

**IRC, 85-CODE-VOL, SEC. 48. DEFINITIONS; SPECIAL RULES.**

**(a) SECTION 38 PROPERTY.--**

48(a)(1) IN GENERAL.--Except as provided in this subsection, the term "section 38 property" means--

48(a)(1)(A) tangible personal property (other than an air conditioning or heating unit), or

48(a)(1)(B) other tangible property (not including a building and its structural components) but only if such property--

48(a)(1)(B)(i) is used as an integral part of manufacturing, production, or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services, or

48(a)(1)(B)(ii) constitutes a research facility used in connection with any of the activities referred to in clause (i), or

48(a)(1)(B)(iii) constitutes a facility used in connection with any of the activities referred to in clause (i) for the bulk storage of fungible commodities (including commodities in a liquid or gaseous state), or

48(a)(1)(C) elevators and escalators, but only if--

48(a)(1)(C)(i) the construction, reconstruction, or erection of the elevator or escalator is completed by the taxpayer after June 30, 1963, or

48(a)(1)(C)(ii) the elevator or escalator is acquired after June 30, 1963, and the original use of such elevator or escalator commences with the taxpayer and commences after such date, or

48(a)(1)(D) single purpose agricultural or horticultural structures; or

48(a)(1)(E) in the case of a qualified rehabilitated building, that portion of the basis which is attributable to qualified rehabilitation expenditures (within the meaning of subsection (g)), or

48(a)(1)(F) in the case of qualified timber property (within the meaning of section 194(c)(1)), that portion of the basis of such property constituting the amortizable basis acquired during the taxable year (other than that portion of such amortizable basis attributable to property which otherwise qualifies as section 38 property) and taken into account under section 194 (after the application of section 194(b)(1)), or

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48(a)(1)(G) a storage facility (not including a building and its structural components) used in connection with the distribution of petroleum or any primary product of petroleum.

Such term includes only recovery property (within the meaning of section 168 without regard to any useful life) and any other property with respect to which depreciation (or amortization in lieu of depreciation) is allowable and having a useful life (determined as of the time such property is placed in service) of 3 years or more. The preceding sentence shall not apply to property described in subparagraph (F) and, for purposes of this subpart, the useful life of such property shall be treated as its normal growing period.

48(a)(2) PROPERTY USED OUTSIDE THE UNITED STATES.--

48(a)(2)(A) IN GENERAL.--Except as provided in subparagraph (B), the term "section 38 property" does not include property which is used predominantly outside the United States.

48(a)(2)(B) EXCEPTIONS.--Subparagraph (A) shall not apply to--

48(a)(2)(B)(i) any aircraft which is registered by the Administrator of the Federal Aviation Agency and which is operated to and from the United States or is operated under contract with the United States;

48(a)(2)(B)(ii) rolling stock which is used within and without the United States and which is--

48(a)(2)(B)(ii)(I) of a domestic railroad corporation providing transportation subject to subchapter I of chapter 105 of title 49, or

48(a)(2)(B)(ii)(II) of a United States person (other than a corporation described in subclause (I)) but only if the rolling stock is not leased to one or more foreign persons for periods aggregating more than 12 months in any 24-month period;

48(a)(2)(B)(iii) any vessel documented under the laws of the United States which is operated in the foreign or domestic commerce of the United States;

48(a)(2)(B)(iv) any motor vehicle of a United States person (as defined in section 7701(a)(30)) which is operated to and from the United States;

48(a)(2)(B)(v) any container of a United States person which is used in the transportation of property to and from the United States;

48(a)(2)(B)(vi) any property (other than a vessel or an aircraft) of a United States person which is used for the purpose of exploring for, developing, removing, or transporting resources from the outer Continental Shelf (within the meaning of section 2 of the Outer Continental Shelf Lands Act, as amended and supplemented; (43 U.S.C. 1331));

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48(a)(2)(B)(vii) any property which is owned by a domestic corporation (other than a corporation which has an election in effect under section 936 or which is entitled to the benefits of section 934(b)) or by a United States citizen (other than a citizen entitled to the benefits of section 931, 932, 933, or 934(c)) and which is used predominantly in a possession of the United States by such a corporation or such a citizen, or by a corporation created or organized in, or under the law of, a possession of the United States;

(viii) any communications satellite (as defined in section 103(3) of the Communications Satellite Act of 1962, 47 U. S. C. 702(3)), or any interest therein, of a United States person;

48(a)(2)(B)(ix) any cable, or any interest therein, of a domestic corporation engaged in furnishing telephone service to which section 46(c)(3)(B)(iii) applies (or of a wholly owned domestic subsidiary of such a corporation), if such cable is part of a submarine cable system which constitutes part of a communication link exclusively between the United States and one or more foreign countries;

48(a)(2)(B)(x) any property (other than a vessel or an aircraft) of a United States person which is used in international or territorial waters within the northern portion of the Western Hemisphere for the purpose of exploring for, developing, removing, or transporting resources from ocean waters or deposits under such waters; and

48(a)(2)(B)(xi) any property described in subsection (l)(3)(A)(ix) which is owned by a United States person and which is used in international or territorial waters to generate energy for use in the United States.

For purposes of clause (x), the term "northern portion of the Western Hemisphere" means the area lying west of the 30th meridian west of Greenwich, each of the international dateline, and north of the Equator, but not including any foreign country which is a country of South America.

48(a)(3) **PROPERTY USED FOR LODGING.**--Property which is used predominantly to furnish lodging or in connection with the furnishing of lodging shall not be treated as section 38 property. The preceding sentence shall not apply to--

48(a)(3)(A) nonlodging commercial facilities which are available to persons not using the lodging facilities on the same basis as they are available to persons using the lodging facilities,

48(a)(3)(B) property used by a hotel or motel in connection with the trade or business of furnishing lodging where the predominant portion of the accommodations is used by transients,

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48(a)(3)(C) coin-operated vending machines and coin-operated washing machines and dryers, and

48(a)(3)(D) a certified historic structure to the extent of that portion of the basis which is attributable to qualified rehabilitation expenditures.

48(a)(4) PROPERTY USED BY CERTAIN TAX-EXEMPT ORGANIZATIONS.— Property used by an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter shall be treated as section 38 property only if such property is used predominantly in an unrelated trade or business the income of which is subject to tax under section 511. If the property is debt-financed property (as defined in section 514(c)), the basis or cost of such property for purposes of computing qualified investment under section 46(c) shall include only that percentage of the basis or cost which is the same percentage as is used under section 514(b), for the year the property is placed in service, in computing the amount of gross income to be taken into account during such taxable year with respect to such property. 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.

48(a)(5) PROPERTY USED BY GOVERNMENTAL UNITS OR FOREIGN PERSONS OR ENTITIES.--

48(a)(5)(A) IN GENERAL.--Property used--

48(a)(5)(A)(i) by the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing, or

48(a)(5)(A)(ii) by any foreign person or entity (as defined in section 168(j)(4)(C)), but only with respect to property to which section 168(j)(4)(A)(iii) applies (determined after the application of section 168(j)(4)(B)), shall not be treated as section 38 property.

48(a)(5)(B) EXCEPTION FOR SHORT-TERM LEASES.--

48(a)(5)(B)(i) IN GENERAL.--This paragraph and paragraph (4) shall not apply to any property by reason of use under a lease with a term of less than 6 months (determined under section 168(j)(6)).

48(a)(5)(B)(ii) EXCEPTION FOR CERTAIN OIL DRILLING PROPERTY AND CERTAIN CONTAINERS.--For purposes of this paragraph and paragraph (4), clause (i) shall be applied by substituting the lease term limitation in section 168(j)(3)(C)(ii) for the lease term limitation in clause (i) in the case of property which is leased to a foreign person or entity and--

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48(a)(5)(B)(ii)(I) which is used in offshore drilling for oil and gas (including drilling vessels, barges, platforms, and drilling equipment) and support vessels with respect to such property, or

48(a)(5)(B)(ii)(II) which is a container described in section 48(a)(2)(B)(V) (without regard to whether such container is used outside the United States) or container chassis or trailer but only if such container, chassis, or trailer has a present class life of not more than 6 years.

48(a)(5)(B)(iii) EXCEPTION FOR CERTAIN AIRCRAFT.--

48(a)(5)(B)(iii)(I) IN GENERAL.--In the case of any aircraft used under a qualifying lease (as defined in section 47(a)(7)(C)) and which is leased to a foreign person or entity before January 1, 1990, clause (i) shall be applied by substituting "3 years" for "6 months."

48(a)(5)(B)(iii)(II) RECAPTURE PERIOD EXTENDED.--For purposes of applying subparagraph (B) of section 47(a)(5) and paragraph (1) of section 47(a), there shall not be taken into account any period of a lease to which subclause (I) applies.

48(a)(5)(C) EXCEPTION FOR QUALIFIED REHABILITATED BUILDINGS LEASED TO GOVERNMENTS, ETC.--If any qualified rehabilitated building is leased to a governmental unit (or a foreign person or entity), this paragraph shall not apply to that portion of the basis of such building which is attributable to qualified rehabilitation expenditures.

48(a)(5)(D) CROSS REFERENCE.--

For provisions providing special rules for the application of this paragraph and paragraph (4), see section 168(j).

48(a)(6) LIVESTOCK.--Livestock (other than horses) acquired by the taxpayer shall be treated as section 38 property, except that if substantially identical livestock is sold or otherwise disposed of by the taxpayer during the one-year period beginning 6 months before the date of such acquisition and if section 47(a) (relating to certain dispositions, etc., of section 38 property) does not apply to such sale or other disposition, then, unless such sale or other disposition constitutes an involuntary conversion (within the meaning of section 1033), the cost of the livestock acquired shall, for purposes of this subpart, be reduced by an amount equal to the amount realized on such sale or other disposition. Horses shall not be treated as section 38 property.

48(a)(7) PROPERTY COMPLETED ABROAD OR PREDOMINANTLY OF FOREIGN ORIGIN.--

48(a)(7)(A) IN GENERAL.--Property shall not be treated as section 38 property if--

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48(a)(7)(A)(i) such property was completed outside the United States, or

48(a)(7)(A)(ii) less than 50 percent of the basis of such property is attributable to value added within the United States.

For purposes of this subparagraph, the term "United States" includes the Commonwealth of Puerto Rico and the possessions of the United States.

48(a)(7)(B) PERIOD OF APPLICATION OF PARAGRAPH.--Except as provided in subparagraph (D), subparagraph (A) shall apply only with respect to property described in section 50 (as in effect before its repeal by the Revenue Act of 1978)--

48(a)(7)(B)(i) the construction, reconstruction, or erection of which by the taxpayer is begun after August 15, 1971, and on or before the date of termination of Proclamation 4074, or

48(a)(7)(B)(ii) which is acquired pursuant to an order placed on or before the date of termination of Proclamation 4074, unless acquired pursuant to an order which the taxpayer establishes was placed before August 16, 1971.

