Energy credit

§ 48. Energy credit

(a) Energy credit

(1) In general

For purposes of section 46, except as provided in paragraphs (1)(B), (2)(B), (3)(B), and (4)(B)
§ 48 of Title 26, Internal Revenue Code, the energy credit for any taxable year is the energy percentage of the basis of each energy property placed in service during such taxable year.

(2) Energy percentage

(A) In general

The energy percentage is—

(i) 30 percent in the case of—

(I) qualified fuel cell property,

(II) energy property described in paragraph (3)(A)(i) but only with respect to periods ending before January 1, 2017,

(III) energy property described in paragraph (3)(A)(ii), and

(IV) qualified small wind energy property, and

(ii) in the case of any energy property to which clause (i) does not apply, 10 percent.

(B) Coordination with rehabilitation credit

The energy percentage shall not apply to that portion of the basis of any property which is attributable to qualified rehabilitation expenditures.

(3) Energy property

For purposes of this subpart, the term "energy property" means any property—

(A) which is—

(i) equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, excepting property used to generate energy for the purposes of heating a swimming pool,

(ii) equipment which uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight but only with respect to periods ending before January 1, 2017,

(iii) equipment used to produce, distribute, or use energy derived from a geothermal deposit (within the meaning of section 613(e)(2)), but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage,

(iv) qualified fuel cell property or qualified microturbine property,

(v) combined heat and power system property,

(vi) qualified small wind energy property, or

(vii) equipment which uses the ground or ground water as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure, but only with respect to periods ending before January 1, 2017,

(B)(i) the construction, reconstruction, or erection of which is completed by the taxpayer, or

(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer,

(C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable, and

(D) which meets the performance and quality standards (if any) which—

(i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy), and

(ii) are in effect at the time of the acquisition of the property.

Such term shall not include any property which is part of a facility the production from which is allowed as a credit under section 45 for the taxable year or any prior taxable year.

(4) Special rule for property financed by subsidized energy financing or industrial development bonds

(A) Reduction of basis

For purposes of applying the energy percentage to any property, if such property is financed in whole or in part by—

(i) subsidized energy financing, or

(ii) the proceeds of a private activity bond (within the meaning of section 141) the interest on which is exempt from tax under section 103,

the amount taken into account as the basis of such property shall not exceed the amount which (but for this subparagraph) would be so taken into account multiplied by the fraction determined under subparagraph (B).

(B) Determination of fraction

For purposes of subparagraph (A), the fraction determined under this subparagraph is 1 reduced by a fraction—

(i) the numerator of which is that portion of the basis of the property which is allocable to such financing or proceeds, and

(ii) the denominator of which is the basis of the property.

(C) Subsidized energy financing

For purposes of subparagraph (A), the term "subsidized energy financing" means financing provided under a Federal, State, or local program a principal purpose of which is to provide subsidized financing for projects designed to conserve or produce energy.

(D) Termination

This paragraph shall not apply to periods after December 31, 2008, under rules similar to the rules of section 48(m) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).
(5) Election to treat qualified facilities as energy property

(A) In general

In the case of any qualified property which is part of a qualified investment credit facility—

(i) such property shall be treated as energy property for purposes of this section, and

(ii) the energy percentage with respect to such property shall be 30 percent.

(B) Denial of production credit

No credit shall be allowed under section 45 for any taxable year with respect to any qualified investment credit facility.

(C) Qualified investment credit facility

For purposes of this paragraph, the term “qualified investment credit facility” means any of the following facilities if no credit has been allowed under section 45 with respect to such facility and the taxpayer makes an irrevocable election to have this paragraph apply to such facility:

(i) Wind facilities

Any qualified facility (within the meaning of section 45) described in paragraph (1) of section 45(d) if such facility is placed in service in 2009, 2010, 2011, or 2012.

(ii) Other facilities

Any qualified facility (within the meaning of section 45) described in paragraph (2), (3), (4), (6), (7), (9), or (11) of section 45(d) if such facility is placed in service in 2009, 2010, 2011, 2012, or 2013.

(D) Qualified property

For purposes of this paragraph, the term “qualified property” means property—

(i) which is—

(I) tangible personal property, or

(II) other tangible property (not including a building or its structural components), but only if such property is used as an integral part of the qualified investment credit facility, and

(ii) with respect to which depreciation (or amortization in lieu of depreciation) is allowable.

(b) Certain progress expenditure rules made applicable

Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of subsection (a).

(c) Definitions

For purposes of this section—

(1) Qualified fuel cell property

(A) In general

The term “qualified fuel cell property” means a fuel cell power plant which—

(i) has a nameplate capacity of at least 0.5 kilowatt of electricity using an electrochemical process, and

(ii) has an electricity-only generation efficiency greater than 30 percent.

(B) Limitation

In the case of qualified fuel cell property placed in service during the taxable year, the credit otherwise determined under subsection (a) for such year with respect to such property shall not exceed an amount equal to $1,500 for each 0.5 kilowatt of capacity of such property.

(C) Fuel cell power plant

The term “fuel cell power plant” means an integrated system comprised of a fuel cell stack assembly and associated balance of plant components which converts a fuel into electricity using electrochemical means.

(D) Termination

The term “qualified fuel cell property” shall not include any property for any period after December 31, 2016.

(2) Qualified microturbine property

(A) In general

The term “qualified microturbine property” means a stationary microturbine power plant which—

(i) has a nameplate capacity of less than 2,000 kilowatts, and

(ii) has an electricity-only generation efficiency of not less than 26 percent at International Standard Organization conditions.

(B) Limitation

In the case of qualified microturbine property placed in service during the taxable year, the credit otherwise determined under subsection (a) for such year with respect to such property shall not exceed an amount equal to $200 for each kilowatt of capacity of such property.

(C) Stationary microturbine power plant

The term “stationary microturbine power plant” means an integrated system comprised of a gas turbine engine, a combustor, a recuperator or regenerator, a generator or alternator, and associated balance of plant components which converts a fuel into electricity and thermal energy. Such term also includes all secondary components located between the existing infrastructure for fuel delivery and the existing infrastructure for power distribution, including equipment and controls for meeting relevant power standards, such as voltage, frequency, and power factors.

(D) Termination

The term “qualified microturbine property” shall not include any property for any period after December 31, 2016.

(3) Combined heat and power system property

(A) Combined heat and power system property

The term “combined heat and power system property” means property comprising a system—

(i) which uses the same energy source for the simultaneous or sequential generation
of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications),

(ii) which produces—

(I) at least 20 percent of its total useful energy in the form of thermal energy which is not used to produce electrical or mechanical power (or combination thereof), and

(II) at least 20 percent of its total useful energy in the form of electrical or mechanical power (or combination thereof),

(iii) the energy efficiency percentage of which exceeds 60 percent, and

(iv) which is placed in service before January 1, 2017.

(B) Limitation

(i) In general

In the case of combined heat and power system property with an electrical capacity in excess of the applicable capacity placed in service during the taxable year, the credit under subsection (a)(1) (determined without regard to this paragraph) for such year shall be equal to the amount which bears the same ratio to such credit as the applicable capacity bears to the capacity of such property.

(ii) Applicable capacity

For purposes of clause (i), the term “applicable capacity” means 15 megawatts or a mechanical energy capacity of more than 20,000 horsepower or an equivalent combination of electrical and mechanical energy capacities.

(iii) Maximum capacity

The term “combined heat and power system property” shall not include any property comprising a system if such system has a capacity in excess of 50 megawatts or a mechanical energy capacity in excess of 67,000 horsepower or an equivalent combination of electrical and mechanical energy capacities.

(C) Special rules

(i) Energy efficiency percentage

For purposes of this paragraph, the energy efficiency percentage of a system is the fraction—

(I) the numerator of which is the total useful electrical, thermal, and mechanical power produced by the system at normal operating rates, and expected to be consumed in its normal application, and

(II) the denominator of which is the lower heating value of the fuel sources for the system.

(ii) Determinations made on Btu basis

The energy efficiency percentage and the percentages under subparagraph (A)(ii) shall be determined on a Btu basis.

