(ii) will provide the greatest net impact in avoiding or reducing air pollutants or anthropogenic emissions of greenhouse gases,

(iii) have the greatest potential for technological innovation and commercial deployment,

(iv) have the lowest levelized cost of generated or stored energy, or of measured reduction in energy consumption or greenhouse gas emission (based on costs of the full supply chain), and

(v) have the shortest project time from certification to completion.

(4) Review and redistribution

(A) Review

Not later than 4 years after the date of enactment of this section, the Secretary shall review the credits allocated under this section as of such date.

(B) Redistribution

The Secretary may reallocate credits awarded under this section if the Secretary determines that—

(i) there is an insufficient quantity of qualifying applications for certification pending at the time of the review, or

(ii) any certification made pursuant to paragraph (2) has been revoked pursuant to paragraph (2)(B) because the project subject to the certification has been delayed as a result of third party opposition or litigation to the proposed project.

(C) Reallocation

If the Secretary determines that credits under this section are available for reallocation pursuant to the requirements set forth in paragraph (2), the Secretary is authorized to conduct an additional program for applications for certification.

(5) Disclosure of allocations

The Secretary shall, upon making a certification under this subsection, publicly disclose the identity of the applicant and the amount of the credit with respect to such applicant.

(e) Denial of double benefit

A credit shall not be allowed under this section for any qualified investment for which a credit is allowed under section 48, 48A, or 48B.

(Added Pub. L. 111–5, div. B, title I, §1302(b), Feb. 17, 2009, 123 Stat. 345; amended Pub. L. 113–295, div. A, title II, §§209(g), 221(a)(2)(C), Dec. 19, 2014, 128 Stat. 4029, 4037.)

REFERENCES IN TEXT

Subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990), referred to in subsec. (b)(2), means section 46(c)(4) and (d) as in effect before enactment of Pub. L. 101–508, which amended section 46 generally.

The date of enactment of this section, referred to in subsec. (d)(1)(A), (4)(A), is the date of enactment of Pub. L. 111–5, which was approved Feb. 17, 2009.

AMENDMENTS

2014—Subsec. (b)(3). Pub. L. 113–295, §209(g), inserted ''as the qualified investment'' after ''The amount which is treated''.

Subsec. (c)(1)(A)(i)(VI). Pub. L. 113–295, §221(a)(2)(C), struck out '', qualified plug-in electric vehicles (as defined by section 30(d)),'' before ''or components''.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by section 209(g) of Pub. L. 113–295 effective as if included in the provisions of the American Recovery and Reinvestment Tax Act of 2009, Pub. L. 111–5, div. B, title I, to which such amendment relates, see section 209(k) of Pub. L. 113–295, set out as a note under section 24 of this title.

Amendment by section 221(a)(2)(C) of Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to periods after Feb. 17, 2009, under rules similar to the rules of section 48(m) of this title as in effect on the day before Nov. 5, 1990, see section 1302(d) of Pub. L. 111–5, set out as an Effective Date of 2009 Amendment note under section 46 of this title.

§48D. Qualifying therapeutic discovery project credit

(a) In general

For purposes of section 46, the qualifying therapeutic discovery project credit for any taxable year is an amount equal to 50 percent of the qualified investment for such taxable year with respect to any qualifying therapeutic discovery project of an eligible taxpayer.

(b) Qualified investment

(1) In general

For purposes of subsection (a), the qualified investment for any taxable year is the aggregate amount of the costs paid or incurred in such taxable year for expenses necessary for and directly related to the conduct of a qualifying therapeutic discovery project.

(2) Limitation

The amount which is treated as qualified investment for all taxable years with respect to any qualifying therapeutic discovery project shall not exceed the amount certified by the Secretary as eligible for the credit under this section.

(3) Exclusions

The qualified investment for any taxable year with respect to any qualifying therapeutic discovery project shall not take into account any cost—

(A) for remuneration for an employee described in section 162(m)(3),

(B) for interest expenses,

(C) for facility maintenance expenses,

(D) which is identified as a service cost under section 1.263A–1(e)(4) of title 26, Code of Federal Regulations, or

(E) for any other expense as determined by the Secretary as appropriate to carry out the purposes of this section.

(4) Certain progress expenditure rules made applicable

In the case of costs described in paragraph (1) that are paid for property of a character subject to an allowance for depreciation, rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before

the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this section.

