

**PART 9—TEMPORARY INCOME TAX
REGULATIONS UNDER THE TAX
REDUCTION ACT OF 1975**

Sec.

9.1 Investment credit—public utility property elections.

9.2 [Reserved]

9.3 Temporary TRASOP requirements for 1-percent additional investment credit.

§9.1 Investment credit—public utility property elections.

(a) *Applicability of prior election under section 46(f)—(1) In general.* Except as provided in paragraph (a)(2) of this section, an election made before March 10, 1972 (hereinafter referred to as a 1972 election) under section 46(f) (redesignated from section 46(e) by the Tax Reduction Act of 1975) applies to the credit allowable for a taxable year with respect to public utility property described in section 46(f)(5) by reason of sections 301 and 302 of the Tax Reduction Act of 1975.

(2) *1972 immediate flow-through election.* A 1972 election under section 46(f)(3) (hereinafter referred to as an election for immediate flow-through) does not apply to the additional credit allowed under section 38 with respect to limited property (public utility property described in section 46(c)(3)(B) to which section 167(1)(2)(C) applies, other than nonregulated communication property of the type described in the last sentence of section 46(c)(3)(B) by reason of the Tax Reduction Act of 1975. However, a 1972 election for immediate flow-through does apply to the additional credit allowed for a taxable year with respect to property described in section 46(f)(5)(B). See paragraph (b) of this section for a new election under section 46(f)(3) with regard to the additional credit with respect to limited property allowed by reason of the Tax Reduction Act of 1975. See paragraph (a)(3) of this section for determination of additional credit. For purposes of this section the phrase “determined as if the Tax Reduction Act had not been enacted” means the following amendments shall be disregarded in determining credit allowable or allowed:

(i) The increase in the amount of credit from 7 percent to 10 or 11 percent under section 46(a)(1) (A), (B), and (D),

(ii) The increase in the amount of qualified investment from 4/7 to 7/7 under section 46(a)(1)(C) and (c)(3)(A),

(iii) The increase in the dollar limitation from \$50,000 to \$100,000 on used property under section 48(c)(2), and

(iv) The increase in the limitation based on tax under section 46(a)(6) for certain public utilities.

In determining the amount of credit attributable to limited property possible disallowance under section 46(f) shall be disregarded.

(3) *Additional credit allowed—(i) Credit earned in taxable year.* The amount of additional credit allowed for credit earned for limited property for taxable year is an amount equal to the excess of—

(A) The credit allowed by section 38 for the taxable year (determined without regard to section 46(b)) multiplied by a fraction, the numerator of which is the amount of credit earned for limited property for the taxable year and the denominator of which is the amount of credit earned for all section 38 property for the taxable year, over

(B) The amount of normal credit allowed for limited property for the taxable year (determined without regard to section 46(b)). The amount of normal credit allowed for limited property is the amount of credit that would be allowed for the taxable year determined as if the Tax Reduction Act had not been enacted multiplied by a fraction, the numerator of which is the amount of credit earned for limited property for the taxable year determined as if the Tax Reduction Act had not been enacted and the denominator of which is the credit earned for all section 38 property for the taxable year determined as if the Tax Reduction Act had not been enacted.

(ii) *Carryover or carryback to taxable year.* The amount of additional credit allowed for limited property attributable to a carryover or a carryback of any unused credit to any taxable year in an amount equal to the excess of—

(A) The amount of credit allowed by section 38 for the taxable year by reason of section 46(b) multiplied by the fraction contained in paragraph (a)(3)(i)(A) of this section for the unused credit year, over

(B) The amount of unused normal credit allowed for limited property for the taxable year. The amount of unused normal credit allowed for limited property is the amount of unused credit that would be allowed for the taxable year under section 38 by reason of section 46(b), taking into account the amount of unused credit that would be allowed for any preceding year, determined as if the Tax Reduction Act had not been enacted, multiplied by the fraction contained in paragraph (a)(3)(i)(B) of this section for the unused credit year.

(b) *New election*—(1) *In general.* A taxpayer who made a 1972 election for immediate flow-through under section 46(f)(3) with respect to limited property may elect to apply section 46(f)(3) to the additional credit allowed by the Tax Reduction Act of 1975 with respect to such property, or, if eligible, may make the election in paragraph (b)(2) of this section to apply section 46(f)(2) to such additional credit. The election to apply section 46(f)(2) or (3) must be made before June 28, 1975, in the manner provided in paragraph (c) of this section. If the taxpayer does not make a new election, section 46(f)(1) shall apply to additional credit for limited property. However, if the taxpayer made a 1972 election under section 46(f)(2) with respect to property to which section 46(f)(3) does not apply, then section 46(f)(2) shall apply to such additional credit notwithstanding any prohibition in section 46(f)(3) to the contrary.

(2) *Special section 46(f)(2) election.* A taxpayer who:

(i) Made a 1972 election under section 46(f)(3),

(ii) Did not make an election to apply section 46(f)(2) with respect to property to which section 46(f)(3) does not apply, and

(iii) Did not acquire property to which section 46(f)(1) applied in any taxable year ending before January 1, 1975, may elect to apply section 46(f)(2) to the additional credit allowed by the Tax Reduction Act of 1975 with respect to limited property notwithstanding any prohibition in section 46(f)(3) to the contrary.

(c) *Method of making election.* A taxpayer may make an election described

in paragraph (b) of this section by filing a statement before June 28, 1975, with the district director or director of the internal revenue service center with whom the taxpayer ordinarily files its income tax return. For rules with respect to taxpayers filing consolidated returns, see §1.1502-77(a) of part 1 of this chapter. The statement shall contain the following information: (1) The name, address, and taxpayer identification number of the taxpayer, and (2) the election which the taxpayer is making under paragraph (b) of this section. If a taxpayer is electing flow-through under section 46(f)(3), the statement shall also contain a written recitation that the election is made at the taxpayer's own option and without regard to any requirement imposed by an agency described in section 46(c)(3)(B) having jurisdiction over the taxpayer. The recitation shall be verified by a written declaration that it is made under the penalties of perjury.

(Secs. 46(f) and 7805 of the Internal Revenue Code of 1954 (85 Stat. 503, 68A Stat. 917; 26 U.S.C. 46, 7805))

[T.D. 7360, 40 FR 25472, June 16, 1975]

§9.2 [Reserved]

§9.3 Temporary TRASOP requirements for 1-percent additional investment credit.

The provisions listed in §1.46-8 (a)(4) (i)–(ix) (Income Tax Regulations) are deemed effective only as temporary regulations under this section.

(Sec. 301(d)(2)(C) and (10) of the Tax Reduction Act of 1975 and sec. 7805 of the Internal Revenue Code of 1954 (89 Stat. 38, 68A Stat. 917 (26 U.S.C. 7805)))

[T.D. 7589, 44 FR 4145, Jan. 16, 1979; 44 FR 6715, Feb. 2, 1979]

PART 11—TEMPORARY INCOME TAX REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Sec.

11.401(a)-11 Qualified joint and survivor annuities.

11.401(a)-19 Nonforfeitability in case of certain withdrawals.

11.401(b)-1 Certain retroactive changes in plan.