(iii) Input and output property not included

The term “combined heat and power system property” does not include property used to transport the energy source to the facility or to distribute energy produced by the facility.

(D) Systems using biomass

If a system is designed to use biomass (within the meaning of paragraphs (2) and (3) of section 45(c) without regard to the last sentence of paragraph (3)(A)) for at least 90 percent of the energy source—

(i) subparagraph (A)(iii) shall not apply, but

(ii) the amount of credit determined under subsection (a) with respect to such system shall not exceed the amount which bears the same ratio to such amount of credit (determined without regard to this subparagraph) as the energy efficiency percentage of such system bears to 60 percent.

(4) Qualified small wind energy property

(A) In general

The term “qualified small wind energy property” means property which uses a qualifying small wind turbine to generate electricity.

(B) Qualifying small wind turbine

The term “qualifying small wind turbine” means a wind turbine which has a nameplate capacity of not more than 100 kilowatts.

(C) Termination

The term “qualified small wind energy property” shall not include any property for any period after December 31, 2016.

(d) Coordination with Department of Treasury

In the case of any property with respect to which the Secretary makes a grant under section 1603 of the American Recovery and Reinvestment Tax Act of 2009—

(1) Denial of production and investment credits

No credit shall be determined under this section or section 45 with respect to such property for the taxable year in which such grant is made or any subsequent taxable year.

(2) Recapture of credits for progress expenditures made before grant

If a credit was determined under this section with respect to such property for any taxable year ending before such grant is made—

(A) the tax imposed under subtitle A on the taxpayer for the taxable year in which such grant is made shall be increased by so much of such credit as was allowed under section 38,

(B) the general business carryforwards under section 39 shall be adjusted so as to recapture the portion of such credit which was not so allowed, and

(C) the amount of such grant shall be determined without regard to any reduction in the basis of such property by reason of such credit.

(3) Treatment of grants

Any such grant shall—

(A) not be includible in the gross income of the taxpayer, but
Subsec. (c)(2)(D). Pub. L. 110–343, §103(e)(2)(B), redesignated subpar. (E) as (D) and struck out heading and text of former subpar. (D). Text read as follows: “The first sentence of the matter in subsection (a)(3) which follows subparagraph (D) thereof shall not apply to qualified microturbine property which is used predominantly in the trade or business of the furnishing or sale of telephone service, telegraph service by means of domestic telegraph operations, or other telegraph services (other than international telegraph services).”
Subsec. (c)(1)(B), (2)(B). Pub. L. 110–172, §111(a)(9), substituted “subsection (a)” for “paragraph (1)”.
Pub. L. 110–99, §1336(d), inserted “except as provided in paragraph (1)(B) or (2)(B) of subsection (d),” before “the energy credit.”
Subsec. (a)(2)(A). Pub. L. 110–99, §1337(a), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: “The energy percentage is—

(i) in the case of qualified fuel cell property, 30 percent, and

(ii) in the case of any other energy property, 10 percent.”

Pub. L. 110–98, §1336(c), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: “The energy percentage is 10 percent.”
Pub. L. 110–98, §1337(b), added cl. (ii). Former cl. (i) redesignated (iii) relating to equipment used to produce, distribute, or use energy derived from a geothermal deposit.
Subsec. (a)(3)(A)(iii). Pub. L. 110–98, §1337(b), redesignated cl. (ii) as (iii) relating to equipment used to produce, distribute, or use energy derived from a geothermal deposit.
Pub. L. 110–98, §1336(a), added cl. (iii) relating to qualified fuel cell property or qualified microturbine property.
Subsec. (a)(3). Pub. L. 108–357, §710(e), inserted at end of concluding provisions “Such term shall not include any property which is part of a facility the production from which is allowed as a credit under section 45 for the taxable year or any prior taxable year.”
Pub. L. 108–357, §322(d)(2)(A)(i), struck out heading and text of subsec. (b). Text read as follows: “(1) In general.—For purposes of section 46, the reforestation credit for any taxable year is 10 percent of the portion of the amortizable basis of any qualified timber property which was acquired during such taxable year and which is taken into account under section 191 (after the application of section 194(b)(1)).

(2) Definitions.—For purposes of this part, the terms ‘amortizable basis’ and ‘qualified timber property’ have the respective meanings given to such terms by section 191.”

1992—Subsec. (a)(2). Pub. L. 102–486 substituted “The” for “Except as provided in subparagraph (B), the” in subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: “(B) The” in preceding sentence, rules similar to the rules of section 48(c) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply.”


1990—Pub. L. 101–508, §11813(a), amended section generally, substituting section catchline for one which read: “Definitions; special rules” and in text substituting present provisions for provisions defining section 38 property, new section 38 property, section 38 property, provisions relating to certain leased property, estates and trusts, special rules for qualified rehabilitated buildings, credit for movie and television films, treatment of energy property, application of certain transitional rules, definitions of certain credits, definition of single purpose agricultural or horticultural structure, basis adjustment to section 38 property, certain section 501(d) organizations, special rules relating to sound recordings, and a cross reference to section 381 of this title.

Subsec. (a)(8)(B). Pub. L. 101–508, §11801(c)(6)(A), struck out par. (8) “Amortized property” which read as follows: “Any property with respect to which an election is treated as section 38 property,”

1988—Subsec. (a)(1). Pub. L. 100–647, §1002(a)(20), which directed amendment of par. (1) by substituting “property to which section 168 applies” for “recovery property (within the meaning of section 168)” in penultimate sentence, was executed by making the substitution for “recovery property (within the meaning of section 168),” which results in retaining remaining parenthetical material and closing parenthesis.


Subsec. (a)(5)(D). Pub. L. 100–647, §1002(a)(14)(F), substituted “paragraphs (5) and (6) of section 168(h)” for “(paragraphs 5 and 6 6 of section 168).”

Subsec. (a)(5)(E). Pub. L. 100–647, §1002(a)(14)(G), amended subpar. (E) generally, substituting “provision” for “provisions” and “168(h)” for “168(h).”

Subsec. (j)(2)(C). Pub. L. 100–647, §1002(a)(38), substituted “to which section 168 applies” for “which is recovery property (within the meaning of section 168)”.

Subsec. (j)(11)(A)(ii). Pub. L. 100–647, §1013(a)(41), substituted “a private activity bond (within the meaning of section 141)” for “an industrial development bond (within the meaning of section 103(b)(2)).”

Subsec. (s). Pub. L. 100–647, §1002(a)(20), redesignated subsec. (s), relating to credit, as (t).

Subsec. (i)(5). Pub. L. 99–514, §1847(b)(6), substituted "section 25(c)" for "section 44C(c)" and "section 25(c)(4)(A)(vii)" for "section 44C(c)(4)(A)(vii)".

Subsec. (q)(3). Pub. L. 99–514, §261(c), struck out "other than a certified historic structure" after "qualified rehabilitated building".

Subsec. (q)(7). Pub. L. 99–514, §1809(d)(2), renumbered par. (6), relating to special rule for qualified films, as (7).


Subsec. (s). Pub. L. 99–514, §1879(j)(1), redesignated former subsec. (r) as (s).

Subsec. (s)(5). Pub. L. 99–514, §803(b)(2)(B), which directed the general amendment of par. (5) of subsec. (r), was executed by amending par. (5) of subsec. (s) to reflect the probable intent of Congress and the intervening redesignation of subsec. (r) as (s) by Pub. L. 99–514, §1879(j)(1), see note above. Prior to amendment, par. (5) read as follows: "For purposes of this subsection, the term "sound recording" means any sound recording described in section 201(c)(2)."


1984—Subsec. (a)(5). Pub. L. 98–369, §31(b), amended par. (5) generally, to extend its scope to encompass property used by foreign persons or entities and to create an exception for short-term leases by substituting provisions covered by subpars. (A) to (D) for former provisions which had directed that property used by the United States, any State or political subdivision thereof, any international organization, or any successor organization of any of the foregoing not be treated as section 38 property, that for purposes of that prohibition the International Telecommunications Satellite Organization, the International Maritime Satellite Organization, and any successor organization of such Consortium or Organization not be treated as an international organization, and that if any qualified rehabilitated building were used by the governmental unit pursuant to a lease, this paragraph would not apply to that portion of the basis of such building attributable to qualified rehabilitation expenditures.

