Effective Date of 1971 Amendment

In redetermining qualified investment for purposes of subsec. (a) of this section in the case of any property which ceases to be section 38 property with respect to the taxpayer after Aug. 15, 1971, or which becomes public utility property after such date, section 46(c)(2) of this title as amended by section 102(a) of Pub. L. 92-178 as applicable, see section 102(d)(2) of Pub. L. 92-178, set out as a note under section 46 of this title.

Amendment by section 107(a)(1) of Pub. L. 92-178 applicable to casualties and thefts occurring after Aug. 15, 1971, see section 107(a)(2) of Pub. L. 92-178, set out as a note under section 46 of this title.


Pub. L. 91-676, §2, Jan. 12, 1971, 84 Stat. 2066, provided that: "The amendment made by the first section of this Act [amending this section] shall apply to taxable years ending after April 18, 1969."

Effective Date

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

Savings Provision

For provisions that nothing in an 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, 1986, for purposes of determining liability for tax for periods ending after Nov. 5, 1986, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

Plan Amendments Not Required Until January 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

Clarification of Effect of 1984 Amendment on Investment Tax Credit

For provision that nothing in the amendments made by section 474(c) 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 474(c) of Pub. L. 98-369, set out as a note under section 46 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. 69-670, 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.

Effective Date of 1971 Amendment

In redetermining qualified investment for purposes of subsec. (a) of this section in the case of any property which ceases to be section 38 property with respect to the taxpayer after Aug. 15, 1971, or which becomes public utility property after such date, section 46(c)(2) of this title as amended by section 102(a) of Pub. L. 92-178 as applicable, see section 102(d)(2) of Pub. L. 92-178, set out as a note under section 46 of this title.

Amendment by section 107(a)(1) of Pub. L. 92-178 applicable to casualties and thefts occurring after Aug. 15, 1971, see section 107(a)(2) of Pub. L. 92-178, set out as a note under section 46 of this title.


Pub. L. 92-178, title I, §102(d)(3), Dec. 10, 1971, 85 Stat. 500, provided that: "The amendment made by subsection (c) [amending this section] shall apply to taxable years ending after April 18, 1969."

Pub. L. 91-676, §2, Jan. 12, 1971, 84 Stat. 2066, provided that: "The amendment made by the first section of this Act [amending this section] shall apply to taxable years ending after April 18, 1969."

Effective Date

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

Savings Provision

For provisions that nothing in an 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, 1986, for purposes of determining liability for tax for periods ending after Nov. 5, 1986, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

Plan Amendments Not Required Until January 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

Clarification of Effect of 1984 Amendment on Investment Tax Credit

For provision that nothing in the amendments made by section 474(c) 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 474(c) of Pub. L. 98-369, set out as a note under section 46 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. 69-670, 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.

$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) of subsection (c), 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) the construction, reconstruction, or erection of which is completed by the taxpayer, or

1 See References in Text note below.

1 See References in Text note below.
(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 facility—
(i) which is a qualified facility (within the meaning of section 45) described in paragraph (1), (2), (3), (4), (6), (7), (9), or (11) of section 45(d),
(ii) which is placed in service after 2008 and the construction of which begins before January 1, 2014, and
(iii) with respect to which—
(I) no credit has been allowed under section 45, and
(II) the taxpayer makes an irrevocable election to have this paragraph apply.

(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,
(ii) with respect to which depreciation (or amortization in lieu of depreciation) is allowable,
(iii) which is constructed, reconstructed, erected, or acquired by the taxpayer, and
(iv) the original use of which commences with the taxpayer.

(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\(^2\) $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—

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\(^2\)So in original. Probably should be followed by “to”. 
(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 grants

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 or any subsequent taxable year.

(B) the general business carryforwards made before grant shall be reduced under section 47(c) in the same manner as a credit allowed under subsection (a).


*So in original. The word "shall" probably should not appear."

