

29. Credit for producing fuel from a nonconventional source

(a) Allowance of credit. -- There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to --

- (1) \$3, multiplied by
- (2) the barrel-of-oil equivalent of qualified fuels --
  - (A) sold by the taxpayer to an unrelated person during the taxable year, and
  - (B) the production of which is attributable to the taxpayer.

(b) Limitations and adjustment. --

(1) Phase out of credit. -- The amount of the credit allowable under subsection (a) shall be reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to this paragraph) as --

(A) the amount by which the reference price for the calendar year in which the sale occurs exceeds \$23.50, bears to

(B) \$6.

(2) Credit and phase out adjustment based on inflation. -- The \$3 amount in subsection (a) and the \$23.50 and \$6 amounts in paragraph (1) shall each be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. In the case of gas from a tight formation, the \$3 amount in subsection (a) shall not be adjusted.

(3) Credit reduced for grants, tax-exempt bonds, and subsidized energy financing. --

(A) In general. -- The amount of the credit allowable under subsection (a) with respect to any project for any taxable year (determined after the application of paragraphs (1) and (2)) shall be reduced by the amount which is the product of the amount so determined for such year and a fraction --

(i) the numerator of which is the sum, for the taxable year and all prior taxable years, of --

(I) grants provided by the United States, a State, or a political subdivision of a state for used in connection with the project,

(II) proceeds of any issue of State or local government obligations used to provide financing for the project the interest on which is exempt from tax under section 103, and

(III) the aggregate amount of subsidized energy financing (within the meaning of section 48(a)(4)(C)) provided in connection with the project, and

(ii) the denominator of which is the aggregate amount of additions to the capital account for the project for the taxable year and all prior taxable years.

(B) Amounts determined at close of year. -- The amounts under subparagraph (A) for any taxable year shall be determined as of the close of the taxable year.

(4) Credit reduced for energy credit. -- The amount allowable as a credit under subsection (a) with respect to any project for any taxable year (determined after the application of paragraphs (1), (2), and (3)) shall be reduced by the excess of --

(A) the aggregate amount allowed under section 38 for the taxable year or any prior taxable year by reason of the energy percentage with respect to property used in the project, over

(B) the aggregate amount recaptured with respect to the amount described in subparagraph (A) --

(i) under section 49(b) or 50(a) for the taxable year or any prior taxable year, or

(ii) under this paragraph for any prior taxable year.

The amount recaptured under section 49(b) or 50(a) with respect to any property shall be appropriately

reduced to take into account any reduction in the credit allowed by this section by reason of the preceding sentence.

(5) credit reduced for enhanced oil recovery credit. -- The amount allowable as a credit under subsection (a) with respect to any project for any taxable year (determined after application of paragraphs (1), (2), (3), and (4)) shall be reduced by the excess (if any) of --

(A) the aggregate amount allowed under section 38 for the taxable year and any prior taxable year by reason of any enhanced oil recovery credit determined under section 43 with respect to such project, over

(B) the aggregate amount recaptured with respect to the amount described in subparagraph (A) under this paragraph for any prior taxable year.

(6) Application with other credits. -- The credit allowed by subsection (a) for any taxable year shall not exceed the excess (if any) of --

(A) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27 and 28, over

(B) the tentative minimum tax for the taxable year.

(c) Definition of qualified fuels. -- For purposes of this section --

(1) In general. -- The term "qualified fuels" means --

(A) oil produced from shale and tar sands,

(B) gas produced from and --

(i) geopressured brine, Devonian shale, coal seams, or a tight formation, or

(ii) biomass,

(C) liquid, gaseous, or solid synthetic fuels produced from coal (including lignite), including such fuels when used as feed stocks.

(2) Gas from geopressured brine, etc. --

(A) In general. -- Except as provided in subparagraph (B), the determination of whether any gas is produced from geopressured brine, Devonian shale, coal seams, or a tight formation shall be made in accordance with section 503 of the Natural Gas Policy Act of 1978.

