to determine the hours of service of an employee, including rules for the application of this paragraph to employees who are not compensated on an hourly basis.

(3) Average annual wages

(A) In general

The average annual wages of an eligible small employer for any taxable year is the amount determined by dividing—

(i) the aggregate amount of wages which were paid by the employer to employees during the taxable year, by

(ii) the number of full-time equivalent employees of the employee determined under paragraph (2) for the taxable year.

Such amount shall be rounded to the next lowest multiple of $1,000 if not otherwise such a multiple.

(B) Dollar amount

For purposes of paragraph (1)(B) and subsection (c)(2)—

(i) 2010, 2011, 2012, and 2013

The dollar amount in effect under this paragraph for taxable years beginning in 2010, 2011, 2012, or 2013 is $25,000.

(ii) Subsequent years

In the case of a taxable year beginning in a calendar year after 2013, the dollar amount in effect under this paragraph shall be equal to $25,000, multiplied by the cost-of-living adjustment under section 1(f)(3) for the calendar year, determined by substituting ''calendar year 2012'' for ''calendar year 1992'' in subparagraph (B) thereof.

(4) Contribution arrangement

An arrangement is described in this paragraph if it requires an eligible small employer

to make a nonelective contribution on behalf of each employee who enrolls in a qualified health plan offered to employees by the employer through an exchange in an amount equal to a uniform percentage (not less than 50 percent) of the premium cost of the qualified health plan.

(5) Seasonal worker hours and wages not counted

For purposes of this subsection—

(A) In general

The number of hours of service worked by, and wages paid to, a seasonal worker of an employer shall not be taken into account in determining the full-time equivalent employees and average annual wages of the employer unless the worker works for the employer on more than 120 days during the taxable year.

(B) Definition of seasonal worker

The term ''seasonal worker'' means a worker who performs labor or services on a seasonal basis as defined by the Secretary of Labor, including workers covered by section 500.20(s)(1) of title 29, Code of Federal Regulations and retail workers employed exclusively during holiday seasons.

(e) Other rules and definitions

For purposes of this section—

(1) Employee

(A) Certain employees excluded

The term ''employee'' shall not include—

(i) an employee within the meaning of section 401(c)(1),

(ii) any 2-percent shareholder (as defined in section 1372(b)) of an eligible small business which is an S corporation,

(iii) any 5-percent owner (as defined in section 416(i)(1)(B)(i)) of an eligible small business, or

(iv) any individual who bears any of the relationships described in subparagraphs (A) through (G) of section 152(d)(2) to, or is a dependent described in section 152(d)(2)(H) of, an individual described in clause (i), (ii), or (iii).

(B) Leased employees

The term ''employee'' shall include a leased employee within the meaning of section 414(n).

(2) Credit period

The term ''credit period'' means, with respect to any eligible small employer, the 2-consecutive-taxable year period beginning with the 1st taxable year in which the employer (or any predecessor) offers 1 or more qualified health plans to its employees through an Exchange.

(3) Nonelective contribution

The term ''nonelective contribution'' means an employer contribution other than an employer contribution pursuant to a salary reduction arrangement.

(4) Wages

The term ''wages'' has the meaning given such term by section 3121(a) (determined without regard to any dollar limitation contained in such section).

(5) Aggregation and other rules made applicable

(A) Aggregation rules

All employers treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 shall be treated as a single employer for purposes of this section.

(B) Other rules

Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply.

(f) Credit made available to tax-exempt eligible small employers

(1) In general

In the case of a tax-exempt eligible small employer, there shall be treated as a credit allowable under subpart C (and not allowable under this subpart) the lesser of—

(A) the amount of the credit determined under this section with respect to such employer, or

(B) the amount of the payroll taxes of the employer during the calendar year in which the taxable year begins.

(2) Tax-exempt eligible small employer

For purposes of this section, the term ''tax-exempt eligible small employer'' means an eligible small employer which is any organization described in section 501(c) which is exempt from taxation under section 501(a).

(3) Payroll taxes

For purposes of this subsection—

(A) In general

The term ''payroll taxes'' means—

(i) amounts required to be withheld from the employees of the tax-exempt eligible small employer under section 3401(a),

(ii) amounts required to be withheld from such employees under section 3101(b), and

(iii) amounts of the taxes imposed on the tax-exempt eligible small employer under section 3111(b).

