

[Sec. 48(d)]

(d) CERTAIN LEASED PROPERTY. --

(1) GENERAL RULE. -- A person (other than a person referred to in section 46(e)(1)) who is a lessor of property may (at such time, in such manner, and subject to such conditions as are provided by regulations prescribed by the Secretary) elect with respect to any new section 38 property (other than property described in paragraph (4)) to treat the lessee as having acquired such property for an amount equal to --

(A) except as provided in subparagraph (B), the fair market value of such property, or

(B) if the property is leased by a corporation which is a component member of a controlled group (within the meaning of section 38(c)(3)(B)) to another corporation which is a component member of the same controlled group, the basis of such property to the lessor.

(2) SPECIAL RULE FOR CERTAIN SHORT TERM LEASES. --

(A) IN GENERAL. -- A person (other than a person referred to in section 46(e)(1)) who is a lessor of property described in paragraph (4) may (at such time, in such manner, and subject to such conditions as are provided by regulations prescribed by the Secretary) elect with respect to such property to treat the lessee as having acquired a portion of such property for the amount determined under subparagraph (B).

(B) DETERMINATION OF LESSEE'S INVESTMENT. -- The amount for which a lessee of property described in paragraph (4) shall be treated as having acquired a portion of such property is an amount equal to a fraction, the numerator of which is the term of the lease and the denominator of which is the class life of the property leased (determined under section 167(m)), of the amount for which the lessee would be treated as having acquired the property under paragraph (1).

(C) DETERMINATION OF LESSOR'S QUALIFIED INVESTMENT. -- The qualified investment of a lessor of property described in paragraph (4) in any such property with respect to which he has made an election under this paragraph is an amount equal to his qualified investment in such property (as determined under section 46(c)) multiplied by a fraction equal to the excess of one over the fraction used under subparagraph (B) to determine the lessee's investment in such property.

(3) LIMITATIONS. -- The elections provided by paragraphs (1) and (2) may be made with respect to property which would be new section 38 property if acquired by the lessee. For purposes of the preceding sentence and section 46(c), the useful life of property in the hands of the lessee is the useful life of such property in the hands of the lessor. If a lessor makes the election provided by paragraph (1) with respect to any property, the lessee shall be treated for all purposes of this subpart as having acquired such property. If a lessor makes the election provided by paragraph (2) with respect to any property, the lessee shall be treated for all purposes of this subpart as having acquired a fractional portion of such property equal to the fraction determined under paragraph (2)(B) with respect to such property.

(4) PROPERTY TO WHICH PARAGRAPH (2) APPLIES. -- Paragraph (2) shall apply only to property which

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(A) is new section 38 property,

(B) has a class life (determined under section 167(m)) in excess of 14 years,

(C) is leased for a period which is less than 80 percent of its class life, and

(D) is not leased subject to a net lease (within the meaning of section 57(c)(1)(B) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986)).

(5) COORDINATION WITH BASIS ADJUSTMENT. -- In the case of any property with respect to which an election is made under this subsection --

(A) subsection (q) (other than paragraph (4)) shall not apply with respect to such property,

(B) the lessee of such property shall include ratably in gross income over the shortest recovery period which could be applicable under section 168 with respect to such property an amount equal to 50 percent of the amount of the credit allowable under section 38 to the lessee with respect to such property, and

(C) in the case of a disposition of such property to which section 47 applies, this paragraph shall be applied in accordance with regulations prescribed by the Secretary.

(6) COORDINATION WITH AT-RISK RULES. --

(A) EXTENSION OF AT-RISK RULES TO CERTAIN LESSORS. --

(i) IN GENERAL. -- If --

(I) a lessor makes an election under this subsection with respect to any at-risk property leased to an at-risk lessee, and

(II) but for this clause, section 46(c)(8) would not apply to such property in the hands of the lessor,

section 46(c)(8) shall apply to the lessor with respect to such property.

(ii) EXCEPTIONS. -- Clause (i) shall not apply --

(I) if the lessor manufactured or produced the property,

(II) if the property has a readily ascertainable fair market value, or

(III) in circumstances which the Secretary determines by regulations to be circumstances where the application of clause (i) is not necessary to carry out the purposes of section 46(c)(8).

