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.

CLARIFICATION OF EFFECT OF 1984 AMENDMENT ON INVESTMENT TAX CREDIT

Pub. L. 98–369, title IV, §475(c), July 18, 1984, 98 Stat. 847, provided that: ''Nothing in the amendments made by section 474(*o*) [amending this section and sections 47 and 48 of this title] shall be construed as reducing the amount of any credit allowable for qualified investment in taxable years beginning before January 1, 1984.''

REGULATED PUBLIC UTILITIES; SPECIAL TRANSITIONAL RULE

Pub. L. 97–34, title II, §209(d)(2), Aug. 13, 1981, 95 Stat. 227, 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 paragraph (1) or (2) of section 46(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to property for an accounting period ending after December 31, 1980, 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 meets such requirements. This provision shall not apply to any rate order which, under the rules in effect before the date of the enactment of this Act was inconsistent with the requirements of paragraph (1) or (2) of section 46(f) of such Code (whichever would have been applicable).''

PLAN REQUIREMENTS FOR TAXPAYERS ELECTING ADDITIONAL CREDITS

Pub. L. 94–12, title III, §301(d)–(f), Mar. 29, 1975, 89 Stat. 38, as amended by Pub. L. 94–455, title VIII, §§802(b)(7), 803(c)–(e), Oct. 4, 1976, 90 Stat. 1583–1588, relating to plan requirements for taxpayers electing additional credit, was repealed by Pub. L. 95–600, title I, §141(f)(1), Nov. 6, 1978, 92 Stat. 2795.

PUBLIC UTILITY PROPERTY SUBJECT TO SUBSEC. (e); PROVISIONS RESPECTING TREATMENT OF INVESTMENT CREDIT BY FEDERAL REGULATORY AGENCIES INAPPLICABLE

Pub. L. 92–178, title I, §105(e), Dec. 10, 1971, 85 Stat. 506, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Section 203(e) of the Revenue Act of 1964 [set out as note under section 38 of this title] shall not apply to public utility property to which section 46(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (c)) [subsec. (e) of this section] applies.''

§ 47. Rehabilitation credit

(a) General rule

(1) In general

For purposes of section 46, for any taxable year during the 5-year period beginning in the taxable year in which a qualified rehabilitated building is placed in service, the rehabilitation credit for such year is an amount equal to the ratable share for such year.

(2) Ratable share

For purposes of paragraph (1), the ratable share for any taxable year during the period described in such paragraph is the amount equal to 20 percent of the qualified rehabilitation expenditures with respect to the qualified rehabilitated building, as allocated ratably to each year during such period.

(b) When expenditures taken into account

(1) In general

Qualified rehabilitation expenditures with respect to any qualified rehabilitated building shall be taken into account for the taxable year in which such qualified rehabilitated building is placed in service.

(2) Coordination with subsection (d)

The amount which would (but for this paragraph) be taken into account under paragraph (1) with respect to any qualified rehabilitated building shall be reduced (but not below zero) by any amount of qualified rehabilitation expenditures taken into account under subsection (d) by the taxpayer or a predecessor of the taxpayer (or, in the case of a sale and leaseback described in section 50(a)(2)(C), by the lessee), to the extent any amount so taken into account has not been required to be recaptured under section 50(a).

(c) Definitions

For purposes of this section—

(1) Qualified rehabilitated building

(A) In general

The term ''qualified rehabilitated building'' means any building (and its structural components) if—

(i) such building has been substantially rehabilitated,

(ii) such building was placed in service before the beginning of the rehabilitation,

(iii) such building is a certified historic structure, and

(iv) depreciation (or amortization in lieu of depreciation) is allowable with respect to such building.

(B) Substantially rehabilitated defined

(i) In general

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

(I) the adjusted basis of such building (and its structural components), or

(II) $5,000.

The adjusted basis of the building (and its structural components) shall be determined as of the beginning of the 1st day of such 24-month period, or of the holding period of the building, whichever is later. For purposes of the preceding sentence, the determination of the beginning of the holding period shall be made without regard to any reconstruction by the taxpayer in connection with the rehabilitation.

(ii) Special rule for phased rehabilitation

In the case of any rehabilitation which may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins, clause (i) shall be applied by substituting ''60-month period'' for ''24-month period''.

