IRC, 85-CODE-VOL, SEC. 46. AMOUNT OF CREDIT.

(a) AMOUNT OF INVESTMENT CREDIT.--

For purposes of section 38, the amount of the investment credit determined under this section for any taxable year shall be an amount equal to the sum of the following percentages of the qualified investment (as determined under subsections (c) and (d)):

46(a)(1) the regular percentage,

46(a)(2) in the case of energy property, the energy percentage, and

46(a)(3) in the case of that portion of the basis of any property which is attributable to qualified rehabilitation expenditures, the rehabilitation percentage.

(b) DETERMINATION OF PERCENTAGES.--

For purposes of subsection (a)--

46(b)(1) REGULAR PERCENTAGE.--The regular percentage is 10 percent.

46(b)(2) ENERGY PERCENTAGE.--

46(b)(2)(A) IN GENERAL.--The energy percentage shall be determined in accordance with the following table:

[Chart data intentionally removed.]

46(b)(2)(B) PERIODS FOR WHICH PERCENTAGE NOT SPECIFIED.--In the case of any energy property, the energy percentage shall be zero for any period for which an energy percentage is not specified for such property under subparagraph (A) (as modified by subparagraphs (C) and (D)).

46(b)(2)(C) LONGER PERIOD FOR CERTAIN LONG-TERM PROJECTS.--For the purpose of applying the energy percentage contained in clause (i) of subparagraph (A) with respect to property which is part of a project with a normal construction period of 2 years or more (within the meaning of subsection (d)(2)(A)(i)), "December 31, 1990" shall be substituted for "December 31, 1982" if--

46(b)(2)(C)(i) before January 1, 1983, all engineering studies in connection with the commencement of the construction of the project have been completed and all environmental and construction permits required under Federal, State, or local law in connection with the commencement of the construction of the project have been applied for, and

46(b)(2)(C)(ii) before January 1, 1986, the taxpayer has entered into binding contracts for the acquisition, construction, reconstruction, or erection of equipment specially designed for the project and the aggregate cost to the taxpayer of that equipment is at least 50 percent of the reasonably estimated cost for all such equipment which is to be placed in service sas part of the project upon its completion.

46(b)(2)(D) LONGER PERIOD FOR CERTAIN HYDROELECTRIC GENERATING PROPERTY.--If an application has been docketed by the Federal Energy Regulatory Commission before January 1, 1986, with respect to the installation of any qualified hydroelectric generating property, for purposes of applying the energy percentage contained in clause (iv) of subparagraph (A) with respect to such property, "December 31, 1988" shall be substituted for "December 31, 1985."

46(b)(3) SPECIAL RULE FOR CERTAIN ENERGY PROPERTY.--The regular percentage shall not apply to any energy property which, but for section 48(l)(1), would not be section 38 property. In the case of any qualified hydroelectric generating property which is a fish passageway, the preceding sentence shall not apply to any period after 1979 for which the energy percentage for such property is greater than zero.

46(b)(4) REHABILITATION PERCENTAGE.--

46(b)(4)(A) IN GENERAL.--

[Chart data intentionally removed.]

46(b)(4)(B) REGULAR AND ENERGY PERCENTAGES NOT TO APPLY.—The regular percentages and the energy percentages shall not apply to that portion of the basis of any property which is attributable to qualified rehabilitation expenditures.

46(b)(4)(C) DEFINITIONS.--For purpose of this paragraph--

46(b)(4)(C)(i) 30-YEAR BUILDING.--The term "30-year building" means a qualified rehabilitated building other than a 40-year building and other than a certified historic structure.

46(b)(4)(C)(ii) 40-YEAR BUILDING.--The term "40-year building" means a qualified rehabilitated building (other than a certified historic structure) which would meet the requirements of section 48(g)(1)(B) if "40" were substituted for "30" each place it appears in subparagraph (B) thereof.

46(b)(4)(C)(iii) CERTIFIED HISTORIC STRUCTURE.--The term "certified historic structure" means a qualified rehabilitated building which meets the requirements of section 48(g)(3).

(c) QUALIFIED INVESTMENT.--

46(c)(1) IN GENERAL.--For purposes of this subpart, the term "qualified investment" means, with respect to any taxable year, the aggregate of--

46(c)(1)(A) the applicable percentage of the basis of each new section 38 property (as defined in section 48(b)) placed in service by the taxpayer during such taxable year, plus

46(c)(1)(B) the applicable percentage of the cost of each used section 38 property (as defined in section 48(c)(1)) placed in service by the taxpayer during such taxable year.

46(c)(2) APPLICABLE PERCENTAGE IN CERTAIN CASES.--Except as provided in paragraphs (3), (6), and (7), the applicable percentage for purposes of paragraph (1), for any property shall be determined under the following table:

[Chart data intentionally removed.]

