

qualified research expenses for taxable years during the base period) is \$175x (($\$150x + \$90x + \$110x$)/2). This amount is greater than the amount determined under paragraph (c)(2) of this section, (50 percent of \$250x, or \$125x). Accordingly, the amount of base period research expenses is \$175x. The credit for determination year 1982 is equal to 25 percent of the excess of \$250x (the qualified research expenses incurred during the determination year) over \$175x (the base period research expenses).

(iii) *Determination year 1983.* For determination year 1983, the base period consists of the 3 immediately preceding taxable years 1980, 1981 and 1982. The amount determined under paragraph (c)(1) of this section (the average qualified research expenses for taxable years during the base period) is \$200x (($\$150x + \$200x + \$250x$)/3). The amount determined under paragraph (c)(2) of this section is \$225x (50 percent of the \$450x of qualified research expenses in 1983). Accordingly, the amount of base period research expenses is \$225x. The credit for determination year 1983 is equal to 25 percent of the excess of \$450x (the qualified research expenses incurred during the determination year) over \$225x (the base period research expenses).

Example 2. Y, an accrual-basis corporation using the calendar year as its taxable year comes into existence and begins carrying on a trade or business on July 1, 1983. Y incurs qualified research expenses as follows:

7/1/83—12/31/83	\$80x
1984	200x
1985	200x

(i) *Determination year 1983.* For determination year 1983, the base period consists of the 3 immediately preceding taxable years: 1980, 1981 and 1982. Although Y was not in existence during 1980, 1981 and 1982, Y is treated under paragraph (b) of this section as having been in existence during those years with qualified research expenses of zero. Thus, the amount determined under paragraph (c)(1) of this section (the average qualified research expenses for taxable years during the base period) is \$0x (($\$0x + \$0x + \$0x$)/3). The amount determined under paragraph (c)(2) of this section is \$40x (50 percent of \$80x). Accordingly, the amount of base period research expenses is \$40x. The credit for determination year 1983 is equal to 25 percent of the excess of \$80x (the qualified research expenses incurred during the determination year) over \$40x (the base period research expenses).

(ii) *Determination year 1984.* For determination year 1984, the base period consists of the 3 immediately preceding taxable years: 1981, 1982, and 1983. Under paragraph (b) of this section, Y is treated as having been in existence during years 1981 and 1982 with qualified research expenses of zero. Because July 1 through December 31, 1983 is a short taxable year, paragraph (d)(2) of this section requires

that the qualified research expenses for that year be adjusted to \$160x for purposes of determining the average qualified research expenses during the base period. The \$160x results from the actual qualified research expenses for that year (\$80x) multiplied by 12 and divided by 6 (the number of months in the short taxable year). Accordingly, the amount determined under paragraph (c)(1) of this section (the average qualified research expenses for taxable years during the base period) is \$53 $\frac{1}{3}$ x (($\$0x + \$0x + \$160x$)/3). The amount determined under paragraph (c)(2) of this section is \$100x (50 percent of \$200x). The amount of base period research expenses is \$100x. The credit for determination year 1984 is equal to 25 percent of the excess of \$200x (the qualified research expenses incurred during the determination year) over \$100x (the base period research expenses).

(iii) *Determination year 1985.* For determination year 1985, the base period consists of the 3 immediately preceding taxable years: 1982, 1983, and 1984. Pursuant to paragraph (b) of this section, Y is treated as having been in existence during 1982 with qualified research expenses of zero. Because July 1 through December 31, 1982, is a short taxable year, paragraph (d)(2) of this section requires that the qualified research expense for that year be adjusted to \$160x for purposes of determining the average qualified research expenses for taxable years during the base period. This \$160x is the actual qualified research expense for that year (\$80x) multiplied by 12 and divided by 6 (the number of months in the short taxable year). Accordingly, the amount determined under paragraph (c)(1) of this section (the average qualified research expenses for taxable years during the base period) is \$120x (($\$0x + \$160x + \$200x$)/3). The amount determined under paragraph (c)(2) of this section is \$100x (50 percent of \$200x). The amount of base period research expenses is \$120x. The credit for determination year 1985 is equal to 25 percent of the excess of \$200x (the qualified research expenses incurred during the determination year) over \$120x (the base period research expenses).

