Subsec. (d)(3)(C)(ii). Pub. L. 110–343, §202(b)(3)(D), substituted ''subsection (b)(4)(B)'' for ''subsection (b)(5)(B)''.

Subsec. (d)(5). Pub. L. 110–343, §203(b), added par. (5).

Subsec. (e)(2), (3). Pub. L. 110–343, §202(b)(3)(C), substituted ''subsection (b)(4)(C)'' for ''subsection (b)(5)(C)''.

Subsec. (f)(2). Pub. L. 110–343, §202(b)(3)(B), amended heading and text of par. (2) generally. Prior to amendment, text read as follows:

''(A) RATE OF CREDIT.—Subsections (b)(1)(A) and (b)(2)(A) shall be applied with respect to renewable diesel by substituting '$1.00' for '50 cents'.

''(B) NONAPPLICATION OF CERTAIN CREDITS.—Subsections (b)(3) and (b)(5) shall not apply with respect to renewable diesel.''

Subsec. (f)(3). Pub. L. 110–343, §202(d), in introductory provisions, struck out ''(as defined in section 45K(c)(3))'' after ''derived from biomass'' and, in concluding provisions, inserted at end ''Such term does not include any fuel derived from coprocessing biomass with a feedstock which is not biomass. For purposes of this paragraph, the term 'biomass' has the meaning given such term by section 45K(c)(3).''

Pub. L. 110–343, §202(c)(1), (2), in introductory provisions, substituted ''liquid fuel'' for ''diesel fuel'' and struck out ''using a thermal depolymerization process'' before ''which meets—''.

Pub. L. 110–246, §15321(f)(2), inserted concluding provisions.

Subsec. (f)(3)(B). Pub. L. 110–343, §202(c)(3), inserted '', or other equivalent standard approved by the Secretary'' before period at end.

Subsec. (f)(4). Pub. L. 110–343, §202(e), added par. (4).

Subsec. (g). Pub. L. 110–343, §202(a), substituted ''December 31, 2009'' for ''December 31, 2008''.

2005—Pub. L. 109–58, §1346(b)(1), inserted ''and renewable diesel'' after ''Biodiesel'' in section catchline.

Subsec. (a). Pub. L. 109–58, §1345(a), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: ''For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the sum of—

''(1) the biodiesel mixture credit, plus

''(2) the biodiesel credit.''

Subsec. (b). Pub. L. 109–58, §1345(d)(2), substituted '', biodiesel credit, and small agri-biodiesel producer credit'' for ''and biodiesel credit'' in heading.

Subsec. (b)(4). Pub. L. 109–58, §1345(d)(1), substituted ''paragraph (1) or (2) of subsection (a)'' for ''this section''.

Subsec. (b)(5). Pub. L. 109–58, §1345(b), added par. (5).

Subsec. (b)(5)(B). Pub. L. 109–135 struck out ''(determined without regard to the last sentence of subsection (d)(2))'' after ''any agri-biodiesel'' in introductory provisions.

Subsec. (d)(3)(C),(D). Pub. L. 109–58, §1345(d)(3), added subpar. (C) and redesignated former subpar. (C) as (D). The words following ''subsection (b)(5)(B),'' in subpar. (C) are shown as a flush provision notwithstanding directory language showing them as part of cl. (ii), to reflect the probable intent of Congress.

Subsec. (e). Pub. L. 109–58, §1345(c), added subsec. (e). The words following ''subparagraph (A) for the taxable year,'' in subsec. (e)(6)(B)(iii) are shown as a flush provision notwithstanding directory language showing them as part of subcl. (II), to reflect the probable intent of Congress. Former subsec. (e) redesignated (f).

Pub. L. 109–58, §1344(a), substituted ''2008'' for ''2006''.

Subsec. (f). Pub. L. 109–58, §1346(a), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 109–58, §1345(c), redesignated subsec. (e) as (f).

Subsec. (g). Pub. L. 109–58, §1346(a), redesignated subsec. (f) as (g).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §701(d), Dec. 17, 2010, 124 Stat. 3310, provided that: ''The amendments made by this section [amending this section and sections 6426 and 6427 of this title] shall apply to fuel sold or used after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title II, §202(g), Oct. 3, 2008, 122 Stat. 3833, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 6426 and 6427 of this title] shall apply to fuel produced, and sold or used, after December 31, 2008.

''(2) COPRODUCTION OF RENEWABLE DIESEL WITH PETROLEUM FEEDSTOCK.—The amendment made by subsection (d) [amending this section] shall apply to fuel produced, and sold or used, after the date of the enactment of this Act [Oct. 3, 2008].''

Amendment by section 203(b) of Pub. L. 110–343 applicable to claims for credit or payment made on or after May 15, 2008, see section 203(d) of Pub. L. 110–343, set out as a note under section 40 of this title.

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15321(f) of Pub. L. 110–246 applicable to fuel produced after Dec. 31, 2008, see section 15321(g) of Pub. L. 110–246, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, §1344(b), Aug. 8, 2005, 119 Stat. 1052, provided that: ''The amendments made by this section [amending this section and sections 6426 and 6427 of this title] shall take effect on the date of the enactment of this Act [Aug. 8, 2005].''

Pub. L. 109–58, title XIII, §1345(e), Aug. 8, 2005, 119 Stat. 1055, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 8, 2005].''

Pub. L. 109–58, title XIII, §1346(c), Aug. 8, 2005, 119 Stat. 1056, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to fuel sold or used after December 31, 2005.''

EFFECTIVE DATE

Section applicable to fuel produced, and sold or used, after Dec. 31, 2004, in taxable years ending after such date, see section 302(d) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendment note under section 38 of this title.

§ 41. Credit for increasing research activities

(a) General rule

For purposes of section 38, the research credit determined under this section for the taxable year shall be an amount equal to the sum of—

(1) 20 percent of the excess (if any) of—

(A) the qualified research expenses for the taxable year, over

(B) the base amount,

(2) 20 percent of the basic research payments determined under subsection (e)(1)(A), and

(3) 20 percent of the amounts paid or incurred by the taxpayer in carrying on any trade or business of the taxpayer during the taxable year (including as contributions) to an energy research consortium for energy research.

(b) Qualified research expenses

For purposes of this section—

(1) Qualified research expenses

The term ''qualified research expenses'' means the sum of the following amounts

which are paid or incurred by the taxpayer during the taxable year in carrying on any trade or business of the taxpayer—

(A) in-house research expenses, and

(B) contract research expenses.

(2) In-house research expenses

(A) In general

The term ''in-house research expenses'' means—

(i) any wages paid or incurred to an employee for qualified services performed by such employee,

(ii) any amount paid or incurred for supplies used in the conduct of qualified research, and

(iii) under regulations prescribed by the Secretary, any amount paid or incurred to another person for the right to use computers in the conduct of qualified research.

Clause (iii) shall not apply to any amount to the extent that the taxpayer (or any person with whom the taxpayer must aggregate expenditures under subsection (f)(1)) receives or accrues any amount from any other person for the right to use substantially identical personal property.

(B) Qualified services

The term ''qualified services'' means services consisting of—

(i) engaging in qualified research, or

(ii) engaging in the direct supervision or direct support of research activities which constitute qualified research.

If substantially all of the services performed by an individual for the taxpayer during the taxable year consists of services meeting the requirements of clause (i) or (ii), the term ''qualified services'' means all of the services performed by such individual for the taxpayer during the taxable year.

(C) Supplies

The term ''supplies'' means any tangible property other than—

(i) land or improvements to land, and

(ii) property of a character subject to the allowance for depreciation.

(D) Wages

(i) In general

The term ''wages'' has the meaning given such term by section 3401(a).

(ii) Self-employed individuals and owner-employees

In the case of an employee (within the meaning of section 401(c)(1)), the term ''wages'' includes the earned income (as defined in section 401(c)(2)) of such employee.

(iii) Exclusion for wages to which work opportunity credit applies

The term ''wages'' shall not include any amount taken into account in determining the work opportunity credit under section 51(a).

(3) Contract research expenses

(A) In general

The term ''contract research expenses'' means 65 percent of any amount paid or incurred by the taxpayer to any person (other than an employee of the taxpayer) for qualified research.

(B) Prepaid amounts

If any contract research expenses paid or incurred during any taxable year are attributable to qualified research to be conducted after the close of such taxable year, such amount shall be treated as paid or incurred during the period during which the qualified research is conducted.

(C) Amounts paid to certain research consortia

(i) In general

Subparagraph (A) shall be applied by substituting ''75 percent'' for ''65 percent'' with respect to amounts paid or incurred by the taxpayer to a qualified research consortium for qualified research on behalf of the taxpayer and 1 or more unrelated taxpayers. For purposes of the preceding sentence, all persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as related taxpayers.