For purposes of this subpart, the useful life of any property shall be the useful life used in computing the allowance for depreciation under section 167 for the taxable year in which the property is placed in service.

46(c)(3) PUBLIC UTILITY PROPERTY.--

46(c)(3)(A) To the extent that the credit allowed by section 38 with respect to any public utility property is determined at the rate of 7 percent, in the case of any property which is public utility property, the amount of the qualified investment shall be 4/7 of the amount determined under paragraph (1). The preceding sentence shall not apply for purposes of applying the energy percentage.

46(c)(3)(B) For purposes of subparagraph (A), the term "public utility property" means property used predominantly in the trade or business of the furnishing or sale of--

46(c)(3)(B)(i) electrical energy, water, or sewage disposal services.

46(c)(3)(B)(ii) gas through a local distribution system, or

46(c)(3)(B)(iii) telephone service, telegraph service by means of domestic telegraph operations (as defined in section 222(a)(5) of the Communications Act of 1934, as amended; 47 U.S.C. 222(a)(5)), or other communication services (other than international telegraph service), if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof. Such term also means communication property of the type used by persons engaged in providing telephone or microwave communication services to which clause (iii) applies, if such property is used predominantly for communication purposes.

46(c)(3)(C) In the case of any interest in a submarine cable circuit used to furnish telegraph service between the United States and a point outside the United States of a taxpayer engaged in furnishing international telegraph service (if the rates for such furnishing have been established or approved by a governmental unit, agency, instrumentality, commission, or similar body described in subparagraph (B)), the qualified investment shall not exceed the qualified investment attributable to so much of the interest of the taxpayer in the circuit as does not exceed 50 percent of all interests in the circuit.

46(c)(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 section 47(a)(3).

46(c)(5) APPLICABLE PERCENTAGE IN THE CASE OF CERTAIN POLLUTION CONTROL FACILITIES.--

46(c)(5)(A) IN GENERAL.--Notwithstanding paragraph (2), in the case of property--

46(c)(5)(A)(i) with respect to which an election under section 169 applies, and

46(c)(5)(A)(ii) the useful life of which (determined without regard to section 169) is not less than 5 years,

100 percent shall be the applicable percentage for purposes of applying paragraph (1) with respect to so much of the adjusted basis of the property as (after the application of section 169(f)) constitutes the amortizable basis for purposes of section 169.

46(c)(5)(B) SPECIAL RULE WHERE PROPERTY IS FINANCED BY INDUSTRIAL DEVELOPMENT BONDS.--To the extent that any property is financed by the proceeds of an industrial development bond (within the meaning of section 103(b)(2)) the interest on which is exempt from tax under section 103, subparagraph (A) shall be applied by substituting "50 percent" for "100 percent." This subparagraph shall not apply for purposes of applying the energy percentage.

46(c)(6) SPECIAL RULE FOR COMMUTER HIGHWAY VEHICLES.--

46(c)(6)(A) IN GENERAL.--Notwithstanding paragraph (2) or (3), in the case of a commuter highway vehicle the useful life of which is 3 years or more, or which is recovery property (within the meaning of section 168), the applicable percentage for purposes of paragraph (1) shall be 100 percent.

46(c)(6)(B) DEFINITION OF COMMUTER HIGHWAY VEHICLE.--The purposes of subparagraph (A), the term "commuter highway vehicle" means a highway vehicle--

46(c)(6)(B)(i) the seating capacity of which is at least 8 adults (not including the driver),

46(c)(6)(B)(ii) at least 80 percent of the mileage use of which can reasonably be expected to be (I) for purposes of transporting the taxpayer's employees between their residences and their place of employment, and (II) on trips during which the number of employees transported for such purposes is at least one-half of the adult seating capacity of such vehicle (not including the driver),

46(c)(6)(B)(iii) which is acquired by the taxpayer on or after the date of the enactment of the Energy Tax Act of 1978, and placed in service by the taxpayer before January 1, 1986, and

46(c)(6)(B)(iv) with respect to which the taxpayer makes an election under this paragraph on his return for the taxable year in which such vehicle is placed in service.

46(c)(7) APPLICABLE PERCENTAGE FOR RECOVERY PROPERTY.— Notwithstanding paragraph (2), the applicable percentage for purposes of paragraph (1) shall be--

46(c)(7)(A) in the case of recovery property other than 3-year property (within the meaning of section 168(c)), 100 percent, and

46(c)(7)(B) in the case of 3-year property (within the meaning of section 168(c)), 60 percent.

For purposes of subparagraph (A), RRB replacement property (within the meaning of section 168(f)(3)(B)) shall be treated as property which is not 3-year property.