Subsec. (b). Pub. L. 98–369, §114(a), amended subsec. (b) generally, substituting a general definition of "new section 38 property" for definitions which made reference to property constructed, reconstructed or erected after December 31, 1961, and adding pars. (2) and (3).

Subsec. (c)(2)(A). Pub. L. 98–369, §11(a), substituted "$125,000 ($150,000 for taxable years beginning after 1986)" for "$75,000 ($100,000 for taxable years beginning after 1983, or 1984)" in first sentence, and "$125,000 (or $150,000)" for "$125,000 (or $150,000)" in first sentence, and "$75,000 ($125,000 for taxable years beginning after 1986)" for "$75,000 ($125,000 for taxable years beginning in 1981, 1982, 1983, or 1984)" and "$125,000 (or $150,000)" for "$125,000 (or $150,000)" in two places in second sentence.

Subsec. (c)(2)(B). Pub. L. 98–369, §11(b), substituted "$62,500 ($75,000 for taxable years beginning after 1987)" for "$75,000 ($125,000 for taxable years beginning in 1981, 1982, 1983, or 1984)" and "$75,000 ($150,000)" for "$125,000 (or $150,000)" in two places in second sentence.

Subsec. (c)(3)(B). Pub. L. 98–369, §474(e)(10), substituted "section 39" for "section 46(b)".


Subsec. (f)(3). Pub. L. 98–369, §474(e)(12), struck out par. (3) which provided that the $25,000 amount specified under subparas. (A) and (B) of section 46(a)(3) applicable to an estate or trust be reduced to an amount which bore the same ratio to $25,000 as the amount of the qualified investment allocated to the estate or trust under paragraph (1) to the entire amount of the qualified investment.


Subsec. (g)(2)(A)(i). Pub. L. 98–369, §111(e)(8)(A), (B), substituted "real property" for "property" in two places, and "18 (15 years in the case of low-income housing)" for "15".

Subsec. (g)(2)(B)(i). Pub. L. 98–369, §31(c)(2), inserted "The preceding sentence shall not apply to any expend-
Subsec. (g)(5)(A). Pub. L. 97–448, §102(g)(3), substituted “a credit is determined under section 46(a)(2)” for “a credit is allowed under this section” and “the credit so determined” for “the credit so allowed”. See 1982 Amendment note for subsec. (g)(5) below and see Effective Date of 1982 and 1983 Amendment notes set out under sections 1 and 196 of this title.


Subsec. (q)(3). Pub. L. 97–448, §308(a)(3), substituted “paragraphs (1) and (2) of this subsection and paragraph (5) of subsection (d)” for “paragraphs (1) and (2)”.


Subsec. (g)(5). Pub. L. 97–248, §205(a)(5)(A), struck out par. (5) which, as added by §102(d)(3) of Pub. L. 97–448, had provided that for purposes of this subtitle, if a credit were determined under section 46(a)(2) for any qualified rehabilitation expenditure in connection with a qualified rehabilitated building other than a certified historic structure, the increase in basis of such property which would (but for this paragraph) have resulted from such expenditure to be reduced by the amount of the credit so determined, that if during any taxable year there was a recapture amount determined with respect to any qualified rehabilitated building the basis of which was reduced under subpar. (A), the basis of such building (immediately before the event resulting in such recapture), had to be increased by an amount equal to such recapture amount, and that for purposes of this paragraph “recapture amount” was defined as any increase in tax (or adjustment in carrybacks or carryovers) determined under section 47a(5).

See 1983 Amendment note for subsec. (g)(5) above and see Effective Date of 1982 and 1983 Amendment notes set out under sections 1 and 196 of this title.


Subsec. (k)(5)(D)(i). Pub. L. 97–354, §5(a)(7), inserted provision that, for purposes of this paragraph “recapture amount” was defined as any increase in tax (or adjustment in carrybacks or carryovers) determined under section 47a(5).

See 1983 Amendment note for subsec. (g)(5) above and see Effective and Termination Dates of 1982 Amendment note below.

Subsec. (g)(31)(C). Pub. L. 97–362, §104(a), temporarily substituted the qualification that such term does not include equipment for hydrogenation, refining, or other process subsequent to retorting other than hydrogenation or other process which is applied in the vicinity of the property from which the shale was extracted and which is applied to bring the shale oil to a grade and quality suitable for transportation to and processing in a refinery, for the qualification that such equipment did not include equipment for hydrogenation, refining, or other process subsequent to retorting or a subsequent process to retain or otherwise process the shale oil in a refinery, for the qualification that such equipment did not include equipment for hydrogenation, refining, or other process subsequent to retorting.

See 1981 Amendment note for subsec. (a)(1) below and see Effective and Termination Dates of 1982 Amendment note below.

Subsecs. (g)(31)(A), (b). Pub. L. 97–362, §104(a), temporarily substituted the qualification that such term does not include equipment for hydrogenation, refining, or other process subsequent to retorting other than hydrogenation or other process which is applied in the vicinity of the property from which the shale was extracted and which is applied to bring the shale oil to a grade and quality suitable for transportation to and processing in a refinery, for the qualification that such equipment did not include equipment for hydrogenation, refining, or other process subsequent to retorting or a subsequent process to retain or otherwise process the shale oil in a refinery, for the qualification that such equipment did not include equipment for hydrogenation, refining, or other process subsequent to retorting.

See 1981 Amendment note for subsec. (a)(1) below and see Effective and Termination Dates of 1982 Amendment note below.


Subsec. (g)1(e)(1). Pub. L. 97–448, §102(c)(2), (6), substituted the “24-month period selected by the taxpayer (at the time and in the manner prescribed by regulation) and ending with or within the taxable year” for “the 24-month period ending on the last day of the taxable year in which the taxpayer selected the period”.

Subsec. (g)1(e)(2). Pub. L. 97–448, §102(c)(2), substituted “adjusted basis of such building (and its structural components) used in connection after storage facility” for “adjusted basis of such building (and its structural components) used in connection with the rehabilitation”.

Subsec. (g)1(e)(3). Pub. L. 97–448, §102(c)(2), substituted “holding period of the building” for “holding period of the property” and inserted provision that, for purposes of the preceding sentence, the determination of the beginning of the holding period to which shall be made without regard to any reconstruction by the taxpayer in connection with the rehabilitation.

Subsec. (g)1(e)(4). Pub. L. 97–448, §102(c)(2), substituted “holding period of the property” for “the 24-month period selected by the taxpayer (at the time and in the manner prescribed by regulation) and ending with or within the taxable year” for “the 24-month period ending on the last day of the taxable year in which the taxpayer selected the period”.

Subsec. (g)1(e)(5). Pub. L. 97–448, §102(c)(2), substituted “holding period of the building” for “holding period of the property” and inserted provision that, for purposes of the preceding sentence, the determination of the beginning of the holding period to which shall be made without regard to any reconstruction by the taxpayer in connection with the rehabilitation.

Subsec. (a)(2)(B)(ii). Pub. L. 97–34, § 211(b), designated existing provisions as subcl. (i) and added subcl. (ii).


Subsec. (a)(4). Pub. L. 97–34, § 214(a), inserted provision that, if any qualified rehabilitated building is used by the tax-exempt organization pursuant to a lease, this paragraph shall not apply to that portion of the basis of such building which is attributable to qualified rehabilitation expenditures.

Subsec. (a)(5). Pub. L. 97–34, § 214(b), inserted provision that, if any qualified rehabilitated building is used by the governmental unit pursuant to a lease, this paragraph shall not apply to that portion of the basis of such building which is attributable to qualified rehabilitation expenditures.

Subsec. (a)(6). Pub. L. 97–34, § 212(d)(2)(A), substituted "or 188" for "188, or 191".


Subsec. (c)(2)(A) to (C). Pub. L. 97–34, § 213(a), amended subpars. (A) to (C) generally raising in subpar. (A) the existing $100,000 dollar limitation to $125,000 in 1981 and to $150,000 in 1985 and $200,000 in 1986.