(ii) Qualified research consortium

The term ''qualified research consortium'' means any organization which—

(I) is described in section 501(c)(3) or 501(c)(6) and is exempt from tax under section 501(a),

(II) is organized and operated primarily to conduct scientific research, and

(III) is not a private foundation.

(D) Amounts paid to eligible small businesses, universities, and Federal laboratories

(i) In general

In the case of amounts paid by the taxpayer to—

(I) an eligible small business,

(II) an institution of higher education (as defined in section 3304(f)), or

(III) an organization which is a Federal laboratory,

for qualified research which is energy research, subparagraph (A) shall be applied by substituting ''100 percent'' for ''65 percent''.

(ii) Eligible small business

For purposes of this subparagraph, the term ''eligible small business'' means a small business with respect to which the taxpayer does not own (within the meaning of section 318) 50 percent or more of—

(I) in the case of a corporation, the outstanding stock of the corporation (either by vote or value), and

(II) in the case of a small business which is not a corporation, the capital and profits interests of the small business.

(iii) Small business

For purposes of this subparagraph—

(I) In general

The term ''small business'' means, with respect to any calendar year, any

person if the annual average number of employees employed by such person during either of the 2 preceding calendar years was 500 or fewer. For purposes of the preceding sentence, a preceding calendar year may be taken into account only if the person was in existence throughout the year.

(II) Startups, controlled groups, and predecessors

Rules similar to the rules of subparagraphs (B) and (D) of section 220(c)(4) shall apply for purposes of this clause.

(iv) Federal laboratory

For purposes of this subparagraph, the term ''Federal laboratory'' has the meaning given such term by section 4(6) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(6)), as in effect on the date of the enactment of the Energy Tax Incentives Act of 2005.

(4) Trade or business requirement disregarded for in-house research expenses of certain startup ventures

In the case of in-house research expenses, a taxpayer shall be treated as meeting the trade or business requirement of paragraph (1) if, at the time such in-house research expenses are paid or incurred, the principal purpose of the taxpayer in making such expenditures is to use the results of the research in the active conduct of a future trade or business—

(A) of the taxpayer, or

(B) of 1 or more other persons who with the taxpayer are treated as a single taxpayer under subsection (f)(1).

(c) Base amount

(1) In general

The term ''base amount'' means the product of—

(A) the fixed-base percentage, and

(B) the average annual gross receipts of the taxpayer for the 4 taxable years preceding the taxable year for which the credit is being determined (hereinafter in this subsection referred to as the ''credit year'').

(2) Minimum base amount

In no event shall the base amount be less than 50 percent of the qualified research expenses for the credit year.

(3) Fixed-base percentage

(A) In general

Except as otherwise provided in this paragraph, the fixed-base percentage is the percentage which the aggregate qualified research expenses of the taxpayer for taxable years beginning after December 31, 1983, and before January 1, 1989, is of the aggregate gross receipts of the taxpayer for such taxable years.

(B) Start-up companies

(i) Taxpayers to which subparagraph applies

The fixed-base percentage shall be determined under this subparagraph if—

(I) the first taxable year in which a taxpayer had both gross receipts and qualified research expenses begins after December 31, 1983, or

(II) there are fewer than 3 taxable years beginning after December 31, 1983, and before January 1, 1989, in which the taxpayer had both gross receipts and qualified research expenses.

(ii) Fixed-base percentage

In a case to which this subparagraph applies, the fixed-base percentage is—

(I) 3 percent for each of the taxpayer's 1st 5 taxable years beginning after December 31, 1993, for which the taxpayer has qualified research expenses,

(II) in the case of the taxpayer's 6th such taxable year, ⅙ of the percentage which the aggregate qualified research expenses of the taxpayer for the 4th and 5th such taxable years is of the aggregate gross receipts of the taxpayer for such years,

(III) in the case of the taxpayer's 7th such taxable year, ⅓ of the percentage which the aggregate qualified research expenses of the taxpayer for the 5th and 6th such taxable years is of the aggregate gross receipts of the taxpayer for such years,

(IV) in the case of the taxpayer's 8th such taxable year, ½ of the percentage which the aggregate qualified research expenses of the taxpayer for the 5th, 6th, and 7th such taxable years is of the aggregate gross receipts of the taxpayer for such years,

(V) in the case of the taxpayer's 9th such taxable year, ⅔ of the percentage which the aggregate qualified research expenses of the taxpayer for the 5th, 6th, 7th, and 8th such taxable years is of the aggregate gross receipts of the taxpayer for such years,

(VI) in the case of the taxpayer's 10th such taxable year, ⅚ of the percentage which the aggregate qualified research expenses of the taxpayer for the 5th, 6th, 7th, 8th, and 9th such taxable years is of the aggregate gross receipts of the taxpayer for such years, and

(VII) for taxable years thereafter, the percentage which the aggregate qualified research expenses for any 5 taxable years selected by the taxpayer from among the 5th through the 10th such taxable years is of the aggregate gross receipts of the taxpayer for such selected years.

(iii) Treatment of de minimis amounts of gross receipts and qualified research expenses

The Secretary may prescribe regulations providing that de minimis amounts of gross receipts and qualified research expenses shall be disregarded under clauses (i) and (ii).

(C) Maximum fixed-base percentage

In no event shall the fixed-base percentage exceed 16 percent.

(D) Rounding

The percentages determined under subparagraphs (A) and (B)(ii) shall be rounded to the nearest 1/100th of 1 percent.

(4) Election of alternative incremental credit

(A) In general

At the election of the taxpayer, the credit determined under subsection (a)(1) shall be equal to the sum of—

(i) 3 percent of so much of the qualified research expenses for the taxable year as exceeds 1 percent of the average described in subsection (c)(1)(B) but does not exceed 1.5 percent of such average,

(ii) 4 percent of so much of such expenses as exceeds 1.5 percent of such average but does not exceed 2 percent of such average, and

(iii) 5 percent of so much of such expenses as exceeds 2 percent of such average.

(B) Election

An election under this paragraph shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.

(5) Election of alternative simplified credit

(A) In general

At the election of the taxpayer, the credit determined under subsection (a)(1) shall be equal to 14 percent (12 percent in the case of taxable years ending before January 1, 2009) of so much of the qualified research expenses for the taxable year as exceeds 50 percent of the average qualified research expenses for the 3 taxable years preceding the taxable year for which the credit is being determined.

(B) Special rule in case of no qualified research expenses in any of 3 preceding taxable years

(i) Taxpayers to which subparagraph applies

The credit under this paragraph shall be determined under this subparagraph if the taxpayer has no qualified research expenses in any one of the 3 taxable years preceding the taxable year for which the credit is being determined.

(ii) Credit rate

The credit determined under this subparagraph shall be equal to 6 percent of the qualified research expenses for the taxable year.

(C) Election

An election under this paragraph shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary. An election under this paragraph may not be made for any taxable year to which an election under paragraph (4) applies.

(6) Consistent treatment of expenses required

(A) In general

Notwithstanding whether the period for filing a claim for credit or refund has expired for any taxable year taken into account in determining the fixed-base percentage, the qualified research expenses taken into account in computing such percentage shall be determined on a basis consistent with the determination of qualified research expenses for the credit year.

(B) Prevention of distortions

The Secretary may prescribe regulations to prevent distortions in calculating a taxpayer's qualified research expenses or gross receipts caused by a change in accounting methods used by such taxpayer between the current year and a year taken into account in computing such taxpayer's fixed-base percentage.

(7) Gross receipts

For purposes of this subsection, gross receipts for any taxable year shall be reduced by returns and allowances made during the taxable year. In the case of a foreign corporation, there shall be taken into account only gross receipts which are effectively connected with the conduct of a trade or business within the United States, the Commonwealth of Puerto Rico, or any possession of the United States.

(d) Qualified research defined

For purposes of this section—

(1) In general

The term ''qualified research'' means research—

(A) with respect to which expenditures may be treated as expenses under section 174,

(B) which is undertaken for the purpose of discovering information—

(i) which is technological in nature, and

(ii) the application of which is intended to be useful in the development of a new or improved business component of the taxpayer, and

(C) substantially all of the activities of which constitute elements of a process of experimentation for a purpose described in paragraph (3).

Such term does not include any activity described in paragraph (4).

(2) Tests to be applied separately to each business component

For purposes of this subsection—

(A) In general

Paragraph (1) shall be applied separately with respect to each business component of the taxpayer.

(B) Business component defined

The term ''business component'' means any product, process, computer software, technique, formula, or invention which is to be—

(i) held for sale, lease, or license, or

(ii) used by the taxpayer in a trade or business of the taxpayer.