REFERENCES IN TEXT

Paragraph (4)(B) of subsection (c), referred to in subsec. (a)(1), was repealed and par. (4)(C) of subsec. (c) was redesignated as (4)(B) by Pub. L. 111–5, div. B, title I, § 1103(a), Feb. 17, 2009, 123 Stat. 339.

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsecs. (a)(4)(D) and (b), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

Section 1603 of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (d), is section 1603 of Pub. L. 111–5, which is set out as a note below.

AMENDMENTS

2013—Subsec. (a)(5)(C). Pub. L. 112–240, § 407(b), amended subpar. (C) generally. Prior to amendment, text read as follows: “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 (3) 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), (5), (6), (7), (9), or (11) of section 45(d) if such facility is placed in service in 2009, 2010, 2011, or 2012.”


2009—Subsec. (a)(4)(D). Pub. L. 111–5, § 1103(b)(1), amended subpar. (D) generally. Prior to amendment, text read as follows: “A qualified facility described in section 45(f)(2) (other than an energy property described in section 45(f)(2)(A)) placed in service before January 1, 2009, was approved Nov. 5, 1990.


2008—Subsec. (a)(1). Pub. L. 110–343, § 104(d), substituted “paragraphs (1)(B), (2)(B), (3)(B), and (4)(B)” for “paragraphs (1)(B), (2)(B), and (3)(B)”.

Subsec. (a)(3)(A)(i). Pub. L. 110–343, § 103(a)(1), inserted “in the case of qualified small wind energy property placed in service during the taxable year, the credit otherwise determined under subsection (a)(1) for such year with respect to all such property of the taxpayer shall not exceed $4,000.’’


Subsec. (a)(3)(A)(vii). Pub. L. 110–343, § 103(a)(4), inserted “in the case of qualified small wind energy property placed in service during the taxable year, the credit otherwise determined under subsection (a)(1) for such year with respect to all such property of the taxpayer shall not exceed $4,000.”

Subsec. (b), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.


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) to (2)(B). Added (3)(B) of section 45(d) if such facility is placed in service in 2009, 2010, 2011, or 2012.”

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.”


“(1) IN GENERAL.—For purposes of section 46, the reclamation 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 194 (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 194.”

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 term ‘minimum investment’—

ENLARGEMENT.—Effective with respect to periods after June 30, 1992, the energy percentage is zero. For purposes of the preceding sentence, rules similar to the rules of section 194(m) (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 50(d) organizations, special rules relating to sound recordings, and a cross reference to section 381 of this title.

Subsec. (a)(3). 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 under section 167(k), 184, or 188 applies shall not be treated as section 38 property.’’

1988—Subsec. (a)(1). Pub. L. 100–647, §1002(a)(29), 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, §1102(a)(14)(E), substituted “paragraphs (5) and (6) of section 168(b)” for “paragraphs (5) and (9) of section 168(b)”.

Subsec. (a)(5)(E). Pub. L. 100–647, §1102(a)(14)(G), amended subpar. (E) generally, substituting “provision” for “provisions” and “168(h)” for “168(j)”.

Subsec. (a)(5)(F). Pub. L. 100–647, §1102(a)(14)(H), struck out former subpar. (F) which read as follows:—“For purposes of section 166(b) and section 168(b),”.

Subsec. (a)(5)(C). Pub. L. 100–647, §1102(a)(14)(C), 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 141)”.

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


Subsec. (t). Pub. L. 100–647, §1002(a)(20), redesignated subsec. (s), relating to cross reference, as (t).
stituted “adjusted basis of such building (and its structural components)” for “adjusted basis of such property” both in subcl. (1) and in provision following subcl. (1), substituting “‘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 begin-
ing of the holding period shall be made without regard to any reconstruction by the taxpayer in connection with the rehabilitation.

Subsec. (g)(5)(A). Pub. L. 97–448, § 102(d)(3), substituted “a credit is determined under section 46(a)(2)(F)” 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 1962 and 1983 Amendment notes set out under sections 1 and 196 of this title.