[T.D. 8251, 54 FR 21204, May 17, 1989. Redesignated by T.D. 8930, 66 FR 289, Jan. 3, 2001]

RULES FOR COMPUTING CREDIT FOR INVESTMENT IN CERTAIN DEPRECIABLE PROPERTY

§ 1.45D-1T New markets tax credit.

(a) *Table of contents.* This paragraph lists the headings that appear in § 1.45D-1T.

- (a) Table of contents.
- (b) Allowance of credit
 - (1) In general.
 - (2) Credit allowance date.
 - (3) Applicable percentage.

consists of all amounts paid by the taxpayer to, or on behalf of, the CDE (including any underwriter's fees) to purchase the investment at its original issue.

(c) *Qualified equity investment*—(1) *In general.* The term *qualified equity investment* means any equity investment (as defined in paragraph (c)(2) of this section) in a CDE if—

(i) The investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash;

(ii) Substantially all (as defined in paragraph (c)(5) of this section) of such cash is used by the CDE to make qualified low-income community investments (as defined in paragraph (d)(1) of this section); and

(iii) The investment is designated for purposes of section 45D and this section by the CDE on its books and records using any reasonable method.

(2) *Equity investment.* The term *equity investment* means any stock (other than nonqualified preferred stock as defined in section 351(g)(2)) in an entity that is a corporation for Federal tax purposes and any capital interest in an entity that is a partnership for Federal tax purposes. See §§ 301.7701-1 through 301.7701-3 of this chapter for rules governing when a business entity, such as a business trust or limited liability company, is classified as a corporation or a partnership for Federal tax purposes.

(3) *Equity investments made prior to allocation*—(i) *In general.* Except as provided in paragraph (c)(3)(ii) of this section, an equity investment in an entity is not eligible to be designated as a qualified equity investment if it is made before the entity enters into an allocation agreement with the Secretary. An *allocation agreement* is an agreement between the Secretary and a CDE relating to a new markets tax credit allocation under section 45D(f)(2).

(ii) *Exception.* Notwithstanding paragraph (c)(3)(i) of this section, an equity investment in an entity is eligible to be designated as a qualified equity investment under paragraph (c)(1)(iii) of this section if—

(A) The equity investment is made on or after April 20, 2001;

(B) The entity in which the equity investment is made is certified by the Secretary as a CDE under section 45D(c) before January 1, 2003;

(C) The entity in which the equity investment is made receives notification of the credit allocation (with the actual receipt of such credit allocation contingent upon subsequently entering into an allocation agreement) from the Secretary before January 1, 2003; and

(D) The equity investment otherwise satisfies the requirements of section 45D and this section.

(iii) *Initial investment date.* If an equity investment is designated as a qualified equity investment in accordance with paragraph (c)(3)(ii) of this section, the investment is treated as initially made on the effective date of the allocation agreement between the CDE and the Secretary.

(4) *Limitations*—(i) *In general.* The term *qualified equity investment* does not include—

(A) Any equity investment issued by a CDE more than 5 years after the date the CDE enters into an allocation agreement (as defined in paragraph (c)(3)(i) of this section) with the Secretary; and

(B) Any equity investment by a CDE in another CDE, if the CDE making the investment has received an allocation under section 45D(f)(2).

(ii) *Allocation limitation.* The maximum amount of equity investments issued by a CDE that may be designated under paragraph (c)(1)(iii) of this section by the CDE may not exceed the portion of the limitation amount allocated to the CDE by the Secretary under section 45D(f)(2).

(5) *Substantially all*—(i) *In general.* Except as provided in paragraph (c)(5)(v) of this section, the term *substantially all* means at least 85 percent. The substantially-all requirement must be satisfied for each annual period in the 7-year credit period using either the direct-tracing calculation under paragraph (c)(5)(ii) of this section, or the safe harbor calculation under paragraph (c)(5)(iii) of this section. The substantially-all requirement is treated as satisfied for an annual period if either the direct-tracing calculation under paragraph (c)(5)(ii) of this section, or the safe harbor calculation

under paragraph (c)(5)(iii) of this section, is performed every six months and the average of the two calculations for the annual period is at least 85 percent. For purposes of this paragraph (c)(5)(i), the *7-year credit period* means the period of 7 years beginning on the date the qualified equity investment is initially made. See paragraph (c)(6) of this section for circumstances in which a CDE may treat more than one equity investment as a single qualified equity investment.

