

INTERNAL REVENUE CODE SECTIONS 46(c)(4) AND 46(d)

Prior to Amendment by the Revenue Reconciliation Act of 1990, P.L. 101-508

SECTION 46. AMOUNT OF CREDIT.

(c) QUALIFIED INVESTMENT.—

(4) COORDINATION WITH SUBSECTION (d).—The amount which would (but for this paragraph) be treated as qualified investment under this subsection with respect to any property shall be reduced (but not below zero) by any amount treated by the taxpayer or a predecessor of the taxpayer (or, in the case of a sale and leaseback described in section 47(a)(3)(C), by the lessee) as qualified investment with respect to such property under subsection (d), to the extent the amount so treated has not been required to be recaptured by reason of subsection 47(a)(3).

(d) QUALIFIED PROGRESS EXPENDITURES.—

(1) INCREASE IN QUALIFIED INVESTMENT.—

(A) IN GENERAL.—In the case of any taxpayer who has made an election under paragraph (6), the amount of the qualified investment of such taxpayer for the taxable year (determined under subsection (c) without regard to this subsection) shall be increased by an amount equal to the aggregate of the applicable percentage of each qualified progress expenditure for the taxable year with respect to progress expenditure property.

(B) APPLICABLE PERCENTAGE.—

(i) RECOVERY PROPERTY.—For purposes of subparagraph (A), the applicable percentage for property to which section 168 applies shall be determined under subsection (c)(7) based on a reasonable expectation of what the character of the property will be when it is placed in service.

(ii) NONRECOVERY PROPERTY.—For purposes of subparagraph (A), the applicable percentage for property to which section 168 does not apply shall be determined under subsection (c)(2) based on a reasonable expectation of what the useful life of the property will be when it is placed in service.

(iii) APPLICATION ON BASIS OF FACTS KNOWN.—Clauses (i) and (ii) shall be applied on the basis of the facts known at the close of the taxable year of the taxpayer in which the expenditure is made.

(2) PROGRESS EXPENDITURE PROPERTY DEFINED.—

(A) IN GENERAL.—For purposes of this subsection, the term “progress expenditure property” means any property which is being constructed by or for the taxpayer and which—

(i) has a normal construction period of two years or more, and

(ii) it is reasonable to believe will be new section 38 property in the hands of the taxpayer when it is placed in service.

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

(B) NORMAL CONSTRUCTION PERIOD.—For purposes of subparagraph (A), the term “normal construction period” means the period reasonably expected to be required for the construction of the property—

(i) beginning with the date on which physical work on the construction 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) QUALIFIED PROGRESS EXPENDITURES DEFINED.—For purposes of this subsection—

(A) SELF-CONSTRUCTED PROPERTY.—In the case of any self-constructed property, the term “qualified progress expenditures” means the amount which, for purposes of this subpart, is, properly chargeable (during such taxable year) to capital account with respect to such property.

(B) NON-SELF-CONSTRUCTED PROPERTY.—In the case of non-self-constructed property, the term “qualified progress expenditures” means the lesser of—

(i) the amount paid during the taxable year to another person for the construction of such property, or

(ii) the amount which represents that proportion of the overall cost to the taxpayer of the construction by such other person which is properly attributable to that portion of such construction which is completed during such taxable year.

(4) SPECIAL RULES FOR APPLYING PARAGRAPH (3).—For purposes of paragraph (3)—

(A) COMPONENT PARTS, ETC.—Property which is to be a component part of, or is otherwise to be included in, any progress expenditure property shall be taken into account—

(i) at a time not earlier than the time at which it becomes irrevocably devoted to use in the progress expenditure property, 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 property.

(B) CERTAIN BORROWINGS DISREGARDED.—Any amount borrowed directly or indirectly by the taxpayer from the person constructing the property for him shall not be treated as an amount expended for such construction.

(C) CERTAIN UNUSED EXPENDITURES CARRIED OVER.—In the case of non-self-constructed property, if for the taxable year—

(i) the amount under clause (i) of paragraph (3)(B) exceeds the amount under clause (ii) of paragraph (3)(B), then the amount of such excess shall be taken into account under such clause (i) for the succeeding taxable year, or

(ii) the amount under clause (ii) of paragraph (3)(B) exceeds the amount under clause (i) of paragraph (3)(B), then the amount of such excess shall be taken into account under such clause (ii) for the succeeding taxable year.

(D) DETERMINATION OF PERCENTAGE OF COMPLETION.—In the case of non-self-constructed property, the determination under paragraph (3)(B)(ii) of the proportion of the overall cost to the taxpayer of the construction of any property which is properly attributable to construction 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 construction shall be deemed to be completed not more rapidly than ratably over the normal construction period.

(E) NO QUALIFIED PROGRESS EXPENDITURES FOR CERTAIN PRIOR PERIODS.—In the case of any property, no qualified progress expenditures shall be taken into account under this subsection for any period before January 22, 1975 (or, if later, before the first day of the first taxable year to which an election under this subsection applies).

(F) NO QUALIFIED PROGRESS EXPENDITURES FOR PROPERTY FOR YEAR IT IS PLACED IN SERVICE, ETC.—In the case of any property, no qualified progress expenditures shall be taken into account under this subsection for the earlier of—

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

(ii) the first taxable year for which recapture is required under section 47(a)(3) with respect to such property,

or for any taxable year thereafter.

(5) OTHER DEFINITIONS.—For purposes of this subsection—

(A) SELF-CONSTRUCTED PROPERTY.—The term “self-constructed property” means property more than half of the construction expenditures for which it is reasonable to believe will be made directly by the taxpayer.

(B) NON-SELF-CONSTRUCTED PROPERTY.—The term “non-self-constructed property” means property which is not self-constructed property.

(C) CONSTRUCTION, ETC.—The term “construction” includes reconstruction and erection, and the term “constructed” includes reconstructed and erected.

(D) ONLY CONSTRUCTION OF SECTION 38 PROPERTY TO BE TAKEN INTO ACCOUNT.—Construction shall be taken into account only if, for purposes of this subpart, expenditures therefor are properly chargeable to capital account with respect to the property.

(6) ELECTION.—An election under this subsection may be made at such time and in such manner as the Secretary may by regulations prescribe. Such an election shall apply to the taxable year for which made and to all subsequent taxable years. Such an election, once made, may not be revoked except with the consent of the Secretary.

(7) TRANSITIONAL RULES.—The qualified investment taken into account under this subsection for any taxable year beginning before January 1, 1980, with respect to any property shall be (in lieu of the full amount) an amount equal to the sum of—

(A) the applicable percentage of the full amount determined under the following table:

For a taxable year beginning in:	The applicable percentage is:
1974 or 1975.....	20
1976	40
1977	60
1978	80
1979	100;
plus	

(B) in the case of any property to which this subsection applied for one or more preceding taxable years, 20 percent of the full amount for each such preceding taxable year.

For purposes of this paragraph, the term “full amount”, when used with respect to any property for any taxable year, means the amount of the qualified investment for such property for such year determined under this subsection without regard to this paragraph.