(B) REQUIREMENT THAT LESSOR BE AT RISK. -- In the case of any property which, in the hands of the lessor, is property to which section 46(c)(8) applies, the amount of the credit allowable to the lessee under section 38 with respect to such property by reason of an election under this subsection shall at no time exceed the credit which would have been allowable to the lessor with respect to such property (determined without regard to section 46(e)(3)) if --

(i) the lessor's basis in such property were equal to the lessee acquisition amount, and

(ii) no election had been made under this subsection.

(C) LESSEE SUBJECT TO AT-RISK LIMITATIONS. --

(i) IN GENERAL. -- In the case of any lease where --

(I) the lessee is an at-risk lessee,

(II) the property is at-risk property, and

(III) the at-risk percentage is less than the required percentage,

any credit allowable under section 38 to the lessee by reason of an election under this subsection (hereinafter in this paragraph referred to as the "total credit") shall be allowable only as provided in subparagraph (D).

(ii) AT-RISK PERCENTAGE. -- For purposes of this paragraph, the term "at-risk percentage" means the percentage obtained by dividing --

(I) the present value (as of the time the lease is entered into) of the aggregate lease at-risk payments, by

(II) the lessee acquisition amount.

For purposes of subclause (I), the present value shall be determined by using a discount rate equal to the underpayment rate in effect under section 6621 as of the time the lease is entered into.

(iii) REQUIRED PERCENTAGE. -- For purposes of clause (i)(III), the term "required percentage" means the sum of --

(I) 2 times the sum of the percentages applicable to the property under section 46(a), plus

(II) 10 percent.

In the case of 3-year property, such term means 60 percent of the required percentage determined under the preceding sentence.

(iv) LESSEE ACQUISITION AMOUNT. -- For purposes of this paragraph, the term "lessee acquisition amount" means the amount for which the lessee is treated as having acquired the property by reason of an election under this subsection.

(v) LEASE AT-RISK PAYMENT. -- For purposes of this paragraph, the term "lease at-risk payment" means any rental payment --

(I) which the lessee is required to make under the lease in all events, and

(II) with respect to which the lessee is not protected against loss through nonrecourse financing, guarantees, stop-loss agreements, or other similar arrangements.

(D) YEAR FOR WHICH CREDIT ALLOWABLE. --

(i) IN GENERAL. -- Except as provided in clause (ii), in any case to which subparagraph (C)(i) applies, the portion of the total credit allowable for any taxable year shall be an amount which bears the same ratio to such total credit as --

(I) the aggregate rental payments made by the lessee under the lease during such taxable year, bears to

(II) the lessee acquisition amount.

(ii) REMAINING AMOUNT ALLOWABLE FOR YEAR IN WHICH AGGREGATE RENTAL PAYMENTS EXCEED REQUIRED PERCENTAGE OF ACQUISITION AMOUNT. -- The total credit (to the extent not allowable for a preceding taxable year) shall be allowable for the first taxable year as of the close of which the aggregate rental payments made by the lessee under the lease equal or exceed the required percentage (as defined in subparagraph (C)(iii)) of the lessee acquisition amount.

(E) DEFINITION OF AT-RISK LESSEE AND AT-RISK PROPERTY. -- For purposes of this paragraph --

(i) AT-RISK LESSEE. -- The term "at-risk lessee" means any lessee who is a taxpayer described in section 465(a)(1).

(ii) AT-RISK PROPERTY. -- The term "at-risk property" means any property used by an at-risk lessee in connection with an activity with respect to which any loss is subject to limitation under section 465.

(F) SPECIAL RULES FOR SUBPARAGRAPHS (c) AND (d). --

(i) SUBPARAGRAPHS (c) AND (d) APPLY IN LIEU OF OTHER AT-RISK RULES. -- In the case of any election under this subsection, paragraphs (8) and (9) of section 46(c) and subsection (d) of section 47 shall only apply with respect to the lessor.

(ii) APPLICATION TO PARTNERSHIPS AND S CORPORATIONS. -- For purposes of subparagraphs (C) and (D), rules similar to the rules of subparagraph (E) of section 46(c)(8) shall apply.

(iii) SUBSEQUENT REDUCTIONS IN AT-RISK AMOUNT. -- Under regulations prescribed by the Secretary, the principles of subsection (d) of section 47 shall apply for purposes of subparagraphs (C) and (D).

(G) REGULATIONS. -- The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including regulations --

(i) providing for such adjustments as may be appropriate where expenses connected with the lease are borne by the lessor, and

(ii) providing the extent to which contingencies in the lease will be disregarded.