46(c)(8) CERTAIN NONRECOURSE FINANCING EXCLUDED FROM CREDIT BASE.--

46(c)(8)(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 property (as of the close of the taxable year in which placed in service).

46(c)(8)(B) PROPERTY TO WHICH PARAGRAPH APPLIES.--This paragraph applies to any property which--

46(c)(8)(B)(i) is placed in service during the taxable year by a taxpayer described in section 465(a)(1), and

46(c)(8)(B)(ii) is used in connection with an activity with respect to which any loss is subject to limitation under section 465.

46(c)(8)(C) CREDIT BASE DEFINED.--For purposes of this paragraph, the term "credit base" means--

46(c)(8)(C)(i) in the case of new section 38 property, the basis of the property, or

46(c)(8)(C)(ii) in the case of used section 38 property, the cost of such property.

46(c)(8)(D) NONQUALIFIED NONRECOURSE FINANCING.--

46(c)(8)(D)(i) IN GENERAL.--For purposes of this paragraph and paragraph (9), the term "nonqualified nonrecourse financing" means any nonrecourse financing which is not qualified commercial financing.

46(c)(8)(D)(ii) QUALIFIED COMMERCIAL FINANCING.--For purposes of this paragraph, the term "qualified commercial financing" means any financing with respect to any property if--

46(c)(8)(D)(ii)(I) such property is acquired by the taxpayer from a person who is not a related person,

46(c)(8)(D)(ii)(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

46(c)(8)(D)(ii)(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.

46(c)(8)(D)(iii) NONRECOURSE FINANCING.--For purposes of this subparagraph, the term "nonrecourse financing" includes--

46(c)(8)(D)(iii)(I) any amount with respect to which the taxpayer is protected against loss through guarantees, stop-loss agreements, or other similar arrangements, and

46(c)(8)(D)(iii)(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.

46(c)(8)(D)(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--

46(c)(8)(D)(iv)(I) a related person with respect to the taxpayer.

46(c)(8)(D)(iv)(II) a person from which the taxpayer acquired the property (or a related person to such person), or

46(c)(8)(D)(iv)(III) a person who receives a fee with respect to the taxpayer's investment in the property (or a related person to such person).

46(c)(8)(D)(v) RELATED PERSON.--For purposes of clause (i), the term "related person" has the meaning given such term by section 168(e)(4). Except as otherwise provided in regulations prescribed by the Secretary, the determination of whether a person is a related person shall be made as of the close of the taxable year in which the property is placed in service.

46(c)(8)(E) APPLICATION TO PARTNERSHIPS AND S CORPORATIONS.—For purposes of this paragraph and paragraph (9)--

46(c)(8)(E)(i) IN GENERAL.--Except as otherwise provided in this subparagraph, in the case of any partnership or S corporation, the determination of whether a partner's or shareholder's allocable share of any financing is nonqualified nonrecourse financing shall be made at the partner or shareholder level.

46(c)(8)(E)(ii) SPECIAL RULE FOR CERTAIN RECOURSE FINANCING OF S CORPORATION.--A shareholder of an S corporation shall be treated as liable for his allocable share of any financing provided by a qualified person to such corporation if--

46(c)(8)(E)(ii)(I) such financing is recourse financing (determined at the corporate level), and

46(c)(8)(E)(ii)(II) such financing is provided with respect to qualified business property of such corporation.

46(c)(8)(E)(iii) QUALIFIED BUSINESS PROPERTY.--For purposes of clause (ii), the term "qualified business property" means any property if--

46(c)(8)(E)(iii)(I) such property is used by the corporation in the active conduct of a trade or business,

46(c)(8)(E)(iii)(II) during the entire 12-month period ending on the last day of the taxable year, such corporation had at least 3 full-time employees who were not owner-employees (as defined in section 465(c)(7)(E)(i)) and substantially all the services of whom were services directly related to such trade or business, and

46(c)(8)(E)(iii)(III) during the entire 12-month period ending on the last day of such taxable year, such corporation had at least 1 full-time employee substantially all of the services of whom were in the active management of the trade or business.

Such term shall not include any master sound recording or other tangible or intangible asset associated with literary, artistic, or musical properties.

46(c)(8)(E)(iv) DETERMINATION OF ALLOCABLE SHARE.--The determination of any partner's or shareholder's allocable share of any financing shall be made in the same manner as the credit allowable by section 38 with respect to such property.

46(c)(8)(F) SPECIAL RULE FOR CERTAIN ENERGY PROPERTY.--

46(c)(8)(F)(i) IN GENERAL.--Subparagraph (A) shall not apply with respect to qualified energy property.