(iii) Lessees

The Secretary shall prescribe by regulation rules for applying this subparagraph to lessees.

(C) Reconstruction

Rehabilitation includes reconstruction.

(2) Qualified rehabilitation expenditure defined

(A) In general

The term ''qualified rehabilitation expenditure'' means any amount properly chargeable to capital account—

(i) for property for which depreciation is allowable under section 168 and which is—

(I) nonresidential real property,

(II) residential rental property,

(III) real property which has a class life of more than 12.5 years, or

(IV) an addition or improvement to property described in subclause (I), (II), or (III), and

(ii) in connection with the rehabilitation of a qualified rehabilitated building.

(B) Certain expenditures not included

The term ''qualified rehabilitation expenditure'' does not include—

(i) Straight line depreciation must be used

Any expenditure with respect to which the taxpayer does not use the straight line method over a recovery period determined under subsection (c) or (g) of section 168. The preceding sentence shall not apply to any expenditure to the extent the alternative depreciation system of section 168(g) applies to such expenditure by reason of subparagraph (B) or (C) of section 168(g)(1).

(ii) Cost of acquisition

The cost of acquiring any building or interest therein.

(iii) Enlargements

Any expenditure attributable to the enlargement of an existing building.

(iv) Certified historic structure

Any expenditure attributable to the rehabilitation of a qualified rehabilitated building unless the rehabilitation is a certified rehabilitation (within the meaning of subparagraph (C)).

(v) Tax-exempt use property

(I) In general

Any expenditure in connection with the rehabilitation of a building which is allocable to the portion of such property which is (or may reasonably be expected to be) tax-exempt use property (within the meaning of section 168(h), except that ''50 percent'' shall be substituted for ''35 percent'' in paragraph (1)(B)(iii) thereof).

(II) Clause not to apply for purposes of paragraph (1)(C)

This clause shall not apply for purposes of determining under paragraph (1)(C) whether a building has been substantially rehabilitated.

(vi) Expenditures of lessee

Any expenditure of a lessee of a building if, on the date the rehabilitation is completed, the remaining term of the lease (determined without regard to any renewal periods) is less than the recovery period determined under section 168(c).

(C) Certified rehabilitation

For purposes of subparagraph (B), the term ''certified rehabilitation'' means any rehabilitation of a certified historic structure which the Secretary of the Interior has certified to the Secretary as being consistent with the historic character of such property or the district in which such property is located.

(D) Nonresidential real property; residential rental property; class life

For purposes of subparagraph (A), the terms ''nonresidential real property,'' ''residential rental property,'' and ''class life'' have the respective meanings given such terms by section 168.

(3) Certified historic structure defined

(A) In general

The term ''certified historic structure'' means any building (and its structural components) which—

(i) is listed in the National Register, or

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

(B) Registered historic district

The term ''registered historic district'' means—

(i) any district listed in the National Register, and

(ii) any district—

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

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

(d) Progress expenditures

(1) In general

In the case of any building to which this subsection applies, except as provided in paragraph (3)—

(A) if such building is self-rehabilitated property, any qualified rehabilitation expenditure with respect to such building shall be taken into account for the taxable year for which such expenditure is properly chargeable to capital account with respect to such building, and

(B) if such building is not self-rehabilitated property, any qualified rehabilitation expenditure with respect to such building shall be taken into account for the taxable year in which paid.

(2) Property to which subsection applies

(A) In general

This subsection shall apply to any building which is being rehabilitated by or for the taxpayer if—

(i) the normal rehabilitation period for such building is 2 years or more, and

(ii) it is reasonable to expect that such building will be a qualified rehabilitated building in the hands of the taxpayer when it is placed in service.

Clauses (i) and (ii) shall be applied on the basis of facts known as of the close of the taxable year of the taxpayer in which the rehabilitation begins (or, if later, at the close of the first taxable year to which an election under this subsection applies).

(B) Normal rehabilitation period

For purposes of subparagraph (A), the term ''normal rehabilitation period'' means the period reasonably expected to be required for the rehabilitation of the building—

(i) beginning with the date on which physical work on the rehabilitation begins (or, if later, the first day of the first taxable year to which an election under this subsection applies), and

(ii) ending on the date on which it is expected that the property will be available for placing in service.