48(a)(7)(C) PRESIDENT MAY EXEMPT ARTICLES.--If the President of the United States shall at any time determine that the application of subparagraph (A) to any article or class of articles is not in the public interest, he may by Executive order specify that subparagraph (A) shall not apply to such article or class of articles. Subparagraph (A) shall not apply to an article or class of articles for the period specified in such Executive order. Any period specified under the preceding sentence shall not apply to property ordered before (or to property the construction, reconstruction, or erection of which began before) the date of the Executive order specifying such period, except that, if the President determines it to be in the public interest, such period shall apply to property ordered (or property the construction, reconstruction, or erection of which began) after a date (before the date of the Executive order) specified in the Executive order.

48(a)(7)(D) COUNTRIES MAINTAINING TRADE RESTRICTIONS OR ENGAGING IN DISCRIMINATORY ACTS.--If, on or after the date of the termination of Proclamation 4074, the President determines that a foreign country--

48(a)(7)(D)(i) maintains nontariff trade restrictions, including variable import fees, which substantially burden United States commerce in a manner inconsistent with provisions of trade agreements, or

48(a)(7)(D)(ii) engages in discriminatory or other acts (including tolerance of international cartels) or policies unjustifiably restricting United States commerce, he may provide by Executive order for the application of subparagraph (A) to any article or class of articles manufactured or produced in such foreign country for such period as may be provided by Executive order.

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48(a)(8) AMORTIZED PROPERTY.--Any property with respect to which an election under section 167(k), 184, or 188 applies shall not be treated as section 38 property.

48(a)(9) [Repealed]

48(a)(10) BOILERS FUELED BY OIL OR GAS.--

48(a)(10)(A) IN GENERAL.--The term "section 38 property" does not include any boiler primarily fueled by petroleum or petroleum products (including natural gas) unless the use of coal is precluded by Federal air pollution regulations (or by State air pollution regulations in effect on October 1, 1978) or unless the use of such boiler will be an exempt use within the meaning of subparagraph (B). For purposes of the preceding sentence, the term "petroleum or petroleum products" does not include petroleum coke or petroleum pitch.

48(a)(10)(B) EXEMPT USE DEFINED.--For purposes of subparagraph (A), the term "exempt use" means--

48(a)(10)(B)(i) use in an apartment, hotel, motel, or other residential facility,

48(a)(10)(B)(ii) use in a vehicle, aircraft, or vessel, or in transportation by pipeline,

48(a)(10)(B)(iii) use on a farm for farming purposes (within the meaning of section 6420(c)),

48(a)(10)(B)(iv) use in--

48(a)(10)(B)(iv)(I) a shopping center,

48(a)(10)(B)(iv)(II) an office building,

48(a)(10)(B)(iv)(III) a wholesale or retail establishment,

48(a)(10)(B)(iv)(IV) any other facility which is not an integral part of manufacturing, processing, or mining, or

48(a)(10)(B)(iv)(V) any facility for the production of electric power having a heat rate of less than 9,500 Btu's per kilowatt hour and which is capable of converting to synthetic fuels (as certified by the Secretary),

48(a)(10)(B)(v) use in the exploration for, or the development, extraction, transmission, or storage of, crude oil, natural gas, or natural gas liquids, and

48(a)(10)(B)(vi) use in Hawaii.

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Except as provided in clauses (iv)(V) and (vi) of the preceding sentence, the term "exempt use" does not include use of a boiler which is public utility property (within the meaning of section 46(f)(5)).

### **(b) NEW SECTION 38 PROPERTY.--**

For purposes of this subpart--

48(b)(1) IN GENERAL.--The term "new section 38 property" means section 38 property the original use of which commences with the taxpayer.

48(b)(2) SPECIAL RULE FOR SALE-LEASEBACKS.--For purposes of paragraph (1), in the case of any section 38 property which--

48(b)(2)(A) is originally placed in service by a person, and

48(b)(2)(B) is sold and leased back by such person, or is leased to such person, within 3 months of the date such property was originally placed in service, such property shall be treated as originally placed in service not earlier than the date on which such property is used under the lease.

48(b)(3) SPECIAL RULE FOR ENERGY PROPERTY.--The principles of paragraph (2) shall be applicable in determining whether the original use of property commences with the taxpayer for purposes of section 48(1)(2)(B)(ii).

### **(c) USED SECTION 38 PROPERTY.--**

48(c)(1) IN GENERAL.--For purposes of this subpart, the term "used section 38 property" means section 38 property acquired by purchase after December 31, 1961, which is not new section 38 property. Property shall not be treated as "used section 38 property" if, after its acquisition by the taxpayer, it is used by a person who used such property before such acquisition (or by a person who bears a relationship described in section 179(d)(2)(A) or (B) to a person who used such property before such acquisition).

48(c)(2) DOLLAR LIMITATION.--

48(c)(2)(A) IN GENERAL.--The cost of used section 38 property taken into account under section 46(c)(1)(B) for any taxable year shall not exceed \$125,000 (\$150,000 for taxable years beginning after 1987). If such cost exceeds \$125,000 (or \$150,000 as the case may be), the taxpayer shall select (at such time and in such manner as the Secretary shall by regulations prescribe) the items to be taken into account, but only to the extent of an aggregate cost of \$125,000 (or \$150,000). Such a selection, once made, may be changed only in the manner, and to the extent, provided by such regulations.

48(c)(2)(B) MARRIED INDIVIDUALS.--In the case of a husband or wife who files a separate return, the limitation under subparagraph (A) shall be \$62,500 (\$75,000 for



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taxable years beginning after 1987). This subparagraph shall not apply if the spouse of the taxpayer has no used section 38 property which may be taken into account as qualified investment for the taxable year of such spouse which ends within or with the taxpayer's taxable year.

48(c)(2)(C) CONTROLLED GROUPS.--In the case of a controlled group, the amount specified under subparagraph (A) shall be reduced for each component member of the group by apportioning such amount among the component members of such group in accordance with their respective amounts of used section 38 property which may be taken into account.

48(c)(2)(D) PARTNERSHIPS AND S CORPORATIONS.--In the case of a partnership, the limitation contained in subparagraph (A) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

48(c)(3) DEFINITIONS.--For purposes of this subsection--

48(c)(3)(A) PURCHASE.--The term "purchase" has the meaning assigned to such term by section 179(d)(2).

48(c)(3)(B) COST.--The cost of used section 38 property does not include so much of the basis of such property as is determined by reference to the adjusted basis of other property held at any time by the person acquiring such property. If property is disposed of (other than by reason of its destruction or damage by fire, storm, shipwreck, or other casualty, or its theft) and used section 38 property similar or related in service or use is acquired as a replacement therefor in a transaction to which the preceding sentence does not apply, the cost of the used section 38 property acquired shall be its basis reduced by the adjusted basis of the property replaced. The cost of used section 38 property shall not be reduced with respect to the adjusted basis of any property disposed of if, by reason of section 47, such disposition involved an increase of tax or a reduction of the unused credit carrybacks or carryovers described in section 39.

48(c)(3)(C) CONTROLLED GROUP.--The term "controlled group" has the meaning assigned to such term by section 1563(a), except that the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in section 1563(a)(1).

### **(d) CERTAIN LEASED PROPERTY.--**

48(d)(1) GENERAL RULE.--A person (other than a person referred to in section 46(e)(1)) who is a lessor of property may (at such time, in such manner, and subject to such conditions as are provided by regulations prescribed by the Secretary) elect with respect to any new section 38 property (other than property described in paragraph (4)) to treat the lessee as having acquired such property for an amount equal to--

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48(d)(1)(A) except as provided in subparagraph (B), the fair market value of such property, or

48(d)(1)(B) if the property is leased by a corporation which is a component member of a controlled group (within the meaning of section 38(c)(3)(B)) to another corporation which is a component member of the same controlled group, the basis of such property to the lessor.

48(d)(2) SPECIAL RULE FOR CERTAIN SHORT TERM LEASES.--

48(d)(2)(A) IN GENERAL.--A person (other than a person referred to in section 46(e)(1) who is a lessor of property described in paragraph (4) may (at such time, in such manner, and subject to such conditions as are provided by regulations prescribed by the Secretary) elect with respect to such property to treat the lessee as having acquired a portion of such property for the amount determined under subparagraph (B).

48(d)(2)(B) DETERMINATION OF LESSEE'S INVESTMENT.--The amount for which a lessee of property described in paragraph (4) shall be treated as having acquired a portion of such property is an amount equal to a fraction, the numerator of which is the term of the lease and the denominator of which is the class life of the property leased (determined under section 167(m)), of the amount for which the lessee would be treated as having acquired the property under paragraph (1).

48(d)(2)(C) DETERMINATION OF LESSOR'S QUALIFIED INVESTMENT.—The qualified investment of a lessor of property described in paragraph (4) in any such property with respect to which he has made an election under this paragraph is an amount equal to his qualified investment in such property (as determined under section 46(c)) multiplied by a fraction equal to the excess of one over the fraction used under subparagraph (B) to determine the lessee's investment in such property.

48(d)(3) LIMITATIONS.--The elections provided by paragraphs (1) and (2) may be made with respect to property which would be new section 38 property if acquired by the lessee. For purposes of the preceding sentence and section 46(c), the useful life of property in the hands of the lessee is the useful life of such property in the hands of the lessor. If a lessor makes the election provided by paragraph (1) with respect to any property, the lessee shall be treated for all purposes of this subpart as having acquired such property. If a lessor makes the election provided by paragraph (2) with respect to any property, 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.

48(d)(4) PROPERTY TO WHICH PARAGRAPH (2) APPLIES.--Paragraph (2) shall apply only to property which--

48(d)(4)(A) is new section 38 property,

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48(d)(4)(B) has a class life (determined under section 167(m)) in excess of 14 years,

48(d)(4)(C) is leased for a period which is less than 80 percent of its class life, and

48(d)(4)(D) is not leased subject to a net lease (within the meaning of section 57(c)(1)(B)).

48(d)(5) COORDINATION WITH BASIS ADJUSTMENT.--In the case of any property with respect to which an election is made under this subsection--

48(d)(5)(A) subsection (q) (other than paragraph (4)) shall not apply with respect to such property,

48(d)(5)(B) the lessee of such property shall include ratably in gross income over the shortest recovery period which could be applicable under section 168 with respect to such property an amount equal to 50 percent of the amount of the credit allowable under section 38 to the lessee with respect to such property, and

48(d)(5)(C) in the case of a disposition of such property to which section 47 applies, this paragraph shall be applied in accordance with regulations prescribed by the Secretary.

48(d)(6) COORDINATION WITH AT-RISK RULES.--

48(d)(6)(A) EXTENSION OF AT-RISK RULES TO CERTAIN LESSORS.--

48(d)(6)(A)(i) IN GENERAL.--If--

48(d)(6)(A)(i)(I) a lessor makes an election under this subsection with respect to any at-risk property leased to an at-risk lessee, and

48(d)(6)(A)(i)(II) but for this clause, section 46(c)(8) would not apply to such property in the hands of the lessor,

section 46(c)(8) shall apply to the lessor with respect to such property.

48(d)(6)(A)(ii) EXCEPTIONS.--Clause (i) shall not apply--

48(d)(6)(A)(ii)(I) if the lessor manufactured or produced the property,

48(d)(6)(A)(ii)(II) if the property has a readily ascertainable fair market value, or

48(d)(6)(A)(ii)(III) in circumstances which the Secretary determines by regulations to be circumstances where the application of clause (i) is not necessary to carry out the purposes of section 46(c)(8).