Subsec. (g). Pub. L. 97–34, § 212(b), in amending subsec. (c) generally incorporated the concept of "substantially rehabilitated" into par. (1)(A), substituted "30 years" for "20 years" as the requisite period in par. (1)(B), substituted a definition of "substantially rehabilitated" for former provisions that a major portion could be treated as a separate building in certain cases in par. (1)(C), reenacted par. (1)(D) without change, substituted "December 31, 1981" for "October 31, 1978" in provisions of par. (2)(A) preceding cl. (i), substituted provisions for a recovery period of 15 years for provisions that had provided for a useful life of 5 years or more in cl. (i) of par. (2)(A), reenacted cl. (ii) without change, substituted provisions that accelerated methods of depreciation may not be used for provisions relating to property otherwise section 38 property in cl. (i) of par. (2)(B), reenacted cl. (ii) and (iii) without change, revised the provisions of cl. (iv) relating to certified historic structures, and added cl. (v) relating to expenditures of lessees, added par. (3), redesignated former par. (3) as (4), and added par. (5).

Subsec. (h)(6). Pub. L. 97–34, § 211(e)(3), inserted "or which is recovery property (within the meaning of section 167)" after "3 years or more".

Subsec. (i)(1)(A). Pub. L. 97–34, § 232(b), substituted which does not exceed for equal to.


- Subsec. (a)(1). Pub. L. 96–451 added subpar. (F) which related simply to equipment which used coal as a petroleum or natural gas derived feedstock for the manufacture of chemicals or other products and equipment which converts coal into methanol, ammonia, or hydroprocessed coal liquid or solid for provisions which had related simply to equipment which used coal as feedstock for the manufacture of chemicals or other products other than coke or coke gas, added cl. (ix), and, following cl. (ix), inserted provision that the equipment described in cl. (vii) includes equipment used for the storage of fuel derived from garbage at the site at which such fuel was produced from garbage.

Subsec. (i)(3)(B). Pub. L. 96–223, § 222(i)(1)(A), redesignated subpar. (C) as (B), Former subpar. (B), which excluded public utility property from the terms "alternative energy property" or "solar or wind energy property", or "recycling equipment", was struck out.

Subsec. (i)(3)(C), (D). Pub. L. 96–223, § 222(i)(1)(A), (3), redesignated subpar. (D) as (C) and inserted following cl. (ii) provision that, for the purposes of the preceding sentence, in the case of property which is alternative energy property solely by reason of the amendments made by section 222(b) of the Crude Oil Windfall Profit Tax Act of 1980, "January 1, 1980" was to be substituted for "October 1, 1978", Former subpar. (C) redesignated (B).


Subsec. (i)(5). Pub. L. 96–223, § 222(d), added subpar. (L), redesignated former subpar. (L) as (M), and inserted provision that the Secretary shall not specify any property under subpar. (M) unless he determines that such specification meets the requirements of par. (9) of section 44C(c) for specification of items under section 44C(c)(4)(A)(viii).

Subsec. (i)(11). Pub. L. 96–223, § 221(b)(2), substituted "one-half of the energy percentage determined under section 46(a)(2)(C)" for "3 percent".

Subsec. (i)(23). Pub. L. 96–223, § 223(c)(1), completely revised par. (11) to incorporate property financed by subsidized energy financing, effective with regard to periods after Dec. 31, 1982. Prior to the revision par. (11) read as follows: "In the case of property which is financed in whole or in part by the proceeds of an industrial development bond (within the meaning of section 103(b)(2)) the interest on which is exempt from tax under section 103, the energy percentage shall be one-half of the energy percentage determined under section 46(a)(2)(C)".


Subsec. (n). Pub. L. 96–222, § 101(a)(4)(G), (H), (L)(i)(I)–(IV), (ii)(III)–(VI), (iii)(II), (v)(II)–(IV), (M)(i)(I), (o)(V)(III), amended subsec. (n) generally to reflect the remaining of an investment tax credit ESOP to a tax credit employee stock ownership plan and a leveraged employee stock ownership plan (commonly referred to as an ESOP) to an employee stock ownership plan.

Subsec. (n)(6)(B)(i). Pub. L. 96–605, § 223(a), substituted the date on which the securities are contributed to the plan for the due date for filing the return for the taxable year (determined with regard to extensions).

Subsec. (o). Pub. L. 96–222, § 101(a)(7)(L)(i)(III), (v)(IV), (V), (M)(i)(II), substituted "employee plan" for "employee stock ownership plan and a leveraged employee stock ownership plan".

Subsec. (p)(4). Pub. L. 96–222, § 223(b), substituted "the adjusted basis of the property for purposes of section 1012" for "the basis of the property for purposes of section 1012".

Subsec. (q). Pub. L. 96–222, § 223(c), substituted "section 1012" for "section 341(b)(3)".
“ESOP” wherever appearing and inserted “percentage” after “attributable to the matching employee plan” in par. (5).

1976—Subsec. (a)(1)(A). Pub. L. 95–618, § 301(d)(1), inserted “other than an air conditioning or heating unit” after “personal property”.

Subsec. (a)(1)(D). Pub. L. 95–600, § 314(a), added par. (D).


Subsec. (a)(7)(A). Pub. L. 95–600, § 312(c)(3), struck out “other than pretermination property” after “property”.

Subsec. (a)(8). Pub. L. 95–600, § 315(c), substituted “188, or 191” for “or 188”.


Subsec. (d)(4)(D). Pub. L. 95–600, § 703(a)(4), substituted “section 57(c)(1)(B)” for “section 57(c)(2)”.

Subsec. (g). Pub. L. 95–600, § 315(b), added subsec. (g).

Subsec. (h). Pub. L. 95–600, § 312(c)(1), struck out subsec. (h) which related to suspension of investment credits.

Subsec. (i). Pub. L. 95–600, § 312(c)(1), struck out subsec. (i) which related to an exemption from suspension of $20,000 of investment.

Subsec. (j). Pub. L. 95–600, § 314(b), added subsec. (j) and redesignated former subsec. (i) as (n).

Subsec. (n). Pub. L. 95–618, § 301(b), redesignated former subsec. (i) as (n).

Subsec. (o). Pub. L. 95–600, § 141(b), added subsec. (o).

Subsec. (p). Pub. L. 95–600, §§ 141(b), 314(b), added subsec. (p). Former subsec. (n) redesignated (p) and subsequently as (q).


Subsec. (a)(2)(B)(vii). Pub. L. 94–455, § 1901(a)(5)(B), substituted “other than a corporation which has an election in effect under section 933(b) or which is entitled to the benefits of section 934(b)” for “other than a corporation entitled to the benefits of section 931 or 932(b)”.


Subsec. (a)(8). Pub. L. 94–455, §§ 1901(b)(1)(A), 2112(a)(1), struck out “169,” after “section 167(k),” “167,” before “or 188 applies,” and provisions relating to the limitation of the applicability of this paragraph on property to which section 169 applies.

Subsecs. (c)(2)(A), (d)(1), (2)(A), Pub. L. 94–455, § 1906(b)(13)(A), struck out “or his delegate after “Secretary”.

Subsec. (f). Pub. L. 94–455, §§ 802(b)(6), substituted “section 46(a)(3) for “section 46(a)(2)”.

Subsec. (h)(2). Pub. L. 94–455, § 1906(b)(13)(A), struck out “or his delegate after “Secretary”.


1975—Subsec. (a)(2)(B). Pub. L. 94–12, § 694(a), substituted “territorial waters within the northern portion of the Western Hemisphere” for “territorial waters” in cl. (x) and inserted definition of “northern portion of the Western Hemisphere” following cl. (x).

Subsec. (c)(2)(A). Pub. L. 94–12, § 301(c)(1)(A), substituted “$100,000” for “$50,000”.

1974—Pub. L. 93–35, § 8(a), added subsec. (c)(2)(B). Pub. L. 94–12, § 301(c)(1)(A), (B), substituted “$50,000” for “$25,000” and “$100,000” for “$50,000”.