(ii) *Direct-tracing calculation.* The substantially-all requirement is satisfied if at least 85 percent of the taxpayer's investment is directly traceable to qualified low-income community investments as defined in paragraph (d)(1) of this section. The direct-tracing calculation is a fraction the numerator of which is the CDE's aggregate cost basis determined under section 1012 in all of the qualified low-income community investments that are directly traceable to the taxpayer's cash investment, and the denominator of which is the amount of the taxpayer's cash investment under paragraph (b)(4) of this section. For purposes of this paragraph (c)(5)(ii), cost basis includes the cost basis of any qualified low-income community investment that becomes worthless. See paragraph (d)(2) of this section for the treatment of amounts received by a CDE in payment of, or for, capital, equity or principal with respect to a qualified low-income community investment.

(iii) *Safe harbor calculation.* The substantially-all requirement is satisfied if at least 85 percent of the aggregate gross assets of the CDE are invested in qualified low-income community investments as defined in paragraph (d)(1) of this section. The safe harbor calculation is a fraction the numerator of which is the CDE's aggregate cost basis determined under section 1012 in all of its qualified low-income community investments, and the denominator of which is the CDE's aggregate cost basis determined under section 1012 in all of its assets. For purposes of this paragraph (c)(5)(iii), cost basis includes the cost basis of any qualified low-income community investment that becomes worthless. See paragraph (d)(2) of this section for the treatment of

amounts received by a CDE in payment of, or for, capital, equity or principal with respect to a qualified low-income community investment.

(iv) *Time limit for making investments.* The taxpayer's cash investment received by a CDE is treated as invested in a qualified low-income community investment as defined in paragraph (d)(1) of this section only to the extent that the cash is so invested no later than 12 months after the date the cash is paid by the taxpayer (directly or through an underwriter) to the CDE.

(v) *Reduced substantially-all percentage.* For purposes of the substantially-all requirement (including the direct-tracing calculation under paragraph (c)(5)(ii) of this section and the safe harbor calculation under paragraph (c)(5)(iii) of this section), 85 percent is reduced to 75 percent for the seventh year of the 7-year credit period (as defined in paragraph (c)(5)(i) of this section).

(6) *Aggregation of equity investments.* A CDE may treat any qualified equity investments issued on the same day as one qualified equity investment. If a CDE aggregates equity investments under this paragraph (c)(6), the rules in this section shall be construed in a manner consistent with that treatment.

(7) *Subsequent purchasers.* A qualified equity investment includes any equity investment that would (but for paragraph (c)(1)(i) of this section) be a qualified equity investment in the hands of the taxpayer if the investment was a qualified equity investment in the hands of a prior holder.

(d) *Qualified low-income community investments—(1) In general.* The term *qualified low-income community investment* means any of the following—

(i) *Investment in a qualified active low-income community business.* Any capital or equity investment in, or loan to, any qualified active low-income community business (as defined in paragraph (d)(4) of this section).

(ii) *Purchase of certain loans from CDEs.* The purchase from another CDE (whether or not that CDE has received an allocation from the Secretary under section 45D(f)(2)) of any loan made by such entity that is a qualified low-income community investment. A loan

purchased from another CDE is a qualified low-income community investment if it qualifies as such either—

(A) At the time the selling CDE made the loan; or

(B) At the time the loan is purchased from the selling CDE.

(iii) *Financial counseling and other services.* Financial counseling and other services (as defined in paragraph (d)(7) of this section) provided to any qualified active low-income community business, or to any residents of a low-income community (as defined in section 45D(e)).

(iv) *Investments in other CDEs.* Any equity investment in, or loan to, any CDE, but only to the extent that the CDE in which the equity investment or loan is made uses the proceeds of the investment or loan in a manner—

(A) That is described in paragraphs (d)(1)(i) or (iii) of this section; and

(B) That would constitute a qualified low-income community investment if it were made directly by the CDE making such equity investment or loan.