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48(d)(6)(B) REQUIREMENT THAT LESSOR BE AT RISK.--In the case of any property which, in the hands of the lessor, is property to which section 46(c)(8) applies, the amount of the credit allowable to the lessee under section 38 with respect to such property by reason of an election under this subsection shall at no time exceed the credit which would have been allowable to the lessor with respect to such property (determined without regard to section 46(e)(3) if--

48(d)(6)(B)(i) the lessor's basis in such property were equal to the lessee acquisition amount, and

48(d)(6)(B)(ii) no election had been made under this subsection.

48(d)(6)(C) LESSEE SUBJECT TO AT-RISK LIMITATIONS.--

48(d)(6)(C)(i) IN GENERAL.--In the case of any lease where--

48(d)(6)(C)(i)(I) the lessee is an at-risk lessee,

48(d)(6)(C)(i)(II) the property is at-risk property, and

48(d)(6)(C)(i)(III) the at-risk percentage is less than the required percentage, any credit allowable under section 38 to the lessee by reason of an election under this subsection (hereinafter in this paragraph referred to as the "total credit") shall be allowable only as provided in subparagraph (D).

48(d)(6)(C)(ii) AT-RISK PERCENTAGE.--For purposes of this paragraph, the term "at-risk percentage" means the percentage obtained by dividing--

48(d)(6)(C)(ii)(I) the present value (as of the time the lease is entered into) of the aggregate lease at-risk payments, by

48(d)(6)(C)(ii)(II) the lessee acquisition amount.

For purposes of subclause (I), the present value shall be determined by using a discount rate equal to the rate in effect under section 6621 as of the time the lease is entered into.

48(d)(6)(C)(iii) REQUIRED PERCENTAGE.--For purposes of clause (i)(III), the term "required percentage" means the sum of--

48(d)(6)(C)(iii)(I) 2 times the sum of the percentages applicable to the property under section 46(a), plus

48(d)(6)(C)(iii)(II) 10 percent.

In the case of 3-year property, such term means 60 percent of the required percentage determined under the preceding sentence.

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48(d)(6)(C)(iv) LESSEE ACQUISITION AMOUNT.--For purposes of this paragraph, the term "lessee acquisition amount" means the amount for which the lessee is treated as having acquired the property by reason of an election under this subsection.

48(d)(6)(C)(v) LEASE AT-RISK PAYMENT.--For purposes of this paragraph, the term "lease at-risk payment" means any rental payment--

48(d)(6)(C)(v)(I) which the lessee is required to make under the lease in all events, and

48(d)(6)(C)(v)(II) with respect to which the lessee is not protected against loss through nonrecourse financing, guarantees, stop-loss agreements, or other similar arrangements.

48(d)(6)(D) YEAR FOR WHICH CREDIT ALLOWABLE.--

48(d)(6)(D)(i) IN GENERAL.--Except as provided in clause (ii), in any case to which subparagraph (C)(i) applies, the portion of the total credit allowable for any taxable year shall be an amount which bears the same ratio to such total credit as--

48(d)(6)(D)(i)(I) the aggregate rental payments made by the lessee under the lease during such taxable year, bears to

48(d)(6)(D)(i)(II) the lessee acquisition amount.

48(d)(6)(D)(ii) REMAINING AMOUNT ALLOWABLE FOR YEAR IN WHICH AGGREGATE RENTAL PAYMENTS EXCEED REQUIRED PERCENTAGE OF ACQUISITION AMOUNT.--The total credit (to the extent not allowable for a preceding taxable year) shall be allowable for the first taxable year as of the close of which the aggregate rental payments made by the lessee under the lease equal or exceed the required percentage (as defined in subparagraph (C)(iii)) of the lessee acquisition amount.

48(d)(6)(E) DEFINITION OF AT-RISK LESSEE AND AT-RISK PROPERTY.—For purposes of this paragraph--

48(d)(6)(E)(i) AT-RISK LESSEE.--The term "at-risk" means any lessee who is a taxpayer described in section 465(a)(1).

48(d)(6)(E)(ii) AT-RISK PROPERTY.--The term "at-risk property" means any property used by an at-risk lessee in connection with an activity with respect to which any loss is subject to limitation under section 465.

48(d)(6)(F) SPECIAL RULES FOR SUBPARAGRAPHS (C) AND (D).--

48(d)(6)(F)(i) SUBPARAGRAPHS (C) AND (D) APPLY IN LIEU OF OTHER AT-RISK RULES.--In the case of any election under this subsection, paragraphs (8) and (9)

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of section 46(c) and subsection (d) of section 47 shall only apply with respect to the lessor.

48(d)(6)(F)(ii) APPLICATION TO PARTNERSHIPS AND S CORPORATIONS.—For purposes of subparagraphs (C) and (D), rules similar to the rules of subparagraph (E) of section 46(c)(8) shall apply.

48(d)(6)(F)(iii) SUBSEQUENT REDUCTIONS IN AT-RISK AMOUNT.—Under regulations prescribed by the Secretary, the principles of subsection (d) of section 47 shall apply for purposes of subparagraphs (C) and (D).

48(d)(6)(G) REGULATIONS.--The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including regulations--

48(d)(6)(G)(i) providing for such adjustments as may be appropriate where expenses connected with the lease are borne by the lessor, and

48(d)(6)(G)(ii) providing the extent to which contingencies in the lease will be disregarded.

### **(e) SUBCHAPTER S CORPORATIONS.--**

[Caution: Code Sec. 48(e) is repealed by P.L. 97-354, applicable to tax years beginning after 1982.--CCH.]

In the case of an electing small business corporation (as defined in section 1371)--

48(e)(1) the qualified investment for each taxable year shall be apportioned pro rata among the persons who are shareholders of such corporation on the last day of such taxable year; and

48(e)(2) any person to whom any investment has been apportioned under paragraph (1) shall be treated (for purposes of this subpart) as the taxpayer with respect to such investment, and such investment shall not (by reason of such apportionment) lose its character as an investment in new section 38 property or used section 38 property, as the case may be.

### **(f) ESTATES AND TRUSTS.--**

In the case of an estate or trust--

48(f)(1) the qualified investment for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each, and

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48(f)(2) any beneficiary to whom any investment has been apportioned under paragraph (1) shall be treated (for purposes of this subpart) as the taxpayer with respect to such investment, and such investment shall not (by reason of such apportionment) lose its character as an investment in new section 38 property or used section 38 property, as the case may be.

### **(g) SPECIAL RULES FOR QUALIFIED REHABILITATED BUILDINGS.--**

For purposes of this subpart--

#### **48(g)(1) QUALIFIED REHABILITATED BUILDING DEFINED.--**

48(g)(1)(A) IN GENERAL.--The term "qualified rehabilitated building" means any building (and its structural components)--

48(g)(1)(A)(i) which has been substantially rehabilitated,

48(g)(1)(A)(ii) which was placed in service before the beginning of the rehabilitation, and

48(g)(1)(A)(iii) 75 percent or more of the existing external walls of which are retained in place as external walls in the rehabilitation process.

48(g)(1)(B) 30 YEARS MUST HAVE ELAPSED SINCE CONSTRUCTION.--In the case of a building other than a certified historic structure, a building shall not be a qualified rehabilitated building unless there is a period of at least 30 years between the date the physical work on the rehabilitation began and the date the building was first placed in service.

#### **48(g)(1)(C) SUBSTANTIALLY REHABILITATED DEFINED.--**

48(g)(1)(C)(i) IN GENERAL.--For purposes of subparagraph (A)(i), a building shall be treated as having been substantially rehabilitated only if the qualified rehabilitation expenditures during the 24-month period selected by the taxpayer (at the time and in the manner prescribed by regulations) and ending with or within the taxable year exceed the greater of--

48(g)(1)(C)(i)(I) the adjusted basis of such building (and its structural components), or

48(g)(1)(C)(i)(II) \$5,000.

The adjusted basis of the building (and its structural components) shall be determined as of the beginning of the first day of such 24-month period, or of the holding period of the building (within the meaning of section 1250(e), whichever is later. For purposes of the preceding sentence, the determination of the beginning of the holding period shall be

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made without regard to any reconstruction by the taxpayer in connection with the rehabilitation.

48(g)(1)(C)(ii) SPECIAL RULE FOR PHASED REHABILITATION.--In the case of any rehabilitation which may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins, clause (i) shall be applied by substituting "60-month period" for "24-month period."

48(g)(1)(C)(iii) LESSEES.--The Secretary shall prescribe by regulation rules for applying this provision to lessees.

48(g)(1)(D) RECONSTRUCTION.--Rehabilitation includes reconstruction.

48(g)(1)(E) ALTERNATIVE TEST FOR DEFINITION OF QUALIFIED REHABILITATED BUILDING.--The requirement in clause (iii) of subparagraph (A) shall be deemed to be satisfied if in the rehabilitation process--

48(g)(1)(E)(i) 50 percent or more of the existing external walls of the building are retained in place as external walls,

48(g)(1)(E)(ii) 75 percent or more of the existing external walls of such building are retained in place as internal or external walls, and

48(g)(1)(E)(iii) 75 percent or more of the existing internal structural framework of such building is retained in place.

48(g)(2) QUALIFIED REHABILITATION EXPENDITURE DEFINED.--

48(g)(2)(A) IN GENERAL.--The term "qualified rehabilitation expenditure" means any amount properly chargeable to capital account which is incurred after December 31, 1981--

48(g)(2)(A)(i) for real property (or additions or improvements to real property) which have a recovery period (within the meaning of section 168) of 19 (15 years in the case of low-income housing) years, and

48(g)(2)(A)(ii) in connection with the rehabilitation of a qualified rehabilitated building.

48(g)(2)(B) CERTAIN EXPENDITURES NOT INCLUDED.--The term "qualified rehabilitation expenditure" does not include--

48(g)(2)(B)(i) ACCELERATED METHODS OF DEPRECIATION MAY NOT BE USED.-- Any expenditures with respect to which an election has not been made under section 168(b)(3) (to use the straight-line method of depreciation). The preceding sentence shall not apply to any expenditure to the extent subsection (f)(12) or (j) of section 168 applies to such expenditure.



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48(g)(2)(B)(ii) COST OF ACQUISITION.--The cost of acquiring only building or interest therein.

48(g)(2)(B)(iii) ENLARGEMENTS.--Any expenditure attributable to the enlargement of an existing building.

48(g)(2)(B)(iv) CERTIFIED HISTORIC STRUCTURE, ETC.--Any expenditure attributable to the rehabilitation of a certified historic structure or a building in a registered historic district, unless the rehabilitation is a certified rehabilitation (within the meaning of subparagraph (C)). The preceding sentence shall not apply to a building in a registered historic district if--

48(g)(2)(B)(iv)(I) such building was not a certified historic structure,

48(g)(2)(B)(iv)(II) the Secretary of the Interior certified to the Secretary that such building is not of historic significance to the district, and

48(g)(2)(B)(iv)(III) if the certification referred to in subclause (II) occurs after the beginning of the rehabilitation of such building, the taxpayer certifies to the Secretary that, at the beginning of such rehabilitation, he in good faith was not aware of the requirements of subclause (II).

48(g)(2)(B)(v) EXPENDITURES OF LESSEE.--Any expenditure of a lessee of a building if, on the date the rehabilitation is completed, the remaining term of the lease (determined without regard to any renewal periods) is less than 19 years (15 years in the case of low-income housing).