(5) Application of subsection

An investment shall be considered a qualified investment under this subsection only if such investment is made in a taxable year beginning in 2009 or 2010.

(c) Definitions

(1) Qualifying therapeutic discovery project

The term ''qualifying therapeutic discovery project'' means a project which is designed—

(A) to treat or prevent diseases or conditions by conducting pre-clinical activities, clinical trials, and clinical studies, or carrying out research protocols, for the purpose of securing approval of a product under section 505(b) of the Federal Food, Drug, and Cosmetic Act or section 351(a) of the Public Health Service Act,

(B) to diagnose diseases or conditions or to determine molecular factors related to diseases or conditions by developing molecular diagnostics to guide therapeutic decisions, or

(C) to develop a product, process, or technology to further the delivery or administration of therapeutics.

(2) Eligible taxpayer

(A) In general

The term ''eligible taxpayer'' means a taxpayer which employs not more than 250 employees in all businesses of the taxpayer at the time of the submission of the application under subsection (d)(2).

(B) Aggregation rules

All persons treated as a single employer under subsection (a) or (b) of section 52, or subsection (m) or (*o*) of section 414, shall be so treated for purposes of this paragraph.

(3) Facility maintenance expenses

The term ''facility maintenance expenses'' means costs paid or incurred to maintain a facility, including—

(A) mortgage or rent payments,

(B) insurance payments,

(C) utility and maintenance costs, and

(D) costs of employment of maintenance personnel.

(d) Qualifying therapeutic discovery project program

(1) Establishment

(A) In general

Not later than 60 days after the date of the enactment of this section, the Secretary, in consultation with the Secretary of Health and Human Services, shall establish a qualifying therapeutic discovery project program to consider and award certifications for qualified investments eligible for credits under this section to qualifying therapeutic discovery project sponsors.

(B) Limitation

The total amount of credits that may be allocated under the program shall not exceed $1,000,000,000 for the 2-year period beginning with 2009.

(2) Certification

(A) Application period

Each applicant for certification under this paragraph shall submit an application containing such information as the Secretary may require during the period beginning on the date the Secretary establishes the program under paragraph (1).

(B) Time for review of applications

The Secretary shall take action to approve or deny any application under subparagraph (A) within 30 days of the submission of such application.

(C) Multi-year applications

An application for certification under subparagraph (A) may include a request for an allocation of credits for more than 1 of the years described in paragraph (1)(B).

(3) Selection criteria

In determining the qualifying therapeutic discovery projects with respect to which qualified investments may be certified under this section, the Secretary—

(A) shall take into consideration only those projects that show reasonable potential—

(i) to result in new therapies—

(I) to treat areas of unmet medical need, or

(II) to prevent, detect, or treat chronic or acute diseases and conditions,

(ii) to reduce long-term health care costs in the United States, or

(iii) to significantly advance the goal of curing cancer within the 30-year period beginning on the date the Secretary establishes the program under paragraph (1), and

(B) shall take into consideration which projects have the greatest potential—

(i) to create and sustain (directly or indirectly) high quality, high-paying jobs in the United States, and

(ii) to advance United States competitiveness in the fields of life, biological, and medical sciences.

(4) Disclosure of allocations

The Secretary shall, upon making a certification under this subsection, publicly disclose the identity of the applicant and the amount of the credit with respect to such applicant.

(e) Special rules

(1) Basis adjustment

For purposes of this subtitle, if a credit is allowed under this section for an expenditure related to property of a character subject to an allowance for depreciation, the basis of such property shall be reduced by the amount of such credit.

(2) Denial of double benefit

(A) Bonus depreciation

A credit shall not be allowed under this section for any investment for which bonus

depreciation is allowed under section 168(k), 1400L(b)(1), or 1400N(d)(1).

(B) Deductions

No deduction under this subtitle shall be allowed for the portion of the expenses otherwise allowable as a deduction taken into account in determining the credit under this section for the taxable year which is equal to the amount of the credit determined for such taxable year under subsection (a) attributable to such portion. This subparagraph shall not apply to expenses related to property of a character subject to an allowance for depreciation the basis of which is reduced under paragraph (1), or which are described in section 280C(g).

(C) Credit for research activities

(i) In general

Except as provided in clause (ii), any expenses taken into account under this section for a taxable year shall not be taken into account for purposes of determining the credit allowable under section 41 or 45C for such taxable year.