(2) *Payments of, or for, capital, equity or principal—(i) In general.* Except as otherwise provided in this paragraph (d)(2), amounts received by a CDE in payment of, or for, capital, equity or principal with respect to a qualified low-income community investment must be reinvested by the CDE in a qualified low-income community investment no later than 12 months from the date of receipt to be treated as continuously invested in a qualified low-income community investment. If the amounts received by the CDE are equal to or greater than the cost basis of the original qualified low-income community investment (or applicable portion thereof), and the CDE reinvests, in accordance with this paragraph (d)(2)(i), an amount at least equal to such original cost basis, then an amount equal to such original cost basis will be treated as continuously invested in a qualified low-income community investment. In addition, if the amounts received by the CDE are equal to or greater than the cost basis of the original qualified low-income community investment (or applicable portion thereof), and the CDE reinvests, in accordance with this paragraph (d)(2)(i), an amount less than such original cost basis, then only the

amount so reinvested will be treated as continuously invested in a qualified low-income community investment. If the amounts received by the CDE are less than the cost basis of the original qualified low-income community investment (or applicable portion thereof), and the CDE reinvests an amount in accordance with this paragraph (d)(2)(i), then the amount treated as continuously invested in a qualified low-income community investment will equal the excess (if any) of such original cost basis over the amounts received by the CDE that are not so reinvested. Amounts received by a CDE in payment of, or for, capital, equity or principal with respect to a qualified low-income community investment during the seventh year of the 7-year credit period (as defined in paragraph (c)(5)(i) of this section) do not have to be reinvested by the CDE in a qualified low-income community investment in order to be treated as continuously invested in a qualified low-income community investment.

(ii) *Subsequent reinvestments.* In applying paragraph (d)(2)(i) of this section to subsequent reinvestments, the original cost basis is reduced by the amount (if any) by which the original cost basis exceeds the amount determined to be continuously invested in a qualified low-income community investment.

(iii) *Special rule for loans.* Periodic amounts received during a calendar year as repayment of principal on a loan that is a qualified low-income community investment are treated as continuously invested in a qualified low-income community investment if the amounts are reinvested in another qualified low-income community investment by the end of the following calendar year.

(iv) *Example.* The application of paragraphs (d)(2)(i) and (ii) of this section is illustrated by the following example:

Example. On April 1, 2003, A, B, and C each pay \$100,000 to acquire a capital interest in X, a partnership. X is a CDE that has received a new markets tax credit allocation from the Secretary. X treats the 3 partnership interests as one qualified equity investment under paragraph (c)(6) of this section. In August 2003, X uses the \$300,000 to make a qualified low-income community investment

under paragraph (d)(1) of this section. In August 2005, the qualified low-income community investment is redeemed for \$250,000. In February 2006, X reinvests \$230,000 of the \$250,000 in a second qualified low-income community investment and uses the remaining \$20,000 for operating expenses. Under paragraph (d)(2)(i) of this section, \$280,000 of the proceeds of the qualified equity investment is treated as continuously invested in a qualified low-income community investment. In December 2008, X sells the second qualified low-income community investment and receives \$400,000. In March 2009, X reinvests \$320,000 of the \$400,000 in a third qualified low-income community investment. Under paragraphs (d)(2)(i) and (ii) of this section, \$280,000 of the proceeds of the qualified equity investment is treated as continuously invested in a qualified low-income community investment (\$40,000 is treated as invested in another qualified low-income community investment in March 2009).

(3) *Special rule for reserves.* Reserves (not in excess of 5 percent of the taxpayer's cash investment under paragraph (b)(4) of this section) maintained by the CDE for loan losses or for additional investments in existing qualified low-income community investments are treated as invested in a qualified low-income community investment under paragraph (d)(1) of this section.

(4) *Qualified active low-income community business—(i) In general.* The term *qualified active low-income community business* means, with respect to any taxable year, a corporation (including a nonprofit corporation) or a partnership, if the requirements in paragraphs (d)(4)(i)(A), (B), (C), (D), and (E) of this section are met.