48(g)(2)(B)(vi) TAX-EXEMPT USE PROPERTY.--

48(g)(2)(B)(vi)(I) IN GENERAL.--Any expenditure in connection with the rehabilitation of a building which is allocable to that portion of such building which is (or may reasonably be expected to be) tax-exempt use property (within the meaning of section 168(j)(3)).

48(g)(2)(B)(vi)(II) CLAUSE NOT TO APPLY FOR PURPOSES OF PARAGRAPH (1)(C).--This clause shall not apply for purposes of determining under paragraph (1)(C) whether a building has been substantially rehabilitated.

48(g)(2)(C) CERTIFIED REHABILITATION.--For purposes of subparagraph (B), the term "certified rehabilitation" means any rehabilitation of a certified historic structure which the Secretary of the Interior has certified to the Secretary as being consistent with the historic character of such property or the district in which such property is located.

48(g)(2)(D) LOW-INCOME HOUSING.--For purposes of subparagraph (B), the term "low-income housing" has the meaning given such term by section 168(c)(2)(F).

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48(g)(3) CERTIFIED HISTORIC STRUCTURE DEFINED.--

48(g)(3)(A) IN GENERAL.--The term "certified historic structure" means any building (and its structural components) which--

48(g)(3)(A)(i) is listed in the National Register, or

48(g)(3)(A)(ii) is located in a registered historic district and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

48(g)(3)(B) REGISTERED HISTORIC DISTRICT.--The term "registered historic district" means--

48(g)(3)(B)(i) any district listed in the National Register, and

48(g)(3)(B)(ii) any district--

48(g)(3)(B)(ii)(I) which is designated under a statute of the appropriate State or local government, if such statute is certified by the Secretary of the Interior to the Secretary as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district, and

48(g)(3)(B)(ii)(II) which is certified by the Secretary of the Interior to the Secretary as meeting substantially all of the requirements for the listing of districts in the National Register.

48(g)(4) PROPERTY TREATED AS NEW SECTION 38 PROPERTY.--Property which is treated as section 38 property by reason of subsection (a)(1)(E) shall be treated as new section 38 property.

**(h) SUSPENSION OF INVESTMENT CREDIT.--**

For purposes of this subpart--

48(h)(1) GENERAL RULE.--Section 38 property which is suspension period property shall not be treated as new or used section 38 property.

48(h)(2) SUSPENSION PERIOD PROPERTY DEFINED.--Except as otherwise provided in this subsection and subsection (i), the term "suspension period property" means section 38 property--

48(h)(2)(A) the physical construction, reconstruction, or erection of which (i) is begun during the suspension period, or (ii) is begun, pursuant to an order placed during such period, before May 24, 1967, or

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48(h)(2)(B) which (i) is acquired by the taxpayer during the suspension period, or (ii) is acquired by the taxpayer, pursuant to an order placed during such period, before May 24, 1967.

In applying subparagraph (A) to any section 38 property, there shall be taken into account only that portion of the basis which is properly attributable to construction, reconstruction, or erection before May 24, 1967.

48(h)(3) BINDING CONTRACTS.--To the extent that any property is constructed, reconstructed, erected, or acquired pursuant to a contract which was, on October 9, 1966, and at all times thereafter, binding on the taxpayer, such property shall not be deemed to be suspension period property.

48(h)(4) EQUIPPED BUILDING RULE.--If--

48(h)(4)(A) pursuant to a plan of the taxpayer in existence on October 9, 1966 (which plan was not substantially modified at any time after such date and before the taxpayer placed the equipped building in service), the taxpayer has constructed, reconstructed, erected, or acquired a building and the machinery and equipment necessary to the planned use of the building by the taxpayer, and

48(h)(4)(B) more than 50 percent of the aggregate adjusted basis of all the property of a character subject to the allowance for depreciation making up such building as so equipped is attributable to either property the construction, reconstruction, or erection of which was begun by the taxpayer before October 10, 1966, or property the acquisition of which by the taxpayer occurred before such date, then all section 38 property comprising such building as so equipped (and any incidental section 38 property adjacent to such building which is necessary to the planned use of the building) shall be treated as section 38 property which is not suspension period property. For purposes of subparagraph (B) of the preceding sentence, the rules of paragraphs (3) and (6) shall be applied. For purposes of this paragraph, a special purpose structure shall be treated as a building.

48(h)(5) PLANT FACILITY RULE.--

48(h)(5)(A) GENERAL RULE.--If--

48(h)(5)(A)(i) pursuant to a plan of the taxpayer in existence on October 9, 1966 (which plan was not substantially modified at any time after such date and before the taxpayer placed the plant facility in service), the taxpayer has constructed, reconstructed or erected a plant facility, and either

48(h)(5)(A)(ii) the construction, reconstruction, or erection of such plant facility was commenced by the taxpayer before October 10, 1966, or

48(h)(5)(A)(iii) more than 50 percent of the aggregate adjusted basis of all the property of a character subject to the allowance for depreciation making up such plant facility is

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attributable to either property the construction, reconstruction, or erection of which was begun by the taxpayer before October 10, 1966, or property the acquisition of which by the taxpayer occurred before such date,

then all section 38 property comprising such plant facility shall be treated as section 38 property which is not suspension period property. For purposes of clause (iii) of the preceding sentence, the rules of paragraphs (3) and (6) shall be applied.

48(h)(5)(B) PLANT FACILITY DEFINED.--For purposes of this paragraph, the term "plant facility" means a facility which does not include any building (or of which buildings constitute an insignificant portion) and which is--

48(h)(5)(B)(i) a self-contained, single operating unit or processing operation,

48(h)(5)(B)(ii) located on a single site, and

48(h)(5)(B)(iii) identified, on October 9, 1966, in the purchasing and internal financial plans of the taxpayer as a single unitary project.

48(h)(5)(C) SPECIAL RULE.--For purposes of this subsection, if--

48(h)(5)(C)(i) a certificate of convenience and necessity has been issued before October 10, 1966, by a Federal regulatory agency with respect to two or more plant facilities which are included under a single plan of the taxpayer to construct, reconstruct or erect such plant facilities, and

48(h)(5)(C)(ii) more than 50 percent of the aggregate adjusted basis of all the property of a character subject to the allowance for depreciation making up such plant facilities is attributable to either property the construction, reconstruction, or erection of which was begun by the taxpayer before October 10, 1966, or property the acquisition of which by the taxpayer occurred before such date, such plant facilities shall be treated as a single plant facility.

48(h)(5)(D) COMMENCEMENT OF CONSTRUCTION.--For purposes of subparagraph (A)(ii), the construction, reconstruction, or erection of a plant facility shall not be considered to have commenced until construction, reconstruction, or erection has commenced at the site of such plant facility. The preceding sentence shall not apply if the site of such plant facility is not located on land.

48(h)(6) MACHINERY OR EQUIPMENT RULE.--Any piece of machinery or equipment--

48(h)(6)(A) more than 50 percent of the parts and components of which (determined on the basis of cost) were held by the taxpayer on October 9, 1966, or are acquired by the taxpayer pursuant to a binding contract which was in effect on such date, for inclusion or use in such piece of machinery or equipment, and

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48(h)(6)(B) the cost of the parts and components of which is not an insignificant portion of the total cost, shall be treated as property which is not suspension period property.

48(h)(7) CERTAIN LEASE-BACK TRANSACTIONS, ETC.--Where a person who is a party to a binding contract described in paragraph (3) 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 (3), 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 subsection (d), only if a party to such contract retains a right to use the property under a long-term lease.

48(h)(8) CERTAIN LEASE AND CONTRACT OBLIGATIONS.--Where, pursuant to a binding lease or contract to lease in effect on October 9, 1966, a lessor or lessee is obligated to construct, reconstruct, erect, or acquire property specified in such lease or contract, any property so constructed, reconstructed, erected, or acquired by the lessor or lessee which is section 38 property shall be treated as property which is not suspension period property. In the case of any project which includes property other than the property to be leased to such lessee, the preceding sentence shall be applied, in the case of the lessor, to such other property only if the binding leases and contracts with all lessees in effect on October 9, 1966, cover real property constituting 25 percent or more of the project (determined on the basis of rental value). For purpose of the preceding sentences of this paragraph, in the case of any project where one or more vendor-vendee relationships exist, such vendors and vendees shall be treated as lessors and lessees. Where, pursuant to a binding contract in effect on October 9, 1966, (i) the taxpayer is required to construct, reconstruct, erect, or acquire property specified in the contract, to be used to produce one or more products, and (ii) the other party is required to take substantially all of the products to be produced over a substantial portion of the expected useful life of the property, then such property shall be treated as property which is not suspension period property. Clause (ii) of the preceding sentence shall not apply if a political subdivision of a State is the other party to the contract and is required by the contract to make substantial expenditures which benefit the taxpayer.

48(h)(9) CERTAIN TRANSFERS TO BE DISREGARDED.--

48(h)(9)(A) If property or rights under a contract are transferred in--

48(h)(9)(A)(i) a transfer by reason of death, or

48(h)(9)(A)(ii) a transaction as a result of which the basis of the property in the hands of the transferee is determined by reference to its basis in the hands of the transferor by reason of the application of section 332, 351, 361, 371(a), 374(a), 721, or 731, and such property (or the property acquired under such contract) would not be treated as

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suspension period property in the hands of the decedent or the transferor, such property shall not be treated as suspension period property in the hands of the transferee.

48(h)(9)(B) If--

48(h)(9)(B)(i) property or rights under a contract are acquired in a transaction to which section 334(b)(2) applies,

48(h)(9)(B)(ii) the stock of the distributing corporation was acquired before October 10, 1966, or pursuant to a binding contract in effect October 9, 1966, and

48(h)(9)(B)(iii) such property (or the property acquired under such contract) would not be treated as suspension period property in the hands of the distributing corporation, such property shall not be treated as suspension period property in the hands of the distributee.

48(h)(10) PROPERTY ACQUIRED FROM AFFILIATED CORPORATION.--For purposes of this subsection, in the case of property acquired by a corporation which is a member of an affiliated group from another member of the same group--

48(h)(10)(A) such corporation shall be treated as having acquired such property on the date on which it was acquired by such other member,

48(h)(10)(B) such corporation shall be treated as having entered into a binding contract for the construction, reconstruction, or erection, or acquisition of such property on the date on which such other member entered into a contract for the construction, reconstruction, erection, or acquisition of such property, and

48(h)(10)(C) such corporation shall be treated as having commenced the construction, reconstruction, or erection of such property on the date on which such other member commenced such construction, reconstruction, or erection.

For purposes of the preceding sentence, the term "affiliated group" has the meaning assigned to it by section 1504(a), except that all corporations shall be treated as includible corporations (without any exclusion under section 1504(b)).

48(h)(11) CERTAIN TANGIBLE PROPERTY CONSTRUCTED DURING SUSPENSION PERIOD AND LEASED NEW THEREAFTER.--Tangible personal property constructed or reconstructed by a person shall not be suspension period property if--

48(h)(11)(A) such person leases such property after the close of the suspension period and the original use of such property commences after the close of such period,

48(h)(11)(B) such construction or reconstruction, and such lease transaction, was not pursuant to an order placed during the suspension period, and

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48(h)(11)(C) an election is made under subsection (d) with respect to such property which satisfies the requirements of such subsection.