Subsec. (c)(2)(C). Pub. L. 94–12, § 301(c)(1)(A), substituted “$100,000” for “$50,000”.


Subsec. (a)(1)(B)(ii), (iii). Pub. L. 92–178, § 104(a)(1), substituted “research facility” for “research or storage facility” in cl. (i) and added cl. (iii).

Subsec. (a)(2)(B). Pub. L. 92–178, § 104(c)(2), (3), (d), added cls. (vii) to (x), respectively.


Subsec. (a)(5). Pub. L. 92–178, § 104(c)(1), inserted “other than the International Telecommunications Satellite Consortium or any successor organization” after “international organization”.

Subsec. (a)(6). Pub. L. 92–178, § 104(e), substituted provisions for treatment of livestock (other than horses) acquired by the taxpayer as section 38 property, with exception provision for reduction of acquisition cost by amount equal to amount realized on sale or other disposition under certain circumstances, and for nontreatment of horses as section 38 property for former provision that livestock shall not be treated as section 38 property.

Subsec. (a)(7) to (9). Pub. L. 92–178, §§ 103, 104(f)(1), (g), added pars. (7) to (9), respectively.

Subsec. (d). Pub. L. 92–178, § 108(b) and (c), substituted “section 46(d)(1)” for “section 46(d)” and designated as par. (1) the present first sentence, redesignated as subpars. (A) and (B) provisions formerly designated cl. (1) and (2), again substituted “section 46(d)(1)” for “section 46(d)” in par. (1) and inserted “other than property described in paragraph (4)” in par. (1), added pars. (2) and (4), incorporated provisions of former second, third, and fourth sentences in provisions designated as par. (3), substituted in par. (3) “the lessee shall be treated for all purposes of this subpart as having acquired a fractional portion of such property equal to the fraction determined under paragraph (2)(B) with respect to such property” for “the lessee shall be treated for all purposes of this subpart as having acquired such property”, and struck out former fifth and sixth sentences respecting election regarding treatment of leases of suspension period property and section 38 property. See Effective Date of 1971 Amendment note below.

1969—Subsec. (a)(4). Pub. L. 91–172, § 1211(d)(2)(A), inserted provision relating to the percentage of the cost or cost of debt-financed property that may be considered in computing qualified investment under section 46(c) of this title.

Subsec. (c)(2)(C). Pub. L. 91–172, § 401(e)(2), reenacted subpar. (C) with minor changes and substituted reference to controlled group for reference to affiliated group.


Subsec. (d)(2). Pub. L. 91–172, § 401(e)(4), substituted reference to a component member of a controlled group for reference to a member of an affiliated group.

1967—Subsec. (a)(2)(B)(i). Pub. L. 90–26, § 3, inserted “or is operated under contract with the United States” after “the United States”.

Subsec. (h)(2). Pub. L. 90–26, § 2(a), limited definition of suspension period property to section 38 property where the physical construction, reconstruction or erection was begun before May 24, 1967, pursuant to an order placed during the suspension period, subject to the proviso that in applying the definition to property the physical construction, reconstruction or erection of which was begun before May 24, 1967, only that portion of the basis properly attributable to construction, reconstruction or erection before May 24, 1967 be taken into account.


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Subsec. (d). Pub. L. 89–800, §1(b), inserted provisions covering the treatment of suspension period property, and the elections to be deemed made in connection therewith.

Subsecs. (h) to (k). Pub. L. 89–800, §1(a), added subsec. (h) to (j) and redesignated former subsec. (h) as (k).


Subsec. (d). Pub. L. 88–272, §203(a)(3)(A), (b), substituted "except as provided in paragraph (2)" for "if such property was constructed by the lessor (or by a corporation which controls or is controlled by the lessor within the meaning of section 368(c))" in par. (1), "if such property is leased by a corporation which is a member of an affiliated group (within the meaning of section 46(a)(5)) to another corporation which is a member of the same affiliated group" for "if paragraph (1) does not apply" in par. (2), and deleted provisions which stated that if a lessor made an election under this subsection, subsec. (g) would not apply with respect to such property, and deductions otherwise allowable under section 162 to the lessee for amounts paid the lessor would be adjusted consistent with subsec. (g).

Subsec. (g). Pub. L. 88–272, §203(a)(1), repealed subsec. (g) which required that the basis of section 38 property be reduced by 7 percent of the qualified investment.

Effective Date of 2009 Amendment
Pub. L. 111–5, div. B, title I, §101(b), Feb. 17, 2009, 123 Stat. 320, provided that: "The amendments made by this section [amending this section] shall apply to periods after December 31, 2008." Amendment by section 103(f), Oct. 3, 2008, 122 Stat. 3814, provided that: "The amendments made by this section [amending this section] shall apply to periods after the date of the enactment of this Act [Oct. 3, 2008], in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990])."

Effective Date of 2005 Amendment
Pub. L. 109–58, title XIII, §1336(e), Aug. 8, 2005, 119 Stat. 58, provided that: "The amendments made by this section [amending this section] shall apply to periods after December 31, 2005, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990])."

Effective Date of 2004 Amendment

Effective Date of 2002 Amendment

Effective Date of 2001 Amendment
Pub. L. 109–58, title XIII, §1337(d), Aug. 8, 2005, 119 Stat. 58, provided that: "The amendments made by this section [amending this section] shall apply to periods after December 31, 2005, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990])."

Effective Date of 2000 Amendment
Amendment by section 11813(a) 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 1999 Amendment
Amendment by section 1101(a) 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 43 of this title.

Effective Date of 1997 Amendment

Pub. L. 110–343, div. B, title I, §105(b), Oct. 3, 2008, 122 Stat. 3814, provided that: "The amendments made by this section [amending this section] shall apply to periods after the date of the enactment of this Act [Oct. 3, 2008], in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990])."
Amendment by section 251(b), (c) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided for certain rehabilitations, see section 251(d) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 701(e)(4)(C) 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 803(b)(2)(B) of Pub. L. 99–514 applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99–514, set out as an Effective Date note under section 263A of this title.

Amendment by sections 1272(d)(5) and 1275(c)(5) 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.

Amendment by section 1511(c)(3) of Pub. L. 99–514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99–514, set out as a note under section 47 of this title.

Section 1787(j)(2) of Pub. L. 99–514 provided that: "The amendments made by this subsection [amending this section] shall apply to periods after December 31, 1986, (under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1954 (now 1986)), in taxable years ending after such date.

Amendment by section 1801 of title XVIII of Pub. L. 99–514 provided that: "Except as otherwise provided in this subtitle, any amendment made by this subtitle [subtitle A div. A] to which such amendment relates.''

**Effective Date of 1985 Amendment**

Amendment by Pub. L. 99–121 applicable with respect to property placed in service by the taxpayer after May 8, 1985, with specified exceptions, but amendment of subsec. (g)(2)(B) of section and section 46, 57, 128, 168, 179, 265, 415, 854, 857, and 911 of this title, enacting provisions set out as a note under section 168 of this title, and amending provisions set out as notes under sections 128 and 136 of the Subchapter S Revision Act of 1983 shall apply to taxable years ending after December 31, 1983.

"(b) SPECIAL RULE FOR SECTION 14.—The amendment made by section 14 (amending section 41 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."

Amendment by section 31(b), (c)(1) of Pub. L. 98–369 effective, except as otherwise provided in section 31(g) of Pub. L. 98–369, as to property placed in service by the taxpayer after May 23, 1983, in taxable years ending after such date and to property placed in service by the taxpayer on or before May 23, 1983, if the lease to the tax-exempt entity is entered into after May 23, 1983, and amendment by section 31(c)(2) of Pub. L. 98–369, to the extent it relates to section 168(f)(12) of this title, effective as if it had been included in the amendments to section 168 of this title by Pub. L. 97–248, see section 31(g)(1), (12) of Pub. L. 98–369, set out as a note under section 168 of this title.

Amendment by section 111(e)(8) of Pub. L. 98–369 applicable with respect to property placed in service by the taxpayer after Mar. 15, 1984, subject to certain exceptions, see section 111(e) of Pub. L. 98–369, set out as a note under section 168 of this title.