(C) Special rule for production processes

Any plant process, machinery, or technique for commercial production of a busi-

ness component shall be treated as a separate business component (and not as part of the business component being produced).

(3) Purposes for which research may qualify for credit

For purposes of paragraph (1)(C)—

(A) In general

Research shall be treated as conducted for a purpose described in this paragraph if it relates to—

(i) a new or improved function,

(ii) performance, or

(iii) reliability or quality.

(B) Certain purposes not qualified

Research shall in no event be treated as conducted for a purpose described in this paragraph if it relates to style, taste, cosmetic, or seasonal design factors.

(4) Activities for which credit not allowed

The term ''qualified research'' shall not include any of the following:

(A) Research after commercial production

Any research conducted after the beginning of commercial production of the business component.

(B) Adaptation of existing business components

Any research related to the adaptation of an existing business component to a particular customer's requirement or need.

(C) Duplication of existing business component

Any research related to the reproduction of an existing business component (in whole or in part) from a physical examination of the business component itself or from plans, blueprints, detailed specifications, or publicly available information with respect to such business component.

(D) Surveys, studies, etc.

Any—

(i) efficiency survey,

(ii) activity relating to management function or technique,

(iii) market research, testing, or development (including advertising or promotions),

(iv) routine data collection, or

(v) routine or ordinary testing or inspection for quality control.

(E) Computer software

Except to the extent provided in regulations, any research with respect to computer software which is developed by (or for the benefit of) the taxpayer primarily for internal use by the taxpayer, other than for use in—

(i) an activity which constitutes qualified research (determined with regard to this subparagraph), or

(ii) a production process with respect to which the requirements of paragraph (1) are met.

(F) Foreign research

Any research conducted outside the United States, the Commonwealth of Puerto Rico, or any possession of the United States.

(G) Social sciences, etc.

Any research in the social sciences, arts, or humanities.

(H) Funded research

Any research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity).

(e) Credit allowable with respect to certain payments to qualified organizations for basic research

For purposes of this section—

(1) In general

In the case of any taxpayer who makes basic research payments for any taxable year—

(A) the amount of basic research payments taken into account under subsection (a)(2) shall be equal to the excess of—

(i) such basic research payments, over

(ii) the qualified organization base period amount, and

(B) that portion of such basic research payments which does not exceed the qualified organization base period amount shall be treated as contract research expenses for purposes of subsection (a)(1).

(2) Basic research payments defined

For purposes of this subsection—

(A) In general

The term ''basic research payment'' means, with respect to any taxable year, any amount paid in cash during such taxable year by a corporation to any qualified organization for basic research but only if—

(i) such payment is pursuant to a written agreement between such corporation and such qualified organization, and

(ii) such basic research is to be performed by such qualified organization.

(B) Exception to requirement that research be performed by the organization

In the case of a qualified organization described in subparagraph (C) or (D) of paragraph (6), clause (ii) of subparagraph (A) shall not apply.

(3) Qualified organization base period amount

For purposes of this subsection, the term ''qualified organization base period amount'' means an amount equal to the sum of—

(A) the minimum basic research amount, plus

(B) the maintenance-of-effort amount.

(4) Minimum basic research amount

For purposes of this subsection—

(A) In general

The term ''minimum basic research amount'' means an amount equal to the greater of—

(i) 1 percent of the average of the sum of amounts paid or incurred during the base period for—

(I) any in-house research expenses, and

(II) any contract research expenses, or

(ii) the amounts treated as contract research expenses during the base period by

reason of this subsection (as in effect during the base period).

(B) Floor amount

Except in the case of a taxpayer which was in existence during a taxable year (other than a short taxable year) in the base period, the minimum basic research amount for any base period shall not be less than 50 percent of the basic research payments for the taxable year for which a determination is being made under this subsection.

(5) Maintenance-of-effort amount

For purposes of this subsection—

(A) In general

The term ''maintenance-of-effort amount'' means, with respect to any taxable year, an amount equal to the excess (if any) of—

(i) an amount equal to—

(I) the average of the nondesignated university contributions paid by the taxpayer during the base period, multiplied by

(II) the cost-of-living adjustment for the calendar year in which such taxable year begins, over

(ii) the amount of nondesignated university contributions paid by the taxpayer during such taxable year.

(B) Nondesignated university contributions

For purposes of this paragraph, the term ''nondesignated university contribution'' means any amount paid by a taxpayer to any qualified organization described in paragraph (6)(A)—

(i) for which a deduction was allowable under section 170, and

(ii) which was not taken into account—

(I) in computing the amount of the credit under this section (as in effect during the base period) during any taxable year in the base period, or

(II) as a basic research payment for purposes of this section.

(C) Cost-of-living adjustment defined

(i) In general

The cost-of-living adjustment for any calendar year is the cost-of-living adjustment for such calendar year determined under section 1(f)(3), by substituting ''calendar year 1987'' for ''calendar year 1992'' in subparagraph (B) thereof.

(ii) Special rule where base period ends in a calendar year other than 1983 or 1984

If the base period of any taxpayer does not end in 1983 or 1984, section 1(f)(3)(B) shall, for purposes of this paragraph, be applied by substituting the calendar year in which such base period ends for 1992. Such substitution shall be in lieu of the substitution under clause (i).

(6) Qualified organization

For purposes of this subsection, the term ''qualified organization'' means any of the following organizations:

(A) Educational institutions

Any educational organization which—

(i) is an institution of higher education (within the meaning of section 3304(f)), and

(ii) is described in section 170(b)(1)(A)(ii).

(B) Certain scientific research organizations

Any organization not described in subparagraph (A) which—

(i) is described in section 501(c)(3) and is exempt from tax under section 501(a),

(ii) is organized and operated primarily to conduct scientific research, and

(iii) is not a private foundation.

(C) Scientific tax-exempt organizations

Any organization which—

(i) is described in—

(I) section 501(c)(3) (other than a private foundation), or

(II) section 501(c)(6),

(ii) is exempt from tax under section 501(a),

(iii) is organized and operated primarily to promote scientific research by qualified organizations described in subparagraph (A) pursuant to written research agreements, and

(iv) currently expends—

(I) substantially all of its funds, or

(II) substantially all of the basic research payments received by it,

for grants to, or contracts for basic research with, an organization described in subparagraph (A).

(D) Certain grant organizations

Any organization not described in subparagraph (B) or (C) which—

(i) is described in section 501(c)(3) and is exempt from tax under section 501(a) (other than a private foundation),

(ii) is established and maintained by an organization established before July 10, 1981, which meets the requirements of clause (i),

(iii) is organized and operated exclusively for the purpose of making grants to organizations described in subparagraph (A) pursuant to written research agreements for purposes of basic research, and

(iv) makes an election, revocable only with the consent of the Secretary, to be treated as a private foundation for purposes of this title (other than section 4940, relating to excise tax based on investment income).

(7) Definitions and special rules

For purposes of this subsection—

(A) Basic research

The term ''basic research'' means any original investigation for the advancement of scientific knowledge not having a specific commercial objective, except that such term shall not include—

(i) basic research conducted outside of the United States, and

(ii) basic research in the social sciences, arts, or humanities.

(B) Base period

The term ''base period'' means the 3-taxable-year period ending with the taxable

year immediately preceding the 1st taxable year of the taxpayer beginning after December 31, 1983.

(C) Exclusion from incremental credit calculation

For purposes of determining the amount of credit allowable under subsection (a)(1) for any taxable year, the amount of the basic research payments taken into account under subsection (a)(2)—

(i) shall not be treated as qualified research expenses under subsection (a)(1)(A), and

(ii) shall not be included in the computation of base amount under subsection (a)(1)(B).

(D) Trade or business qualification

For purposes of applying subsection (b)(1) to this subsection, any basic research payments shall be treated as an amount paid in carrying on a trade or business of the taxpayer in the taxable year in which it is paid (without regard to the provisions of subsection (b)(3)(B)).

(E) Certain corporations not eligible

The term ''corporation'' shall not include—

(i) an S corporation,

(ii) a personal holding company (as defined in section 542), or

(iii) a service organization (as defined in section 414(m)(3)).

(f) Special rules

For purposes of this section—

(1) Aggregation of expenditures

(A) Controlled group of corporations

In determining the amount of the credit under this section—

(i) all members of the same controlled group of corporations shall be treated as a single taxpayer, and

(ii) the credit (if any) allowable by this section to each such member shall be its proportionate shares of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, giving rise to the credit.

(B) Common control

Under regulations prescribed by the Secretary, in determining the amount of the credit under this section—

(i) all trades or businesses (whether or not incorporated) which are under common control shall be treated as a single taxpayer, and

(ii) the credit (if any) allowable by this section to each such person shall be its proportionate shares of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, giving rise to the credit.