48(h)(12) WATER AND AIR POLLUTION CONTROL FACILITIES.--

48(h)(12)(A) IN GENERAL.--Any water pollution control facility or air pollution control facility shall be treated as property which is not suspension period property.

48(h)(12)(B) WATER POLLUTION CONTROL FACILITY.--For purposes of subparagraph (A), the term "water pollution control facility" means any section 38 property which--

48(h)(12)(B)(i) is used primarily to control water pollution by removing, altering, or disposing of wastes, including the necessary intercepting sewers, outfall sewers, pumping, power, and other equipment, and their appurtenances, and

48(h)(12)(B)(ii) is certified by the State water pollution control agency (as defined in section 13(a) of the Federal Water Pollution Control Act) as being in conformity with the State program or requirements for control of water pollution and is certified by the Secretary of Interior as being in compliance with the applicable regulations of Federal agencies and the general policies of the United States for cooperation with the States in the prevention and abatement of water pollution under the Federal Water Pollution Control Act.

48(h)(12)(C) AIR POLLUTION CONTROL FACILITY.--For purposes of subparagraph (A), the term "air pollution control facility" means any section 38 property which--

48(h)(12)(C)(i) is used primarily to control atmospheric pollution or contamination by removing, altering, or disposing of atmospheric pollutants or contaminants; and

48(h)(12)(C)(ii) is certified by the State air pollution control agency (as defined in section 302(b) of the Clean Air Act) as being in conformity with the State program or requirements for control of air pollution and is certified by the Secretary of Health, Education, and Welfare as being in compliance with the applicable regulations of Federal agencies and the general policies of the United States for cooperation with the States in the prevention and abatement of air pollution under the Clean Air Act.

48(h)(12)(D) STANDARDS FOR FACILITY.--Subparagraph (A) shall apply in the case of any facility only if the taxpayer constructs, reconstructs, erects, or acquires such facility in furtherance of Federal, State, or local standards for the control of water pollution or atmospheric pollution or contaminants.

48(h)(13) CERTAIN REPLACEMENT PROPERTY.--Section 38 property constructed, reconstructed, erected, or acquired by the taxpayer shall be treated as property which is not suspension period property to the extent such property is placed in service to replace property which was--

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48(h)(13)(A) destroyed or damaged by fire, storm, shipwreck, or other casualty, or

48(h)(13)(B) stolen, but only to the extent the basis (in the case of new section 38 property) or cost (in the case of used section 38 property) of such section 38 property does not exceed the adjusted basis of the property destroyed, damaged, or stolen.

### **(i) EXEMPTION FROM SUSPENSION OF \$20,000 OF INVESTMENT.--**

48(i)(1) IN GENERAL.--In the case of property acquired by the taxpayer by purchase for use in his trade or business which would (but for this subsection) be suspension period property, the taxpayer may select items to which this subsection applies, to the extent of an aggregate cost, for the suspension period, of \$20,000. Any item so selected shall be treated as property which is not suspension period property for purposes of this subpart (other than for purposes of paragraphs (4), (5), (6), (7), (8), (9), and (10) of subsection (h)).

48(i)(2) APPLICABLE RULES.--Under regulations prescribed by the Secretary, rules similar to the rules provided by paragraphs (2) and (3) of subsection (c) shall be applied for purposes of this subsection. Subsection (d) shall not apply with respect to any item to which this subsection applies.

### **(j) SUSPENSION PERIOD.--**

For purposes of this subpart, the term "suspension period" means the period beginning on October 10, 1966, and ending on March 9, 1967.

### **(k) MOVIE AND TELEVISION FILMS.--**

48(k)(1) ENTITLEMENT TO CREDIT.--

48(k)(1)(A) IN GENERAL.--A credit shall be allowable under section 38 to a taxpayer with respect to any motion picture film or video tape--

48(k)(1)(A)(i) only if such film or tape is new section 38 property (determined without regard to useful life) which is a qualified film, and

48(k)(1)(A)(ii) only to the extent that the taxpayer has an ownership interest in such film or tape.

48(k)(1)(B) QUALIFIED FILM DEFINED.--For purposes of this subsection, the term "qualified film" means any motion picture film or video tape created primarily for use as public entertainment or for educational purposes. Such term does not include any film or tape the market for which is primarily topical or is otherwise essentially transitory in nature.



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48(k)(1)(C) OWNERSHIP INTEREST.--For purposes of this subsection, a person's "ownership interest" in a qualified film shall be determined on the basis of his proportionate share of any loss which may be incurred with respect to the production costs of such film.

48(k)(2) APPLICABLE PERCENTAGE TO BE 662/3.--Except as provided in paragraph (3), the applicable percentage under section 46(c)(2) for any qualified film shall be 662/3 percent.

48(k)(3) ELECTION OF 90--PERCENT RULE.--

48(k)(3)(A) IN GENERAL.--If the taxpayer makes an election under this paragraph, the applicable percentage under section 46(c)(2) 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 would equal or exceed 90 percent of the basis of the film.

48(k)(3)(B) MAKING OF ELECTION.--An election under this paragraph shall be made at such time and in such manner as the Secretary may by regulations prescribe. Such an election shall apply for the taxable year for which it is made and for all subsequent taxable years and may be revoked only with the consent of the Secretary.

48(k)(3)(C) WHO MAY ELECT.--If for any prior taxable year paragraph (2) of this subsection applied to the taxpayer or any related business entity, or if for the taxable year paragraph (2) applies to any related business entity, an election under this paragraph may be made by the taxpayer only with the consent of the Secretary.

48(k)(3)(D) RELATED BUSINESS ENTITY.--Two or more corporations, partnerships, trusts, estates, proprietorships, or other entities shall be treated as related business entities if 50 percent or more of the beneficial interest in each of such entities is owned by the same or related persons (taking into account only persons who own at least 10 percent of such beneficial interest). For purposes of this subparagraph, a person is a related person to another person if--

48(k)(3)(D)(i) such persons are component members of a controlled group of corporations (within the meaning of section 1563(a), except that section 1563(b)(2) shall not apply and except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in section 1563(a)), or

48(k)(3)(D)(ii) the relationship between such persons would result in a disallowance of losses under section 267 or 707(b), except that for these purposes a family of an individual includes only his spouse and minor children.

For purposes of this subparagraph, the term "beneficial interest" means voting stock in the case of a corporation, profits interest or capital interest in the case of a partnership, or beneficial interest in the case of a trust or estate.

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48(k)(4) PREDOMINANT USE TEST OR AT-RISK RULES; QUALIFIED INVESTMENT.—In the case of any qualified film--

48(k)(4)(A) section 48(a)(2), section 46(c)(8), or section 46(c)(9) shall not apply, and

48(k)(4)(B) in determining qualified investment under section 46(c)(1), there shall be used (in lieu of the basis of the property) an amount equal to the qualified United States production costs (as defined in paragraph (5)).

48(k)(5) QUALIFIED UNITED STATES PRODUCTION COSTS.--

48(k)(5)(A) IN GENERAL.--For purposes of this subsection, the term "qualified United States production costs" means with respect to any film--

48(k)(5)(A)(i) direct production costs allocable to the United States, plus

48(k)(5)(A)(ii) if 80 percent or more of the direct production costs are allocable to the United States, all other production costs other than direct production costs allocable outside the United States.

48(k)(5)(B) PRODUCTION COSTS.--For purposes of this subsection, the term "production costs" includes--

48(k)(5)(B)(i) a reasonable allocation of general overhead costs,

48(k)(5)(B)(ii) compensation (other than participations described in clause (vi)) for services performed by actors, production personnel, directors, and producers,

48(k)(5)(B)(iii) costs of "first" distribution of prints,

48(k)(5)(B)(iv) the cost of the screen rights and other material being filmed,

48(k)(5)(B)(v) "residuals" payable under contracts with labor organizations, and

48(k)(5)(B)(vi) participations payable as compensation to actors, production personnel, directors, and producers.

Participations on all qualified films placed in service by a taxpayer during a taxable year shall be taken into account under clause (vi) only to the extent of the lesser of 25 percent of each such participation or 121/2 percent of the aggregate qualified United States production costs (other than costs described in clauses (v) and (vi) of this subparagraph) for such films, but taking into account for both the 25 percent limit and 121/2 percent limit no more than \$1,000,000 in participations for any one individual with respect to any one film. For purposes of this subparagraph (other than clauses (v) and (vi) and the preceding sentence), costs shall be taken into account only if they are capitalized.

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48(k)(5)(C) DIRECT PRODUCTION COSTS.--For purposes of this paragraph, the term "direct production costs" does not include items referred to in clause (i), (iv), (v), or (vi) of subparagraph (B). The term also does not include advertising and promotional costs and such other costs as may be provided in regulations prescribed by the Secretary.

48(k)(5)(D) ALLOCATION OF DIRECT PRODUCTION COSTS.--For purposes of this paragraph--

48(k)(5)(D)(i) Compensation for services performed shall be allocated to the country in which the services are performed, except that payments to United States persons for services performed outside the United States shall be allocated to the United States. For purposes of the preceding sentence, payments to an S corporation or a partnership shall be considered payments to a United States person only to the extent that such payments are included in the gross income of a United States person other than an S corporation or partnership.

48(k)(5)(D)(ii) Amounts for equipment and supplies shall be allocated to the country in which, with respect to the production of the film, the predominant use occurs.

48(k)(5)(D)(iii) All other items shall be allocated under regulations prescribed by the Secretary which are consistent with the allocation principle set forth in clause (ii).

48(k)(6) UNITED STATES.--For purposes of this subsection, the term "United States" includes the possessions of the United States.

### **(l) ENERGY PROPERTY.--**

For purposes of this subpart--

48(l)(1) TREATMENT AS SECTION 38 PROPERTY.--For any period for which the energy percentage determined under section 46(b)(2) for any energy property is greater than zero--

48(l)(1)(A) such energy property shall be treated as meeting the requirements of paragraph (1) of subsection (a), and

48(l)(1)(B) paragraph (3) of subsection (a) shall not apply to such property.

48(l)(2) ENERGY PROPERTY DEFINED.--The term "energy property" means property--

48(l)(2)(A) which is--

48(l)(2)(A)(i) alternative energy property,

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48(l)(2)(A)(ii) solar or wind energy property,

48(l)(2)(A)(iii) specially defined energy property,

48(l)(2)(A)(iv) recycling equipment,

48(l)(2)(A)(v) shale oil equipment,

48(l)(2)(A)(vi) equipment for producing natural gas from geopressed brine,

48(l)(2)(A)(vii) qualified hydroelectric generating property,

(viii) cogeneration equipment, or

48(l)(2)(A)(ix) qualified intercity buses,

48(l)(2)(B)(i) the construction, reconstruction, or erection of which is completed by the taxpayer after September 30, 1978, or

48(l)(2)(B)(ii) which is acquired after September 30, 1978, if the original use of such property commences with the taxpayer and commences after such date, and

48(l)(2)(C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable, and which has a useful life (determined as of the time such property is placed in service) of 3 years or more or which is recovery property (within the meaning of section 168).