Amendment by section 113(b)(3) of Pub. L. 98–369 applicable as if included in the amendments made by section 203(a)(1) of Pub. L. 97–248, see section 113(b)(2)(B) of Pub. L. 98–369, set out as a note under section 168 of this title.

Amendment by section 113(b)(4) of Pub. L. 98–369 applicable as if included in the amendments made by section 203(a)(1) of Pub. L. 97–248, see section 113(c)(2)(C) of Pub. L. 98–369, set out as a note under section 168 of this title.

Section 113(c)(1) of Pub. L. 98–369 provided that: "The amendments made by subsection (a) [amending this section and section 168 of this title] shall apply to property placed in service after March 15, 1984, in taxable years ending after such date."

Section 114(b) of Pub. L. 98–369 provided that: "The amendment made by this section [amending this subtitle] shall apply to property originally placed in service after April 11, 1984 (determined without regard to such amendment)."

Amendment by section 431(c) of Pub. L. 98–369 applicable to property placed in service after July 18, 1984, in taxable years ending after such date, but not applicable to property to which sections 46(c)(8), (9) and 47(d) of this title apply as if included in the provisions of the Tax Reform Act of 1984 (Pub. L. 98–369, div. A) to which such amendment relates."

**Effective Date of 1984 Amendment**

Section 18 of Pub. L. 98–369 provided that:


"(b) SPECIAL RULE FOR SECTION 14.—The amendment made by section 14 (amending section 41 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."

Amendment by section 31(b), (c)(1) of Pub. L. 98–369 effective, except as otherwise provided in section 31(g) of Pub. L. 98–369, as to property placed in service by the taxpayer after May 23, 1983, in taxable years ending after such date and to property placed in service by the taxpayer on or before May 23, 1983, if the lease to the tax-exempt entity is entered into after May 23, 1983, and amendment by section 31(c)(2) of Pub. L. 98–369, to the extent it relates to section 168(f)(12) of this title, effective as if it had been included in the amendments to section 168 of this title by Pub. L. 97–248, see section 31(g)(1), (12) of Pub. L. 98–369, set out as a note under section 168 of this title.


Section 701(e)(8) of Pub. L. 98–369 provided that: "The amendments made by this section [amending this section] shall apply to expenditures incurred after December 31, 1983, in taxable years ending after such date."

Effective Date of 1983 Amendment

Amendment by title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 168 of Pub. L. 97–448, set out as a note under section 1 of this title.

Amendment by section 202(c) of Pub. L. 97–448 effective, except as otherwise provided, as if it had been in-


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.

Amendment by section 205(a)(1), (4), (5)(A) ofPub. L. 97–248, applicable to periods after Dec. 31, 1982, under rules similar to the rules of subsec. (m) of this section, with certain exceptions and qualifications, see section 205(c)(1) of Pub. L. 97–248, set out as an Effective Date note under section 196 of this title.

Amendment by section 208(c) of Pub. L. 97–248 applicable to property placed in service after Dec. 31, 1983, but not to qualified leased property described in section 168(r)(8)(D)(v) of this title which is placed in service before Jan. 1, 1988, or is placed in service after such date pursuant to a binding contract or commitment entered into before April 1, 1983, and solely because of conditions which, as determined by the Secretary of the Treasury or his delegate, are not within the control of the lessor or lessee, see sections 208(d)(5) and 209(d)(2) of Pub. L. 97–248, set out as notes under section 168 of this title.

Effective Date of 1981 Amendment

Section 213(b) of Pub. L. 97–34, as amended by Pub. L. 97–448, title I, §102(g), Jan. 12, 1983, 96 Stat. 2372, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1980.''

Section 214(c) of Pub. L. 97–34 provided that: "The amendments made by this section [amending this section] shall apply to taxable years after September 30, 1978, under rules similar to the rules of section 48(m) of this title.''


Amendment by section 211(c) of Pub. L. 97–34 applicable to periods after Dec. 31, 1980, under rules similar to the rules under subsec. (m) of this section, see section 211(c)(3) of Pub. L. 97–34, set out as a note under section 46 of this title.

Effective Date of 1980 Amendments

Section 109(b) of Pub. L. 96–605 provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1979.''

Section 223(b) of Pub. L. 96–605 provided that: "The amendments made by subsection (a) [amending this section] shall apply to periods after December 31, 1980.''

Section 205(b) of Pub. L. 96–451 provided that: "The amendments made by this section [amending this section] shall apply with respect to taxable years beginning after December 31, 1980.''

Section 223(b) of Pub. L. 96–223, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2055, provided that: "(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 46 of this title] shall apply to periods after December 31, 1979, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (formerly I.R.C. 1954).''

Section 223(c) of Pub. L. 96–223, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2055, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to periods after December 31, 1979, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (formerly I.R.C. 1954).''

Section 223(c) of Pub. L. 96–223, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2055, provided that: "(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by paragraph (1) [amending this section] shall apply to periods after December 31, 1982, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (formerly I.R.C. 1954).''

Section 302(b) of Pub. L. 96–451 provided that: "The amendments made by paragraph (1) shall apply to periods after December 31, 1979, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986.

Section 223(c) of Pub. L. 96–223, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2055, provided that: "(B) EARLIER APPLICATION FOR CERTAIN PROPERTY.—In the case of property which is—

"(i) qualified hydroelectric generating property (described in section 48(h)(2)(A)(vii) of such Code),

"(ii) cogeneration equipment (described in section 48(h)(2)(A)(vii) of such Code),

"(iii) qualified intercity buses (described in section 48(h)(2)(A)(ii) of such Code),

"(iv) ocean thermal property (described in section 48(h)(3)(A)(i)(x) of such Code), or

"(v) expanded energy credit property, the amendment made by paragraph (1) shall apply to periods after December 31, 1979, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986.

Section 306(a)(3) of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–609, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.
Section 108(c)(7) of Pub. L. 96–222 provided that: “Any amendment made by this subsection [amending sections 4971, 4221, 4616, and 6212 of this title] shall take effect as if included in the provision of the Energy Tax Act of 1978 [See Short Title of 1978 Amendment note set out under section 1 of this title] to which such amendment relates; except that the amendment made by paragraph (6) [amending this section] shall take effect on the first day of the first calendar month which begins more than 10 days after the date of the enactment of this Act [Apr. 1, 1980].”

Effective Date of 1978 Amendments
Section 301(d)(4) of Pub. L. 95–618 provided that:
“(A) IN GENERAL.—The amendments made by this subsection [amending this section and section 167 of this title] shall apply to property which is placed in service after September 30, 1978.

“(B) BINDING CONTRACTS.—The amendments made by this subsection [amending this section and section 167 of this title] shall not apply to property which is constructed, reconstructed, erected, or acquired pursuant to a contract which, on October 1, 1978, and at all times thereafter, was binding on the taxpayer.”

Amendment by section 141(b) of Pub. L. 95–600 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. 95–600, set out as an Effective Date note under section 499 of this title.

Amendment by section 312(c)(1), (2), (3) of Pub. L. 95–600 applicable to taxable years ending after Dec. 31, 1978, see section 312(d) of Pub. L. 95–600, set out as a note under section 46 of this title.

Section 314(c) of Pub. L. 95–600 provided that: “The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years ending after August 15, 1971.”

Section 315(d) of Pub. L. 95–600 provided that: “The amendments made by this section [amending this section] shall apply to taxable years ending after October 31, 1978; except that the amendment made by subsection (c) shall only apply with respect to property placed in service after such date.”

Amendment by section 703(a)(3), (4) of Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(c) of Pub. L. 95–600, set out as a note under section 46 of this title.

Effective Date of 1976 Amendment
Amendment by section 802(b)(6) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 802(c) of Pub. L. 94–455, set out as a note under section 46 of this title.

“(1) IN GENERAL.—The amendments made by subsections (a) and (b) [amending this section and section 46 of this title] shall apply to taxable years beginning after December 31, 1974.

“(2) ELECTION MAY ALSO APPLY TO PROPERTY DESCRIBED IN SECTION 50A.—At the election of the taxpayer, made within 1 year after the date of the enactment of this Act [Oct. 4, 1976] in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe, the amendments made by subsections (a) and (b) shall also apply to property which is property described in section 50(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] and which is placed in service in taxable years beginning before January 1, 1975.”

