with respect to a qualified motor vehicle agreement on a return of tax imposed by chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which was filed before the date of the enactment of this Act [Sept. 3, 1982] or to deny a credit for investment in depreciable property claimed by the lessee on such a return pursuant to an agreement with the lessor that the lessor would not claim the credit.''

INFORMATION RETURNS WITH RESPECT TO SAFE HARBOR LEASES

Pub. L. 97–119, title I, § 112, Dec. 29, 1981, 95 Stat. 1640, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) REQUIREMENT OF RETURN.—

''(1) IN GENERAL.—Except as provided in paragraph (2), paragraph (8) of section 168(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to special rule for leases) shall not apply with respect to an agreement unless a return, signed by the lessor and lessee and containing the information required to be included in the return pursuant to subsection (b), has been filed with the Internal Revenue Service not later than the 30th day after the date on which the agreement is executed.

''(2) SPECIAL RULES FOR AGREEMENTS EXECUTED BEFORE JANUARY 1, 1982.—

''(A) IN GENERAL.—In the case of an agreement executed before January 1, 1982, such agreement shall cease on February 1, 1982, to be treated as a lease under section 168(f)(8) unless a return, signed by the lessor and containing the information required to be included in subsection (b), has been filed with the Internal Revenue Service not later than January 31, 1982.

''(B) FILING BY LESSEE.—If the lessor does not file a return under subparagraph (A), the return requirement under subparagraph (A) shall be satisfied if such return is filed by the lessee before January 31, 1982.

''(3) CERTAIN FAILURE TO FILE.—If—

''(A) a lessor or lessee fails to file any return within the time prescribed by this subsection, and

''(B) such failure is shown to be due to reasonable cause and not due to willful neglect,

the lessor or lessee shall be treated as having filed a timely return if a return is filed within a reasonable time after the failure is ascertained.

''(b) INFORMATION REQUIRED.—The information required to be included in the return pursuant to this subsection is as follows:

''(1) The name, address, and taxpayer identifying number of the lessor and the lessee (and parent company if a consolidated return is filed);

''(2) The district director's office with which the income tax returns of the lessor and lessee are filed;

''(3) A description of each individual property with respect to which the election is made;

''(4) The date on which the lessee places the property in service, the date on which the lease begins and the term of the lease;

''(5) The recovery property class and the ADR midpoint life of the leased property;

''(6) The payment terms between the parties to the lease transaction;

''(7) Whether the ACRS deductions and the investment tax credit are allowable to the same taxpayer;

''(8) The aggregate amount paid to outside parties to arrange or carry out the transaction;

''(9) For the lessor only: the unadjusted basis of the property as defined in section 168(d)(1);

''(10) For the lessor only: if the lessor is a partnership or a grantor trust, the name, address, and taxpayer identifying number of the partners or the beneficiaries, and the district director's office with which the income tax return of each partner or beneficiary is filed; and

''(11) Such other information as may be required by the return or its instructions.

Paragraph (8) shall not apply with respect to any person for any calendar year if it is reasonable to estimate that the aggregate adjusted basis of the property of such person which will be subject to subsection (a) for such year is $1,000,000 or less.

''(c) COORDINATION WITH OTHER INFORMATION REQUIREMENTS.—In the case of agreements executed after December 31, 1982, to the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, the provisions of this section shall be modified to coordinate such provisions with the other information requirements of the Internal Revenue Code of 1986.''

REGULATED PUBLIC UTILITIES; SPECIAL TRANSITIONAL RULE FOR NORMALIZATION REQUIREMENTS

Pub. L. 97–34, title II, § 209(d)(1), Aug. 13, 1981, 95 Stat. 226, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If, by the terms of the applicable rate order last entered before the date of the enactment of this Act [Aug. 13, 1981] by a regulatory commission having appropriate jurisdiction, a regulated public utility would (but for this provision) fail to meet the requirements of section 168(e)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to property because, for an accounting period ending after December 31, 1980, such public utility used a method of accounting other than a normalization method of accounting, such regulated public utility shall not fail to meet such requirements if, by the terms of its first rate order determining cost of service with respect to such property which becomes effective after the date of the enactment of this Act and on or before January 1, 1983, such regulated public utility uses a normalization method of accounting. This provision shall not apply to any rate order which, under the rules in effect before the date of the enactment of this Act, required a regulated public utility to use a method of accounting with respect to the deduction allowable by section 167 which, under section 167(*l*), it was not permitted to use.''