Subsec. (q)(3). Pub. L. 97–448, § 1036(a)(3), substituted “paragraphs (1) and (2) of this subsection and paragraph (5) of subsection (d)’ for “paragraphs (1) and (2) of this subsection” and “October 31, 1978” for "December 31, 1981” as the requisite period for purposes of paragraphs (1) and (2) of this subsection.”

Subsec. (b), (h), Pub. L. 97–248, § 209(c), inserted provision that for purposes of determining whether section 38 property subject to a lease is new section 38 property, such property shall be treated as originally placed in service not earlier than the date such property is used under the lease, but only if such property is leased within 3 months after such property is placed in service.

Subsec. (c)(2)(D). Pub. L. 97–354 substituted “Partnerships and S corporations” for “Partnerships” in subpar. heading, and inserted “A similar rule shall apply in the case of an S corporation and its shareholders”.

Subsec. (d)(5). Pub. L. 97–248, § 2056a(c), added par. (5).


Subsec. (g)(5). Pub. L. 97–248, § 2056a(5)(A), struck out par. (5) which, as amended by § 102(d)(3) of Pub. L. 97–448, had provided that for purposes of this subsection, 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 certif

failed to result from such expenditure had 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) shall 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 carryback or carryovers) determined under section 47(a)(5). See 1983 Amendment note for subsec. (g)(5) above and see Effective Date of 1962 and 1983 Amendment notes set out under sections 1 and 196 of this title.

Subsec. (h)(7). Pub. L. 97–362, § 104(a), temporarily substi-
tuted 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 processes subsequent to retorting. See Effective and Termination Dates of 1982 Amendment note below.

Subsecs. (q), (r). Pub. L. 97–248, § 2056a(a)(1), added sub-
sec. (q) and redesignated former subsec. (q) as (r).

sions following subpar. (G), substituted “Such term in-
cludes only recovery property (within the meaning of sec-
tion 168 without regard to any useful life) of any other property” for “Such term includes only prop-
erty”.


Subsec. (a)(4). Pub. L. 97–34, § 214(a), inserted provi-
sion 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 provi-
sion 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 reha-

bilitation expenditures.


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 1986 and in subpar. (B) the existing $50,000 dollar limitation to $62,500 in 1981 and to $75,000 in 1985.

Subsec. (g). Pub. L. 97–34, § 212(b), in amending subsec. (c) generally incorporated the concept of "substantial rehabilitation” 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 depre-
ciation may not be used for provisions relating to prop-
erty otherwise section 38 property in cl. (i) of par. (2)(B), reenacted cls. (ii) and (iii) without change, re-
vised the provisions of cl. (iv) relating to certified historic structures, and added cl. (v) relating to expendi-
tures of lessees, added par. (3), redesignated former par. (3) as (4), and added par. (5).

Subsec. (l)(2)(C). Pub. L. 97–34, § 211(e)(3), inserted “or which is recovery property (within the meaning of sec-
tion 168)” after “3 years or more”.

Subsec. (n)(1)(A)(i). Pub. L. 97–34, § 232(b)(2), substituted “which does not exceed” for “equal to”.


Subsec. (a)(1). Pub. L. 96–451 added subpar. (F) and provision for treatment of the useful life of subpar. (F) property as its normal growing period.


Subsec. (a)(5). Pub. L. 96–605, § 109(a), included the International Maritime Satellite Organization or any successor organization within organizations not to be treated as international organizations.

Subsec. (a)(7)(B). Pub. L. 96–605, § 312(b)(2), as amended by Pub. L. 96–222, § 103(a)(2)(A), substituted “described in section 50 (as in effect before its repeal by the Reven-
ue Act of 1978)” for “described in section 59”.

or petroleum products" does not include petroleum coke or petroleum pitch.