(A) *Gross-income requirement.* At least 50 percent of the total gross income of such entity is derived from the active conduct of a qualified business (as defined in paragraph (d)(5) of this section) within any low-income community (as defined in section 45D(e)). An entity is deemed to satisfy this paragraph (d)(4)(i)(A) if the entity meets the requirements of either paragraph (d)(4)(i)(B) or (C) of this section, if “50 percent” is applied instead of 40 percent. In addition, an entity may satisfy this paragraph (d)(4)(i)(A) based on all the facts and circumstances.

(B) *Use of tangible property.* At least 40 percent of the use of the tangible property of such entity (whether owned or leased) is within any low-income

community. This percentage is determined based on a fraction the numerator of which is the average value of the tangible property owned or leased by the entity and used by the entity during the taxable year in a low-income community and the denominator of which is the average value of the tangible property owned or leased by the entity and used by the entity during the taxable year. Property owned by the entity is valued at its cost basis as determined under section 1012. Property leased by the entity is valued at a reasonable amount established by the entity.

(C) *Services performed.* At least 40 percent of the services performed for such entity by its employees are performed in a low-income community. This percentage is determined based on a fraction the numerator of which is the total amount paid by the entity for employee services performed in a low-income community during the taxable year and the denominator of which is the total amount paid by the entity for employee services during the taxable year.

(D) *Collectibles.* Less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of business.

(E) *Nonqualified financial property.* Less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property (as defined in section 1397C(e)). Because the definition of *nonqualified financial property* in section 1397C(e) includes debt instruments with a term in excess of 18 months, banks, credit unions, and other financial institutions are generally excluded from the definition of a *qualified active low-income community business*.

(ii) *Proprietorships.* Any business carried on by an individual as a proprietor is a qualified active low-income community business if the business would meet the requirements of paragraph (d)(4)(i) of this section if the business were incorporated.

(iii) *Portions of business.* A CDE may treat any trade or business as a qualified active low-income community business if the trade or business would meet the requirements of paragraph (d)(4)(i) of this section if the trade or business were separately incorporated.

(5) *Qualified business—(i) In general.* Except as otherwise provided in this paragraph (d)(5), the term *qualified business* means any trade or business. There is no requirement that employees of a qualified business be residents of a low-income community.

(ii) *Rental of real property.* The rental to others of real property located in any low-income community (as defined in section 45D(e)) is a *qualified business* if and only if the property is not residential rental property (as defined in section 168(e)(2)(A)) and there are substantial improvements located on the real property.

(iii) *Exclusions—(A) Trades or businesses involving intangibles.* The term *qualified business* does not include any trade or business consisting predominantly of the development or holding of intangibles for sale or license.

(B) *Certain other trades or businesses.* The term *qualified business* does not include any trade or business consisting of the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(C) *Farming.* The term *qualified business* does not include any trade or business the principal activity of which is farming (within the meaning of section 2032A(e)(5)(A) or (B)) if, as of the close of the taxable year of the taxpayer conducting such trade or business, the sum of the aggregate unadjusted bases (or, if greater, the fair market value) of the assets owned by the taxpayer that are used in such a trade or business, and the aggregate value of the assets leased by the taxpayer that are used in such a trade or business, exceeds \$500,000. For purposes of this paragraph (d)(5)(iii)(C), two or more trades or businesses will be treated as a single trade or business under rules similar to the rules of section 52(a) and (b).

(6) *Qualifications—(i) In general.* Except as provided in paragraph (d)(6)(ii) of this section, an entity is treated as a qualified active low-income community business for the duration of the CDE's investment in the entity if the CDE reasonably expects, at the time the CDE makes the capital or equity investment in, or loan to, the entity, that the entity will satisfy the requirements to be a qualified active low-income community business under paragraph (d)(4)(i) of this section throughout the entire period of the investment or loan.

(ii) *Control—(A) In general.* If a CDE controls or obtains control of an entity at any time during the 7-year credit period (as defined in paragraph (c)(5)(i) of this section), the entity will be treated as a qualified active low-income community business only if the entity satisfies the requirements of paragraph (d)(4)(i) of this section throughout the entire period the CDE controls the entity.

(B) *Definition of control.* Generally, control means, with respect to an entity, direct or indirect ownership (based on value) or control (based on voting or management rights) of 33 percent or more of the entity. However, a CDE does not control an entity if an unrelated person possesses greater control over the entity than the CDE.