(B) Special rules for gas from tight formations. -- The term "gas produced from a tight formation" shall only include gas from a tight formation --

(i) which, as of April 20, 1977, was committed or dedicated to interstate commerce (as defined in section 2(18) of the Natural Gas Policy Act of 1978, as in effect on the date of the enactment of this clause), or

(ii) which is produced from a well drilled after such date of enactment.

(3) Biomass. -- The term "biomass" means any organic material other than --

(A) oil and natural gas (or any product thereof), and

(B) coal (including lignite) or any product thereof.

(d) Other definitions and special rules. -- For purposes of this section --

(1) Only production within the United States taken into account. -- Sales shall be taken into account under this section only with respect to qualified fuels the production of which is within --

(A) the United States (within the meaning of Section 638(1)), or

(B) a possession of the United States (within the meaning of section 638(2)).

(2) Computation of inflation adjustment factor and reference price. --

(A) In general. -- The Secretary shall, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor and the reference price for the preceding calendar year in accordance with this paragraph.

(B) Inflation adjustment factor. -- The term "inflation adjustment factor" means, with respect to a calendar year, a fraction the numerator of which is the GNP implicit price deflator for the calendar

year and the denominator of which is the GNP implicit price deflator for calendar year 1979. The term "GNP implicit price deflator" means the first revision of the implicit price deflator for the gross national product as computed and published by the Department of Commerce.

(C) Reference Price. -- The term "reference price" means with respect to a calendar year the Secretary's estimate of the annual average wellhead price per barrel for all domestic crude oil the price of which is not subject to regulation by the United States.

(3) Production attributable to the taxpayer. -- In the case of a property or facility in which more than 1 person has an interest, except to the extent provided in regulations prescribed by the Secretary, production from the property or facility (as the case may be) shall be allocated among such persons in proportion to their respective interests in the gross sales from such property or facility.

(4) Gas from geopressured brine, Devonian shale, coal seams, or a tight formation. -- The amount of the credit allowable under subsection (a) shall be determined without regard to any production attributable to a property from which gas from Devonian shale, coal seams, geopressured brine, or a tight formation was produced in marketable quantities before January 1, 1980.

(5) Barrel-of-oil equivalent. -- The term "barrel-of-oil equivalent" with respect to any fuel means that amount of such fuel which has a Btu content of 5.8 million; except that in the case of qualified fuels described in subparagraph (C) of subsection (c)(1), the Btu content shall be determined without regard to any material from a source not described in such subparagraph.

(6) Barrel defined. -- The term "barrel" means 42 United States gallons.

(7) Related persons. -- Persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b). In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling qualified fuels to an unrelated person if such fuels are sold to such a person by another member of such group.

(8) Pass-thru in the case of estates and trusts. -- Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(e) Application with the Natural Gas Policy Act of 1978. --

(1) No credit if section 107 of the Natural Gas Policy Act of 1978 is utilized. -- Subsection (a) shall apply with respect to any natural gas described in subsection (c)(1)(B)(i) which is sold during the taxable year only if such natural gas is sold at a lawful price which is determined without regard to the provisions of section 107 of the Natural Gas Policy Act of 1978 and subtitle B of title I of such Act.

(2) Treatment of this section. -- For purposes of section 107(d) of the Natural Gas Policy Act of 1978, this section shall not be treated as allowing any credit, exemption, deduction, or comparable adjustment applicable to the computation of any Federal tax.

(f) Application of section. -- This section shall apply with respect to qualified fuels --

(1) which are --

(A) produced from a well drilled after December 31, 1979, and before January 1, 1993, or

(B) produced in a facility placed in service after December 31, 1979, and before January 1, 1993, and

(2) which are sold before January 1, 2003.

### 31. Tax withheld on wages

(a) Wage withholding for income tax purposes. --

(1) In general. -- The amount withheld as tax under chapter 24 shall be allowed to the recipient of the income as a credit against the tax imposed by this subtitle.

(2) Year of credit. -- The amount so withheld during any calendar year shall be allowed as a credit for the taxable year beginning in such calendar year. If more than one taxable year begins in a

calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

(b) Credit for special refunds of social security tax. --

(1) In general. -- The Secretary may prescribe regulations providing for the crediting against the tax imposed by this subtitle of the amount determined by the taxpayer or the Secretary to be allowable under section 6413(c) as a special refund of tax imposed on wages. The amount allowed as a credit under such regulations shall, for purposes of this subtitle, be considered an amount withheld at source as tax under section 3412.