46(c)(8)(F)(ii) QUALIFIED ENERGY PROPERTY.--The term "qualified energy property" means energy property to which (but for this subparagraph) subparagraph (A) applies and--

46(c)(8)(F)(ii)(I) which is described in clause (iii),

46(c)(8)(F)(ii)(II) with respect to which the energy percentage determined under subsection (b)(2) at the time such property is placed in service is greater than zero,

46(c)(8)(F)(ii)(III) as of the close of the taxable year in which the property is placed in service, not more than 75 percent of the basis of such property is attributable to nonqualified nonrecourse financing, and

46(c)(8)(F)(ii)(IV) with respect to which any nonqualified nonrecourse financing in connection with such property consists of a level payment loan.

For purposes of subclause (II), the energy percentage for property described in clause (iii)(V) shall be treated as being greater than zero during any period the energy percentage for property described in section 48(1)(14) is greater than zero.

46(c)(8)(F)(iii) PROPERTY TO WHICH THIS SUBPARAGRAPH APPLIES.-- Energy property is described in this clause if such property is--

46(c)(8)(F)(iii)(I) described in clause (ii), (iv), or (vii) or [of] section 48(1)(2)[A],

46(c)(8)(F)(iii)(II) described in section 48(l)(15),

46(c)(8)(F)(iii)(III) described in section 48(l)(3)(A)(iii) (but only to the extent such property is used for converting an alternate substance into alcohol for fuel purposes),

46(c)(8)(F)(iii)(IV) described in clause (i) of section 48(l)(2)(A) (but only to the extent such property is also described in section 48(l)(3)(A)(viii) or (ix)), or

46(c)(8)(F)(iii)(V) property comprising a system for using the same energy source for the sequential generation of electrical power, mechanical shaft power, or both, in combination with steam, heat, or other forms of useful energy.

46(c)(8)(F)(iv) LEVEL PAYMENT LOAN DEFINED.--The term "level payment loan" means a loan in which each installment is substantially equal, a portion of each installment is attributable to the repayment of principal, and that portion is increased commensurate with decreases in the portion of the payment attributable to interest.

46(c)(9) SUBSEQUENT DECREASES IN NONQUALIFIED NONRECOURSE FINANCING WITH RESPECT TO THE PROPERTY.--

46(c)(9)(A) IN GENERAL.--If, at the close of a taxable year following the taxable year in which the property was placed in service, there is a net decrease in the amount of nonqualified nonrecourse financing with respect to such property, such net decrease shall be taken into account as additional qualified investment in such property in accordance with subparagraph (C).

46(c)(9)(B) CERTAIN TRANSACTIONS NOT TAKEN INTO ACCOUNT.--For purposes of this paragraph, nonqualified nonrecourse financing shall not be treated as decreased through the surrender or other use of property financed by nonqualified nonrecourse financing.

46(c)(9)(C) MANNER IN WHICH TAKEN INTO ACCOUNT.--

46(c)(9)(C)(i) CREDIT DETERMINED BY REFERENCE TO TAXABLE YEAR PROPERTY PLACED IN SERVICE.--For purposes of determining the amount of credit allowable under section 38 and the amount of credit subject to the early disposition or cessation rules under section 47, any increase in a taxpayer's qualified investment in property by reason of this paragraph shall be deemed to be additional qualified investment made by the taxpayer in the year in which the property referred to in subparagraph (A) was first placed in service.

46(c)(9)(C)(ii) CREDIT ALLOWED FOR YEAR OF DECREASE IN NONQUALIFIED NONRECOURSE FINANCING.--Any credit allowable under this subpart for any increase in qualified investment by reason of this paragraph shall be treated as earned during the taxable year of the decrease in the amount of nonqualified nonrecourse financing.

(d) QUALIFIED PROGRESS EXPENDITURES.--

46(d)(1) INCREASE IN QUALIFIED INVESTMENT.--

46(d)(1)(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.

46(d)(1)(B) APPLICABLE PERCENTAGE.--

46(d)(1)(B)(i) RECOVERY PROPERTY.--For purposes of subparagraph (A), the applicable percentage for recovery property (within the meaning of section 168) 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.

46(d)(1)(B)(ii) NONRECOVERY PROPERTY.--For purposes of subparagraph (A), the applicable percentage for property which is not recovery property (within the meaning of section 168) 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.

46(d)(1)(B)(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.

46(d)(2) PROGRESS EXPENDITURE PROPERTY DEFINED.--

46(d)(2)(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--

46(d)(2)(A)(i) has a normal construction period of two years or more, and

46(d)(2)(A)(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).

46(d)(2)(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--

46(d)(2)(B)(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

46(d)(2)(B)(ii) ending on the date on which it is expected that the property will be available for placing in service.