INTERIM REGULATIONS WITH RESPECT TO NORMALIZATION; AUTHORITY TO PRESCRIBE

Pub. L. 97–34, title II, § 209(d)(4), Aug. 13, 1981, 95 Stat. 227, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Until Congress acts further, the Secretary of the Treasury or his delegate may prescribe such interim regulations as may be necessary or appropriate to determine whether the requirements of section 168(e)(3)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] have been met with respect to property placed in service after December 31, 1980.''

## § 169. Amortization of pollution control facilities

### (a) Allowance of deduction

Every person, at his election, shall be entitled to a deduction with respect to the amortization of the amortizable basis of any certified pollution control facility (as defined in subsection (d)), based on a period of 60 months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the amortizable basis of the pollution control facility at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such amortizable basis at the end of the month shall be computed without regard to the amortization deduction for such month. The amortization deduction provided by this section with respect to any month shall be in lieu of the depreciation deduction with respect to such pollution control facility for such month provided by section 167. The 60-month period shall begin, as to any pollution control facility, at the election of the taxpayer, with the month following the month in which

such facility was completed or acquired, or with the succeeding taxable year.

**(b) Election of amortization**

The election of the taxpayer to take the amortization deduction and to begin the 60-month period with the month following the month in which the facility is completed or acquired, or with the taxable year succeeding the taxable year in which such facility is completed or acquired, shall be made by filing with the Secretary, in such manner, in such form, and within such time, as the Secretary may by regulations prescribe, a statement of such election.

**(c) Termination of amortization deduction**

A taxpayer which has elected under subsection (b) to take the amortization deduction provided in subsection (a) may, at any time after making such election, discontinue the amortization deduction with respect to the remainder of the amortization period, such discontinuance to begin as of the beginning of any month specified by the taxpayer in a notice in writing filed with the Secretary before the beginning of such month. The depreciation deduction provided under section 167 shall be allowed, beginning with the first month as to which the amortization deduction does not apply, and the taxpayer shall not be entitled to any further amortization deduction under this section with respect to such pollution control facility.

**(d) Definitions and special rules**

For purposes of this section—

**(1) Certified pollution control facility**

The term ''certified pollution control facility'' means a new identifiable treatment facility which is used, in connection with a plant or other property in operation before January 1, 1976, to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, storing, or preventing the creation or omission of pollutants, contaminants, wastes, or heat and which—

(A) the State certifying authority having jurisdiction with respect to such facility has certified to the Federal certifying authority as having been constructed, reconstructed, erected, or acquired in conformity with the State program or requirements for abatement or control of water or atmospheric pollution or contamination;

(B) the Federal certifying authority has certified to the Secretary (i) as being in compliance with the applicable regulations of Federal agencies and (ii) as being in furtherance of the general policy of the United States for cooperation with the States in the prevention and abatement of water pollution under the Federal Water Pollution Control Act, as amended (33 U.S.C. 466 et seq.), or in the prevention and abatement of atmospheric pollution and contamination under the Clean Air Act, as amended (42 U.S.C. 1857 et seq.); and

(C) does not significantly—

(i) increase the output or capacity, extend the useful life, or reduce the total operating costs of such plant or other property (or any unit thereof), or

(ii) alter the nature of the manufacturing or production process or facility.

**(2) State certifying authority**

The term ''State certifying authority'' means, in the case of water pollution, the State water pollution control agency as defined in section 13(a) of the Federal Water Pollution Control Act and, in the case of air pollution, the air pollution control agency as defined in section 302(b) of the Clean Air Act. The term ''State certifying authority'' includes any interstate agency authorized to act in place of a certifying authority of the State.

**(3) Federal certifying authority**

The term ''Federal certifying authority'' means, in the case of water pollution, the Secretary of the Interior and, in the case of air pollution, the Secretary of Health and Human Services.

**(4) New identifiable treatment facility**

**(A) In general**

For purposes of paragraph (1), the term ''new identifiable treatment facility'' includes only tangible property (not including a building and its structural components, other than a building which is exclusively a treatment facility) which is of a character subject to the allowance for depreciation provided in section 167, which is identifiable as a treatment facility, and which is property—

(i) the construction, reconstruction, or erection of which is completed by the taxpayer after December 31, 1968, or

(ii) acquired after December 31, 1968, if the original use of the property commences with the taxpayer and commences after such date.

In applying this section in the case of property described in clause (i) there shall be taken into account only that portion of the basis which is properly attributable to construction, reconstruction, or erection after December 31, 1968.