(2) Year of credit. -- Any amount to which paragraph (1) applies shall be allowed as a credit for the taxable year beginning in the calendar year during which the wages were received. If more than one taxable year begins in the calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

(c) Special rule for backup withholding. -- Any credit allowed by subsection (a) for any amount withheld under section 3406 shall be allowed for the taxable year of the recipient of the income in which the income is received.

### 32. Earned income

(a) Allowance of credit. -- In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the sum of --

(1) the basic earned income credit, and

(2) the health insurance credit.

(b) Computation of credit. -- For purposes of this section --

(1) Basic earned income credit. --

(A) In general. -- The term "basic earned income credit" means an amount equal to the credit percentage of so much of the taxpayer's earned income for the taxable year as does not exceed \$5,714.

(B) Limitation. -- The amount of the basic earned income credit allowable to a taxpayer for any taxable year shall not exceed the excess (if any) of --

(i) the credit percentage of \$5,714, over

(ii) the phaseout percentage of so much of the adjusted gross income (or, if greater the earned income) of the taxpayer for the taxable year as exceeds \$9,000.

(C) Percentages. -- For purposes of this paragraph --

(i) In general. -- Except as provided in clause (ii), the percentages shall be determined as follows:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
qualifying child	23	16.43
or more qualifying children	25	17.86

(ii) Transition percentages. --

(I) For taxable years beginning in 1991, the percentages are:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage:
qualifying child	16.7	11.93
or more qualifying children:	17.3	12.36

(II) For taxable years beginning in 1992, the percentages are:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage:
qualifying child	17.6	12.57
or more qualifying children:	18.4	13.14

(III) For taxable years beginning in 1993, the percentages are:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage:
qualifying child	18.5	13.21
or more qualifying children:	19.5	13.93

(D) Supplemental young child credit. -- In the case of a taxpayer with a qualifying child who has not attained age 1 as of the close of the calendar year in which or with which the taxable year of the taxpayer ends --

- (i) the credit percentage shall be increased by 5 percentage points, and
- (ii) the phaseout percentage shall be increased by 3.57 percentage points.

If the taxpayer elects to take a child into account under this subparagraph, such child shall not be treated as a qualifying individual under section 21.

(2) Health insurance credit. --

(A) In general. -- The term "health insurance credit" means an amount determined in the same manner as the basic earned income credit except that --

- (i) the credit percentage shall be equal to 6 percent, and
- (ii) the phaseout percentage shall be equal to 4.285 percent.

(B) Limitation based on health insurance costs. -- The amount of the health insurance credit determined under subparagraph (A) for any taxable year shall not exceed the amounts paid by the taxpayer during the taxable year for insurance coverage --

- (i) which constitutes medical care (within the meaning of section 213(d)(1)(C)), and
- (ii) which includes at least 1 qualifying child.

For purposes of this subparagraph, the rules of section 213(d)(6) shall apply.

(C) Subsidized expenses. -- A taxpayer may not take into account under subparagraph (B), any amount to the extent that --

(i) such amount is paid, reimbursed, or subsidized by the Federal Government, a State or local government, or any agency or instrumentality thereof; and

(ii) the payment, reimbursement, or subsidy of such amount is not includable in the gross income of the recipient.

(c) Definitions and special rules. -- For purposes of this section --

(1) Eligible individual. --

(A) In general. -- The term "eligible individual" means any individual who has a qualifying child for the taxable year.

(B) Qualifying child ineligible. -- If an individual is the qualifying child of a taxpayer for any taxable year of such taxpayer beginning in a calendar year, such individual shall not be treated as an eligible individual for any taxable year of such individual beginning in such calendar year.

(C) 2 or more eligible individuals. -- If 2 or more individuals would (but for this subparagraph and after application of subparagraph(B)) be treated as eligible individuals with respect to the same qualifying child for taxable years beginning in the same calendar year, only the individual with the highest adjusted gross income for such taxable year shall be treated as an eligible individual with respect to such qualifying child.