(ii) Expenses included in determining base period research expenses

Any expenses for any taxable year which are qualified research expenses (within the meaning of section 41(b)) shall be taken into account in determining base period research expenses for purposes of applying section 41 to subsequent taxable years.

(f) Coordination with Department of Treasury grants

In the case of any investment with respect to which the Secretary makes a grant under section 9023(e) of the Patient Protection and Affordable Care Act of 2009—

(1) Denial of credit

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

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

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

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

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

(C) the amount of such grant shall be determined without regard to any reduction in the basis of any property of a character subject to an allowance for depreciation by reason of such credit.

(3) Treatment of grants

Any such grant shall not be includible in the gross income of the taxpayer.

(Added Pub. L. 111–148, title IX, §9023(a), Mar. 23, 2010, 124 Stat. 877.)

REFERENCES IN TEXT

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

Section 505(b) of the Federal Food, Drug, and Cosmetic Act, referred to in subsec. (c)(1)(A), is classified to section 355(b) of Title 21, Food and Drugs.

Section 351(a) of the Public Health Service Act, referred to in subsec. (c)(1)(A), is classified to section 262(a) of Title 42, The Public Health and Welfare.

The date of the enactment of this section, referred to in subsec. (d)(1)(A), is the date of enactment of Pub. L. 111–148, which was approved Mar. 23, 2010.

Section 9023(e) of the Patient Protection and Affordable Care Act of 2009, referred to in subsec. (f), is section 9023(e) of Pub. L. 111–148, which is set out as a note below.

EFFECTIVE DATE

Section applicable to amounts paid or incurred after Dec. 31, 2008, in taxable years beginning after such date, see section 9023(f) of Pub. L. 111–148, set out as an Effective Date of 2010 Amendment note under section 46 of this title.

GRANTS FOR QUALIFIED INVESTMENTS IN THERAPEUTIC DISCOVERY PROJECTS IN LIEU OF TAX CREDITS

Pub. L. 111–148, title IX, §9023(e), Mar. 23, 2010, 124 Stat. 881, provided that:

''(1) IN GENERAL.—Upon application, the Secretary of the Treasury shall, subject to the requirements of this subsection, provide a grant to each person who makes a qualified investment in a qualifying therapeutic discovery project in the amount of 50 percent of such investment. No grant shall be made under this subsection with respect to any investment unless such investment is made during a taxable year beginning in 2009 or 2010.

''(2) APPLICATION.—

''(A) IN GENERAL.—At the stated election of the applicant, an application for certification under section 48D(d)(2) of the Internal Revenue Code of 1986 for a credit under such section for the taxable year of the applicant which begins in 2009 shall be considered to be an application for a grant under paragraph (1) for such taxable year.

''(B) TAXABLE YEARS BEGINNING IN 2010.—An application for a grant under paragraph (1) for a taxable year beginning in 2010 shall be submitted—

''(i) not earlier than the day after the last day of such taxable year, and

''(ii) not later than the due date (including extensions) for filing the return of tax for such taxable year.

''(C) INFORMATION TO BE SUBMITTED.—An application for a grant under paragraph (1) shall include such information and be in such form as the Secretary may require to state the amount of the credit allowable (but for the receipt of a grant under this subsection) under section 48D for the taxable year for the qualified investment with respect to which such application is made.

''(3) TIME FOR PAYMENT OF GRANT.—

''(A) IN GENERAL.—The Secretary of the Treasury shall make payment of the amount of any grant under paragraph (1) during the 30-day period beginning on the later of—

''(i) the date of the application for such grant, or

''(ii) the date the qualified investment for which the grant is being made is made.

''(B) REGULATIONS.—In the case of investments of an ongoing nature, the Secretary shall issue regulations to determine the date on which a qualified investment shall be deemed to have been made for purposes of this paragraph.

''(4) QUALIFIED INVESTMENT.—For purposes of this subsection, the term 'qualified investment' means a qualified investment that is certified under section 48D(d) of the Internal Revenue Code of 1986 for purposes of the credit under such section 48D.

''(5) APPLICATION OF CERTAIN RULES.—

''(A) IN GENERAL.—In making grants under this subsection, the Secretary of the Treasury shall apply rules similar to the rules of section 50 of the Internal Revenue Code of 1986. In applying such rules, any increase in tax under chapter 1 of such Code by reason of an investment ceasing to be a qualified investment shall be imposed on the person to whom the grant was made.