46(d)(3) QUALIFIED PROGRESS EXPENDITURES DEFINED.--For purposes of this subsection--

46(d)(3)(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.

46(d)(3)(B) NON-SELF-CONSTRUCTED PROPERTY.--In the case of non-self-constructed property, the term "qualified progress expenditures" means the lesser of--

46(d)(3)(B)(i) the amount paid during the taxable year to another person for the construction of such property, or

46(d)(3)(B)(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.

46(d)(4) SPECIAL RULES FOR APPLYING PARAGRAPH (3).--For purposes of paragraph (3)--

46(d)(4)(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--

46(d)(4)(A)(i) at a time not earlier than the time at which it becomes irrevocably devoted to use in the progress expenditure property, and

46(d)(4)(A)(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.

46(d)(4)(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.

46(d)(4)(C) CERTAIN UNUSED EXPENDITURES CARRIED OVER.--In the case of non-self-constructed property, if for the taxable year--

46(d)(4)(C)(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

46(d)(4)(C)(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.

46(d)(4)(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.

46(d)(4)(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).

46(d)(4)(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--

46(d)(4)(F)(i) the taxable year in which the property is placed in service, or

46(d)(4)(F)(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.

46(d)(5) OTHER DEFINITIONS.--For purposes of this subsection--

46(d)(5)(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.

46(d)(5)(B) NON-SELF-CONSTRUCTED PROPERTY.--The term "non-self-constructed property" means property which is not self-constructed property.

46(d)(5)(C) CONSTRUCTION, ETC.--The term "construction" includes reconstruction and erection, and the term "constructed" includes reconstructed and erected.

46(d)(5)(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.

46(d)(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 exception with the consent of the Secretary.

46(d)(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--

46(d)(7)(A) the applicable percentage of the full amount determined under the following table:

[Chart data intentionally removed.]

plus

46(d)(7)(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.

(e) LIMITATIONS WITH RESPECT TO CERTAIN PERSONS.--

46(e)(1) IN GENERAL.--In the case of--

46(e)(1)(A) an organization to which section 593 applies, and

46(e)(1)(B) a regulated investment company or a real estate investment trust subject to taxation under subchapter M (sec. 851 and following), the qualified investment shall equal such person's ratable share of such qualified investment.

46(e)(2) RATABLE SHARE.--For purposes of paragraph (1), the ratable share of any person for any taxable year of qualified investment shall be--

46(e)(2)(A) in the case of an organization referred to in paragraph (1)(A), 50 percent thereof, and

46(e)(2)(B) in the case of a regulated investment company or a real estate investment trust, the ratio (i) the numerator of which is its taxable income and (ii) the denominator of which is its taxable income computed without regard to the deduction for dividends paid provided by section 852(b)(2)(D) or 857(b)(2)(B), as the case may be.

For purposes of subparagraph (B) of the preceding sentence, the term "taxable income" means in the case of a regulated investment company its investment company taxable income (within the meaning of section 852(b)(2)), and in the case of a real estate investment trust its real estate investment trust taxable income (within the meaning of section 857(b)(2)) determined without regard to any deduction for capital gains dividends (as defined in section 857(b)(3)(C)) and by excluding any net capital gain.

46(e)(3) NONCORPORATE LESSORS.--A credit shall be allowed by section 38 to a person which is not a corporation with respect to property of which such person is the lessor only if--

46(e)(3)(A) the property subject to the lease has been manufactured or produced by the lessor, or

46(e)(3)(B) the term of the lease (taking into account options to renew) is less than 50 percent of the useful life of the property, and for the period consisting of the first 12 months after the date on which the property is transferred to the lessee the sum of the deductions with respect to such property which are allowable to the lessor solely by reason of section 162 (other than rents and reimbursed amounts with respect to such property) exceeds 15 percent of the rental income produced by such property.

In the case of property of which a partnership is the lessor, the credit otherwise allowable under section 38 with respect to such property to any partner which is a corporation shall be allowed notwithstanding the first sentence of this paragraph. For purposes of this paragraph, an S corporation shall be treated as a person which is not a corporation. This paragraph shall not apply with respect to any property which is treated as section 38 property by reason of section 48(a)(1)(E). For purposes of subparagraph (B), in the case of any recovery property (within the meaning of section 168), the useful life shall be the present class life for such property (as defined in section 168(g)(2)).

46(e)(4) SPECIAL RULES WHERE SECTION 593 ORGANIZATION IS LESSEE.--

46(e)(4)(A) IN GENERAL.--For purposes of paragraph (1)(A), if an organization described in section 593 is the lessee of any section 38 property, the lessor of such property shall be treated as an organization described in section 593 with respect to such property.