(3) Special rules for applying paragraph (1)

For purposes of paragraph (1)—

(A) Component parts, etc.

Property which is to be a component part of, or is otherwise to be included in, any building to which this subsection applies shall be taken into account—

(i) at a time not earlier than the time at which it becomes irrevocably devoted to use in the building, and

(ii) as if (at the time referred to in clause (i)) the taxpayer had expended an amount equal to that portion of the cost to the taxpayer of such component or other property which, for purposes of this subpart, is properly chargeable (during such taxable year) to capital account with respect to such building.

(B) Certain borrowing disregarded

Any amount borrowed directly or indirectly by the taxpayer from the person rehabilitating the property for him shall not be treated as an amount expended for such rehabilitation.

(C) Limitation for buildings which are not self-rehabilitated

(i) In general

In the case of a building which is not self-rehabilitated, the amount taken into account under paragraph (1)(B) for any taxable year shall not exceed the amount which represents the portion of the overall cost to the taxpayer of the rehabilitation which is properly attributable to the portion of the rehabilitation which is completed during such taxable year.

(ii) Carryover of certain amounts

In the case of a building which is not a self-rehabilitated building, if for the taxable year—

(I) the amount which (but for clause (i)) would have been taken into account under paragraph (1)(B) exceeds the limitation of clause (i), then the amount of such excess shall be taken into account under paragraph (1)(B) for the succeeding taxable year, or

(II) the limitation of clause (i) exceeds the amount taken into account under paragraph (1)(B), then the amount of such excess shall increase the limitation of clause (i) for the succeeding taxable year.

(D) Determination of percentage of completion

The determination under subparagraph (C)(i) of the portion of the overall cost to the taxpayer of the rehabilitation which is properly attributable to rehabilitation completed during any taxable year shall be made, under regulations prescribed by the Secretary, on the basis of engineering or architectural estimates or on the basis of cost accounting records. Unless the taxpayer establishes otherwise by clear and convincing evidence, the rehabilitation shall be deemed to be completed not more rapidly than ratably over the normal rehabilitation period.

(E) No progress expenditures for certain prior periods

No qualified rehabilitation expenditures shall be taken into account under this subsection for any period before the first day of the first taxable year to which an election under this subsection applies.

(F) No progress expenditures for property for year it is placed in service, etc.

In the case of any building, no qualified rehabilitation expenditures shall be taken into account under this subsection for the earlier of—

(i) the taxable year in which the building is placed in service, or

(ii) the first taxable year for which recapture is required under section 50(a)(2) with respect to such property,

or for any taxable year thereafter.

(4) Self-rehabilitated building

For purposes of this subsection, the term ''self-rehabilitated building'' means any building if it is reasonable to believe that more

than half of the qualified rehabilitation expenditures for such building will be made directly by the taxpayer.

(5) Election

This subsection shall apply to any taxpayer only if such taxpayer has made an election under this paragraph. Such an election shall apply to the taxable year for which made and all subsequent taxable years. Such an election, once made, may be revoked only with the consent of the Secretary.

