

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. Repealed. Pub. L. 115-141, div. U, title IV, § 401(d)(3)(A), Mar. 23, 2018, 132 Stat. 1209]

Section, added Pub. L. 111-148, title IX, §9023(a), Mar. 23, 2010, 124 Stat. 877, provided for a qualifying therapeutic discovery project credit.

SAVINGS PROVISION

Pub. L. 115-141, div. U, title IV, §401(d)(3)(C), Mar. 23, 2018, 132 Stat. 1209, provided that: “In the case of the repeal of section 48D(e)(1) of the Internal Revenue Code of 1986, the amendments made by this paragraph [amending sections 49, 50, and 280C of this title and repealing this section] shall not apply to expenditures made in taxable years beginning before January 1, 2011.”

For provisions that nothing in repeal by Pub. L. 115-141 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Mar. 23, 2018, for purposes of determining liability for tax for periods ending after Mar. 23, 2018, see section 401(e) of Pub. L. 115-141, set out as a note under section 23 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, directed the Secretary of the Treasury to award grants for 50 percent of a qualified investment in a qualifying therapeutic discovery project in 2009 or 2010 in lieu of tax credit allowed under section 48D of this title.

§ 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, and

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

(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.

(iii) Nonrecourse financing

For purposes of this subparagraph, the term “nonrecourse financing” includes—

(I) any amount with respect to which the taxpayer is protected against loss through guarantees, stop-loss agreements, or other similar arrangements, and

(II) except to the extent provided in regulations, any amount borrowed from a person who has an interest (other than as a creditor) in the activity in which the property is used or from a related person to a person (other than the taxpayer) having such an interest.

In the case of amounts borrowed by a corporation from a shareholder, subclause (II) shall not apply to an interest as a shareholder.

(iv) Qualified person

For purposes of this paragraph, the term “qualified person” means any person which is actively and regularly engaged in the business of lending money and which is not—

(I) a related person with respect to the taxpayer,