Subsec. (a)(10)(B). Pub. L. 96–222, § 108(c)(6), substituted "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)(ii). Pub. L. 96–603, § 1229(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. (e). Pub. L. 96–222, § 101(a)(7)(L)(II)(III), (V)(IV), (V)(III), substituted "employee plan" for "ESOP" wherever appearing and inserted "percentage" after "attributable to the matching employee plan in par. (5)."

1978—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)(7)(B). Pub. L. 95–600, § 312(c)(2), struck out "described in section 50 after "with respect to property". See 1980 Amendment note above.

Subsec. (a)(8). Pub. L. 95–600, § 313(c), substituted "188, or 191" for "or 188".


Subsec. (d)(1)(B). Pub. L. 95–600, § 703(a)(3), substituted "section 46(a)(6)" for "section 46(a)(6)".

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

Subsec. (a)(7)(B). Pub. L. 95–600, § 313(b), added subsec. (g).

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

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, § 312(c)(1), struck out subsec. (i) which defined "suspension period".

Subsecs. (l), (m). Pub. L. 95–618, § 301(b), added subsecs. (l) and (m) and redesignated former subsec. (l) as (n).

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

Pub. L. 95–600, § 141(b), added subsec. (n). Former subsec. (n) redesignated (p).

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)(viii). Pub. L. 94–455, § 101(b)(1), substituted "other than a corporation which has an election in effect under section 938 which is entitled to the benefits of section 934(b)" for "other than a corporation which has an election in effect under section 938 which is entitled to the benefits of section 934(b)".


Subsec. (a)(8). Pub. L. 94–455, §§ 1901(b)(11)(A), 2112(a)(1), struck out "169," after "section 167(k),", "187," before "or 188 applies," and provisions relating to the limitation of the applicability of this paragraph on property to which section 169 applies.

Subsec. (c)(5)(A). Pub. L. 94–455, § 1906(b)(13)(A), struck out "or his delegate" after "Secretary".

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


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, §801(c)(1)(A), substituted “$100,000” for “$50,000”.


Subsec. (a)(2)(A). Pub. L. 92–178, §104(a)(1), substituted “research facility” for “research or storage facility” in cl. (ii) and added cl. (iii).

Subsec. (a)(2)(B). Pub. L. 92–178, §104(c)(2), (3), (d), added cls. (viii) 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, §106(c), substituted provision 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), and 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 cls. (1) and (2), and 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 part 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 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 lessor for amounts paid the lessee would be adjusted consistent with subsec. (g).

Subsec. (g). Pub. L. 92–178, §108(a), repealed subsec. (g) which required that the basis of section 38 property be reduced by 7 percent of the qualified investment.

EFFECTIVE DATE OF 2013 AMENDMENT

EFFECTIVE DATE OF 2009 AMENDMENT

EFFECTIVE DATE OF 2008 AMENDMENT

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 38 of this title] shall take effect on the date of the enactment of this Act [Oct. 3, 2008].

“(2) ALLOWANCE AGAINST ALTERNATIVE MINIMUM TAX.—The amendments made by subsection (b) [amending section 38 of this title] shall apply to credits determined under section 46 of the Internal Revenue Code of 1986 in taxable years beginning after the date of the enactment of this Act and to carrybacks of such credits.

“(3) COMBINED HEAT AND POWER AND FUEL CELL PROPERTY.—The amendments made by subsections (c) and (d) [amending this section] shall apply to periods after the date of the enactment of this Act, 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

Amendment by Pub. L. 109–58, title XVIII, §1881, Oct. 22, 2005, 119 Stat. 3814, provided that: "The amendments made by this subsection [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

Amendment by section 322(d)(2)(A), (B) of Pub. L. 108–357 applicable with respect to expenditures paid or incurred after Oct. 22, 2004, see section 322(e) of Pub. L. 108–357, set out as a note under section 46 of this title. Amendment by section 716(e) of Pub. L. 108–357 applicable, except as otherwise provided, to electricity produced and sold after Oct. 22, 2004, in taxable years ending after such date, see section 716(g) of Pub. L. 108–357, as amended, set out as a note under section 45 of this title.