(2) Earned income. --

(A) The term "earned income" means --

(i) wages, salaries, tips, and other employee compensation, plus

(ii) the amount of the taxpayer's net earnings from self-employment for the taxable year (within the meaning of section 1402(a)), but such net earnings shall be determined with regard to the deduction allowed to the taxpayer by section 1649f).

- (B) For purposes of subparagraph(A) --
- (i) the earned income of an individual shall be computed without regard to any community property laws,
  - (ii) no amount received as a pension or annuity shall be taken into account, and
  - (iii) no amount to which section 871(a) applies (relating to income of nonresident alien individuals not connected with United States business) shall be taken into account.
- (3) Qualifying child. --
- (A) In general. -- The term "qualifying child" means, with respect to any taxpayer for any taxable year, an individual --
- (i) who bears a relationship to the taxpayer described in subparagraph (B),
  - (ii) except as provided in subparagraph (B)(iii), who has the same principal place of abode as the taxpayer for more than one-half of such taxable year,
  - (iii) who meets the age requirements of subparagraph (C), and
  - (iv) with respect to whom the taxpayer meets the identification requirements of subparagraph (D).
- (B) Relationship test. --
- (i) In general. -- An individual bears a relationship to the taxpayer described in this subparagraph if such individual is --
    - (I) a son or daughter of the taxpayer, or a descendant of either,
    - (II) a stepson or stepdaughter of the taxpayer, or
    - (III) an eligible foster child of the taxpayer
  - (ii) Married children. -- Clause (i) shall not apply to any individual who is married as of the close of the taxpayer's taxable year unless the taxpayer is entitled to a deduction under section 151 for such taxable year with respect to such individual (or would be so entitled but for paragraph (2) or (4) of section 152(e)).
  - (iii) Eligible foster child. -- For purposes of clause (i)(III), term "eligible foster child" means an individual not described in clause (i)(I) or (II) who --
    - (I) the taxpayer cares for as the taxpayer's own child, and
    - (II) has the same principal place of abode as the taxpayer for the taxpayer's entire taxable year.
  - (iv) Adoption. -- For purposes of this subparagraph, a child who is legally adopted, or who is placed with the taxpayer by an authorized placement agency for adoption by the taxpayer, shall be treated as a child by blood.
- (C) Age requirements. -- An individual meets the requirements of this subparagraph if such individual --
- (i) has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins,
  - (ii) is a student (as defined in section 151(c)(4)) who has not attained the age of 24 as of the close of such calendar year, or
  - (iii) is permanently and totally disable (as defined in section 22(e)(3)) at any time during the taxable year.
- (D) Identification requirements. --
- (i) In general. -- The requirements of this subparagraph are met if --
    - (I) the taxpayer includes the name and age of each qualifying child (without regard to this subparagraph) on the return of tax for the taxable year, and
    - (II) in the case of an individual who has attained the age of 1 year before the closes of the taxpayer's taxable year, the taxpayer includes the taxpayer identification number of such individual on

such return of tax for such taxable year.

(ii) Insurance policy number. -- In the case of any taxpayer with respect to which the health insurance credit is allowed under subsection (a)(2), the Secretary may require a taxpayer to include an insurance policy number ;or other adequate evidence of insurance in addition to any information required to be included in clause (i).

(iii) Other methods. -- The Secretary may prescribe other methods for providing the information described in clause (i) or(ii).

(E) Abode must be in the United States. -- The requirements of subparagraphs (A(ii) and (B)(iii)(II) shall be met only if the principal place of abode is in the United States.

(d) Married individuals. -- In the case of an individual who is married (within the meaning of section 7703), this section shall apply only if a joint return is filed for the taxable year under section 6013.

(e) Taxable year must be full taxable year. -- Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months.

(f) Amount of credit to be determined under tables prescribed by the Secretary.