(Added Pub. L. 87–834, §2(b), Oct. 16, 1962, 76 Stat. 966; amended Pub. L. 91–172, title VII, §703(c), Dec. 30, 1969, 83 Stat. 666; Pub. L. 91–676, §1, Jan. 12, 1971, 84 Stat. 2060; Pub. L. 92–178, title I, §§102(c), 107(a)(1), (b)(1), Dec. 10, 1971, 85 Stat. 500, 507; Mar. 29, 1975, Pub. L. 94–12, title III, §302(b)(2)(A), (c)(1), (2), 89 Stat. 43, 44; Pub. L. 94–455, title VIII, §804(b), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1594, 1834; Pub. L. 95–600, title III, §317(a), Nov. 6, 1978, 92 Stat. 2830; Pub. L. 95–618, title II, §241(b), Nov. 9, 1978, 92 Stat. 3193; Pub. L. 97–34, title II, §211(f)(2), (g), Aug. 13, 1981, 95 Stat. 231, 233; Pub. L. 97–248, title II, §208(a)(2)(B), Sept. 3, 1982, 96 Stat. 435; Pub. L. 97–448, title I, §102(e)(3), Jan. 12, 1983, 96 Stat. 2371; Pub. L. 98–369, div. A, title IV, §§421(b)(7), 431(b)(2), (d)(4), (5), 474(*o*)(8), (9), July 18, 1984, 98 Stat. 794, 807, 810, 836; Pub. L. 98–443, §9(p), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 99–121, title I, §103(b)(6), Oct. 11, 1985, 99 Stat. 510; Pub. L. 99–514, title XV, §1511(c)(2), title XVIII, §§1802(a)(5)(A), 1844(b)(1), (2), (4), Oct. 22, 1986, 100 Stat. 2744, 2788, 2855; Pub. L. 100–647, title I, §§1002(a)(18), (26)–(28), 1007(g)(3)(A), Nov. 10, 1988, 102 Stat. 3356, 3357, 3435; Pub. L. 101–508, title XI, §11801(c)(8)(A), 11813(a), Nov. 5, 1990, 104 Stat. 1388–524, 1388–536; Pub. L. 110–289, div. C, title I, §3025(a), July 30, 2008, 122 Stat. 2897; Pub. L. 115–97, title I, §13402(a), (b)(1), Dec. 22, 2017, 131 Stat. 2134.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 48(g) of this title, prior to the general amendment of this subpart by Pub. L. 101–508.

AMENDMENTS

2017—Subsec. (a). Pub. L. 115–97, §13402(a), amended subsec. (a) generally. Prior to amendment, text read as follows: ''For purposes of section 46, the rehabilitation credit for any taxable year is the sum of—

''(1) 10 percent of the qualified rehabilitation expenditures with respect to any qualified rehabilitated building other than a certified historic structure, and

''(2) 20 percent of the qualified rehabilitation expenditures with respect to any certified historic structure.''

Subsec. (c)(1)(A)(iii). Pub. L. 115–97, §13402(b)(1)(A)(i), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''in the case of any building other than a certified historic structure, in the rehabilitation process—

''(I) 50 percent or more of the existing external walls of such building are retained in place as external walls,

''(II) 75 percent or more of the existing external walls of such building are retained in place as internal or external walls, and

''(III) 75 percent or more of the existing internal structural framework of such building is retained in place, and''.

Subsec. (c)(1)(B) to (D). Pub. L. 115–97, §13402(b)(1)(A)(ii), (iii), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B). Prior to amendment, text of subpar. (B) read as follows: ''In the case of a building other than a certified historic structure, a building shall not be a qualified rehabilitated building unless the building was first placed in service before 1936.''

Subsec. (c)(2)(B)(iv). Pub. L. 115–97, §13402(b)(1)(B), amended cl. (iv) generally. Prior to amendment, text read as follows: ''Any expenditure attributable to the rehabilitation of a certified historic structure or a building in a registered historic district, unless the rehabilitation is a certified rehabilitation (within the meaning of subparagraph (C)). The preceding sentence shall not apply to a building in a registered historic district if—

''(I) such building was not a certified historic structure,

''(II) the Secretary of the Interior certified to the Secretary that such building is not of historic significance to the district, and

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

2008—Subsec. (c)(2)(B)(v)(I). Pub. L. 110–289 substituted ''section 168(h), except that '50 percent' shall be substituted for '35 percent' in paragraph (1)(B)(iii) thereof'' for ''section 168(h)''.

1990—Pub. L. 101–508, §11813(a), amended section generally, substituting section catchline for one which read: ''Certain dispositions, etc., of section 38 property'' and in text substituting present provisions for provisions relating to general rules regarding disposition of section 38 property, nonapplicability of section in certain cases, the treatment of any increase in tax under the section, increases in nonqualified nonrecourse financing, and transfers between spouses or incident to divorce.

Subsec. (b)(1) to (3). Pub. L. 101–508, §11801(c)(8)(A), inserted ''or'' at end of par. (1), substituted a period for '', or'' at end of par. (2), and struck out par. (3) which related to nonapplicability of subsec. (a) in the case of a transfer of section 38 property related to exchanges under final system plan for ConRail.

1988—Subsec. (a)(5)(D). Pub. L. 100–647, §1002(a)(26)(B), struck out at end ''If, prior to a disposition to which this subsection applies, any portion of any credit is not allowable with respect to any property by reason of section 168(i)(3), such portion shall be treated (for purposes of this subparagraph) as not having been used to reduce tax liability.''