48(l)(3) ALTERNATIVE ENERGY PROPERTY.--

48(l)(3)(A) IN GENERAL.--The term "alternative energy property" means--

48(l)(3)(A)(i) a boiler the primary fuel for which will be an alternate substance,

48(l)(3)(A)(ii) a burner (including necessary on-site equipment to bring the alternate substance to the burner) for a combustor other than a boiler if the primary fuel for such burner will be an alternate substance,

48(l)(3)(A)(iii) equipment for converting an alternate substance into a synthetic liquid, gaseous, or solid fuel,

48(l)(3)(A)(iv) equipment designed to modify existing equipment which uses oil or natural gas as a fuel or as feedstock so that such equipment will use either a substance other than oil and natural gas, or oil mixed with a substance other than oil and natural gas (where such other substance will provide not less than 25 percent of the fuel or feedstock),

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48(l)(3)(A)(v) equipment to convert--

48(l)(3)(A)(v)(I) coal (including lignite), or any nonmarketable substance derived therefrom, into a substitute for a petroleum or natural gas derived feedstock for the manufacture of chemicals or other products, or

48(l)(3)(A)(v)(II) coal (including lignite), or any substance derived therefrom, into methanol, ammonia, or a hydroprocessed coal liquid or solid,

48(l)(3)(A)(vi) pollution control equipment required (by Federal, State, or local regulations) to be installed on or in connection with equipment described in clause (i), (ii), (iii), (iv), or (v),

48(l)(3)(A)(vii) equipment used for the unloading, transfer, storage, reclaiming from storage, and preparation (including, but not limited to, washing, crushing, drying, and weighing) at the point of use of an alternate substance for use in equipment described in clause (i), (ii), (iii), (iv), (v), or (vi),

(viii) equipment used to produce, distribute, or use energy derived from a geothermal deposit (within the meaning of section 613(e)(3)), but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage, and

48(l)(3)(A)(ix) equipment, placed in service at either of 2 locations designated by the Secretary after consultation with the Secretary of Energy, which converts ocean thermal energy to usable energy.

The equipment described in clause (vii) includes equipment used for the storage of fuel derived from garbage at the site at which such fuel was produced from garbage.

48(l)(3)(B) ALTERNATE SUBSTANCE.--The term "alternate substance" means any substance other than--

48(l)(3)(B)(i) oil and natural gas, and

48(l)(3)(B)(ii) any product of oil and natural gas.

48(l)(3)(C) SPECIAL RULE FOR CERTAIN POLLUTION CONTROL EQUIPMENT.-  
The term "pollution control equipment" does not include any equipment which --

48(l)(3)(C)(i) is installed on or in connection with property which, as of October 1, 1978, was using coal (including lignite), and 48(l)(3)(C)(ii) was required to be installed by Federal, State, or local regulations in effect on such date.

For 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

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Oil Windfall Profit Tax Act of 1980, "January 1, 1980" shall be substituted for "October 1, 1978."

48(l)(4) SOLAR OR WIND ENERGY PROPERTY.--The term "solar or wind energy property" means any equipment which uses solar or wind energy—

48(l)(4)(A) to generate electricity,

48(l)(4)(B) to heat or cool (or provide hot water for use in) a structure, or

48(l)(4)(C) to provide solar process heat.

48(l)(5) SPECIALLY DEFINED ENERGY PROPERTY.--The term "specially defined energy property" means--

48(l)(5)(A) a recuperator,

48(l)(5)(B) a heat wheel,

48(l)(5)(C) a regenerator,

48(l)(5)(D) a heat exchanger,

48(l)(5)(E) a waste heat boiler,

48(l)(5)(F) a heat pipe,

48(l)(5)(G) an automatic energy control system,

48(l)(5)(H) a turbulator,

48(l)(5)(I) a preheater,

48(l)(5)(J) a combustile gas recovery system,

48(l)(5)(K) an economizer,

48(l)(5)(L) modifications to alumina electrolytic cells,

48(l)(5)(M) modifications to chlor-alkali electrolytic cells, or

48(l)(5)(N) any other property of a kind specified by the Secretary by regulations, the principal purpose of which is reducing the amount of energy consumed in any existing industrial or commercial process and which is installed in connection with an existing industrial or commercial facility. The Secretary shall not specify any property under subparagraph (N) unless he determines that such specification meets the requirements of

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paragraph (9) of section 44C(c) for specification of items under section 44C(c)(4)(A)(viii).

48(l)(6) RECYCLING EQUIPMENT.--

48(l)(6)(A) IN GENERAL.--The term "recycling equipment" means any equipment which is used exclusively--

48(l)(6)(A)(i) to sort and prepare solid waste for recycling, or

48(l)(6)(A)(ii) in the recycling of solid waste.

48(l)(6)(B) CERTAIN EQUIPMENT NOT INCLUDED.--The term "recycling equipment" does not include--

48(l)(6)(B)(i) any equipment used in a process after the first marketable product is produced, or

48(l)(6)(B)(ii) in the case of recycling iron or steel, any equipment used to reduce the waste to a molten state and in any process thereafter.

48(l)(6)(C) 10 PERCENT VIRGIN MATERIAL ALLOWED.--Any equipment used in the recycling of material which includes some virgin materials shall not be treated as failing to meet the exclusive use requirements of subparagraph (A) if the amount of such virgin materials is 10 percent or less.

48(l)(6)(D) CERTAIN EQUIPMENT INCLUDED.--The term "recycling equipment" includes any equipment which is used in the conversion of solid waste into a fuel or into useful energy such as steam, electricity, or hot water.

48(l)(7) SHALE OIL EQUIPMENT.--The term "shale oil equipment" means equipment for producing or extracting oil from oil-bearing shale rock but does not include equipment for hydrogenation, refining, or other process subsequent to retorting.

[Caution: Code Sec. 48(l)(7), below, as amended by P.L. 97-362, applies to periods beginning after 1980 and before 1983 under rules similar to those of Code Sec. 48(m).--CCH.]

48(l)(7) SHALE OIL EQUIPMENT.--The term "shale oil equipment" means equipment for producing or extracting oil from oil-bearing shale rock; except 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.

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### 48(l)(8) EQUIPMENT FOR PRODUCING NATURAL GAS FROM GEOPRESSURED BRINE.--

The term "equipment for producing natural gas from geopressured brine" means equipment which is used exclusively to extract natural gas described in section 613A(b)(3)(C)(i).

### 48(l)(9) EQUIPMENT MUST MEET CERTAIN STANDARDS TO QUALIFY.—

Equipment qualifies under paragraph (3), (4), (5), (6), (7), or (8) only if it meets the performance and quality standards (if any) which--

48(l)(9)(A) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy), and

48(l)(9)(B) are in effect at the time of the acquisition of the property.

### 48(l)(10) EXISTING.--For purposes of this subsection, the term "existing" means--

48(l)(10)(A) when used in connection with a facility, 50 percent or more of the basis of such facility is attributable to construction, reconstruction, or erection before October 1, 1978, or

48(l)(10)(B) when used in connection with an industrial or commercial process, such process was carried on in the facility as of October 1, 1978.

### 48(l)(11) SPECIAL RULE FOR PROPERTY FINANCED BY INDUSTRIAL DEVELOPMENT BONDS.--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).

[Caution: Code Sec. 48(l)(11), below, as amended by P.L. 96-223, Sec. 223(c)(1), generally applies to periods after 1982 under rules similar to the rule of Code Sec. 48(m), except for property that is allowed the energy percentage for the first time under P.L. 96-223 in which case such provision applies to periods after 1979 under rules similar to the rules of Code Sec. 48(m). Financing made before 1980 is not considered in applying this section to property financed by subsidized energy financing other than from the proceeds of any tax-exempt industrial development bonds.--CCH.]

### 48(l)(11) SPECIAL RULE FOR PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING OR INDUSTRIAL DEVELOPMENT BONDS.--

48(l)(11)(A) REDUCTION OF QUALIFIED INVESTMENT.--For purposes of applying the energy percentage to any property, if such property is financed in whole or in part by

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48(l)(11)(A)(i) subsidized energy financing, or

48(l)(11)(A)(ii) 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 amount taken into account as qualified investment shall not exceed the amount which (but for this subparagraph) would be the qualified investment multiplied by the fraction determined under subparagraph (B).

48(l)(11)(B) DETERMINATION OF FRACTION.--For purposes of subparagraph (A), the fraction determined under this subparagraph is 1 reduced by a fraction--

48(l)(11)(B)(i) the numerator of which is that portion of the qualified investment in the property which is allocable to such financing or proceeds, and

48(l)(11)(B)(ii) the denominator of which is the qualified investment in the property.

48(l)(11)(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.

48(l)(12) INDUSTRIAL INCLUDES AGRICULTURAL.--The term "industrial" includes agricultural.

48(l)(13) QUALIFIED HYDROELECTRIC GENERATING PROPERTY.--

48(l)(13)(A) IN GENERAL.--The term "qualified hydroelectric generating property" means property installed at a qualified hydroelectric site which is--

48(l)(13)(A)(i) equipment for increased capacity to generate electricity by water (up to, but not including, the electrical transmission stage), and

48(l)(13)(A)(ii) structures for housing such generating equipment, fish passageways, and dam rehabilitation property, required by reason of the installation of equipment described in clause (i).

48(l)(13)(B) QUALIFIED HYDROELECTRIC SITE.--The term "qualified hydroelectric site" means any site--

48(l)(13)(B)(i) at which--

48(l)(13)(B)(i)(I) there is a dam the construction of which was completed before October 18, 1979, and which was not significantly enlarged after such date, or

48(l)(13)(B)(i)(II) electricity is to be generated without any dam or other impoundment of water, and

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48(l)(13)(B)(ii) the installed capacity of which is less than 125 megawatts.

48(l)(13)(C) LIMITATION ON CREDIT WHEN INSTALLED CAPACITY EXCEEDS 25 MEGAWATTS.--For purposes of applying the energy percentage to any qualified hydroelectric generating property placed in service in connection with a site the installed capacity of which exceeds 25 megawatts, the amount taken into account as qualified investment shall not exceed the amount which (but for this subparagraph) would be the qualified investment multiplied by a fraction--

48(l)(13)(C)(i) the numerator of which is 25 reduced by 1 for each whole megawatt by which such installed capacity exceeds 100 megawatts, and

48(l)(13)(C)(ii) the denominator of which is the number of megawatts of such installed capacity but not in excess of 100.

48(l)(13)(D) DAM REHABILITATION PROPERTY.--For purposes of this paragraph, the term "dam rehabilitation property" means any amount properly chargeable to capital account for property (or additions or improvements to property) in connection with the rehabilitation of a dam.

48(l)(13)(E) INSTALLED CAPACITY.--The term "installed capacity" means, with respect to any site, the installed capacity of all electrical generating equipment placed in service at such site. Such term includes the capacity of equipment installed during the 3 taxable years following the taxable year in which the equipment is placed in service.

48(l)(14) COGENERATION EQUIPMENT.--

48(l)(14)(A) IN GENERAL.--The term "cogeneration equipment" means property which is an integral part of a system for using the same fuel to produce both qualified energy and electricity at an industrial or commercial facility at which, as of January 1, 1980, electricity or qualified energy was produced.