(2) Requirements for tables. -- The tables prescribed under paragraph (1) shall reflect the provisions for subsections (a) and (b) and shall have income brackets of not greater than \$50 each --

(A) for earned income between \$0 and the amount of earned income at which the credit is phased out under subsection (b), and

(B) for adjusted gross income between the dollar amount at which the phaseout begins under subsection (b) and the amount of adjusted gross income at which the credit is phased out under subsection (b).

(g) Coordination with advance payments of earned income credit. --

(1) recapture of excess advance payments. -- If any payment is made to the individual by an employer under section 3507 during any calendar year, then the tax imposed by this chapter for the individual's last taxable year beginning in such calendar year shall be increased by the aggregate amount of such payments.

(2) reconciliation of payments advanced and credit allowed. -- Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit (other than the credit allowed by subsection (a)) allowable under this subpart.

(h) reduction of credit to taxpayers subject to alternative minimum tax. -- The credit allowed under this section for the taxable year shall be reduced by the amount of tax imposed by section 55 (relating to alternative minimum tax) with respect to such taxpayer for such taxable year.

(i) Inflation adjustments. --

(1) In general. -- In the case of any taxable year beginning after the applicable calendar year, each dollar amount referred to in paragraph (2)(B) shall be increased by an amount equal to --

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3), for the calendar year in which the taxable year begins, by substituting "calendar year 1984" for "calendar year 1989" in subparagraph (B) thereof.

(2) Definitions, etc. -- For purposes of paragraph (1) --

(A) Applicable calendar year. -- The term "applicable calendar year" means --

(i) 1986 in the case of the dollar amounts referred to in clause (i) of subparagraph (B), and

(ii) 1987 in the case of the dollar amount referred to in clause (ii) of subparagraph (B).

(B) Dollar amounts. -- The dollar amount referred to in this subparagraph are --

(i) the \$5,714 dollar amounts contained in subsection (b)(1), and (ii) the \$9,000 amount

contained in subsection (b)(1)(B)(ii).

(3) Rounding. -- If any dollar amount after being increased under paragraph (1) is not a multiple of \$10 such dollar amount shall be rounded to the nearest multiple of \$10 (or, if such dollar amount is a multiple of \$5, such dollar amount shall be increased to the next higher multiple of \$10).

(j) Coordination with certain means-tested programs. -- For purposes of --

- 91) the United States Housing Act of 1937.
- (2) title V of the Housing Act of 1949.
- (3) section 101 of the Housing and Urban Development Act of 1965,
- (4) sections 221(d)(3), 235, and 236 of the National Housing Act, and
- (5) the Food Stamp Act of 1977, any refund made to an individual (or the spouse of an individual) by reason of this section, and any payment made to such individual (or such spouse) by an employer under section 3507, shall not be treated as income (and shall not be taken into account in determining resources for the month of its receipt and the following month).

### 33. Tax withheld at source on nonresident aliens and foreign corporations

There shall be allowed as a credit against the tax imposed by this subtitle the amount of tax withheld at source under subchapter A of chapter 3 (relating to withholding of tax on nonresident aliens and on foreign corporations).

### 34. Certain uses of gasoline and special fuels

(a) General rule. -- There shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the sum of the amounts payable to the taxpayer --

(1) under section 6420 with respect to gasoline used during the taxable year on a farm for farming purposes (determined without regard to section 6420(g)),

(2) under section 6421 with respect to gasoline used during the taxable year

(A) otherwise than as a fuel in a highway vehicle or (B) in vehicles while engaged in furnishing certain public passenger land transportation service (determined without regard to section 6421(i)), and

(3) under section 6427 --

(A) with respect to fuels used for nontaxable purposes or resold, or

(B) with respect to any qualified diesel-powered highway vehicle purchased (or deemed purchased under section 6427(g)(6)), during the taxable year (determined without regard to section 6427(k)).

(b) Exception. -- Credit shall not be allowed under subsection (a) for any amount payable under section 6421 or 6427, if a claim for such amount is timely filed and, under section 6421(j) or 6427(k), is payable under such section.

### 38. General business credit

(a) Allowance of credit. -- There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of --

(1) the business credit carry forwards carried to such taxable year,

(2) the amount of the current year business credit, plus

(3) the business credit carry backs carried to such taxable year.