(7) *Financial counseling and other services.* The term *financial counseling and other services* means advice provided by the CDE relating to the organization or operation of a trade or business.

(e) *Recapture—(1) In general.* If, at any time during the 7-year period beginning on the date of the original issue of a qualified equity investment in a CDE, there is a recapture event under paragraph (e)(2) of this section with respect to such investment, then the tax imposed by Chapter 1 of the Internal Revenue Code for the taxable year in which the recapture event occurs is increased by the credit recapture amount under section 45D(g)(2). A recapture event under paragraph (e)(2) of this section requires recapture of credits allowed to the taxpayer who purchased the equity investment from the CDE at its original issue and to all subsequent holders of that investment.

(2) *Recapture event.* There is a recapture event with respect to an equity investment in a CDE if—

- (i) The entity ceases to be a CDE;
- (ii) The proceeds of the investment cease to be used in a manner that satisfies the substantially-all requirement of paragraph (c)(1)(ii) of this section; or
- (iii) The investment is redeemed by the CDE.

(3) *Bankruptcy.* Bankruptcy of a CDE is not a recapture event.

(4) *Waiver of requirement or extension of time—(i) In general.* The Commissioner may waive a requirement or extend a deadline if such waiver or extension does not materially frustrate the purposes of section 45D and this section.

(ii) *Manner for requesting a waiver or extension.* A CDE that believes it has good cause for a waiver or an extension may request relief from the Commissioner in a ruling request. The request should set forth all the relevant facts and include a detailed explanation describing the event or events relating to the request for a waiver or an extension. For further information on the application procedure for a ruling, see Rev. Proc. 2001-1 (2001-1 I.R.B. 1) (see § 601.601(d)(2) of this chapter).

(iii) *Terms and conditions.* The granting of a waiver or an extension to a CDE under this section may require adjustments of the CDE's requirements under section 45D and this section as may be appropriate.

(5) *Example.* The application of this paragraph (e) is illustrated by the following example:

Example. In 2003, A and B acquire separate qualified equity investments in X, a partnership. X is a CDE that has received a new markets tax credit allocation from the Secretary. X uses the proceeds of A's qualified equity investment to make a qualified low-income community investment in Y, and X uses the proceeds of B's qualified equity investment to make a qualified low-income community investment in Z. Y and Z are not CDEs. X controls both Y and Z within the meaning of paragraph (d)(6)(ii)(B) of this section. In 2003, Y and Z are qualified active low-income community businesses. In 2007, Y, but not Z, is a qualified active low-income community business and X does not satisfy the substantially-all requirement using the safe harbor calculation under paragraph (c)(5)(iii) of this section. A's equity investment satisfies the substantially-all require-

ment of paragraph (c)(1)(ii) of this section using the direct-tracing calculation of paragraph (c)(5)(ii) of this section because A's equity investment is traceable to Y. However, B's equity investment fails the substantially-all requirement using the direct-tracing calculation because B's equity investment is traceable to Z. Therefore, under paragraph (e)(2)(ii) of this section, there is a recapture event for B's equity investment (but not A's equity investment).

(f) *Basis reduction—(1) In general.* A taxpayer's basis in a qualified equity investment is reduced by the amount of any new markets tax credit determined under paragraph (b)(1) of this section with respect to the investment. A basis reduction occurs on each credit allowance date under paragraph (b)(2) of this section. This paragraph (f) does not apply for purposes of sections 1202, 1400B, and 1400F.

(2) *Adjustment in basis of interest in partnership or S corporation.* The adjusted basis of either a partner's interest in a partnership, or stock in an S corporation, must be appropriately adjusted to take into account adjustments made under paragraph (f)(1) of this section in the basis of a qualified equity investment held by the partnership or S corporation (as the case may be).

(g) *Other rules—(1) Anti-abuse.* If a principal purpose of a transaction or a series of transactions is to achieve a result that is inconsistent with the purposes of section 45D and this section, the Commissioner may treat the transaction or series of transactions as causing a recapture event under paragraph (e)(2) of this section.

