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