Subsec. (a)(5)(E)(iii). Pub. L. 100–647, §1002(a)(26)(C), substituted ''168(e)'' for ''168(c)''.

Subsec. (a)(5)(E)(v). Pub. L. 100–647, §1002(a)(26)(A), added cl. (v).

Subsec. (a)(9)(A). Pub. L. 100–647, §1002(a)(27), substituted ''section 168(h)(2)'' for ''section 168(j)(4)(C)''.

Subsec. (c). Pub. L. 100–647, §1007(g)(3)(A), substituted ''D, or G'' for ''or D''.

Subsec. (d)(1). Pub. L. 100–647, §1002(a)(18), substituted ''section 46(c)(8)(C)'' for ''section 48(c)(8)(C)''.

Subsec. (d)(3)(C)(i). Pub. L. 100–647, §1002(a)(28), substituted ''class life (as defined in section 168(i)(1))'' for ''present class life (as defined in section 168(g)(2))'' and ''no class life'' for ''no present class life''.

1986—Subsec. (a)(9). Pub. L. 99–514, §1802(a)(5)(A), added par. (9).

Subsec. (d)(1). Pub. L. 99–514, §1844(b)(1), substituted ''reducing the credit base (as defined in section 48(c)(8)(C))'' for ''reducing the qualified investment'' and inserted ''For purposes of determining the amount of credit subject to the early disposition or cessation rules of subsection (a), the net increase in the amount of the nonqualified nonrecourse financing with respect to the property shall be treated as reducing the property's credit base (and correspondingly reducing the qualified investment in the property) in the year in which the property was first placed in service.''

Subsec. (d)(3)(E)(i). Pub. L. 99–514, § 1844(b)(4), inserted ''reduced by the sum of the credit recapture amounts with respect to such property for all preceding years''.

Subsec. (d)(3)(F). Pub. L. 99–514, § 1844(b)(2), struck out subpar. (F) which read as follows: ''The amount of any increase in tax under subsection (a) with respect to any property to which this paragraph applies shall be determined by reducing the qualified investment with respect to such property by the aggregate credit recapture amounts for all taxable years under this paragraph.''

Subsec. (d)(3)(G). Pub. L. 99–514, § 1511(c)(2), substituted ''determined at the underpayment rate established under section 6621'' for ''determined under section 6621''.

1985—Subsec. (a)(5)(B). Pub. L. 99–121 substituted ''For property other than 3-year property'' for ''For 15-year, 10-year, and 5-year property'' in table heading.

1984—Subsec. (a)(5)(D), (6). Pub. L. 98–369, § 474(*o*)(8), substituted ''under section 39'' for ''under section 46(b)''.

Subsec. (a)(7)(C). Pub. L. 98–443 substituted ''Secretary of Transportation'' for ''Civil Aeronautics Board''.

Subsec. (c). Pub. L. 98–369, § 474(*o*)(9), substituted ''subpart A, B, or D'' for ''subpart A''.

Subsec. (d). Pub. L. 98–369, § 431(b)(2), substituted ''Increases in nonqualified nonrecourse financing'' for ''Property ceasing to be at risk'' in heading.

Subsec. (d)(1). Pub. L. 98–369, § 431(b)(2), substituted provisions relating to increases in tax liability resulting from increases in nonqualified nonrecourse financing for provisions relating to increases in tax liability resulting from the taxpayer ceasing to be at risk with respect to certain property.

Subsec. (d)(2). Pub. L. 98–369, § 431(b)(2), substituted provisions that for purposes of par. (1), transfers of debt, or agreements to transfer, occurring more than one year after the initial borrowing shall not be treated as increasing nonqualified nonrecourse financing with respect to the taxpayer for provisions that for purposes of par. (1), such transfers (or agreements to transfer) by a qualified person to a nonqualified person would not cause the taxpayer to be treated as ceasing to be at risk.

Subsec. (d)(3)(A). Pub. L. 98–369, § 431(d)(4), substituted ''increasing the amount of nonqualified nonrecourse financing (within the meaning of section 46(c)(8))'' for ''ceasing to be at risk''.