The regulations prescribed under this subparagraph shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(2) Allocations

(A) Pass-thru in the case of estates and trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(B) Allocation in the case of partnerships

In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

(3) Adjustments for certain acquisitions, etc.

Under regulations prescribed by the Secretary—

(A) Acquisitions

If, after December 31, 1983, a taxpayer acquires the major portion of a trade or business of another person (hereinafter in this paragraph referred to as the ''predecessor'') or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section for any taxable year ending after such acquisition, the amount of qualified research expenses paid or incurred by the taxpayer during periods before such acquisition shall be increased by so much of such expenses paid or incurred by the predecessor with respect to the acquired trade or business as is attributable to the portion of such trade or business or separate unit acquired by the taxpayer, and the gross receipts of the taxpayer for such periods shall be increased by so much of the gross receipts of such predecessor with respect to the acquired trade or business as is attributable to such portion.

(B) Dispositions

If, after December 31, 1983—

(i) a taxpayer disposes of the major portion of any trade or business or the major portion of a separate unit of a trade or business in a transaction to which subparagraph (A) applies, and

(ii) the taxpayer furnished the acquiring person such information as is necessary for the application of subparagraph (A),

then, for purposes of applying this section for any taxable year ending after such disposition, the amount of qualified research expenses paid or incurred by the taxpayer during periods before such disposition shall be decreased by so much of such expenses as is attributable to the portion of such trade or business or separate unit disposed of by the taxpayer, and the gross receipts of the taxpayer for such periods shall be decreased by so much of the gross receipts as is attributable to such portion.

(C) Certain reimbursements taken into account in determining fixed-base percentage

If during any of the 3 taxable years following the taxable year in which a disposition to which subparagraph (B) applies occurs, the disposing taxpayer (or a person with whom the taxpayer is required to aggregate expenditures under paragraph (1)) reimburses the acquiring person (or a person required to so aggregate expenditures with

such person) for research on behalf of the taxpayer, then the amount of qualified research expenses of the taxpayer for the taxable years taken into account in computing the fixed-base percentage shall be increased by the lesser of—

(i) the amount of the decrease under subparagraph (B) which is allocable to taxable years so taken into account, or

(ii) the product of the number of taxable years so taken into account, multiplied by the amount of the reimbursement described in this subparagraph.

(4) Short taxable years

In the case of any short taxable year, qualified research expenses and gross receipts shall be annualized in such circumstances and under such methods as the Secretary may prescribe by regulation.

(5) Controlled group of corporations

The term ''controlled group of corporations'' has the same meaning given to such term by section 1563(a), except that—

(A) ''more than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears in section 1563(a)(1), and

(B) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

(6) Energy research consortium

(A) In general

The term ''energy research consortium'' means any organization—

(i) which is—

(I) described in section 501(c)(3) and is exempt from tax under section 501(a) and is organized and operated primarily to conduct energy research, or

(II) organized and operated primarily to conduct energy research in the public interest (within the meaning of section 501(c)(3)),

(ii) which is not a private foundation,

(iii) to which at least 5 unrelated persons paid or incurred during the calendar year in which the taxable year of the organization begins amounts (including as contributions) to such organization for energy research, and

(iv) to which no single person paid or incurred (including as contributions) during such calendar year an amount equal to more than 50 percent of the total amounts received by such organization during such calendar year for energy research.

(B) Treatment of persons

All persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as related persons for purposes of subparagraph (A)(iii) and as a single person for purposes of subparagraph (A)(iv).

(C) Foreign research

For purposes of subsection (a)(3), amounts paid or incurred for any energy research conducted outside the United States, the Commonwealth of Puerto Rico, or any possession of the United States shall not be taken into account.

(D) Denial of double benefit

Any amount taken into account under subsection (a)(3) shall not be taken into account under paragraph (1) or (2) of subsection (a).

(E) Energy research

The term ''energy research'' does not include any research which is not qualified research.

(g) Special rule for pass-thru of credit

In the case of an individual who—

(1) owns an interest in an unincorporated trade or business,

(2) is a partner in a partnership,

(3) is a beneficiary of an estate or trust, or

(4) is a shareholder in an S corporation,

the amount determined under subsection (a) for any taxable year shall not exceed an amount (separately computed with respect to such person's interest in such trade or business or entity) equal to the amount of tax attributable to that portion of a person's taxable income which is allocable or apportionable to the person's interest in such trade or business or entity. If the amount determined under subsection (a) for any taxable year exceeds the limitation of the preceding sentence, such amount may be carried to other taxable years under the rules of section 39; except that the limitation of the preceding sentence shall be taken into account in lieu of the limitation of section 38(c) in applying section 39.

(h) Termination

(1) In general

This section shall not apply to any amount paid or incurred—

(A) after June 30, 1995, and before July 1, 1996, or

(B) after December 31, 2011.

(2) Termination of alternative incremental credit

No election under subsection (c)(4) shall apply to taxable years beginning after December 31, 2008.

(2)[1] Computation for taxable year in which credit terminates

In the case of any taxable year with respect to which this section applies to a number of days which is less than the total number of days in such taxable year—

(A) the amount determined under subsection (c)(1)(B) with respect to such taxable year shall be the amount which bears the same ratio to such amount (determined without regard to this paragraph) as the number of days in such taxable year to which this section applies bears to the total number of days in such taxable year, and

(B) for purposes of subsection (c)(5), the average qualified research expenses for the preceding 3 taxable years shall be the amount which bears the same ratio to such average qualified research expenses (determined without regard to this paragraph) as the number of days in such taxable year to which this section applies bears to the total number of days in such taxable year.

[1] So in original. Probably should be ''(3)''.

(Added Pub. L. 97–34, title II, § 221(a), Aug. 13, 1981, 95 Stat. 241, § 44F; amended Pub. L. 97–354, § 5(a)(3), Oct. 19, 1982, 96 Stat. 1692; Pub. L. 97–448, title I, § 102(b)(2), Jan. 12, 1983, 96 Stat. 2372; renumbered § 30 and amended Pub. L. 98–369, div. A, title IV, §§ 471(c), 474(i)(1), title VI, § 612(e)(1), July 18, 1984, 98 Stat. 826, 831, 912; renumbered § 41 and amended Pub. L. 99–514, title II, § 231(a)(1), (b), (c), (d)(2), (3)(C)(ii), (e), title XVIII, § 1847(b)(1), Oct. 22, 1986, 100 Stat. 2173, 2175, 2178–2180, 2856; Pub. L. 100–647, title I, § 1002(h)(1), title IV, §§ 4007(a), 4008(b)(1), Nov. 10, 1988, 102 Stat. 3370, 3652; Pub. L. 101–239, title VII, §§ 7110(a)(1), (b), (b)[(c)], 7814(e)(2)(C), Dec. 19, 1989, 103 Stat. 2322, 2323, 2325, 2414; Pub. L. 101–508, title XI, §§ 11101(d)(1)(C), 11402(a), Nov. 5, 1990, 104 Stat. 1388–405, 1388–473; Pub. L. 102–227, title I, § 102(a), Dec. 11, 1991, 105 Stat. 1686; Pub. L. 103–66, title XIII, §§ 13111(a)(1), 13112(a), (b), 13201(b)(3)(C), Aug. 10, 1993, 107 Stat. 420, 421, 459; Pub. L. 104–188, title I, §§ 1201(e)(1), (4), 1204(a)–(d), Aug. 20, 1996, 110 Stat. 1772–1774; Pub. L. 105–34, title VI, § 601(a), (b)(1), Aug. 5, 1997, 111 Stat. 861; Pub. L. 105–277, div. J, title I, § 1001(a), Oct. 21, 1998, 112 Stat. 2681–888; Pub. L. 106–170, title V, § 502(a)(1), (b)(1), (c)(1), Dec. 17, 1999, 113 Stat. 1919; Pub. L. 108–311, title III, § 301(a)(1), Oct. 4, 2004, 118 Stat. 1178; Pub. L. 109–58, title XIII, § 1351(a), (b), Aug. 8, 2005, 119 Stat. 1056, 1057; Pub. L. 109–135, title IV, § 402(*l*), Dec. 21, 2005, 119 Stat. 2615; Pub. L. 109–432, div. A, title I, § 104(a)(1), (b)(1), (c)(1), Dec. 20, 2006, 120 Stat. 2934, 2935; Pub. L. 110–172, §§ 6(c), 11(e)(2), Dec. 29, 2007, 121 Stat. 2479, 2489; Pub. L. 110–343, div. C, title III, § 301(a)(1), (b)–(d), Oct. 3, 2008, 122 Stat. 3865, 3866; Pub. L. 111–312, title VII, § 731(a), Dec. 17, 2010, 124 Stat. 3317.)