Amendment by section 1051(h)(1) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975 with certain exceptions, see section 1051(i) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 1901(a)(5), (b)(11)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 212(a) of Pub. L. 94–455 applicable to property acquired by the taxpayer after Dec. 31, 1976, and property, the construction, reconstruction, or erection of which was completed by the taxpayer after Dec. 31, 1976, (but only to the extent of the basis thereof attributable to construction, reconstruction, or erection after such date), in taxable years beginning after such date, see section 212(d)(1) of Pub. L. 94–455, set out as a note under section 46 of this title.

Effective and Termination Dates of 1975 Amendment

Amendment by section 302(c)(3) of Pub. L. 94–12 applicable to taxable years ending after Dec. 31, 1974, see section 303(a) of Pub. L. 94–12, set out as an Effective Date of 1975 Amendment note under section 46 of this title.

Section 504(b) of Pub. L. 94–12, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:
“(1) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall only apply to property, the construction, reconstruction, or erection of which was completed after March 18, 1975, or the acquisition of which by the taxpayer occurred after such date.

“(2) BINDING CONTRACT.—The amendments made by subsection (a) [amending this section] shall not apply to property constructed, reconstructed, erected, or acquired pursuant to a contract which was on April 1, 1974, and at all times thereafter, binding on the taxpayer.

“(3) CERTAIN LEASE-BACK TRANSACTIONS, ETC.—Where a person who is a party to a binding contract described in paragraph (2) transfers rights in such contract (or in the property to which such contract relates) to another person but a party to such contract retains a right to use the property under a lease with such other person, then to the extent of the transferred rights such other person shall, for purposes of paragraph (2), succeed to the position of the transferor with respect to such binding contract and such property. The preceding sentence shall apply, in any case in which the lessor does not make an election under section 48(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], only if a party to such contract retains a right to use the property under a long-term lease.”

Effective Date of 1971 Amendment
Section 104(b) of Pub. L. 92–178, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by this section [amending this section and sections 169 and 1245 of this title] (other than by subsections (c)(1), (c)(2), and (g) [amending this section]) shall apply to property described in section 50 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]. The amendments made by subsections (c)(1), (c)(2), and (g) [amending this section] shall apply to taxable years beginning after December 31, 1961.”

Amendment by section 108(b), (c) of Pub. L. 92–178, applicable to leases entered into after Sept. 22, 1971, and at all times thereafter, binding on the lessor.

Amendment by section 121(h)(2)(A) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

Amendment by section 401(e)(2)–(4) of Pub. L. 91–172 applicable with respect to taxable years ending on or after Dec. 31, 1970, see section 401(h)(3) of Pub. L. 91–172, set out as a note under section 1561 of this title.
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**Effective Date of 1967 Amendment**

Section 4 of Pub. L. 90–26 provided that: “The amendments made by the first three sections of this Act (amending this section and section 167 of this title) shall apply to taxable years ending after March 9, 1967.”

**Effective Date of 1966 Amendments**

Section 201(b) of Pub. L. 89–809, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1965, but only with respect to property placed in service after such date. In applying section 46(b) of the Internal Revenue Code of 1986 (formerly I.R.C. 1954) (relating to carryback and carryover of unused credits), the amount of any investment credit carryback to any taxable year ending on or before December 31, 1965, shall be determined without regard to the amendments made by this section.”

Amendment by Pub. L. 89–800 applicable to taxable years ending after Oct. 9, 1966, see section 4 of Pub. L. 89–800, set out as a note under section 46 of this title.

**Effective Date of 1964 Amendment**

Section 203(a)(4) of Pub. L. 88–272 provided that: “(A) in the case of the property placed in service after December 31, 1963, with respect to taxable years ending after such date, and

(B) in the case of the property placed in service before January 1, 1964, with respect to taxable years beginning after December 31, 1963.”

Section 301(f) of Pub. L. 88–272 provided that: “(1) The amendments made by subsection (b) [amending this section] shall apply with respect to property possession of which is transferred to a lessee on or after the date of enactment of this Act [Feb. 26, 1964].

(2) The amendments made by subsection (c) [amending this section] shall apply with respect to taxable years ending after June 30, 1963.

(3) The amendments made by subsection (d) [amending section 1245 of this title] shall apply with respect to dispositions after December 31, 1963, in taxable years ending after such date.”

**Effective Date**

Section applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(b) of Pub. L. 87–834, set out as a note under section 46 of this title.

**Saving Provision**

For provisions that nothing in amendment by 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.

**Transfer of Functions**

Functions, powers, and duties of Federal Aviation Agency and of Administrator and other offices and officers thereof transferred by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, to Secretary of Transportation, with functions, powers, and duties of Secretary of Transportation pertaining to aviation safety to be exercised by Federal Aviation Administrator in Department of Transportation, see section 106 of Title 49, Transportation.

**Grants for Specified Energy Property in Lieu of Tax Credits**


(a) IN GENERAL.—Upon application, the Secretary of the Treasury shall, subject to the requirements of this section, provide a grant to each person who places in service specified energy property to reimburse such person for a portion of the expense of such property as provided in subsection (b). No grant shall be made under this section with respect to any property unless such property—

(1) is placed in service during 2009, 2010, or 2011, or

(2) is placed in service after 2011 and before the credit termination date with respect to such property, but only if the construction of such property began during 2009, 2010, or 2011.

(b) GRANT AMOUNT.—

(1) IN GENERAL.—The amount of the grant under subsection (a) with respect to any specified energy property shall be the applicable percentage of the basis of such property.

(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term 'applicable percentage' means—

(A) 30 percent in the case of any property described in paragraphs (1) through (4) of subsection (d), and

(B) 10 percent in the case of any other property.

(3) DOLLAR LIMITATIONS.—In the case of property described in paragraph (2), (6), or (7) of subsection (d), the amount of any grant under this section with respect to such property shall not exceed the limitation described in section 48(c)(1)(B), 48(c)(2)(B), or 48(c)(3)(B) of the Internal Revenue Code of 1986, respectively, with respect to such property.

(c) TIME FOR PAYMENT OF GRANT.—The Secretary of the Treasury shall make payment of any grant under subsection (a) (during the 60-day period beginning on the later of—

(1) the date of the application for such grant, or

(2) the date the specified energy property for which the grant is being made is placed in service.

(d) SPECIFIED ENERGY PROPERTY.—For purposes of this section, the term 'specified energy property' means any of the following:

(1) QUALIFIED FACILITIES.—Any qualified property (as defined in section 48(a)(5)(D) of the Internal Revenue Code of 1986) which is part of a qualified facility (within the meaning of section 45 of such Code) described in paragraph (1), (2), (3), (4), (6), (7), (9), or (11) of section 45(d) of such Code.

(2) QUALIFIED FUEL CELL PROPERTY.—Any qualified fuel cell property (as defined in section 48(c)(1) of such Code).

(3) SOLAR PROPERTY.—Any property described in clause (1) or (11) of section 48(a)(3)(A) of such Code.

(4) QUALIFIED SMALL WIND ENERGY PROPERTY.—Any qualified small wind energy property (as defined in section 48(c)(4) of such Code).

(5) GeoTHERMAL PROPERTY.—Any property described in clause (iii) of section 48(a)(3)(A) of such Code.

(6) QUALIFIED MICROTURBINE PROPERTY.—Any qualified microturbine property (as defined in section 48(c)(2) of such Code).

(7) COMBINED HEAT AND POWER SYSTEM PROPERTY.—Any combined heat and power system property (as defined in section 48(c)(3) of such Code).

(8) GeoTHERMAL HEAT PUMP PROPERTY.—Any property described in clause (vii) of section 48(a)(3)(A) of such Code.

Such term shall not include any property unless depreciation (or amortization in lieu of depreciation) is allowable with respect to such property.

(e) CREDIT TERMINATION DATE.—For purposes of this section, the term 'credit termination date' means—

(1) in the case of any specified energy property which is part of a facility described in paragraph (1) of section 45(d) of the Internal Revenue Code of 1986, January 1, 2013.