Subsec. (d)(3)(B)(i). Pub. L. 98–369, § 431(d)(5), struck out ''other than a loan described in section 46(c)(8)(B)(ii)'' after ''section 46(c)(8)(F)(iv)''.

Subsec. (e). Pub. L. 98–369, § 421(b)(7), added subsec. (e).

1983—Subsec. (d)(2). Pub. L. 97–448, § 102(e)(3)(A), substituted ''section 46(c)(8)(D)'' and ''section 46(c)(8)(B)'' for ''section 48(c)(8)(D)'' and ''section 48(c)(8)(B)'', respectively.

Subsec. (d)(3)(A). Pub. L. 97–448, § 102(e)(3)(B), substituted ''section 46(c)(8)(F)'' for ''section 46(c)(8)(E)''.

1982—Subsec. (a)(5)(D). Pub. L. 97–248, § 208(a)(2)(B), inserted provision that if, prior to a disposition to which this subsection applies, any portion of any credit is not allowable with respect to any property by reason of section 168(i)(3), such portion shall be treated, for purposes of this subparagraph, as not having been used to reduce tax liability.

1981—Subsec. (a)(3)(D). Pub. L. 97–34, § 211(g)(2)(A), inserted provisions relating to disposition, cessation, or change in expected use described in paragraph (5).

Subsec. (a)(5), (6). Pub. L. 97–34, § 211(g)(1), (2)(B), added par. (5), redesignated former par. (5) as (6) and substituted ''paragraph (1), (3), or (5)'' for ''paragraph (1) or (3)''. Former par. (6) redesignated (7).

Subsec. (a)(7), (8). Pub. L. 97–34, § 211(g)(1), (2)(C), redesignated former par. (6) as (7), substituted ''paragraph (6)'' for ''paragraph (5)'', and redesignated former par. (7) as (8).

Subsec. (d). Pub. L. 97–34, § 211(f)(2), added subsec. (d).

1978—Subsec. (a)(4), (5). Pub. L. 95–618, § 241(b)(1), added par. (4), redesignated former par. (4) as (5) and substituted ''paragraph (2) or (4)'' for ''paragraph (2)''.

Subsec. (a)(6)(B). Pub. L. 95–618, § 241(b)(3), substituted ''paragraph (5)'' for ''paragraph (4)''.

Subsec. (b)(3). Pub. L. 95–600, § 317(a), added par. (3).

1976—Subsec. (a). Pub. L. 94–455, § 1906(b)(13)(A), struck out in introductory provision and in par. (3)(C) ''or his delegate'' after ''Secretary''.

Subsec. (a)(7). Pub. L. 94–455, § 804(b), added par. (7).

1975—Subsec. (a)(3), (4). Pub. L. 94–12, § 302(b)(2)(A), (c)(1), added par. (3), redesignated former par. (3) as (4) and substituted ''paragraph (1) or (3)'' for ''paragraph (1)''. A former par. (4), relating to increase or adjustment of tax where property is destroyed by casualty, etc., was repealed by Pub. L. 92–178.

Subsec. (a)(5), (6)(B). Pub. L. 94–12, § 302(c)(2), substituted ''paragraph (4)'' for ''paragraph (3)''.

1971—Subsec. (a)(4). Pub. L. 92–178, § 107(a)(1), struck out par. (4) relating to property destroyed by casualty, etc.

Subsec. (a)(5). Pub. L. 92–178, § 107(b)(1), provided for the repeal of par. (5) with the repeal not to apply, however, in the case of certain replacement property. See section 107(b)(2) of Pub. L. 92–178, set out in the Effective Date of 1971 Amendment note below.

Subsec. (a)(6)(A). Pub. L. 92–178, § 102(c), substituted ''3½ years'' for ''4 years''.

Subsec. (a)(6). Pub. L. 91–676 added par. (6).

1969—Subsec. (a)(5). Pub. L. 91–172, § 703(c)(2), added par. (5).

Subsec. (a)(4). Pub. L. 91–172, § 703(c)(1), inserted provision making subpars. (B) and (C) inapplicable to any casualty or theft occurring after April 18, 1969.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, § 13402(c), Dec. 22, 2017, 131 Stat. 2134, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 145 of this title] shall apply to amounts paid or incurred after December 31, 2017.