References in Text

The date of the enactment of the Energy Tax Incentives Act of 2005, referred to in subsec. (b)(3)(D)(iv), is the date of enactment of title XIII of Pub. L. 109–58, which was approved Aug. 8, 2005.

Prior Provisions

A prior section 41, added Pub. L. 97–34, title III, § 331(a), Aug. 13, 1981, 95 Stat. 289, § 44G; amended Pub. L. 97–448, title I, § 103(g)(1), Jan. 12, 1983, 96 Stat. 2379; renumbered § 41 and amended Pub. L. 98–369, div. A, title I, § 14, title IV, §§ 471(c), 474(*l*), 491(e)(2), (3), July 18, 1984, 98 Stat. 505, 826, 833, 852, 853, related to employee stock ownership credit, prior to repeal by Pub. L. 99–514, title XI, § 1171(a), Oct. 22, 1986, 100 Stat. 2513, applicable to compensation paid or accrued after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 1171(c) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 38 of this title. For transition rules relating to such repeal, see section 1177 of Pub. L. 99–514, set out as a Transition Rules note under section 38 of this title.

Another prior section 41 was renumbered section 24 of this title.

Amendments

2010—Subsec. (h)(1)(B). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (c)(5)(A). Pub. L. 110–343, § 301(c), substituted ''14 percent (12 percent in the case of taxable years ending before January 1, 2009)'' for ''12 percent''.

Subsec. (h)(1)(B). Pub. L. 110–343, § 301(a)(1), substituted ''December 31, 2009'' for ''December 31, 2007''.

Subsec. (h)(2). Pub. L. 110–343, § 301(d), redesignated par. (3) as (2) related to computation for taxable year in which credit terminates.

Pub. L. 110–343, § 301(b), added par. (2). Former par. (2) redesignated (3).

Subsec. (h)(3). Pub. L. 110–343, § 301(d), amended par. (3) generally, redesignating it as par. (2) related to computation for taxable year in which credit terminated and amending heading and text generally. Prior to amendment, text read as follows: ''In the case of any taxable year with respect to which this section applies to a number of days which is less than the total number of days in such taxable year, the base amount with respect to such taxable year shall be the amount which bears the same ratio to the base amount for such year (determined without regard to this paragraph) as the number of days in such taxable year to which this section applies bears to the total number of days in such taxable year.''

Pub. L. 110–343, § 301(b), redesignated par. (2) as (3).

2007—Subsec. (a)(3). Pub. L. 110–172, § 6(c)(1), inserted ''for energy research'' before period at end.

Subsec. (f)(1)(A)(ii), (B)(ii). Pub. L. 110–172, § 11(e)(2), substituted ''qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums,'' for ''qualified research expenses and basic research payments''.

Subsec. (f)(6)(E). Pub. L. 110–172, § 6(c)(2), added subpar. (E).

2006—Subsec. (c)(4)(A)(i). Pub. L. 109–432, § 104(b)(1)(A), substituted ''3 percent'' for ''2.65 percent''.

Subsec. (c)(4)(A)(ii). Pub. L. 109–432, § 104(b)(1)(B), substituted ''4 percent'' for ''3.2 percent''.

Subsec. (c)(4)(A)(iii). Pub. L. 109–432, § 104(b)(1)(C), substituted ''5 percent'' for ''3.75 percent''.

Subsec. (c)(5) to (7). Pub. L. 109–432, § 104(c)(1), added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively.

Subsec. (h)(1)(B). Pub. L. 109–432, § 104(a)(1), substituted ''2007'' for ''2005''.

2005—Subsec. (a)(3). Pub. L. 109–58, § 1351(a)(1), added par. (3).

Subsec. (b)(3)(C)(ii). Pub. L. 109–135, § 402(*l*)(2), struck out ''(other than an energy research consortium)'' after ''organization'' in introductory provisions.

Pub. L. 109–58, § 1351(a)(3), inserted ''(other than an energy research consortium)'' after ''organization'' in introductory provisions.

Subsec. (b)(3)(D). Pub. L. 109–58, § 1351(b), added subpar. (D).

Subsec. (f)(6). Pub. L. 109–58, § 1351(a)(2), added par. (6).

Subsec. (f)(6)(C), (D). Pub. L. 109–135, § 402(*l*)(1), added subpars. (C) and (D).

2004—Subsec. (h)(1)(B). Pub. L. 108–311 substituted ''December 31, 2005'' for ''June 30, 2004''.

1999—Subsec. (c)(4)(A)(i). Pub. L. 106–170, § 502(b)(1)(A), substituted ''2.65 percent'' for ''1.65 percent''.

Subsec. (c)(4)(A)(ii). Pub. L. 106–170, § 502(b)(1)(B), substituted ''3.2 percent'' for ''2.2 percent''.

Subsec. (c)(4)(A)(iii). Pub. L. 106–170, § 502(b)(1)(C), substituted ''3.75 percent'' for ''2.75 percent''.

Subsecs. (c)(6), (d)(4)(F). Pub. L. 106–170, § 502(c)(1), inserted '', the Commonwealth of Puerto Rico, or any possession of the United States'' before period at end.

Subsec. (h)(1). Pub. L. 106–170, § 502(a)(1)(B), struck out concluding provisions which read as follows: ''Notwithstanding the preceding sentence, in the case of a taxpayer making an election under subsection (c)(4) for its first taxable year beginning after June 30, 1996, and before July 1, 1997, this section shall apply to amounts paid or incurred during the 36-month period beginning with the first month of such year. The 36 months referred to in the preceding sentence shall be reduced by the number of full months after June 1996 (and before the first month of such first taxable year) during which the taxpayer paid or incurred any amount which is taken into account in determining the credit under this section.''

Subsec. (h)(1)(B). Pub. L. 106–170, § 502(a)(1)(A), substituted ''June 30, 2004'' for ''June 30, 1999''.

1998—Subsec. (h)(1). Pub. L. 105–277 substituted ''June 30, 1999'' for ''June 30, 1998'' in subpar. (B) and sub-

stituted ''36-month'' for ''24-month'' and ''36 months'' for ''24 months'' in concluding provisions.

1997—Subsec. (c)(4)(B). Pub. L. 105–34, § 601(b)(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''An election under this paragraph may be made only for the first taxable year of the taxpayer beginning after June 30, 1996. Such an election shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.''

Subsec. (h)(1). Pub. L. 105–34, § 601(a), substituted ''June 30, 1998'' for ''May 31, 1997'' in subpar. (B) and ''during the 24-month period beginning with the first month of such year. The 24 months referred to in the preceding sentence shall be reduced by the number of full months after June 1996 (and before the first month of such first taxable year) during which the taxpayer paid or incurred any amount which is taken into account in determining the credit under this section.'' for ''during the first 11 months of such taxable year.'' in concluding provisions.

1996—Subsec. (b)(2)(D)(iii). Pub. L. 104–188, § 1201(e)(1), (4), substituted ''work opportunity credit'' for ''targeted jobs credit'' in heading and text.

Subsec. (b)(3)(C). Pub. L. 104–188, § 1204(d), added subpar. (C).

Subsec. (c)(3)(B)(i). Pub. L. 104–188, § 1204(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The fixed-base percentage shall be determined under this subparagraph if there are fewer than 3 taxable years beginning after December 31, 1983, and before January 1, 1989, in which the taxpayer had both gross receipts and qualified research expenses.''

Subsec. (c)(4) to (6). Pub. L. 104–188, § 1204(c), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (h). Pub. L. 104–188, § 1204(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(1) IN GENERAL.—This section shall not apply to any amount paid or incurred after June 30, 1995.

''(2) COMPUTATION OF BASE AMOUNT.—In the case of any taxable year which begins before July 1, 1995, and ends after June 30, 1995, the base amount with respect to such taxable year shall be the amount which bears the same ratio to the base amount for such year (determined without regard to this paragraph) as the number of days in such taxable year before July 1, 1995, bears to the total number of days in such taxable year.''

1993—Subsec. (c)(3)(B)(ii). Pub. L. 103–66, § 13112(a), amended heading and text of cl. (ii) generally. Prior to amendment, text read as follows: ''In a case to which this subparagraph applies, the fixed-base percentage is 3 percent.''

Subsec. (c)(3)(B)(iii). Pub. L. 103–66, § 13112(b)(1), substituted ''clauses (i) and (ii)'' for ''clause (i)''.

Subsec. (c)(3)(D). Pub. L. 103–66, § 13112(b)(2), substituted ''subparagraphs (A) and (B)(ii)'' for ''subparagraph (A)''.

Subsec. (e)(5)(C). Pub. L. 103–66, § 13201(b)(3)(C), substituted ''1992'' for ''1989'' in cls. (i) and (ii).