(2) in the case of any specified energy property which is part of a facility described in paragraph (2),
from the application of this subsection [amending this section] is prevented at any time before the close of the date which is 1 year after the date of the enactment of this Act (Oct. 22, 1986) by any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the application of the amendments made by this subsection [amending this section]) may nevertheless be made or allowed if claim therefor is filed before the close of such 1-year period.

CLAIRIFICATION OF EFFECT OF 1984 AMENDMENT ON INVESTMENT TAX CREDIT

For provision that nothing in the amendments made by section 47(f)(6) of Pub. L. 98–369, which amended this section, be construed as reducing the investment tax credit in taxable years beginning before Jan. 1, 1984, see section 47(5)(c) of Pub. L. 98–369, set out as a note under section 46 of this title.

ALTERNATIVE METHODS OF COMPUTING CREDIT FOR PAST PERIODS

Section 804(c) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

(1) GENERAL RULE FOR DETERMINING WEAK, PREDOMINANT FOREIGN USE, ETC.—In the case of a qualified film (within the meaning of section 48(k)(1)(B) of the Internal Revenue Code of 1986 (formerly I.R.C. 1984)) placed in service in a taxable year beginning before January 1, 1975, with respect to which neither an election under paragraph (2) of this subsection nor an election under subsection (e)(2) applies:

(A) the applicable percentage under section 48(c)(2) of such Code shall be determined as if the useful life of the film would have expired at the close of the first taxable year by the close of which the aggregate amount allowable as a deduction under section 167 of such Code would equal or exceed 90 percent of the basis of such property (adjusted for any partial dispositions),

(B) for purposes of section 46(c)(1) of such Code, the basis of the property shall be determined by taking into account the total production costs (within the meaning of section 48(k)(5)(B) of such Code),

(C) for purposes of section 48(a)(2) of such Code, such film shall be considered to be used predominantly outside the United States in the first taxable year for which 50 percent or more of the gross revenues received or accrued during the taxable year from showing the film were received or accrued from showing the film outside the United States, and

(D) Section 47(a)(7) of such Code shall apply.

(2) ELECTION OF 40-PERCENT METHOD

(A) IN GENERAL.—A taxpayer may elect to have this paragraph apply to all qualified films placed in service during taxable years beginning before Jan. 1, 1975 (other than films to which an election under subsection (e)(2) of this section applies).

(B) EFFECT OF ELECTION.—If the taxpayer makes an election under this paragraph, then section 48(k) of the Internal Revenue Code of 1986 shall apply to all qualified films described in subparagraph (A) with the following modifications:

(i) subparagraph (B) of paragraph (4) shall not apply, but in determining qualified investment under section 46(c)(1) of such Code there shall be used (in lieu of the basis of such property) an amount equal to 40 percent of the aggregate production costs (within the meaning of paragraph (3)(B) of such section 48(k)),

(ii) paragraph (2) shall be applied by substituting ‘‘100 percent’’ for ‘‘66⅔ percent’’, and

(iii) paragraph (3) and paragraph (5) (other than subparagraph (B) thereof) shall not apply.

(C) RULES RELATING TO ELECTIONS.—An election under this paragraph shall be made not later than
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the day which is 6 months after the date of the enactment of this Act (Oct. 4, 1976) and shall be made in such manner as the Secretary of the Treasury or his delegate shall by regulations prescribe. Such an election may be revoked only with the consent of the Secretary of the Treasury or his delegate.

“(D) The taxpayer must consent to join in certain procedures. — No election may be made under this paragraph or subsection (e)(2) by any taxpayer unless he consents, under regulations prescribed by the Secretary of the Treasury or his delegate, to treat the determination of the investment credit allowable on each film subject to an election as a separate cause of action, and to join in any judicial proceeding for determining the person entitled to, and the amount of, the credit allowable under section 38 of the Internal Revenue Code of 1986 with respect to any film covered by such election.

“(3) Election to have credit determined in accordance with previous litigation. —

“(A) In general. — A taxpayer described in subparagraph (B) may elect to have this paragraph apply to all films (whether or not qualified) placed in service in taxable years beginning before January 1, 1975, and with respect to which an election under subsection (e)(2) is not made.

“(B) Who may elect. — A taxpayer may make an election under this paragraph if he has filed an action in any court of competent jurisdiction, before January 1, 1976, for a determination of such taxpayer’s rights to the allowance of a credit against tax under section 38 of the Internal Revenue Code of 1986 for any taxable year beginning before January 1, 1975, with respect to any film.

“(C) Effect of election. — If the taxpayer makes an election under this paragraph—

“(i) paragraphs (1) and (2) of this subsection, and subsection (d) shall not apply to any film placed in service by the taxpayer, and

“(ii) subsection 48(k) of the Internal Revenue Code of 1986 shall not apply to any film placed in service by the taxpayer in any taxable year beginning before January 1, 1975, and with respect to which an election under subsection (e)(2) is not made, and the right of the taxpayer to the allowance of a credit against tax under section 38 of such Code with respect to any film placed in service in any taxable year beginning before January 1, 1975, and as to which an election under subsection (e)(2) is not made, shall be determined as though this section (other than this paragraph) has not been enacted.

“(D) Rules relating to elections. — An election under this paragraph shall be made not later than the day which is 90 days after the date of the enactment of this Act (Oct. 4, 1976), by filing a notice of such election with the national office of the Internal Revenue Service. Such an election, once made, shall be irrevocable.

ENTITLEMENT TO CREDIT


INCREASE IN BASIS OF PROPERTY PLACED IN SERVICE BEFORE JANUARY 1, 1964

Section 48(a)(2) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ‘‘(A) The basis of any section 38 property (as defined in section 48(a) of the Internal Revenue Code of 1986 (formerly I.R.C. 1954)) placed in service before January 1, 1964, shall be increased, under regulations prescribed by the Secretary of the Treasury or his delegate, by an amount equal to 7 percent of the qualified investment with respect to such property under section 48(c) of the Internal Revenue Code of 1986. If there has been any increase with respect to such property under section 48(g)(2) of such Code, the increase under the preceding sentence shall be appropriately reduced therefor.

‘‘(B) If a lessor made the election provided by section 48(e) of the Internal Revenue Code of 1986 with respect to property placed in service before January 1, 1964—

‘‘(i) subparagraph (A) shall not apply with respect to such property, but

‘‘(ii) under regulations prescribed by the Secretary of the Treasury or his delegate, the deductions otherwise allowable under section 167 of such Code to the lessee for amounts paid to the lessor under the lease (or, if such lessee has purchased such property, the basis of such property) shall be adjusted in a manner consistent with subparagraph (A).

‘‘(C) The adjustments under this paragraph shall be made as of the first day of the taxpayer’s first taxable year which begins after December 31, 1963.’’

§ 48A. Qualifying advanced coal project credit

(a) In general

For purposes of section 46, the qualifying advanced coal project credit for any taxable year is an amount equal to—

(1) 20 percent of the qualified investment for such taxable year in the case of projects described in subsection (d)(3)(B)(i),

(2) 15 percent of the qualified investment for such taxable year in the case of projects described in subsection (d)(3)(B)(ii), and

(3) 30 percent of the qualified investment for such taxable year in the case of projects described in clause (iii) of subsection (d)(3)(B).

(b) Qualified investment

(1) In general

For purposes of subsection (a), the qualified investment for any taxable year is the basis of eligible property placed in service by the taxpayer during such taxable year which is part of a qualifying advanced coal project—

(A)(i) the construction, reconstruction, or erection of which is completed by the taxpayer,

and

(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer, and

(B) with respect to which depreciation (or amortization in lieu of depreciation) is allowable.

(2) Special rule for certain subsidized property

Rules similar to section 48(a)(4) (without regard to subparagraph (D) thereof) shall apply for purposes of this section.

(3) Certain qualified progress expenditures rules made applicable

Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this section.

(c) Definitions

For purposes of this section—

(1) Qualifying advanced coal project

The term ‘‘qualifying advanced coal project’’ means a project which meets the requirements of subsection (e).