48(l)(14)(B) ONLY COGENERATION INCREASES TAKEN INTO ACCOUNT.--The term "cogeneration equipment" includes property only to the extent that such property increases the capacity of the system to produce qualified energy or electricity, whichever is the secondary energy product of the system.

48(l)(14)(C) LIMITATION ON USE OF OIL OR GAS.--The term "cogeneration equipment" does not include any property which is part of a system if--

48(l)(14)(C)(i) such system uses oil or natural gas (or a product of oil or natural gas) as a fuel for any purpose other than--

48(l)(14)(C)(i)(I) start-up,

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48(l)(14)(C)(i)(II) flame control, or

48(l)(14)(C)(i)(III) back-up, or

48(l)(14)(C)(ii) more than 20 percent (determined on a Btu basis) of the fuel for such system for any taxable year consists of oil or natural gas (or a product of oil or natural gas).

48(l)(14)(D) QUALIFIED ENERGY.--The term "qualified energy" means steam, heat, or other forms of useful energy (other than electric energy) to be used for industrial, commercial, or space-heating purposes (other than in the production of electricity).

48(l)(14)(E) INDUSTRIAL INCLUDES PURIFICATION AND DESALINIZATION OF WATER.--The term "industrial" includes the purification of water and the desalinization of water.

48(l)(15) BIOMASS PROPERTY.--

48(l)(15)(A) IN GENERAL.--The term "biomass property" means--

48(l)(15)(A)(i) any property described in clause (i), (ii), or (iii) of paragraph (3)(A), as modified by the last sentence of paragraph (3)(A) and by subparagraph (B) of this paragraph, and

48(l)(15)(A)(ii) any equipment described in so much of clause (vi) or (vii) of paragraph (3)(A) as relates to property described in clause (i) of this subparagraph.

48(l)(15)(B) MODIFICATION.--For purposes of subparagraph (A)--

48(l)(15)(B)(i) the term "alternate substance" has the meaning given to such term by paragraph (3)(B), except that such term does not include any inorganic substance and does not include coal (including lignite) or any product of such coal, and

48(l)(15)(B)(ii) clause (iii) of paragraph (3)(A) shall be applied by substituting "a qualified fuel" for "a synthetic liquid, gaseous, or solid fuel."

48(l)(15)(C) QUALIFIED FUEL.--For purposes of subparagraph (B), the term "qualified fuel" means--

48(l)(15)(C)(i) any synthetic solid fuel, and

48(l)(15)(C)(ii) alcohol for fuel purposes if the primary source of energy for the facility producing the alcohol is not oil or natural gas or a product of oil or natural gas.

48(l)(16) QUALIFIED INTERCITY BUSES.--

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48(l)(16)(A) IN GENERAL.--Paragraph (2)(A)(ix) shall apply only with respect to the qualified investment in qualified intercity buses of a taxpayer--

48(l)(16)(A)(i) which is a common carrier regulated by the Interstate Commerce Commission or an appropriate State agency (as determined by the Secretary), and

48(l)(16)(A)(ii) which is engaged in the trade or business of furnishing intercity passenger transportation or intercity charter service by bus.

48(l)(16)(B) QUALIFIED INTERCITY BUS.--The term "qualified intercity bus" means an automobiles bus--

48(l)(16)(B)(i) the chassis of which is an automobile bus chassis and the body of which is an automobile bus body,

48(l)(16)(B)(ii) which has--

48(l)(16)(B)(ii)(I) a seating capacity of more than 35 passengers (in addition to the driver), and

48(l)(16)(B)(ii)(II) 1 or more baggage compartments, separated from the passenger area, with a capacity of at least 200 cubic feet, and

48(l)(16)(B)(iii) which is used predominantly by the taxpayer in the trade or business of furnishing intercity passenger transportation or intercity chartger service.

48(l)(16)(C) OPERATING CAPACITY MUST INCREASE.--Under regulations prescribed by the Secretary--

48(l)(16)(C)(i) IN GENERAL.--The amount of qualified investment taken into account under paragraph (2)(A)(ix) for any taxable year shall not exceed the amount of the qualified investment which is attributable to an increase in the taxpayer's total operating seating capacity for the taxable year over such capacity as of the close of the preceding taxable year.

48(l)(16)(C)(ii) SPECIAL RULES.--The regulations prescribed under this subparagraph--

48(l)(16)(C)(ii)(I) shall provide that only buses used predominatly on a full-time basis in the trade or business of furnishing intercity passenger or intercity charter service shall be taken into account in determining the taxpayer's total operating seating capacity, and

48(l)(16)(C)(ii)(II) shall provide rules treating related taxpayers as 1 person.

48(l)(17) EXCLUSION FOR PUBLIC UTILITY PROPERTY.--The terms "alternative energy property", "biomass property", "solar or wind energy property," "recycling

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equipment", and "cogeneration property" do not include property which is public utility property (within the meaning of 46(f)(5)).

### **(m) APPLICATION OF CERTAIN TRANSITIONAL RULES.--**

Where the application of any provision of subsection (l) of this section or subsection (b) or (c)(3) of section 46 is expressed in terms of a period, such provision shall apply only to--

48(m)(1) property to which section 46(d) does not apply, the construction, reconstruction, or erection of which is completed by the taxpayer on or after the first day of such period, but only to the extent of the basis thereof attributable to the construction, reconstruction, or erection during such period,

48(m)(2) property to which section 46(d) does not apply, acquired by the taxpayer during such period and placed in service by the taxpayer during such period, and

48(m)(3) property to which section 46(d) applies, but only to the extent of the qualified investment (as determined under subsections (c) and (d) of section 46) with respect to qualified progress expenditures made during such period.

### **(n) REQUIREMENTS FOR ALLOWANCE OF EMPLOYEE PLAN PERCENTAGE.--**

48(n)(1) IN GENERAL.--

48(n)(1)(A) BASIC EMPLOYEE PLAN PERCENTAGE.--The basic employee plan percentage shall not apply to any taxpayer for any taxable year unless the taxpayer on his return for such taxable year agrees, as a condition for the allowance of such percentage--

48(n)(1)(A)(i) to make transfers of employer securities to a tax credit employee stock ownership plan maintained by the taxpayer having an aggregate value which does not exceed 1 percent of the amount of the qualified investment (as determined under subsections (c) and (d) of section 46) for the taxable year, and

48(n)(1)(A)(ii) to make such transfers at the times prescribed in subparagraph (C).

48(n)(1)(B) MATCHING EMPLOYEE PLAN PERCENTAGE.--The matching employee plan percentage shall not apply to any taxpayer, for any taxable year unless the basic employee plan percentage applies to such taxpayer for such taxable year, and the taxpayer on his return for such taxable year agrees, as a condition for the allowance of the matching employee plan percentage--

48(n)(1)(B)(i) to make transfers of employer securities to a tax credit employee stock ownership plan maintained by the employer having an aggregate value equal to the lesser of--

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48(n)(1)(B)(i)(I) the sum of the qualified matching employee contributions made to such plan for the taxable year, or

48(n)(1)(B)(i)(II) onehalf of 1 percent of the amount of the qualified investment (as determined under subsections (c) and (d) of section 46) for the taxable year, and

48(n)(1)(B)(ii) to make such transfers at the times prescribed in subparagraph (C).

48(n)(1)(C) **TIMES FOR MAKING TRANSFERS.**--The aggregate of the transfers required under subparagraphs (A) and (B) shall be made--

48(n)(1)(C)(i) to the extent allocable to that portion of the employee plan credit allowed for the taxable year or allowed as a carryback to a preceding taxable year, not later than 30 days after the due date (including extensions) for filing the return for the taxable year, or

48(n)(1)(C)(ii) to the extent allocable to that portion of the employee plan credit which is allowed as a carryover in a succeeding taxable year, not later than 30 days after the due date (including extensions) for filing the return for such succeeding taxable year.

The Secretary may by regulations provide that transfers may be made later than the times prescribed in the preceding sentence where the amount of any credit or carryover or carryback for any taxable year exceeds the amount shown on the return for the taxable year including where such excess is attributable to qualified matching employee contributions made after the close of the taxable year.

48(n)(1)(D) **ORDERING RULES.**--For purposes of subparagraph (C), the portion of the employee plan credit allowed for the current year or as a carryover or carryback shall be determined--

48(n)(1)(D)(i) first by treating the credit or carryover or carryback as attributable to the regular percentage,

48(n)(1)(D)(ii) second by treating the portion (not allocated under clause (i)) of such credit or carryover or carryback as attributable to the basic employee plan percentage, and

48(n)(1)(D)(iii) finally by treating the portion (not allocated under clause (i) or (ii)) as attributable to the matching employee plan percentage.

48(n)(2) **QUALIFIED MATCHING EMPLOYEE CONTRIBUTION DEFINED.**--

48(n)(2)(A) **IN GENERAL.**--For purposes of this subsection, the term "qualified matching employee contribution" means, with respect to any taxable year, any

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contribution made by an employee to an a tax credit employee stock ownership plan maintained by the taxpayer if--

48(n)(2)(A)(i) each employee who is entitled to an allocation of employer securities transferred to the tax credit employee stock ownership plan under paragraph (1)(A) is entitled to make such a contribution,

48(n)(2)(A)(ii) the contribution is designated by the employee as a contribution intended to be taken into account under this subparagraph for the taxable year,

48(n)(2)(A)(iii) the contribution is paid in cash to the employer or plan administrator not later than 24 months after the close of the taxable year, and is invested forthwith in employer securities, and

48(n)(2)(A)(iv) the tax credit employee stock ownership plan meets the requirements of subparagraph (B).

48(n)(2)(B) PLAN REQUIREMENTS.--For purposes of subparagraph (A), a tax credit employee stock ownership plan meets the requirements of this subparagraph if--

48(n)(2)(B)(i) participation in the tax credit employee stock ownership plan is not required as a condition of employment and the tax credit employee stock ownership plan does not require matching employee contributions as a condition of participation in the tax credit employee stock ownership plan, and

48(n)(2)(B)(ii) the tax credit employee stock ownership plan provides for allocation of all employer securities transferred to it or purchased by it (because of the requirements of paragraph (1)(B)) to the account of each participant in an amount equal to such participant's matching employee contributions for the year.

48(n)(3) CERTAIN CONTRIBUTIONS OF CASH TREATED AS CONTRIBUTIONS OF EMPLOYER SECURITIES.--For purposes of this subsection, a transfer of cash shall be treated as a transfer of employer securities if the cash is, under the tax credit employee stock ownership plan, used within 30 days to purchase employee securities.

48(n)(4) ADJUSTMENTS IF EMPLOYEE PLAN CREDIT RECAPTURED.--If any portion of the employee plan credit is recaptured under section 47 or the employee plan credit is reduced by a final determination--

48(n)(4)(A) the employer may reduce the amount required to be transferred to the tax credit employee stock ownership plan under paragraph (1) for the current taxable year or any succeeding taxable year by an amount equal to such portion (or reduction), or

48(n)(4)(B) notwithstanding the provisions of paragraph (5) and to the extent not taken into account under subparagraph (A), the employer may deduct an amount equal to such portion (or reduction), subject to the limitations of section 404.

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48(n)(5) DISALLOWANCE OF DEDUCTION.--No deduction shall be allowed under section 162, 212, or 404 for amounts required to be transferred to a tax credit employee stock ownership plan under this subsection.