''(B) SPECIAL RULES.—

''(i) RECAPTURE OF EXCESSIVE GRANT AMOUNTS.—If the amount of a grant made under this subsection exceeds the amount allowable as a grant under this subsection, such excess shall be recaptured under subparagraph (A) as if the investment to which such excess portion of the grant relates had ceased to be a qualified investment immediately after such grant was made.

''(ii) GRANT INFORMATION NOT TREATED AS RETURN INFORMATION.—In no event shall the amount of a grant made under paragraph (1), the identity of the person to whom such grant was made, or a description of the investment with respect to which such grant was made be treated as return information for purposes of section 6103 of the Internal Revenue Code of 1986.

''(6) EXCEPTION FOR CERTAIN NON-TAXPAYERS.—The Secretary of the Treasury shall not make any grant under this subsection to—

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

''(B) any organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code,

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

''(D) any partnership or other pass-thru entity any partner (or other holder of an equity or profits interest) of which is described in subparagraph (A), (B) or (C).

In the case of a partnership or other pass-thru entity described in subparagraph (D), partners and other holders of any equity or profits interest shall provide to such partnership or entity such information as the Secretary of the Treasury may require to carry out the purposes of this paragraph.

''(7) SECRETARY.—Any reference in this subsection to the Secretary of the Treasury shall be treated as including the Secretary's delegate.

''(8) OTHER TERMS.—Any term used in this subsection which is also used in section 48D of the Internal Revenue Code of 1986 shall have the same meaning for purposes of this subsection as when used in such section.

''(9) DENIAL OF DOUBLE BENEFIT.—No credit shall be allowed under section 46(6) of the Internal Revenue Code of 1986 by reason of section 48D of such Code for any investment for which a grant is awarded under this subsection.

''(10) APPROPRIATIONS.—There is hereby appropriated to the Secretary of the Treasury such sums as may be necessary to carry out this subsection.

''(11) TERMINATION.—The Secretary of the Treasury shall not make any grant to any person under this subsection unless the application of such person for such grant is received before January 1, 2013.

''(12) PROTECTING MIDDLE CLASS FAMILIES FROM TAX INCREASES.—It is the sense of the Senate that the Senate should reject any procedural maneuver that would raise taxes on middle class families, such as a motion to commit the pending legislation to the Committee on Finance, which is designed to kill legislation that provides tax cuts for American workers and families, including the affordability tax credit and the small business tax credit.''

§ 49. At-risk rules

(a) General rule

(1) Certain nonrecourse financing excluded from credit base

(A) Limitation

The credit base of any property to which this paragraph applies shall be reduced by the nonqualified nonrecourse financing with respect to such credit base (as of the close of the taxable year in which placed in service).

(B) Property to which paragraph applies

This paragraph applies to any property which—

(i) is placed in service during the taxable year by a taxpayer described in section 465(a)(1), and

(ii) is used in connection with an activity with respect to which any loss is subject to limitation under section 465.

(C) Credit base defined

For purposes of this paragraph, the term ''credit base'' means—

(i) the portion of the basis of any qualified rehabilitated building attributable to qualified rehabilitation expenditures,

(ii) the basis of any energy property,

(iii) the basis of any property which is part of a qualifying advanced coal project under section 48A,

(iv) the basis of any property which is part of a qualifying gasification project under section 48B,

(v) the basis of any property which is part of a qualifying advanced energy project under section 48C, and

(vi) the basis of any property to which paragraph (1) of section 48D(e) applies which is part of a qualifying therapeutic discovery project under such section 48D.

(D) Nonqualified nonrecourse financing

(i) In general

For purposes of this paragraph and paragraph (2), the term ''nonqualified nonrecourse financing'' means any nonrecourse financing which is not qualified commercial financing.

(ii) Qualified commercial financing

For purposes of this paragraph, the term ''qualified commercial financing'' means any financing with respect to any property if—

(I) such property is acquired by the taxpayer from a person who is not a related person,

(II) the amount of the nonrecourse financing with respect to such property does not exceed 80 percent of the credit base of such property, and

(III) such financing is borrowed from a qualified person or represents a loan from any Federal, State, or local government or instrumentality thereof, or is guaranteed by any Federal, State, or local government.

Such term shall not include any convertible debt.