(2) *Reporting requirements—(i) Notification by CDE to taxpayer—(A) Allowance of new markets tax credit.* A CDE must provide notice to any taxpayer who acquires a qualified equity investment in the CDE at its original issue that the equity investment is a qualified equity investment entitling the taxpayer to claim the new markets tax credit. The notice must be provided by the CDE to the taxpayer no later than 60 days after the date the taxpayer makes the investment in the CDE. The notice must contain the amount paid to the CDE for the qualified equity investment at its original issue and the taxpayer identification number of the CDE.

Internal Revenue Service, Treasury

§ 1.46-1

(B) *Recapture event.* If, at any time during the 7-year period beginning on the date of the original issue of a qualified equity investment in a CDE, there is a recapture event under paragraph (e)(2) of this section with respect to such investment, the CDE must provide notice to each holder, including all prior holders, of the investment that a recapture event has occurred. The notice must be provided by the CDE no later than 60 days after the date the CDE becomes aware of the recapture event.

(ii) *CDE reporting requirements to Secretary.* Each CDE must comply with such reporting requirements to the Secretary as the Secretary may prescribe.

(iii) *Manner of claiming new markets tax credit.* A taxpayer may claim the new markets tax credit for each applicable taxable year by completing Form 8874, "New Markets Credit," and by filing Form 8874 with the taxpayer's Federal income tax return.

(iv) *Reporting recapture tax.* If there is a recapture event with respect to a taxpayer's equity investment in a CDE, the taxpayer must include the credit recapture amount under section 45D(g)(2) on the line for recapture taxes on the taxpayer's Federal income tax return for the taxable year in which the recapture event under paragraph (e)(2) of this section occurs (or on the line for total tax, if there is no such line for recapture taxes) and write *NMCR* (new markets credit recapture) next to the entry space.

(h) *Effective date.* This section applies on or after December 26, 2001.

[T.D. 8971, 66 FR 66310, Dec. 26, 2001]

§ 1.46-1 Determination of amount.

(a) *Effective dates—(1) In general.* This section is effective for taxable years beginning after December 31, 1975. However, transitional rules under paragraph (g) of this section are effective for certain earlier taxable years.

(2) *Acts covered.* This section reflects changes made by the following Acts of Congress:

Act and Section

Tax Reduction Act of 1975, section 301.
Tax Reform Act of 1976, sections 802, 1701, 1703.

Revenue Act of 1978, sections 311, 312, 315.
Energy Tax Act of 1978, section 301.
Economic Recovery Tax Act of 1981, section 212.
Technical Corrections Act of 1982, section 102(f).
Tax Reform Act of 1986, section 251.

(3) *Prior regulations.* For taxable years beginning before January 1, 1976, see 26 CFR 1.46-1 (Rev. as of April 1, 1979). Those regulations do not reflect changes made by Pub. L. 89-384, Pub. L. 89-389, and Pub. L. 91-172.

(b) *General rule.* The amount of investment credit (credit) allowed by section 38 for the taxable year is the portion of credit available under section 46(a)(1) that does not exceed the limitation based on tax under section 46(a)(3).

(c) *Credit available.* The credit available for the taxable year is the sum of—

(1) Unused credit carried over from prior taxable years under section 46(b) (carryovers).

(2) Amount of credit determined under section 46(a)(2) for the taxable year (credit earned), and

(3) Unused credit carried back from succeeding taxable years under section 46(b) (carrybacks).

(d) *Credit earned.* The credit earned for the taxable year is the sum of the following percentages of qualified investment (as determined under section 46(c) and (d))—

(1) The regular percentage (as determined under section 46),

(2) For energy property, the energy percentage (as determined under section 46), and

(3) For the portion of the basis of a qualified rehabilitated building (as defined in § 1.48-12(b)) that is attributable to qualified rehabilitation expenditures (as defined in § 1.48-12(c)), the rehabilitation percentage (as determined under section 46(b)(4)).

(e) *Designation of credits.* The credit available for the taxable year is designated as follows:

(1) The credit attributable to the regular percentage is the "regular credit".

(2) The credit attributable to the ESOP percentage is the "ESOP credit".

(3) The credit attributable to the energy percentage for energy property other than solar or wind is the "non-refundable energy credit".