Effective Date of 1992 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 1988 Amendment

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Effective Date of 1986 Amendment

If any interest costs incurred after Dec. 31, 1986, are attributable to periods 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 periods after February 13, 2008, 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 an Effective Date note under section 263A of this title.

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 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.


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) not applicable to leases entered into before May 22, 1985, if the lessee signed the lease before May 17, 1985, see section 105(b)(1), (5) of Pub. L. 99–121, set out as a note under section 168 of this title.

Effective Date of 1984 Amendment

"(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(i) of Pub. L. 98–369, as to property placed in service by the taxpayer after 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 section 218(a) of Pub. L. 97–248, see section 31(i)(1), (2) 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, as to section 111(g) of Pub. L. 98–369, set out as a note under section 168 of this title.

Amendment by section 113(c)(3) of Pub. L. 98–369 applicable as if included in the amendments made by sections 201(a), 211(a)(1), and 211(f)(1) of Pub. L. 97–34, which enacted section 168 and amended section 46 of this title, see section 113(c)(1) 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 205(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.

Pub. L. 98–369, div. A, title I, §113(c)(1), July 18, 1984, 98 Stat. 637, 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."

Pub. L. 98–369, div. A, title I, §114(b), July 18, 1984, 98 Stat. 638, provided that: "The amendment made by this section [amending this section] shall apply to property originally placed in service after April 11, 1984 (determined without regard to such amendment)."

Amendment by section 43(c)(3) 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 48(c)(8), (9), and 47(d) of this title, as enacted by section 211(f) of Pub. L. 97–34, do not apply, with the proviso to elect retroactive application of amendment by Pub. L. 98–369, see section 43(e) of Pub. L. 98–369, set out as a note under section 46 of this title.

Amendment by section 47(h)(10)–(18) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 47(a) of Pub. L. 98–369, set out as a note under section 21 of this title.


Amendment by section 755(c)(1) of Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4361 of this title.


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 109 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 included in the provision of the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. 96–223 to which such amendment relates, see section 203(a) of Pub. L. 97–448, set out as a note under section 2 of this title.

Amendment by section 206(a)(3) of Pub. L. 97–448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 311(d) of Pub. L. 97–448, set out as a note under section 31 of this title.

Effective and Termination Dates of 1982 Amendment


Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

Amendment by section 205(a)(1), (4), (5)(A) of Pub. 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 209(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(f)(4)(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 209(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 (b) [amending this section] shall apply to qualified investments made after December 31, 1981.

Amendment by section 211(a)(2), (e)(3), (4) of Pub. L. 97-34 is applicable to periods after Dec. 31, 1980, under rules similar to the rules under subsection (m) of this section, see section 211(1)(x) of Pub. L. 97-34, set out as a note under section 46 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 subsection (m) of this section, see section 211(1)(c) of Pub. L. 97-34, set out as a note under section 46 of this title.

Amendment by section 211(b) of Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1980, see section 211(1)(b) of Pub. L. 97-34, set out as a note under section 46 of this title.

Amendment by section 212(a)(3), (b), (c), (d)(2)(A) of Pub. L. 97-34 applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after such date, see section 212(c) of Pub. L. 97-34, set out as a note under section 46 of this title.

Effective Date of 1980 Amendment

Pub. L. 96-605, title I, §109(b), Dec. 28, 1980, 94 Stat. 3525, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1979."


(2) ALUMINA ELECTROLYTIC CELLS.—The amendments made by subsection (d)(1) [amending this section] shall apply to periods after September 30, 1978, under rules similar to the rules of section 48(m) of such Code."


(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)(viii) 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)(ix) of such Code), or

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

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.