**(B) Certain facilities placed in operation after April 11, 2005**

In the case of any facility described in paragraph (1) solely by reason of paragraph (5), subparagraph (A) shall be applied by substituting ''April 11, 2005'' for ''December 31, 1968'' each place it appears therein.

**(5) Special rule relating to certain atmospheric pollution control facilities**

In the case of any atmospheric pollution control facility which is placed in service after April 11, 2005, and used in connection with an electric generation plant or other property which is primarily coal fired—

(A) paragraph (1) shall be applied without regard to the phrase ''in operation before January 1, 1976'', and

(B) in the case of facility[1] placed in service in connection with a plant or other property placed in operation after December 31, 1975, this section shall be applied by substituting

[1] So in original. Probably should be ''a facility''.

''84'' for ''60'' each place it appears in subsections (a) and (b).

**(e) Profitmaking abatement works, etc.**

The Federal certifying authority shall not certify any property under subsection (d)(1)(B) to the extent it appears that by reason of profits derived through the recovery of wastes or otherwise in the operation of such property, its costs will be recovered over its actual useful life.

**(f) Amortizable basis**

**(1) Defined**

For purposes of this section, the term ''amortizable basis'' means that portion of the adjusted basis (for determining gain) of a certified pollution control facility which may be amortized under this section.

**(2) Special rules**

(A) If a certified pollution control facility has a useful life (determined as of the first day of the first month for which a deduction is allowable under this section) in excess of 15 years, the amortizable basis of such facility shall be equal to an amount which bears the same ratio to the portion of the adjusted basis of such facility, which would be eligible for amortization but for the application of this subparagraph, as 15 bears to the number of years of useful life of such facility.

(B) The amortizable basis of a certified pollution control facility with respect to which an election under this section is in effect shall not be increased, for purposes of this section, for additions or improvements after the amortization period has begun.

**(g) Depreciation deduction**

The depreciation deduction provided by section 167 shall, despite the provisions of subsection (a), be allowed with respect to the portion of the adjusted basis which is not the amortizable basis.

**[(h) Repealed. Pub. L. 92–178, title I, § 104(f)(2), Dec. 10, 1971, 85 Stat. 502]**

**(i) Life tenant and remainderman**

In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowable to the life tenant.

**(j) Cross reference**

**For special rule with respect to certain gain derived from the disposition of property the adjusted basis of which is determined with regard to this section, see section 1245.**

(Added Pub. L. 91–172, title VII, § 704(a), Dec. 30, 1969, 83 Stat. 667; amended Pub. L. 92–178, title I, § 104(f)(2), Dec. 10, 1971, 85 Stat. 502; Pub. L. 93–625, § 3(a), Jan. 3, 1975, 88 Stat. 2109; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), title XXI, § 2112(b), (c), Oct. 4, 1976, 90 Stat. 1834, 1906; Pub. L. 109–58, title XIII, § 1309(a)–(d), Aug. 8, 2005, 119 Stat. 1007; Pub. L. 109–135, title IV, § 402(e), Dec. 21, 2005, 119 Stat. 2611.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, as amended (33 U.S.C. 466 et seq.), referred to in subsec. (d)(1)(B), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. The subject matter of section 13(a) of the act, referred to in subsec. (d)(2), is covered by section 1362(1) of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Clean Air Act, referred to in subsec. (d)(1)(B), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

Section 302(b) of the Clean Air Act, referred to in subsec. (d)(2), formerly classified to section 1857h(b) of Title 42, was reclassified to section 7602(b) of Title 42 on enactment of Pub. L. 95–95.

PRIOR PROVISIONS

A prior section 169, act Aug. 16, 1954, ch. 736, 68A Stat. 55, related to amortization of grain-storage facilities, prior to the reorganization of part VI of subchapter B of chapter 1 of this title by Pub. L. 91–172.

AMENDMENTS

2005—Subsec. (d). Pub. L. 109–58, § 1309(c), inserted ''and special rules'' after ''Definitions'' in heading.

Subsec. (d)(3). Pub. L. 109–58, § 1309(d), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (d)(4)(B). Pub. L. 109–58, § 1309(b), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''In the case of any treatment facility used in connection with any plant or other property not in operation before January 1, 1969, the preceding sentence shall be applied by substituting December 31, 1975, for December 31, 1968.''

Subsec. (d)(5). Pub. L. 109–58, § 1309(a), added par. (5).

Subsec. (d)(5)(B). Pub. L. 109–135 inserted ''in the case of facility placed in service in connection with a plant or other property placed in operation after December 31, 1975,'' before ''this section''.