Subsec. (h). Pub. L. 103–66, § 13111(a)(1), substituted ''June 30, 1995'' for ''June 30, 1992'' in pars. (1) and (2) and ''July 1, 1995'' for ''July 1, 1992'' in two places in par. (2).

1991—Subsec. (h). Pub. L. 102–227 substituted ''June 30, 1992'' for ''December 31, 1991'' in pars. (1) and (2), and ''July 1, 1992'' for ''January 1, 1992'' in two places in par. (2).

1990—Subsec. (e)(5)(C)(i). Pub. L. 101–508, § 11101(d)(1)(C)(i), inserted before period at end '', by substituting 'calendar year 1987' for 'calendar year 1989' in subparagraph (B) thereof''.

Subsec. (e)(5)(C)(ii). Pub. L. 101–508, § 11101(d)(1)(C)(ii), (iii), substituted ''1989'' for ''1987'' and inserted at end ''Such substitution shall be in lieu of the substitution under clause (i).''

Subsec. (h). Pub. L. 101–508, § 11402(a), substituted ''December 31, 1991'' for ''December 31, 1990'' wherever appearing and ''January 1, 1992'' for ''January 1, 1991'' wherever appearing.

1989—Subsec. (a)(1)(B). Pub. L. 101–239, § 7110(b)(2)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the base period research expenses, and''.

Subsec. (b)(4). Pub. L. 101–239, § 7110(b)[(c)], added par. (4).

Subsec. (c). Pub. L. 101–239, § 7110(b)(1), substituted ''Base amount'' for ''Base period research expenses'' in heading and amended text generally, substituting pars. (1) to (5) for former pars. (1) to (3) which defined ''base period research expenses'' and ''base period'' and prescribed minimum base period research expenses.

Subsec. (e)(7)(C)(ii). Pub. L. 101–239, § 7110(b)(2)(B), substituted ''base amount'' for ''base period research expenses''.

Subsec. (f)(1). Pub. L. 101–239, § 7110(b)(2)(C), substituted ''proportionate shares of the qualified research expenses and basic research payments'' for ''proportionate share of the increase in qualified research expenses'' in subpars. (A)(ii) and (B)(ii).

Subsec. (f)(3)(A). Pub. L. 101–239, § 7110(b)(2)(D), substituted ''December 31, 1983'' for ''June 30, 1980'' and inserted before period at end '', and the gross receipts of the taxpayer for such periods shall be increased by so much of the gross receipts of such predecessor with respect to the acquired trade or business as is attributable to such portion''.

Subsec. (f)(3)(B). Pub. L. 101–239, § 7110(b)(2)(E), substituted ''December 31, 1983'' for ''June 30, 1980'' in introductory provisions and inserted before period at end '', and the gross receipts of the taxpayer for such periods shall be decreased by so much of the gross receipts as is attributable to such portion''.

Subsec. (f)(3)(C). Pub. L. 101–239, § 7110(b)(2)(F), substituted ''Certain reimbursements taken into account in determining fixed-base percentage'' for ''Increase in base period'' in heading, ''for the taxable years taken into account in computing the fixed-base percentage shall be increased by the lesser of'' for ''for the base period for such taxable year shall be increased by the lesser of'' in introductory provisions, and new cls. (i) and (ii) for former cls. (i) and (ii) which read as follows:

''(i) the amount of the decrease under subparagraph (B) which is allocable to such base period, or

''(ii) the product of the number of years in the base period, multiplied by the amount of the reimbursement described in this subparagraph.''

Subsec. (f)(4). Pub. L. 101–239, § 7110(b)(2)(G), inserted ''and gross receipts'' after ''qualified research expenses''.

Subsec. (h). Pub. L. 101–239, § 7814(e)(2)(C), redesignated subsec. (i) as (h) and struck out former subsec. (h) which related to election, time for election, and manner of election by taxpayer to have research credit not apply for a taxable year.

Subsec. (h)(1). Pub. L. 101–239, § 7110(a)(1)(A), substituted ''December 31, 1990'' for ''December 31, 1989''.

Subsec. (h)(2). Pub. L. 101–239, § 7110(a)(1), substituted ''January 1, 1991'' for ''January 1, 1990'' in two places and substituted ''December 31, 1990'' for ''December 31, 1989''.

Pub. L. 101–239, § 7110(b)(2)(H), substituted ''base amount'' for ''base period expenses'' in heading and ''the base amount with respect to such taxable year shall be the amount which bears the same ratio to the base amount for such year (determined without regard to this paragraph)'' for ''any amount for any base period with respect to such taxable year shall be the amount which bears the same ratio to such amount for such base period'' in text.

Subsec. (i). Pub. L. 101–239, § 7814(e)(2)(C), redesignated subsec. (i) as (h).

1988—Subsec. (g). Pub. L. 100–647, § 1002(h)(1), inserted at end ''If the amount determined under subsection (a) for any taxable year exceeds the limitation of the preceding sentence, such amount may be carried to other taxable years under the rules of section 39; except that the limitation of the preceding sentence shall be taken

into account in lieu of the limitation of section 38(c) in applying section 39.''

Subsec. (h). Pub. L. 100–647, §4008(b)(1), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 100–647, §4008(b)(1), redesignated former subsec. (h) as (i).

Pub. L. 100–647, §4007(a), substituted ''1989'' and ''1990'' for ''1988'' and ''1989'', respectively, wherever appearing in subsec. (h), prior to redesignation as subsec. (i) by Pub. L. 100–647, §4008(b)(1).

1986—Pub. L. 99–514, §231(d)(2), renumbered section 30 of this title as this section.

Subsec. (a). Pub. L. 99–514, §231(c)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 25 percent of the excess (if any) of—

''(1) the qualified research expenses for the taxable year, over

''(2) the base period research expenses.''

Subsec. (b)(2)(A)(iii). Pub. L. 99–514, §231(e), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''any amount paid or incurred to another person for the right to use personal property in the conduct of qualified research.''

Subsec. (b)(2)(D)(iii). Pub. L. 99–514, §1847(b)(1), substituted ''targeted jobs credit'' for ''new jobs or WIN credit'' in heading.

Subsec. (d). Pub. L. 99–514, §231(b), inserted ''defined'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section the term 'qualified research' has the same meaning as the term research or experimental has under section 174, except that such term shall not include—

''(1) qualified research conducted outside the United States,

''(2) qualified research in the social sciences or humanities, and

''(3) qualified research to the extent funded by any grant, contract, or otherwise by another person (or any governmental entity).''

Subsec. (e). Pub. L. 99–514, §231(c)(2), amended subsec. (e) generally, substituting ''Credit allowable with respect to certain payments to qualified organizations for basic research'' for ''Credit available with respect to certain basic research by colleges, universities, and certain research organizations'' in heading, and restating and expanding provisions of former pars. (1) to (4) into new pars. (1) to (7).

Subsec. (g). Pub. L. 99–514, §231(d)(3)(C)(ii), amended subsec. (g) generally, substituting provisions relating to special rule for pass-thru of credit for provisions relating to limitation on amount of credit for research based on amount of tax liability.

Subsec. (h). Pub. L. 99–514, §231(a)(1), added subsec. (h).

1984—Pub. L. 98–369, §471(c), renumbered section 44F of this title as this section.

Subsec. (b)(2)(D)(iii). Pub. L. 98–369, §474(i)(1)(A), substituted ''in determining the targeted jobs credit under section 51(a)'' for ''in computing the credit under section 40 or 44B''.

Subsec. (g)(1)(A). Pub. L. 98–369, §612(e)(1), substituted ''section 26(b)'' for ''section 25(b)''.

Pub. L. 98–369, §474(i)(1)(B), amended subpar. (A) generally, substituting ''shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 25(b)), reduced by the sum of the credits allowable under subpart A and sections 27, 28, and 29'' for ''shall not exceed the amount of the tax imposed by this chapter reduced by the sum of the credits allowable under a section of this part having a lower number or letter designation than this section, other than the credits allowable by sections 31, 39, and 43. For purposes of the preceding sentence, the term 'tax imposed by this chapter' shall not include any tax treated as not imposed by this chapter under the last sentence of section 53(a)''.

1983—Subsec. (b)(2)(A). Pub. L. 97–448 inserted provision that cl. (iii) would not apply to any amount to the extent that the taxpayer (or any person with whom the taxpayer must aggregate expenditures under subsection (f)(1)) received or accrued any amount from any other person for the right to use substantially identical personal property.

1982—Subsec. (f)(2)(A). Pub. L. 97–354, §5(a)(3)(A), substituted ''Pass-thru in the case of estates and trusts'' for ''Pass-through in the case of subchapter S corporations, etc.'' in subpar. heading, and substituted provisions relating to the applicability of rules similar to rules of subsec. (d) of section 52 for provisions relating to the applicability of rules similar to rules of subsecs. (d) and (e) of section 52.