Amendments

. 1986, Tax Reform Act of 1986 (P.L. 99-514)

P.L. 99-514, § 701(e)(4)(c):

Amended *Code Sec. 48(d)(4)(D)* by striking out "section 57(c)(1)(B)" and inserting in lieu thereof "section 57(c)(1)(B) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986)". Effective,

generally, for tax years beginning after 12-31-86. However, for exceptions, see the amendment notes following *Code Sec. 56*

P.L. 99-514, § 1511(c)(3):

Amended *Code Sec. 48(d)(6)(C)(ii)* by striking out "the rate" in the last sentence and inserting in lieu thereof "the underpayment rate". Effective for purposes of determining interest for periods after 12-31-86.

. 1984, Deficit Reduction Act of 1984 (P.L. 98-369)

P.L. 98-369, § 474(o)(11):

Amended *Code Sec. 48(d)(1)(B)* by striking out "section 46(a)(6)" and inserting in lieu thereof "section 38(c)(3)(B)". Effective for tax years beginning after 12-31-83, and to carryback from such years, but shall not be construed as reducing the amount of any credit allowable for qualified investment in tax years beginning before 1-1-84.

P.L. 98-369, § 431(c):

Amended *Code Sec. 48(d)* by adding paragraph (6). Effective for property placed in service after 7-18-84, in tax years ending after such date; except that such amendments shall not apply to any property to which the amendments made by section 211(f) of P.L. 97-34 do not apply. However, at the election of the taxpayer, the amendment applied by this section shall apply as if included in the amendments made by section 211(f) of P.L. 97-34. Any election made under the preceding sentence shall apply to all property of the taxpayer to which the amendments made by such section 211(f) apply and shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe.

. 1982, Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248)

P.L. 97-248, § 205(a)(4):

Amended *Code Sec. 48(d)* by adding at the end thereof new paragraph (5). Effective for periods after 12-31-82, under rules similar to the rules of *Code Sec. 48(m)* except that the amendments do not apply to any property that --

- (i) is constructed, reconstructed, erected, or acquired pursuant to a contract which was entered into after 8-13-81, and was, on 7-1-82, and at all times thereafter, binding on the taxpayer,
- (ii) is placed in service after 12-31-82, and before 1-1-86,
- (iii) with respect to which an election under section 168(f)(8)(A) of such Code is not in effect at any time, and
- (iv) is not described in section 167(1)(3)(A) of such Code.

~~P.L. 97-248, § 205(c)(1)(C)-(E), provides the following special rules:~~

(C) Special rule for integrated manufacturing facilities. --

(i) In general. -- In the case of any integrated manufacturing facility, the requirements of clause (i) of subparagraph (B) shall be treated as met if --

(I) the on-site construction of the facility began before July 1, 1982, and

(II) during the period beginning after August 13, 1981, and ending on July 1, 1982, the taxpayer constructed (or entered into binding contracts for the construction of) more than 20 percent of the cost of such facility.

(ii) Integrated manufacturing facility. -- For purposes of clause (i) the term "integrated manufacturing facility" means 1 or more facilities --

(I) located on a single site,

(II) for the manufacture of 1 or more manufactured products from raw materials by the application of 2 or more integrated manufacturing processes.

(D) Special rule for historic structures. -- In the case of any certified historic structure (as defined in *section 48(g)(3) of the Internal Revenue Code of 1954*), clause (i) of subparagraph (B) shall be applied by substituting "December 31, 1980" for "August 13, 1981."

(E) Certain projects with respect to historic structures. -- In the case of any certified historic structure (as so defined), the requirements of clause (i) of subparagraph (B) shall be treated as met with respect to such property --

(i) if the rehabilitation begins after December 31, 1980, and before July 1, 1982, or

(ii) if --

(I) before July 1, 1982, a public offering with respect to interests in such property was registered with the Securities and Exchange Commission,

(II) before such date an application with respect to such property was filed under section 8 of the United States Housing Act of 1937, and

(III) such property is placed in service before July 1, 1984.