46(e)(4)(B) EXCEPTION FOR SHORT-TERM LEASES.--This paragraph shall not apply to any property by reason of use under a lease with a term of less than 6 months (determined under section 168(j)(6)).

46(e)(4)(C) ELECTION NOT TO HAVE SUBPARAGRAPH (A) APPLY.—Subparagraph (A) shall not apply for any taxable year to an organization described in section 593 if such organization elects to compute for such year and all subsequent taxable years the amount of the deduction for a reasonable addition to a reserve for bad debts on the basis of actual experience. Any such election shall apply to any successor organization engaged in substantially similar activities and, once made, shall be irrevocable.

(f) LIMITATION IN CASE OF CERTAIN REGULATED COMPANIES[1].--

[1] Taxpayers who are subject to the provisions of Code Sec. 46(f) are not covered by Sec. 101(c) of the Revenue Act of 1971 or by Sec. 203(e) of the Revenue Act of 1964. See the amendatory notes following Code Sec. 46(f).-- CCH.

46(f)(1) GENERAL RULE.--Except as otherwise provided in this subsection, no credit determined under subsection (a) shall be allowed by section 38 with respect to any property described in section 50 (as in effect before its repeal by the Revenue Act of 1978) which is public utility property (as defined in paragraph (5)) of the taxpayer--

46(f)(1)(A) COST OF SERVICE REDUCTION.--If the taxpayer's cost of service for ratemaking purposes is reduced by reason of any portion of the credit determined under subsection (a) and allowable by section 38 (determined without regard to this subsection); or

46(f)(1)(B) RATE BASE REDUCTION.--If the base to which the taxpayer's rate of return for ratemaking purposes is applied is reduced by reason of any portion of the credit determined under subsection (a) and allowable by section 38 (determined without regard to this subsection).

Subparagraph (B) shall not apply if the reduction in the rate base is restored not less rapidly than ratably. If the taxpayer makes an election under this sentence within 90 days after the date of the enactment of this paragraph in the manner prescribed by the Secretary, the immediately preceding sentence shall not apply to property described in paragraph (5)(B) if any agency or instrumentality of the United States having jurisdiction for ratemaking purposes with respect to such taxpayer's trade or business referred to in paragraph (5)(B) determines that the natural domestic supply of the product furnished by the taxpayer in the course of such trade or business is insufficient to meet the present and future requirements of the domestic economy.

46(f)(2) SPECIAL RULE FOR RATABLE FLOW-THROUGH.--If the taxpayer makes an election under this paragraph within 90 days after the date of the enactment of this paragraph in the manner prescribed by the Secretary, paragraph (1) shall not apply, but no credit determined under subsection (a) shall be allowed by section 38 with respect to any property described in section 50 (as in effect before its repeal by the Revenue Act of 1978) which is public utility property (as defined in paragraph (5)) of the taxpayer--

46(f)(2)(A) COST OF SERVICE REDUCTION.--If the taxpayer's cost of service for ratemaking purposes or in its regulated books of account is reduced by more than a ratable portion of the credit determined under subsection (a) and allowable by section 38 (determined without regard to this subsection), or

46(f)(2)(B) RATE BASE REDUCTION.--If the base to which the taxpayer's rate of return for ratemaking purposes is applied is reduced by reason of any portion of the credit determined under subsection (a) and allowable by section 38 (determined without regard to this subsection).

46(f)(3) SPECIAL RULE FOR IMMEDIATE FLOW-THROUGH IN CERTAIN CASES.—In the case of property to which section 167(1)(2)(C) applies, if the taxpayer makes an election under this paragraph within 90 days after the date of the enactment of this paragraph in the manner prescribed by the Secretary, paragraphs (1) and (2) shall not apply to such property.

46(f)(4) LIMITATION.--

46(f)(4)(A) IN GENERAL.--The requirements of paragraphs (1), (2), and (9) regarding cost of service and rate base adjustments shall not be applied to public utility property of the taxpayer to disallow the credit with respect to such property before the first final determination which is inconsistent with paragraph (1), (2), or (9) (as the case may be) is put into effect with respect to public utility property (to which this subsection applies) of the taxpayer. Thereupon, paragraph (1), (2), or (9) shall apply to disallow the credit with respect to public utility property (to which this subsection applies) placed in service by the taxpayer--

46(f)(4)(A)(i) before the date that the first final determination, or a subsequent determination, which is inconsistent with paragraph (1), (2), or (9) (as the case may be) is put into effect, and

46(f)(4)(A)(ii) on or after the date that a determination referred to in clause (i) is put into effect and before the date that a subsequent determination thereafter which is consistent with paragraph (1), (2), or (9) (as the case may be) is put into effect.