Subsec. (g)(1)(B)(iv). Pub. L. 97–354, §5(a)(3)(B), substituted ''an S corporation'' for ''an electing small business corporation (within the meaning of section 1371(b))''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §731(c), Dec. 17, 2010, 124 Stat. 3317, provided that: ''The amendments made by this section [amending this section and section 45C of this title] shall apply to amounts paid or incurred after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §301(e), Oct. 3, 2008, 122 Stat. 3866, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 45C of this title] shall apply to taxable years beginning after December 31, 2007.

''(2) EXTENSION.—The amendments made by subsection (a) [amending this section and section 45C of this title] shall apply to amounts paid or incurred after December 31, 2007.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 6(c) of Pub. L. 110–172 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 6(e) of Pub. L. 110–172, set out as a note under section 30C of this title.

Pub. L. 110–172, §11(e)(3), Dec. 29, 2007, 121 Stat. 2489, provided that: ''The amendments made by this subsection [amending this section and section 6427 of this title] shall take effect as if included in the provisions of the Energy Policy Act of 2005 [Pub. L. 109–58] to which they relate.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §104(a)(3), Dec. 20, 2006, 120 Stat. 2934, provided that: ''The amendments made by this subsection [amending this section and section 45C of this title] shall apply to amounts paid or incurred after December 31, 2005.''

Pub. L. 109–432, div. A, title I, §104(b)(2), (3), Dec. 20, 2006, 120 Stat. 2934, provided that:

''(2) EFFECTIVE DATE.—Except as provided in paragraph (3), the amendments made by this subsection [amending this section] shall apply to taxable years ending after December 31, 2006.

''(3) TRANSITION RULE.—

''(A) IN GENERAL.—In the case of a specified transitional taxable year for which an election under section 41(c)(4) of the Internal Revenue Code of 1986 applies, the credit determined under section 41(a)(1) of such Code shall be equal to the sum of—

''(i) the applicable 2006 percentage multiplied by the amount determined under section 41(c)(4)(A) of such Code (as in effect for taxable years ending on December 31, 2006), plus

''(ii) the applicable 2007 percentage multiplied by the amount determined under section 41(c)(4)(A) of such Code (as in effect for taxable years ending on January 1, 2007).

''(B) DEFINITIONS.—For purposes of subparagraph (A)—

''(i) SPECIFIED TRANSITIONAL TAXABLE YEAR.—The term 'specified transitional taxable year' means

any taxable year which ends after December 31, 2006, and which includes such date.

''(ii) APPLICABLE 2006 PERCENTAGE.—The term 'applicable 2006 percentage' means the number of days in the specified transitional taxable year before January 1, 2007, divided by the number of days in such taxable year.

''(iii) APPLICABLE 2007 PERCENTAGE.—The term 'applicable 2007 percentage' means the number of days in the specified transitional taxable year after December 31, 2006, divided by the number of days in such taxable year.''

Pub. L. 109–432, div. A, title I, §104(c)(2)–(4), Dec. 20, 2006, 120 Stat. 2935, provided that:

''(2) TRANSITION RULE FOR DEEMED REVOCATION OF ELECTION OF ALTERNATIVE INCREMENTAL CREDIT.—In the case of an election under section 41(c)(4) of the Internal Revenue Code of 1986 which applies to the taxable year which includes January 1, 2007, such election shall be treated as revoked with the consent of the Secretary of the Treasury if the taxpayer makes an election under section 41(c)(5) of such Code (as added by this subsection) for such year.

''(3) EFFECTIVE DATE.—Except as provided in paragraph (4), the amendments made by this subsection [amending this section] shall apply to taxable years ending after December 31, 2006.

''(4) TRANSITION RULE FOR NONCALENDAR TAXABLE YEARS.—

''(A) IN GENERAL.—In the case of a specified transitional taxable year for which an election under section 41(c)(5) of the Internal Revenue Code of 1986 (as added by this subsection) applies, the credit determined under section 41(a)(1) of such Code shall be equal to the sum of—

''(i) the applicable 2006 percentage multiplied by the amount determined under section 41(a)(1) of such Code (as in effect for taxable years ending on December 31, 2006), plus

''(ii) the applicable 2007 percentage multiplied by the amount determined under section 41(c)(5) of such Code (as in effect for taxable years ending on January 1, 2007).

''(B) DEFINITIONS AND SPECIAL RULES.—For purposes of subparagraph (A)—

''(i) DEFINITIONS.—Terms used in this paragraph which are also used in subsection (b)(3) [set out above] shall have the respective meanings given such terms in such subsection.

''(ii) DUAL ELECTIONS PERMITTED.—Elections under paragraphs (4) and (5) of section 41(c) of such Code may both apply for the specified transitional taxable year.

''(iii) DEFERRAL OF DEEMED ELECTION REVOCATION.—Any election under section 41(c)(4) of the Internal Revenue Code of 1986 treated as revoked under paragraph (2) shall be treated as revoked for the taxable year after the specified transitional taxable year.''

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by Pub. L. 109–135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

Pub. L. 109–58, title XIII, §1351(c), Aug. 8, 2005, 119 Stat. 1058, provided that: ''The amendments made by this section [amending this section] shall apply to amounts paid or incurred after the date of the enactment of this Act [Aug. 8, 2005], in taxable years ending after such date.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, §301(b), Oct. 4, 2004, 118 Stat. 1178, provided that: ''The amendments made by this section [amending this section and section 45C of this title] shall apply to amounts paid or incurred after June 30, 2004.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §502(a)(3), Dec. 17, 1999, 113 Stat. 1919, provided that: ''The amendments made by this subsection [amending this section and section 45C of this title] shall apply to amounts paid or incurred after June 30, 1999.''

Pub. L. 106–170, title V, §502(b)(2), Dec. 17, 1999, 113 Stat. 1919, provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years beginning after June 30, 1999.''

Pub. L. 106–170, title V, §502(c)(3), Dec. 17, 1999, 113 Stat. 1920, provided that: ''The amendments made by this subsection [amending this section and section 280C of this title] shall apply to amounts paid or incurred after June 30, 1999.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title I, §1001(c), Oct. 21, 1998, 112 Stat. 2681–888, provided that: ''The amendments made by this section [amending this section and section 45C of this title] shall apply to amounts paid or incurred after June 30, 1998.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 601(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and section 45C of this title] shall apply to amounts paid or incurred after May 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1201(e)(1), (4) of Pub. L. 104–188 applicable to individuals who begin work for the employer after Sept. 30, 1996, see section 1201(g) of Pub. L. 104–188, set out as a note under section 38 of this title.

Section 1204(f) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 28 [now 45C] of this title] shall apply to taxable years ending after June 30, 1996.

''(2) SUBSECTIONS (c) AND (d).—The amendments made by subsections (c) and (d) [amending this section] shall apply to taxable years beginning after June 30, 1996.

''(3) ESTIMATED TAX.—The amendments made by this section shall not be taken into account under section 6654 or 6655 of the Internal Revenue Code of 1986 (relating to failure to pay estimated tax) in determining the amount of any installment required to be paid for a taxable year beginning in 1997.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13111(a)(1) of Pub. L. 103–66 applicable to taxable years ending after June 30, 1992, see section 13111(c) of Pub. L. 103–66, set out as a note under section 45C of this title.

Section 13112(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1993.''

Amendment by section 13201(b)(3)(C) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103–66, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–227 applicable to taxable years ending after Dec. 31, 1991, see section 102(c) of Pub. L. 102–227, set out as a note under section 45C of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(1)(C) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

Amendment by section 11402(a) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1989, see section 11402(c) of Pub. L. 101–508, set out as a note under section 45C of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7110(e) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and sections 28, 174, 196, and 280C of this title] (other than subsection (a) [amending this section and section 28 of this title]) shall apply to taxable years beginning after December 31, 1989.''

Amendment by section 7814(e)(2)(C) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1002(h)(1) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 4008(d) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and sections 28, 196, 280C, and 6501 of this title] shall apply to taxable years beginning after December 31, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 231(g) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in this subsection (2), the amendments made by this section [amending this section and sections 28, 38, 39, 108, 170, 280C, 381, 936, 6411, and 6511 of this title, renumbering former section 30 of this title as this section, and enacting and amending provisions set out as notes under this section] shall apply to taxable years beginning after December 31, 1985.

''(2) SUBSECTION (a).—The amendments made by subsection (a) [amending this section and provisions set out as a note under this section] shall apply to taxable years ending after December 31, 1985.