48(n)(6) DEFINITIONS.--For purposes of this subsection--

48(n)(6)(A) EMPLOYER SECURITIES.--The term "employer securities" has the meaning given to such term by section 409A(l).

48(n)(6)(B) VALUE.--The term "value" means--

48(n)(6)(B)(i) in the case of securities listed on a national exchange, the average of closing prices of such securities for the 20 consecutive trading days immediately preceding the date on which the securities are contributed to the plan, or

48(n)(6)(B)(ii) in the case of securities not listed on a national exchange, the fair market value as determined in good faith and in accordance with regulations prescribed by the Secretary.

The above amendment is effective for tax years beginning after December 31, 1983, and to carrybacks from such years, but shall not be construed as reducing the amount of any credit allowable for qualified investment in tax years beginning before January 1, 1984.

### **(o) CERTAIN CREDITS DEFINED.--**

For purposes of this title--

48(o)(1) REGULAR INVESTMENT CREDIT.--The term "regular investment credit" means that portion of the credit allowable by section 38 which is attributable to the regular percentage.

48(o)(2) ENERGY INVESTMENT CREDIT.--The term "energy investment credit" means that portion of the credit allowable by section 38 which is attributable to the energy percentage.

48(o)(3) REHABILITATION INVESTMENT CREDIT.--The term "rehabilitation investment credit" means that portion of the credit allowable by section 38 which is attributable to the rehabilitation percentage.

### **(p) SINGLE PURPOSE AGRICULTURAL OR HORTICULTURAL STRUCTURE DEFINED.--**

For purposes of this section--



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48(p)(1) IN GENERAL.--The term "single purpose agricultural or horticultural structure" means--

48(p)(1)(A) a single purpose livestock structure, and

48(p)(1)(B) a single purpose horticultural structure.

48(p)(2) SINGLE PURPOSE LIVESTOCK STRUCTURE.--The term "single purpose livestock structure" means any enclosure or structure specifically designed, constructed, and used--

48(p)(2)(A) for housing, raising, and feeding a particular type of livestock and their produce, and

48(p)(2)(B) for housing the equipment (including any replacements) necessary for the housing, raising, and feeding referred to in subparagraph (A).

48(p)(3) SINGLE PURPOSE HORTICULTURAL STRUCTURE.--The term "single purpose horticultural structure" means--

48(p)(3)(A) a greenhouse specifically designed, constructed, and used for the commercial production of plants, and

48(p)(3)(B) a structure specifically designed, constructed and used for the commercial production of mushrooms.

48(p)(4) STRUCTURES WHICH INCLUDE WORK SPACE.--An enclosure or structure which provides work space shall be treated as a single purpose agricultural or horticultural structure only if such work space is solely for--

48(p)(4)(A) the stocking, caring for, or collecting of livestock or plants (as the case may be) or their produce,

48(p)(4)(B) the maintenance of the enclosure or structure, and

48(p)(4)(C) the maintenance or replacement of the equipment or stock enclosed or housed therein.

48(p)(5) SPECIAL RULE FOR APPLYING SECTION 47.--For purposes of section 47, any single purpose agricultural or horticultural structure shall be treated as meeting the requirements of this subsection for any period during which such structure is held for the use under which it qualified under this subsection.

48(p)(6) LIVESTOCK.--The term "livestock" includes poultry.

**(q) BASIS ADJUSTMENT TO SECTION 38 PROPERTY.--**

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48(q)(1) IN GENERAL.--For purposes of this subtitle, if a credit is determined under section 46(a) with respect to section 38 property, the basis of such property shall be reduced by 50 percent of the amount of the credit so determined.

48(q)(2) CERTAIN DISPOSITIONS.--If during any taxable year there is a recapture amount determined with respect to any section 38 property the basis of which was reduced under paragraph (1), the basis of such property (immediately before the event resulting in such recapture) shall be increased by an amount equal to 50 percent of such recapture amount. For purposes of the preceding sentence, the term "recapture amount" means any increase in tax (or adjustment in carrybacks or carryovers) determined under section 47.

48(q)(3) SPECIAL RULE FOR QUALIFIED REHABILITATED BUILDINGS.--In the case of any credit determined under section 46(a) for any qualified rehabilitation expenditure in connection with a qualified rehabilitated building other than a certified historic structure, paragraphs (1) and (2) of this subsection and paragraph (5) of subsection (d) shall be applied without regard to the phrase "50 percent of."

48(q)(4) ELECTION OF REDUCED CREDIT IN LIEU OF BASIS ADJUSTMENT FOR REGULAR PERCENTAGE.--

48(q)(4)(A) IN GENERAL.--If the taxpayer elects to have this paragraph apply with respect to any recovery property--

48(q)(4)(A)(i) paragraphs (1) and (2) shall not apply to so much of the credit determined under section 46(a) with respect to such property as is attributable to the regular percentage set forth in section 46(b)(1); and

48(q)(4)(A)(ii) the amount of the credit allowable under section 38 with respect to such property shall be determined under subparagraph (B).

48(q)(4)(B) REDUCTION IN CREDIT.--In the case of any recovery property to which an election under subparagraph (A) applies--

48(q)(4)(B)(i) solely for the purposes of applying the regular percentage, the applicable percentage under subsection (c) or (d) of section 46 shall be deemed to be 100 percent, and

48(q)(4)(B)(ii) notwithstanding section 46(b)(1), the regular percentage shall be--

48(q)(4)(B)(ii)(I) 8 percent in the case of recovery property other than 3-year property, or

48(q)(4)(B)(ii)(II) 4 percent in the case of recovery property which is 3-year property.

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For purposes of the preceding sentence, RRB replacement property (within the meaning of section 168(f)(3)(B)) shall be treated as property which is not 3-year property.

### 48(q)(4)(C) TIME AND MANNER OF MAKING ELECTION.--

48(q)(4)(C)(i) IN GENERAL.--An election under this subsection with respect to any property shall be made on the taxpayer's return of the tax imposed by this chapter for the taxpayer's taxable year in which such property is placed in service (or in the case of property to which an election under section 46(d) applies, for the first taxable year for which qualified progress expenditures were taken into account with respect to such property).

48(q)(4)(C)(ii) REVOCABLE ONLY WITH CONSENT.--An election under this subsection with respect to any property, once made, may be revoked only with the consent of the Secretary.

### 48(q)(5) RECAPTURE OF REDUCTIONS.--

48(q)(5)(A) IN GENERAL.--For purposes of sections 1245 and 1250, any reduction under this subsection shall be treated as a deduction allowed for depreciation.

48(q)(5)(B) SPECIAL RULE FOR SECTION 1250.--For purposes of section 1250(b), the determination of what would have been the depreciation adjustments under the straight line method shall be made as if there had been no reduction under this section.

### 48(q)(6) ADJUSTMENT IN BASIS OF INTEREST IN PARTNERSHIP OR S CORPORATION. --The adjusted basis of--

48(q)(6)(A) a partner's interest in a partnership, and

48(q)(6)(B) stock in an S corporation, shall be appropriately adjusted to take into account adjustments made under this subsection in the basis of property held by the partnership or S corporation (as the case may be).

48(q)(6) SPECIAL RULE FOR QUALIFIED FILMS.--If a credit is allowed under section 38 with respect to any qualified film (within the meaning of subsection (k)(1)(B)) then, in lieu of any reduction under paragraph (1)--

48(q)(6)(A) to the extent that the credit is determined with respect to any amount described in clause (v) or (vi) of subsection (k)(5)(B), any deduction allowable under this chapter with respect to such amount shall be reduced by 50 percent of the amount of the credit so determined, and

48(q)(6)(B) the basis of the taxpayer's ownership interest (within the meaning of subsection (k)(1)(C)) shall be reduced by the excess of--

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48(q)(6)(B)(i) 50 percent of the amount of the credit determined under subsection (k), over

48(q)(6)(B)(ii) the amount of the reduction under subparagraph (A).

### **(r) SPECIAL RULES RELATING TO SOUND RECORDINGS.--**

48(r)(1) IN GENERAL.--For purposes of this title, in the case of any sound recording, the original use of which commences with the taxpayer, the taxpayer may elect to treat such recording as recovery property which is 3-year property to the extent that the taxpayer has an ownership interest in such recording.

48(r)(2) FAILURE TO MAKE ELECTION.--If a taxpayer does not make an election under paragraph (1) with respect to any sound recording--

48(r)(2)(A) no credit shall be allowed under section 38 with respect to such recording, and

48(r)(2)(B) such recording shall not be treated as recovery property.

48(r)(3) PREDOMINANT USE TEST AND AT RISK RULES NOT TO APPLY; QUALIFIED INVESTMENT.--In the case of any sound recording--

48(r)(3)(A) sections 46(c)(8), 46(c)(9), and 48(a)(2) shall not apply, and

48(r)(3)(B) in determining the qualified investment under section 46(c)(1), there shall be used (in lieu of the basis of the property) an amount equal to the production costs which are allocable to the United States (as determined under rules similar to the rules of section 48(k)(5)(D)).

48(r)(4) OWNERSHIP INTEREST.--For purposes of determining the credit allowable under section 38, the ownership interest of any person in a sound recording shall be determined on the basis of his proportionate share of any loss which may be incurred with respect to the production costs of such sound recording.

48(r)(5) SOUND RECORDING.--For purposes of this subsection, the term "sound recording" means any sound recording described in section 280(c)(2).

48(r)(6) PRODUCTION COSTS.--

48(r)(6)(A) IN GENERAL.--For purposes of this subsection, the term "production costs" includes--

48(r)(6)(A)(i) a reasonable allocation of general overhead costs,

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48(r)(6)(A)(ii) compensation for services performed by song writers, artists, production personnel, directors, producers, and similar personnel,

48(r)(6)(A)(iii) costs of "first" distribution of records or tapes, and

48(r)(6)(A)(iv) the cost of the material being recorded.

48(r)(6)(B) CERTAIN COSTS NOT TAKEN INTO ACCOUNT.--Except as provided in subparagraph (C), the term "production costs" shall not include--

48(r)(6)(B)(i) "residuals" payable under contracts with labor organizations, or

48(r)(6)(B)(ii) participations or royalties payable as compensation to song writers, artists, production personnel, directors, producers, and similar personnel, or

48(r)(6)(B)(iii) any other contingent amounts.

48(r)(6)(C) CERTAIN CONTINGENT AMOUNTS TAKEN INTO ACCOUNT.--In the case of any amount which is described in subparagraph (B) and which is incurred in the taxable year in which the sound recording is placed in service or the next taxable year--

48(r)(6)(C)(i) subparagraph (B) shall not apply, and

48(r)(6)(C)(ii) for purposes of sections 38 and 168, the taxpayer shall be treated as having placed in service in each such taxable year 3-year recovery property with a basis equal to the amount so incurred in such taxable year.

48(r)(7) ELECTION MADE SEPARATELY.--An election under paragraph (1) shall be made separately with respect to each sound recording and must be made by all persons having an ownership interest in such recording.

48(r)(8) UNITED STATES.--For purposes of this subsection, the term "United States" includes the possessions of the United States.

### **(s) CROSS REFERENCE.--**

For application of this subpart to certain acquiring corporations, see section 381(c)(26).