46(f)(4)(B) DETERMINATIONS.--For purposes of this paragraph, a determination is a determination made with respect to public utility property (to which this subsection applies) by a governmental unit, agency, instrumentality, or commission or similar body described in subsection (c)(3)(B) which determines the effect of the credit determined under subsection (a) and allowed by section 38 (determined without regard to this subsection)--

46(f)(4)(B)(i) on the taxpayer's cost of service or rate base for ratemaking purposes, or

46(f)(4)(B)(ii) in the case of a taxpayer which made an election under paragraph (2) or the election described in paragraph (9), on the taxpayer's cost of service for ratemaking purposes or in its regulated books of account or rate base for ratemaking purposes.

46(f)(4)(C) SPECIAL RULES.--For purposes of this paragraph--

46(f)(4)(C)(i) a determination is final if all rights to appeal or to request a review, a rehearing, or a redetermination, have been exhausted or have lapsed,

46(f)(4)(C)(ii) the first final determination is the first final determination made after the date of the enactment of this subsection, and

46(f)(4)(C)(iii) a subsequent determination is a determination subsequent to a final determination.

46(f)(5) PUBLIC UTILITY PROPERTY.--For purposes of this subsection, the term "public utility property" means--

46(f)(5)(A) property which is public utility property within the meaning of subsection (c)(3)(B), and

46(f)(5)(B) property used predominantly in the trade or business of the furnishing or sale of (i) steam through a local distribution system or (ii) the transportation of gas or steam by pipeline, if the rates for such furnishing or sale are established or approved by a governmental unit, agency, instrumentality, or commission described in subsection (c)(3)(B).

46(f)(6) RATABLE PORTION.--For purposes of determining ratable restorations to base under paragraph (1) and for purposes of determining ratable portions under paragraph (2)(A), the period of time used in computing depreciation expense for purposes of reflecting operating results in the taxpayer's regulated books of account shall be used.

46(f)(7) REORGANIZATIONS, ASSETS ACQUISITIONS, ETC.--If by reason of a corporate reorganization, by reason of any other acquisition of the assets of one taxpayer by another taxpayer, by reason of the fact that any trade or business of the taxpayer is subject to ratemaking by more than one body, or by reason of other circumstances, the application of any provisions of this subsection to any public utility property does not carry out the purposes of this subsection, the Secretary shall provide by regulations for the application of such provisions in a manner consistent with the purposes of this subsection.

46(f)(8) PROHIBITION OF IMMEDIATE FLOWTHROUGH.--An election made under paragraph (3) shall apply only to the amount of the credit determined under subsection (a) and allowable under section 38 with respect to public utility property (within the meaning of the first sentence of subsection (c)(3)(B)) determined as if the Tax Reduction Act of 1975, the Tax Reform Act of 1976, the Energy Act of 1978, and the Revenue Act of 1978

had not been enacted. Any taxpayer who had timely made an election under paragraph (3) may, -- his own option and without regard to any requirement imposed by an agency described in subsection (c)(3)(B), elect within 90 days after the date of the enactment of the Tax Reduction Act of 1975 (in such manner as the Secretary shall prescribe) to have the provisions of paragraph (3) apply with respect to the amount of the credit determined under subsection (a) and allowable under section 38 with respect to such property which is in excess of the amount determined under the preceding sentence. If such taxpayer does not make such an election, paragraph (1) or (2) (whichever paragraph is applicable without regard to this paragraph) shall apply to such excess credit, except that if neither paragraph (1) nor (2) is applicable (without regard to this paragraph), paragraph (1) shall apply unless the taxpayer elects (in such manner as the Secretary shall prescribe) within 90 days after the date of the enactment of the Tax Reduction Act of 1975 to have the provisions of paragraph (2) apply. The provisions of this paragraph shall not be applied to disallow such excess credit before the first final determination which is inconsistent with such requirements is made, determined in the same manner as under paragraph (4).

46(f)(9) SPECIAL RULE FOR ADDITIONAL CREDIT.--If the taxpayer makes an election under subparagraph (E) of subsection (a)(2), for a taxable year beginning after December 31, 1975, then, notwithstanding the prior paragraphs of this subsection, no credit shall be allowed by section 38 in excess of the amount which would be allowed without regard to the provisions of subparagraph (E) of subsection (a)(2) if--

46(f)(9)(A) the taxpayer's cost of service for ratemaking purposes or in its regulated books of account is reduced by reason of any portion of such credit which results from the transfer of employer securities or cash to a tax credit employee stock ownership plan which meets the requirements of section 409A;

46(f)(9)(B) the base to which the taxpayer's rate of return for ratemaking purposes is applied is reduced by reason of any portion of such credit which results from a transfer described in subparagraph (A) of such employee stock ownership plan; or

46(f)(9)(C) any portion of the amount of such credit which results from a transfer described in subparagraph (A) to such employee stock ownership plan is treated for ratemaking purposes in any way other than as though it had been contributed by the taxpayer's common shareholders.