''(3) BASIC RESEARCH.—Section 41(a)(2) of the Internal Revenue Code of 1986 (as added by this section), and the amendments made by subsection (c)(2) [amending this section], shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 1847(b)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(i)(1) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 612(e)(1) of Pub. L. 98–369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 102(h)(2) of Pub. L. 97–448 provided that the amendment made by that section is effective only with respect to amounts paid or incurred after March 31, 1982.

EFFECTIVE DATE OF 1982 AMENDMENT

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

EFFECTIVE DATE

Pub. L. 97–34, title II, §221(d), Aug. 13, 1981, 95 Stat. 241, as amended by Pub. L. 99–514, §2, title II, §231(a)(2), Oct. 22, 1986, 100 Stat. 2095, 2173, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 55, 381, 383, 6096, 6411, and 6511 of this title] shall apply to amounts paid or incurred after June 30, 1981.

''(2) TRANSITIONAL RULE.—

''(A) IN GENERAL.—If, with respect to the first taxable year to which the amendments made by this section apply and which ends in 1981 or 1982, the taxpayer may only take into account qualified research expenses paid or incurred during a portion of such taxable year, the amount of the qualified research expenses taken into account for the base period of such taxable year shall be the amount which bears the same ratio to the total qualified research expenses for such base period as the number of months in such portion of such taxable year bears to the total number of months in such taxable year.

''(B) DEFINITIONS.—For purposes of the preceding sentence, the terms 'qualified research expenses' and 'base period' have the meanings given to such terms by section 44F [now 41] of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section).''

SPECIAL RULE FOR ELECTIONS UNDER EXPIRED PROVISIONS

Pub. L. 109–432, div. A, title I, §123, Dec. 20, 2006, 120 Stat. 2944, provided that:

''(a) RESEARCH CREDIT ELECTIONS.—In the case of any taxable year ending after December 31, 2005, and before the date of the enactment of this Act [Dec. 20, 2006], any election under section 41(c)(4) or section 280C(c)(3)(C) of the Internal Revenue Code of 1986 shall be treated as having been timely made for such taxable year if such election is made not later than the later of April 15, 2007, or such time as the Secretary of the Treasury, or his designee, may specify. Such election shall be made in the manner prescribed by such Secretary or designee.

''(b) OTHER ELECTIONS.—Except as otherwise provided by such Secretary or designee, a rule similar to the rule of subsection (a) shall apply with respect to elections under any other expired provision of the Internal Revenue Code of 1986 the applicability of which is extended by reason of the amendments made by this title [amending this section and sections 32, 45A, 45C, 45D, 51, 54, 62, 164, 168, 170, 198, 220, 222, 613A, 1397E, 1400, 1400A to 1400C, 1400F, 1400N, 6103, 7608, 7652, and 9812 of this title, section 1185a of Title 29, Labor, and section 300gg–5 of Title 42, The Public Health and Welfare, and repealing section 51A of this title].''

SPECIAL RULE FOR CREDIT ATTRIBUTABLE TO SUSPENSION PERIODS

Pub. L. 106–170, title V, §502(d), Dec. 17, 1999, 113 Stat. 1920, provided that:

''(1) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, the credit determined under section 41 of such Code which is otherwise allowable under such Code—

''(A) shall not be taken into account prior to October 1, 2000, to the extent such credit is attributable to the first suspension period; and

''(B) shall not be taken into account prior to October 1, 2001, to the extent such credit is attributable to the second suspension period.

On or after the earliest date that an amount of credit may be taken into account, such amount may be taken into account through the filing of an amended return, an application for expedited refund, an adjustment of estimated taxes, or other means allowed by such Code.

''(2) SUSPENSION PERIODS.—For purposes of this subsection—

''(A) the first suspension period is the period beginning on July 1, 1999, and ending on September 30, 2000; and

''(B) the second suspension period is the period beginning on October 1, 2000, and ending on September 30, 2001.

''(3) EXPEDITED REFUNDS.—

''(A) IN GENERAL.—If there is an overpayment of tax with respect to a taxable year by reason of paragraph (1), the taxpayer may file an application for a tentative refund of such overpayment. Such application shall be in such manner and form, and contain such information, as the Secretary may prescribe.

''(B) DEADLINE FOR APPLICATIONS.—Subparagraph (A) shall apply only to an application filed before the date which is 1 year after the close of the suspension period to which the application relates.

''(C) ALLOWANCE OF ADJUSTMENTS.—Not later than 90 days after the date on which an application is filed under this paragraph, the Secretary shall—

''(i) review the application;

''(ii) determine the amount of the overpayment; and

''(iii) apply, credit, or refund such overpayment,

in a manner similar to the manner provided in section 6411(b) of such Code.

''(D) CONSOLIDATED RETURNS.—The provisions of section 6411(c) of such Code shall apply to an adjustment under this paragraph in such manner as the Secretary may provide.

''(4) CREDIT ATTRIBUTABLE TO SUSPENSION PERIOD.—

''(A) IN GENERAL.—For purposes of this subsection, in the case of a taxable year which includes a portion of the suspension period, the amount of credit determined under section 41 of such Code for such taxable year which is attributable to such period is the amount which bears the same ratio to the amount of credit determined under such section 41 for such taxable year as the number of months in the suspension period which are during such taxable year bears to the number of months in such taxable year.

''(B) WAIVER OF ESTIMATED TAX PENALTIES.—No addition to tax shall be made under section 6654 or 6655 of such Code for any period before July 1, 1999, with respect to any underpayment of tax imposed by such Code to the extent such underpayment was created or increased by reason of subparagraph (A).

''(5) SECRETARY.—For purposes of this subsection, the term 'Secretary' means the Secretary of the Treasury (or such Secretary's delegate).''

SPECIAL RULES FOR TAXABLE YEARS BEGINNING BEFORE OCT. 1, 1990, AND ENDING AFTER SEPT. 30, 1990

Section 7110(a)(2) of Pub. L. 101–239, which set forth the method of determining the amount treated as qualified research expenses for taxable years beginning before Oct. 1, 1990, and ending after Sept. 30, 1990, was repealed by Pub. L. 101–508, title XI, § 11402(b)(1), Nov. 5, 1990, 104 Stat. 1388–473.

[Section 1702(d)(1) of Pub. L. 104–188 provided that: ''Notwithstanding section 11402(c) of the Revenue Reconciliation Act of 1990 [Pub. L. 101–508, set out as a note under section 45C of this title], the amendment made by section 11402(b)(1) of such Act [repealing section 7110(a)(2) of Pub. L. 101–239, formerly set out as a note above] shall apply to taxable years ending after December 31, 1989.'']

STUDY AND REPORT ON CREDIT PROVIDED BY THIS SECTION

Section 4007(b) of Pub. L. 100–647 directed Comptroller General of United States to conduct a study of credit provided by 26 U.S.C. 41 and submit a report of the study not later than Dec. 31, 1989, to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

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

NEW SECTION 41 TREATED AS CONTINUATION OF OLD SECTION 44F

Section 474(i)(2) of Pub. L. 98–369 provided that: ''For purposes of determining—

''(A) whether any excess credit under old section 44F [now 41] for a taxable year beginning before January 1, 1984, is allowable as a carryover under new section 30 [now 41], and

''(B) the period during which new section 30 [now 41] is in effect,

new section 30 [now 41] shall be treated as a continuation of old section 44F (and shall apply only to the extent old section 44F would have applied).''

§ 42. Low-income housing credit

(a) In general

For purposes of section 38, the amount of the low-income housing credit determined under this section for any taxable year in the credit period shall be an amount equal to—

(1) the applicable percentage of

(2) the qualified basis of each qualified low-income building.

(b) Applicable percentage: 70 percent present value credit for certain new buildings; 30 percent present value credit for certain other buildings

(1) Determination of applicable percentage

For purposes of this section, the term ''applicable percentage'' means, with respect to any building, the appropriate percentage prescribed by the Secretary for the earlier of—

(i) the month in which such building is placed in service, or

(ii) at the election of the taxpayer—

(I) the month in which the taxpayer and the housing credit agency enter into an agreement with respect to such building (which is binding on such agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to such building, or

(II) in the case of any building to which subsection (h)(4)(B) applies, the month in which the tax-exempt obligations are issued.

A month may be elected under clause (ii) only if the election is made not later than the 5th day after the close of such month. Such an election, once made, shall be irrevocable.

(B) [1] Method of prescribing percentages

The percentages prescribed by the Secretary for any month shall be percentages which will yield over a 10-year period amounts of credit under subsection (a) which have a present value equal to—

(i) 70 percent of the qualified basis of a new building which is not federally subsidized for the taxable year, and

(ii) 30 percent of the qualified basis of a building not described in clause (i).

(C) Method of discounting

The present value under subparagraph (B) shall be determined—

[1] So in original. No subpar. (A) has been enacted.