''(2) TRANSITION RULE.—In the case of qualified rehabilitation expenditures with respect to any building—

''(A) owned or leased by the taxpayer during the entirety of the period after December 31, 2017, and

''(B) with respect to which the 24-month period selected by the taxpayer under clause (i) of section 47(c)(1)(B) of the Internal Revenue Code (as amended by subsection (b)), or the 60-month period applicable under clause (ii) of such section, begins not later than 180 days after the date of the enactment of this Act [Dec. 22, 2017],

the amendments made by this section shall apply to such expenditures paid or incurred after the end of the taxable year in which the 24-month period, or the 60-month period, referred to in subparagraph (B) ends.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title I, § 3025(b), July 30, 2008, 122 Stat. 2897, provided that: ''The amendments made by this section [amending this section] shall apply to expenditures properly taken into account for periods after December 31, 2007.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(a) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XV, §1511(d), Oct. 22, 1986, 100 Stat. 2746, provided that: ''The amendments made by this section [amending this section and sections 48, 167, 644, 852, 4497, 6214, 6332, 6343, 6601, 6602, 6611, 6621, 6654, 6655, and 7426 of this title and sections 1961 and 2411 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as a note under section 6621 of this title] shall apply for purposes of determining interest for periods after December 31, 1986.''

Amendment by sections 1802(a)(5)(A) and 1844(b)(1), (2), (4) 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 1985 AMENDMENT

Amendment by Pub. L. 99–121 applicable as if included in the amendments made by section 111 of the Tax Reform Act of 1984, Pub. L. 98–369, see section 105(b)(4) of Pub. L. 99–121, set out as a note under section 168 of this title, and section 111(g) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 168 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98–443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

Amendment by section 421(b)(7) of Pub. L. 98–369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98–369, set out as an Effective Date note under section 1041 of this title.

Amendment by section 431(b)(2), (d)(4), (5) of Pub. L. 98–369 applicable to property placed in service after July 18, 1984, in taxable years ending after such date, but not applicable to property to which subsec. (d) of this section and section 46(c)(8), (9) of this title, as enacted by section 211(f) of Pub. L. 97–34, do not apply, with the taxpayer having an option to elect retroactive application of amendment by Pub. L. 98–369, see section 431(e) of Pub. L. 98–369, set out as a note under section 46 of this title.

Amendment by section 474(*o*)(8), (9) 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.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to agreements entered into after July 1, 1982, or to property placed in service after that date, but not to transitional safe harbor lease property, nor to qualified leased property described in section 168(f)(8)(D)(v) of this title which is placed in service before Jan. 1, 1988, or is placed in service after such date pursuant to a binding contract or commitment entered into before April 1, 1983, and solely because of conditions which, as determined by the Secretary of the Treasury or his delegate, are not within the control of the lessor or lessee, see section 208(d)(1), (2)(A), (5) of Pub. L. 97–248, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 211(g) of Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, see section 211(i)(1) of Pub. L. 97–34, set out in a note under section 46 of this title.

Amendment by section 211(f)(2) of Pub. L. 97–34 not to apply to property placed in service by the taxpayer on or before Feb. 18, 1981, and property placed in service by the taxpayer after Feb. 18, 1981, where such property was acquired by the taxpayer pursuant to a binding contract entered into on or before that date, see section 211(i)(5) of Pub. L. 97–34, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title III, §317(b), Nov. 6, 1978, 92 Stat. 2830, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after March 31, 1976.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 804(b) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1974, see section 804(e) of Pub. L. 94–455, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years ending after Dec. 31, 1974, see section 305(a) of Pub. L. 94–12, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

In redetermining qualified investment for purposes of subsec. (a) of this section in the case of any property which ceases to be section 38 property with respect to the taxpayer after Aug. 15, 1971, or which becomes public utility property after such date, section 46(c)(2) of this title as amended by section 102(a) of Pub. L. 92–178 as applicable, see section 102(d)(2) of Pub. L. 92–178, set out as a note under section 46 of this title.

Amendment by section 107(a)(1) of Pub. L. 92–178 applicable to casualties and thefts occurring after Aug. 15, 1971, see section 107(a)(2) of Pub. L. 92–178, set out as a note under section 46 of this title.