46(f)(10) USE OF INCONSISTENT ESTIMATES AND PROJECTIONS, ETC., FOR PURPOSES OF PARAGRAPHS (1) AND (2).--

46(f)(10)(A) IN GENERAL.--One way in which the requirements of paragraph (1) or (2) are not met is if the taxpayer, for ratemaking purposes, uses a procedure or adjustment which is inconsistent with the requirements of paragraph (1) or paragraph (2), as the case may be.

46(f)(10)(B) USE OF INCONSISTENT ESTIMATES AND PROJECTIONS.—The procedures and adjustments which are to be treated as inconsistent for purposes of

subparagraph (A) shall include any procedure or adjustment for ratemaking purposes which uses an estimate or projection of the taxpayer's qualified investment for purposes of the credit allowable by section 38 unless such estimate or projection is consistent with the estimates and projections of property which are used, for ratemaking purposes, with respect to the taxpayer's depreciation expense and rate base.

46(f)(10)(C) REGULATORY AUTHORITY.--The Secretary may be regulations prescribe procedures and adjustments (in addition to those specified in subparagraph (B)) which are to be treated as inconsistent for purposes of subparagraph (A).

(g) 50 PERCENT CREDIT IN THE CASE OF CERTAIN VESSELS.--

46(g)(1) IN GENERAL.--In the case of a qualified withdrawal out of the untaxed portion of a capital gain account or out of an ordinary income account in a capital construction fund established under section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177), for--

46(g)(1)(A) the acquisition, construction, or reconstruction of a qualified vessel, or

46(g)(1)(B) the acquisition, construction, or reconstruction of barges or containers which are part of the complement of a qualified vessel and to which subsection (f)(1)(B) of such section 607 applies, for purposes of section 38 there shall be deemed to have been made (at the time of such withdrawal) a qualified investment (within the meaning of subsection (c)) or qualified progress expenditures (within the meaning of subsection (d)), whichever is appropriate, with respect to property which is section 38 property.

46(g)(2) AMOUNT OF CREDIT.--For purposes of paragraph (1), the amount of the qualified investment shall be 50 percent of the applicable percentage of the qualified withdrawal referred to in paragraph (1), or the amount of the qualified progress expenditures shall be 50 percent of such withdrawal, as the case may be. For purposes of determining the amount of the credit allowable by reason of this subsection for any taxable year, the limitation of section 38(c) shall be determined without regard to subsection (d)(1)(A) of such section 607.

46(g)(3) COORDINATION WITH SECTION 38.--The amount of the credit allowable by reason of this subsection with respect to any property shall be the minimum amount allowable under section 38 with respect to such property. If, without regard to this subsection, a greater amount is allowable under section 38 with respect to such property, then such greater amount shall apply and this subsection shall not apply.

46(g)(4) COORDINATION WITH SECTION 47.--Section 47 shall be applied--

46(g)(4)(A) to any property to which this subsection applies, and

46(g)(4)(B) to the payment (out of the untaxed portion of a capital gain account or out of the ordinary income account of a capital construction fund established under section 607

of the Merchant Marine Act, 1936) of the principal of any indebtedness incurred in connection with property with respect to which a credit was allowed under section 38.

For purposes of section 47, any payment described in subparagraph (B) of the preceding sentence shall be treated as a disposition occurring less than 3 years after the property was placed in service; but, in the case of a credit allowable without regard to this subsection, the aggregate amount which may be recaptured by reason of this sentence shall not exceed 50 percent of such credit.

46(g)(5) DEFINITIONS.--Any term used in section 607 of the Merchant Marine Act, 1936, shall have the same meaning when used in this subsection.

46(g)(6) NO INFERENCE.--Nothing in this subsection shall be construed to infer that any property described in this subsection is or is not section 38 property, and any determination of such issue shall be made as if this subsection had not been enacted.

(h) SPECIAL RULES FOR COOPERATIVES.--

In the case of a cooperative organization described in section 1381(a)--

46(h)(1) that portion of the credit determined under subsection (a) and allowable to the organization under section 38 which the organization cannot use for the taxable year to which the qualified investment is attributable because of the limitation contained in section 38(c) shall be allocated to the patrons of the organization,

46(h)(2) section 47 (relating to certain dispositions, etc., of section 38 property) shall be applied as if any allocated portion of the credit had been retained by the organization, and

46(h)(3) the rules necessary to carry out the purposes of this subsection shall be determined under regulations prescribed by the Secretary.