1976—Subsecs. (b), (c). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(1). Pub. L. 94–455, §§ 1906(b)(13)(A), 2112(b), substituted in provisions preceding subpar. (A) ''January 1, 1976,'' for ''January 1, 1969,'' and ''storing, or preventing the creation or emission of'' for ''or storing'', struck out in subpar. (B) ''or his delegate'' after ''Secretary'', and added subpar. (C).

Subsec. (d)(4). Pub. L. 94–455, § 2112(c), among other changes, struck out provisions relating to treatment facilities placed in service by taxpayer before Jan. 1, 1976, and inserted provisions that in case of treatment facilities used in connection with any plan or other property not in operation before Jan. 1, 1969, Dec. 31, 1975, shall be substituted for Dec. 31, 1968, as the cut-off date for taking into account that portion of the basis which is attributable to construction, reconstruction, or erection.

1975—Subsec. (d)(4)(B). Pub. L. 93–625 substituted ''January 1, 1976'' for ''January 1, 1975''.

1971—Subsec. (h). Pub. L. 92–178 struck out provision that investment credit not be allowed. See section 48(a)(8) of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

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, § 1309(e), Aug. 8, 2005, 119 Stat. 1007, provided that: ''The amendments made by this section [amending this section] shall apply to facilities placed in service after April 11, 2005.''

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XXI, § 2112(d)(2), Oct. 4, 1976, 90 Stat. 1907, as amended by Pub. L. 99–514, § 2, Oct. 22,

1986, 100 Stat. 2095, provided that: ''The amendments made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1975. Such amendments shall not apply in the case of any property with respect to which the amortization period under section 169 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] has begun before January 1, 1976.''

EFFECTIVE DATE

Pub. L. 91–172, title VII, §704(c), Dec. 30, 1969, 83 Stat. 670, provided that: ''The amendments made by this section [enacting this section and amending sections 642, 1082, 1245, and 1250 of this title] shall apply with respect to taxable years ending after December 31, 1968.''

TRANSFER OF FUNCTIONS

Functions vested in Secretary of the Interior and Secretary of Health, Education, and Welfare by subsec. (d)(1)(B), (3) of this section transferred to Administrator of Environmental Protection Agency by Reorg. Plan No. 3, of 1970, §2(a)(9), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, set out in the Appendix to Title 5, Government Organization and Employees.

### § 170. Charitable, etc., contributions and gifts

#### (a) Allowance of deduction

##### (1) General rule

There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary.

##### (2) Corporations on accrual basis

In the case of a corporation reporting its taxable income on the accrual basis, if—

(A) the board of directors authorizes a charitable contribution during any taxable year, and

(B) payment of such contribution is made after the close of such taxable year and on or before the 15th day of the fourth month following the close of such taxable year,

then the taxpayer may elect to treat such contribution as paid during such taxable year. The election may be made only at the time of the filing of the return for such taxable year, and shall be signified in such manner as the Secretary shall by regulations prescribe.

##### (3) Future interests in tangible personal property

For purposes of this section, payment of a charitable contribution which consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in section 267(b) or 707(b). For purposes of the preceding sentence, a fixture which is intended to be severed from the real property shall be treated as tangible personal property.

#### (b) Percentage limitations

##### (1) Individuals

In the case of an individual, the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs.

###### (A) General rule

Any charitable contribution to—

(i) a church or a convention or association of churches,

(ii) an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on,

(iii) an organization the principal purpose or functions of which are the providing of medical or hospital care or medical education or medical research, if the organization is a hospital, or if the organization is a medical research organization directly engaged in the continuous active conduct of medical research in conjunction with a hospital, and during the calendar year in which the contribution is made such organization is committed to spend such contributions for such research before January 1 of the fifth calendar year which begins after the date such contribution is made,

(iv) an organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization referred to in clause (ii) of this subparagraph and which is an agency or instrumentality of a State or political subdivision thereof, or which is owned or operated by a State or political subdivision thereof or by an agency or instrumentality of one or more States or political subdivisions,

(v) a governmental unit referred to in subsection (c)(1),

(vi) an organization referred to in subsection (c)(2) which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from a governmental unit referred to in subsection (c)(1) or from direct or indirect contributions from the general public,

(vii) a private foundation described in subparagraph (F),

(viii) an organization described in section 509(a)(2) or (3), or

(ix) an agricultural research organization directly engaged in the continuous active conduct of agricultural research (as defined in section 1404 of the Agricultural Research, Extension, and Teaching Policy