

A's account is disclosed to participants, and employee B chooses to pay off A's unpaid pledge, as provided in the plan, by making a \$100 supplemental contribution. The full amount of the securities and dividend income attributable to the unpaid pledge are transferred from A's account to that of B as of December 31, 1979. M's credit for 1977 is not reduced. The \$100 supplemental contribution is an annual addition to B's account for purposes of applying section 415 in 1979. Income attributable to the pledge in excess of the supplemental contribution, \$3 (\$103-\$100), may be allocated and treated as an annual addition by spreading this excess amount over the years from the applicable year to the year of the reduction (1977, 1978, 1979).

(g) *Failure to comply*—(1) *General rule.* If a corporation elects under § 1.46-8(c) (2) through (5) and paragraph (c)(1) of this section to obtain an additional credit, § 1.46-8(h) (1), (2), (3), (5), (6), and (7) as modified by this paragraph (g) apply.

(2) *Failure to comply (penalty classifications)*—(i) *In general.* A corporation fails to comply with an extra additional credit election if a defect described in paragraph (g)(2) (ii)–(iv) of this section occurs in a taxable year.

(ii) *Funding defect.* A funding defect occurs under this section if a corporation or its TRASOP fails to satisfy the requirements of § 1.46-8(c) (8) or (9) or paragraph (c)(4) of this section, as they apply directly to the extra additional credit.

(iii) *Special operational defect.* A special operational defect occurs if a TRASOP fails in operation to satisfy the requirements described in § 1.46-8(d) (5) through (9) (except (6) (i), (iii), and (v) through (viii)) or (e)(3), or paragraphs (d) (5), (6), and (e)(3) of this section, as they apply directly to the extra additional credit.

(iv) *De minimis defect.* A *de minimis* defect occurs if a corporation or its TRASOP fails to satisfy the requirements, other than those enumerated in paragraphs (c) (1) and (2) and (g)(2) (ii) and (iii), of this section or of § 1.46-8 other than those excluded under § 1.46-8(h)(4)(iv).

(3) *Amount involved.* The amount involved in a failure to comply under this section is based upon the extra additional credit within the meaning of section 46(a)(2)(B)(ii).

(4) *Coordination of civil penalties.* The civil penalties under § 1.46-8 and this

section are determined separately. In no case may the amount involved with respect to a particular failure to comply in one year exceed under both sections the full additional credit within the meaning of section 46(a)(2)(B) (i) and (ii).

[T.D. 7856, 47 FR 54805, Dec. 6, 1982]

#### § 1.46-10 [Reserved]

#### § 1.46-11 Commuter highway vehicles.

(a) *In general.* Section 46(c)(6) provides that the applicable percentage to determine qualified investment under section 46(c)(1) for a qualifying commuter highway vehicle is 100 percent. A qualifying commuter highway vehicle is a vehicle (defined in paragraph (b) of this section)—

(1) Which is acquired by the taxpayer on or after November 9, 1978,

(2) Which is placed in service by the taxpayer before January 1, 1986, and

(3) With respect to which the taxpayer makes an election under paragraph (g) of this section.

(b) *Definition of commuter highway vehicle.* A commuter highway vehicle is a highway vehicle that meets the following requirements:

(1) The vehicle is section 38 property in the hands of the taxpayer. The rule of section 48(d), allowing a lessor to elect to treat the lessee of new section 38 property as having acquired the property, applies to commuter highway vehicles. If the vehicle is leased and that

election is made, the lessee is treated as the taxpayer under this section. However, if that election is not made, the lessor, and not the lessee, is treated as the taxpayer under this section.

(2) The vehicle must meet the seating capacity requirement of paragraph (c) of this section; and

(3) The taxpayer reasonably expects to meet the commuter use requirement of paragraph (d) of this section for at least the first 36 months after the vehicle is placed in service.

(c) *Seating capacity.* A commuter highway vehicle must have a seating capacity of at least 8 adults in addition to the driver's seat.

(d) *Commuter use requirement.* A vehicle meets the commuter use requirement only if at least 80 percent of the