(C) Expanded energy credit property.—For purposes of subparagraph (B), the term ‘expanded energy credit property’ means—

(i) property to which section 48(h)(3)(A) of such Code applies because of the amendments made by paragraphs (1) and (2) of section 222(b) [amending this section],

(ii) property described in section 48(h)(4)(C) of such Code (relating to solar process heat),

(iii) property described in section 48(h)(5)(L) of such Code (relating to alumina electrolytic cells), and

(iv) property described in the last sentence of section 48(h)(3)(A) of such Code (relating to storage equipment for refuse-derived fuel).

(D) Financing taken into account.—For the purposes of applying the provisions of section 48(h)(11) of such Code in the case of property financed in whole or in part by subsidized energy financing (within the meaning of section 48(h)(11)(C) of such Code), no financing made before January 1, 1980, shall be taken into account. The preceding sentence shall not apply to financing provided from the proceeds of any tax exempt industrial development bond (within the meaning of section 185(b)(2) of such Code).

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

Pub. L. 96-222, title I, §108(c)(7), Apr. 1, 1980, 94 Stat. 229, provided that: "Any amendment to this section [amending sections 4071, 4221, 6416, and 6421 of such Code] which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 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 Amendment

Pub. L. 95-618, title III, §301(d)(4), Nov. 9, 1978, 92 Stat. 3200, 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, was 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(c)(1) of Pub. L. 95-600, set out as an Effective Date note under section 409 of this title.

Amendment by section 312(c)(1), (2), (3) of Pub. L. 95-600 applicable to taxable years ending after August 15, 1971.

Pub. L. 95-600, title III, §314(c), Nov. 6, 1978, 92 Stat. 2828, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years ending after August 15, 1971."

Pub. L. 95-600, title III, §315(d), Nov. 6, 1978, 92 Stat. 2829, 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(r) 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 sections 501(i), 1245 of this title] shall apply to taxable years beginning after December 31, 1974.

 ``(2) ELECTION MAY ALSO APPLY TO PROPERTY DESCRIPTION.—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. 1964] 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 2 of this title.

Amendment by section 2112(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 after March 18, 1975, or the acquisition of which by the taxpayer occurred after such date, see section 2112(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 302(a) of Pub. L. 94–12, set out as an Effective Date of 1975 Amendment note under section 46 of this title.


 ``(1) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall 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**


Amendment by section 108(b), (c) of Pub. L. 92–178, applicable to leases entered into after Sept. 22, 1971, and after Nov. 6, 1971, respectively, see section 108(d) of Pub. L. 92–178, set out as a note under section 46 of this title.

**Effective Date of 1969 Amendment**

Amendment by section 121(d)(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.

**Effective Date of 1967 Amendment**

Pub. L. 90–26, §4, June 13, 1967, 81 Stat. 58, 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 Amendment**

Pub. L. 89–800, title II, §201(b), Nov. 13, 1966, 80 Stat. 1576, as amended by Pub. L. 99–314, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Paragraphs (1) [amending this section and 3] 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 1966 (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. 4, 1996, see section 4 of Pub. L. 89–800, set out as a note under section 46 of this title.

**Effective Date of 1964 Amendment**

Pub. L. 88–272, title II, §203(a)(4), Feb. 26, 1964, 78 Stat. 34, provided that: "Paragraphs (1) [amending this section] and (3) [amending this section and section 1016 of this title and repealing section 181 of this title] of this subsection shall apply—

 ``(A) in the case of property placed in service after December 31, 1963, with respect to taxable years ending after such date, and

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


 ``(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(h) of Pub. L. 87–834, set out as a note under section 46 of this title.

**Savings 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. 89–676, 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**


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(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 originally placed in service by such person during 2009, 2010, or 2011,

(2) is originally placed in service by such person after 2011 and before the credit termination date with respect to such property, and

(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.

For purposes of this section, the term 'specified energy property' means any of the following:

(1) a qualified facility.—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 (ii) 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) GEOΘERMAL 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) GEOΘERMAL HEAT PUMP PROPERTY.—Any property described in clause (vii) of section 48(a)(3)(A) of such Code.