Pub. L. 92–178, title I, §107(b)(2), Dec. 10, 1971, 85 Stat. 507, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The repeal made by paragraph (1) [repealing subsec. (a)(5) of this section] shall not apply if replacement property described in subparagraph (B) of such section 47(a)(5) is not property described in section 50 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].''

Pub. L. 92–178, title I, §102(d)(3), Dec. 10, 1971, 85 Stat. 500, provided that: ''The amendment made by subsection (c) [amending this section] shall apply to leases executed after April 18, 1969.''

Pub. L. 91–676, §2, Jan. 12, 1971, 84 Stat. 2060, provided that: ''The amendment made by the first section of this Act [amending this section] shall apply to taxable years ending after April 18, 1969.''

EFFECTIVE DATE

Section applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87–834, set out as a note under section 46 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

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.

CLARIFICATION OF EFFECT OF 1984 AMENDMENT ON INVESTMENT TAX CREDIT

For provision that nothing in the amendments made by section 474(*o*) of Pub. L. 98–369, which amended this section, be construed as reducing the investment tax credit in taxable years beginning before Jan. 1, 1984, see section 475(c) of Pub. L. 98–369, set out as a note under section 46 of this title.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Federal Aviation Agency and of Administrator and other offices and officers thereof transferred by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, to Secretary of Transportation, with functions, powers, and duties of Secretary of Transportation pertaining to aviation safety to be exercised by Federal Aviation Administrator in Department of Transportation, see section 106 of Title 49, Transportation.

§ 48. Energy credit

(a) Energy credit

(1) In general

For purposes of section 46, except as provided in paragraphs (1)(B), (2)(B), and (3)(B) of subsection (c), the energy credit for any taxable year is the energy percentage of the basis of each energy property placed in service during such taxable year.

(2) Energy percentage

(A) In general

Except as provided in paragraphs (6) and (7), the energy percentage is—

(i) 30 percent in the case of—

(I) qualified fuel cell property,

(II) energy property described in paragraph (3)(A)(i) but only with respect to property the construction of which begins before January 1, 2024,

(III) energy property described in paragraph (3)(A)(ii),

(IV) qualified small wind energy property, and

(V) waste energy recovery property, and

(ii) in the case of any energy property to which clause (i) does not apply, 10 percent.

(B) Coordination with rehabilitation credit

The energy percentage shall not apply to that portion of the basis of any property which is attributable to qualified rehabilitation expenditures.

(3) Energy property

For purposes of this subpart, the term ''energy property'' means any property—

(A) which is—

(i) equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, excepting property used to generate energy for the purposes of heating a swimming pool,

(ii) equipment which uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight but only with respect to property the construction of which begins before January 1, 2024,

(iii) equipment used to produce, distribute, or use energy derived from a geothermal deposit (within the meaning of section 613(e)(2)), but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage,

(iv) qualified fuel cell property or qualified microturbine property,

(v) combined heat and power system property,

(vi) qualified small wind energy property,

(vii) equipment which uses the ground or ground water as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure, but only with respect to property the construction of which begins before January 1, 2024, or

(viii) waste energy recovery property,

(B)(i) the construction, reconstruction, or erection of which is completed by the taxpayer, or

(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer,

(C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable, and

(D) which meets the performance and quality standards (if any) which—

(i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy), and

(ii) are in effect at the time of the acquisition of the property.

Such term shall not include any property which is part of a facility the production from which is allowed as a credit under section 45 for the taxable year or any prior taxable year.

(4) Special rule for property financed by subsidized energy financing or industrial development bonds

(A) Reduction of basis

For purposes of applying the energy percentage to any property, if such property is financed in whole or in part by—

(i) subsidized energy financing, or

(ii) the proceeds of a private activity bond (within the meaning of section 141) the interest on which is exempt from tax under section 103,

the amount taken into account as the basis of such property shall not exceed the amount which (but for this subparagraph) would be so taken into account multiplied by the fraction determined under subparagraph (B).

(B) Determination of fraction

For purposes of subparagraph (A), the fraction determined under this subparagraph is 1 reduced by a fraction—

(i) the numerator of which is that portion of the basis of the property which is allocable to such financing or proceeds, and