(B) Special rule

A rule similar to the rule of section 24(d)(2)(C) shall apply for purposes of subparagraph (A).

(g) Application of section for calendar years 2010, 2011, 2012, and 2013

In the case of any taxable year beginning in 2010, 2011, 2012, or 2013, the following modifications to this section shall apply in determining the amount of the credit under subsection (a):

(1) No credit period required

The credit shall be determined without regard to whether the taxable year is in a credit period and for purposes of applying this section to taxable years beginning after 2013, no credit period shall be treated as beginning with a taxable year beginning before 2014.

(2) Amount of credit

The amount of the credit determined under subsection (b) shall be determined—

(A) by substituting ''35 percent (25 percent in the case of a tax-exempt eligible small employer)'' for ''50 percent (35 percent in the case of a tax-exempt eligible small employer)'',

(B) by reference to an eligible small employer's nonelective contributions for premiums paid for health insurance coverage (within the meaning of section 9832(b)(1)) of an employee, and

(C) by substituting for the average premium determined under subsection (b)(2) the amount the Secretary of Health and Human Services determines is the average premium for the small group market in the State in which the employer is offering health insurance coverage (or for such area within the State as is specified by the Secretary).

(3) Contribution arrangement

An arrangement shall not fail to meet the requirements of subsection (d)(4) solely because it provides for the offering of insurance outside of an Exchange.

(h) Insurance definitions

Any term used in this section which is also used in the Public Health Service Act or subtitle A of title I of the Patient Protection and Affordable Care Act shall have the meaning given such term by such Act or subtitle.

(i) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations to prevent the avoidance of the 2-year limit on the credit period through the use of successor entities and the avoidance of the limitations under subsection (c) through the use of multiple entities.

(Added and amended Pub. L. 111–148, title I, §1421(a), title X, §10105(e)(1), (2), Mar. 23, 2010, 124 Stat. 237, 906.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (h), is act July 1, 1944, ch. 373, 58 Stat. 682, which is classified generally to chapter 6A (§ 201 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

The Patient Protection and Affordable Care Act, referred to in subsec. (h), is Pub. L. 111–148, Mar. 23, 2010, 124 Stat. 119. Subtitle A (§§1001 to 1004) of title I of the Act enacted sections 300gg–11 to 300gg–19, 300gg–93, and 300gg–94 of Title 42, The Public Health and Welfare, redesignated sections 300gg–4 to 300gg–7 of Title 42 as sections 300gg–25 to 300gg–28, respectively, of Title 42, and section 300gg–13 of Title 42 as section 300gg–9 of Title 42, amended former sections 300gg–11 and 300gg–12 and sections 300gg–21 to 300gg–23 of Title 42, and enacted provisions set out as a note under section 300gg–11 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 18001 of Title 42 and Tables.

AMENDMENTS

2010—Subsec. (d)(3)(B). Pub. L. 111–148, §10105(e)(1), amended subpar. (B) generally, including dollar amount for taxable years beginning in 2010 in addition to dollar amounts for taxable years beginning in 2011, 2012, and 2013, and subsequent years.

Subsec. (g). Pub. L. 111–148, §10105(e)(2), substituted ''2010, 2011'' for ''2011'' in heading and in introductory provisions.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title X, §10105(e)(5), Mar. 23, 2010, 124 Stat. 907, provided that: ''The amendments made by this subsection [amending this section, section 280C of this title, and provisions set out as a note under section 38 of this title] shall take effect as if included in the enactment of section 1421 of this Act.''

EFFECTIVE DATE

Section applicable to amounts paid or incurred in taxable years beginning after Dec. 31, 2009, see section 1421(f)(1) of Pub. L. 111–148, set out as an Effective Date of 2010 Amendment note under section 38 of this title.

SUBPART E—RULES FOR COMPUTING INVESTMENT CREDIT

Sec.

AMENDMENTS

2010—Pub. L. 111–148, title IX, §9023(d), Mar. 23, 2010, 124 Stat. 881, added item 48D.

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 credit,

(3) the qualifying advanced coal project credit,