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**Application of Certain Rules**

In making grants under this section, the Secretary of the Treasury shall apply rules similar to the rules of section 50 of the Internal Revenue Code of 1986 (other than subsection (d) thereof), in applying such rules, if the property is disposed of, or otherwise ceases to be specified energy property, the Secretary of the Treasury shall provide for the recapture of the appropriate percentage of the grant amount in such manner as the Secretary of the Treasury determines appropriate.

**Termination**

The Secretary of the Treasury shall not make any grant under this section to—

(1) any Federal, State, or local government (or any political subdivision, agency, or instrumentality thereof),

(2) any partnership or other pass-thru entity any partner (or other holder of an equity or profits interest) of which is described in paragraph (2), (6), or (7) of subsection (d),

(3) any entity referred to in paragraph (4) of section 54(j) of such Code, or

(4) any partnership or other pass-thru entity any partner (or other holder of an equity or profits interest) of which is described in paragraph (1), (2), or (3).

**Definitions**

Terms used in this section which are also used in section 45 or 48 of the Internal Revenue Code of 1986 shall have the same meaning for purposes of this section as when used in such section 45 or 48. Any reference in this section to the Secretary of the Treasury shall be treated as including the Secretary's delegate.

**Appro priations**

There is hereby appropriated to the Secretary of the Treasury such sums as may be necessary to carry out the provisions of this section.

**Termination**

The Secretary of the Treasury shall not make any grant to any person under this sec-
tion unless the application of such person for such grant is received before October 1, 2012.”  


**PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989**  

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI (§§111–1147 and 1171–1177) or title XVIII (§§1800–1899A) of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.  

**APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES**  

For applicability of amendment by section 701(e)(4)(C) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.  

**SPECIAL RULE**  

Pub. L. 99–514, title XVIII, § 1879(j)(3), Oct. 22, 1986, 100 Stat. 2909, provided that: “If refund or credit of any overpayment of tax resulting from the application of the amendments made by this subsection [amending this section] is prevented at the close of the first taxable year by the close of which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.”  

**CLARIFICATION OF EFFECT OF 1984 AMENDMENT ON INVESTMENT TAX CREDIT**  

For provision that nothing in the amendments made by section 47(h) 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 475(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**  


“(1) **GENERAL RULE FOR DETERMINING USEFUL LIFE, 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 either an election under paragraph (2) of this subsection nor an election under subsection (e)(2) applies—  

“(A) the applicable percentage under section 46(e)(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 predominately 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 66 2/3 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 January 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:  

“(1) subparagraph (B) of paragraph (4) shall not apply, but in determining qualified investments 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 (5)(B) of such section 48(k)),  

“(ii) paragraph (2) shall be applied by substituting ‘100 percent’ for ‘66 2/3 percent’, and  

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

“(C) **RULES RELATING TO ELECTIONS.**—An election under this paragraph shall be made not later than 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 PROCEEDINGS.**—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)(2) of the Internal Revenue Code of 1986 shall not apply to any film placed in service by the taxpayer in any taxable year begin-
§ 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, or

(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).

(2) Advanced coal-based generation technology

The term “advanced coal-based generation technology” means a technology which meets the requirements of subsection (f).

(3) Eligible property

The term “eligible property” means—

(A) in the case of any qualifying advanced coal project using an integrated gasification combined cycle, any property which is a part of such project and is necessary for the gasification of coal, including any coal handling and gas separation equipment, and

(B) in the case of any other qualifying advanced coal project, any property which is a part of such project.

(4) Coal

The term “coal” means anthracite, bituminous coal, subbituminous coal, lignite, and peat.

(5) Greenhouse gas capture capability

The term “greenhouse gas capture capability” means an integrated gasification combined cycle technology facility capable of adding components which can capture, separate on a long-term basis, isolate, remove, and sequester greenhouse gases which result from the generation of electricity.

(6) Electric generation unit

The term “electric generation unit” means any facility at least 50 percent of the total annual net output of which is electrical power,