. 1978, Revenue Act of 1978, (95-600)

P.L. 95-600, § 703(a)(3):

Amended *Code Sec. 48(d)(1)(B)* by striking out "section 46(a)(5)" and inserting in place thereof "section 46(a)(6)". **Effective 10-4-76.**

P.L. 95-600, § 703(a)(4):

Amended *Code Sec. 48(d)(4)(D)* by striking out "section 57(c)(2)" and inserting in place thereof "section 57(c)(1)(B)". **Effective 10-4-76.**

. 1976, Tax Reform Act of 1976 (P.L. 94-455)

P.L. 94-455, § 1906(b)(13)(A):

Amended 1954 Code by substituting "Secretary" for "Secretary or his delegate" each place it appeared. **Effective 2-1-77.**

. 1975, Tax Reduction Act of 1975 (P.L. 94-12)

P.L. 94-12, § 302(c)(3):

Amended *Sec. 48(d)(1)* and (2) by substituting "section 46(e)(1)" for "section 46(d)(1)". **Effective for tax years ending after 12-31-74.**

. 1971 Revenue Act of 1971 (P.L. 92-178)

P.L. 92-178, § 108(c):

Amended *Code Sec. 48(d)*. **Effective** for leases entered into after 11-8-71. Prior to amendment, *Code Sec. 48(d)* read as follows:

"(d) Certain Leased Property. -- A person (other than a person referred to in section 46(d)(1)) who is a lessor of property may (at such time, in such manner, and subject to such conditions as are provided by regulations prescribed by the Secretary or his delegate) elect with respect to any new section 38 property to treat the lessee as having acquired such property for an amount equal to --

"(1) except as provided in paragraph (2), the fair market value of such property, or

"(2) if such property is leased by a corporation which is a component member of a controlled group (within the meaning of section 46(a)(5)) to another corporation which is a component member of the same controlled group, the basis of such property to the lessor.

The election provided by the preceding sentence may be made only with respect to property which would be new section 38 property if acquired by the lessee. For purposes of the preceding sentence and section 46(c), the useful life of property in the hands of the lessee is the useful life of such property in the hands of the lessor. If a lessor makes the election provided by this subsection with respect to any property, the lessee shall be treated for all purposes of this subpart as having acquired such property. In the case of suspension period property which is leased and is property of a kind which the lessor ordinarily leases to one lessee for a substantial portion of the useful life of the property, the lessor of the property shall be deemed to have elected to treat the first such lessee as having acquired such property for purposes of applying the last sentence of section 46(a)(2). In the case of section 38 property which (i) is leased after October 9, 1966 (other than pursuant to a binding contract to lease entered into before October 10, 1966), (ii) is not suspension period property with respect to the lessor but is suspension period property if acquired by the lessee, and (iii) is property of the same kind which the lessor ordinarily sold to customers before October 10, 1966, or ordinarily leased before such date and made an election under this subsection, the lessor of such property shall be deemed to have made an election under this subsection with respect to such property."

P.L. 92-178, § 108(b):

Amended *Code Sec. 48(d)* (see immediately above) by substituting "section 46(d)(1)" for "section 46(d)". Effective for leases entered into after 9-22-71.

. 1969, Tax Reform Act of 1969 (P.L. 91-172)

P.L. 91-172, § 401(e)(4):

Amended Sec. 48(d)(2). Effective for tax years ending on or after 12-31-70. Prior to amendment, Sec. 48(d)(2) read as follows:

(2) if such property is leased by a corporation which is a member of an affiliated group (within the meaning of section 46(a)(5)) to another corporation which is a member of the same affiliated group, the basis of such property to the lessor.

. 1966 (P.L. 89-800)

P.L. 89-800, § 1(b):

Amended *Code Sec. 48(d)* by adding the last two sentences. Effective for tax years ending after 10-9-66.

. 1964, Revenue Act of 1964 (P.L. 88-272)

P.L. 88-272, § 203(a)(3)(A):

Repealed last sentence of subsection (d), which read as follows: "If a lessor makes the election provided by this subsection with respect to any property, then, under regulations prescribed by the Secretary or his delegate, subsection (g) shall not apply with respect to such property and the deductions otherwise allowable under section 162 to the lessee for amounts paid to the lessor under the lease shall be adjusted in a manner consistent with the provisions of subsection (g)." For property placed in service after 12-31-63, repeal effective with respect to tax years ending after such date. For property placed in service before 1-1-64, repeal effective with respect to tax years beginning after 12-31-63.

P.L. 88-272, § 203(b):

Amended paragraphs (1) and (2). Effective with respect to property possession of which is transferred to a lessee on or after 2-26-64, the date of enactment of the Act. Prior to amendment, paragraphs (1) and (2) read as follows:

"(1) if such property was constructed by the lessor (or by a corporation which controls or is controlled by the lessor within the meaning of section 368(c)), the fair market value of such property, or

"(2) if paragraph (1) does not apply, the basis of such property to the lessor."