(b) current year business credit. -- For purposes of this subpart, the amount of the current year business credit is the sum of the following credits determined for the taxable year:

(1) the investment credit determined under section 46,

(2) the targeted jobs credit determined under section 51(a),

- (3) the alcohol fuels credit determined under section 40(a),
- (4) the research credit determined under section 419a),
- (5) the low-income housing credit determined under section 42(a), plus
- (6) the enhanced oil recovery credit under section 43(a), plus
- (7) in the case of an eligible small business (as defined in section 44(b)), the disabled access credit determined under section 44(a).

(c) Limitation based on amount of tax. --

(1) In general. -- The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of the taxpayer's net income tax over the greater of --

(A) the tentative minimum tax for the taxable year, or

(B) 25 percent of so much of the taxpayer's net regular tax liability as exceeds \$25,000.

For purposes of the preceding sentence, the term "net income tax" means the sum of the regular tax liability and the tax imposed by section 55, reduced by the credits allowable under subparts A and B of this part, and the term "net regular tax liability" means the regular tax liability reduced by the sum of the credits allowable under subparts A and B of this part.

(2) Special rules. --

(A) Married individuals. -- In the case of a husband or wife who files a separate return, the amount specified under subparagraph (B) of paragraph (1) shall be \$12,000 in lieu of \$25,000. This subparagraph shall not apply if the spouse of the taxpayer has no business credit carry forward or carry back to, and has no current year business credit for, the taxable year of such spouse which ends within or with the taxpayer's taxable year.

(B) Controlled groups. -- In the case of a controlled group, the \$25,000 amount specified under subparagraph (B) of paragraph (1) shall be reduced for each component member of such group by apportioning \$25,000 among the component members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term "controlled group" has the meaning given to such term by section 1563(a).

(c) Limitations with respect to certain persons. -- In the case of a person described in subparagraph (A) or (B) of section 46(e)(1) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), the \$25,000 amount specified under subparagraph (B) of paragraph (1) shall equal such person's ratable share (as determined under section 46(E)(2) (as so in effect) of such amount.

(D) Estates and trusts. -- In the case of an estate or trust, the \$25,000 amount specified under subparagraph (B) of paragraph (1) shall be reduced to an amount which bears the same ratio to \$25,000 as the portion of the income of the estate or trust which is not allocated to beneficiaries bears to the total income of the estate or trust.

(d) Ordering rules. -- For purposes of any provision of this title where it is necessary to ascertain the extent to which the credits determined under any section referred to in subsection (b) are used in a taxable year or as a carry back or carry forward --

(1) In general. -- The order in which such credits are used shall be determined on the basis of the order in which they are listed in subsection (b) as of the close of the taxable year in which the credit is used.

(2) Components of investment credit. -- The order in which the credits listed in section 46 are used shall be determined on the basis of the order in which such credits are listed in section 46 as of the close of the taxable year in which the credit is used.

(3) Credits no longer listed. -- For purposes of this subsection --

(A) the credit allowable by section 40, as in effect on the day before the date of the enactment of the Tax Reform Act of 1984, (relating to expenses of work incentive programs) and the credit

allowable by section 41(a), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986, (relating to employee stock ownership credit) shall be treated as referred to in that order after the last paragraph of subsection (b), and

(B) the credit determined under section 46 --

(i) to the extent attributable to the employee plan percentage (as defined in section 46(a)(2)

(E) as in effect on the day before the date of the enactment of the Tax Reform Act of 1984) shall be treated as a credit listed after paragraph (1) of section 46, and

(ii) to the extent attributable to the regular percentage (as defined in section 46(b)(1) as in

effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall be treated as the first credit listed in section 46.

### 39. Carry back and carry forward of unused credits

(a) In general. --

(1) 3-year carry back and 15-year carry forward. -- If the sum of the business credit carry forwards to the taxable year plus the amount of the current year business credit for the taxable year exceeds the amount of the limitation imposed by subsection (c) of section 38 for such taxable year (hereinafter in this section referred to as the "unused credit year"), such excess (to the extent attributable to the amount of the current year business credit) shall be --

(A) a business credit carry back to each of the 3 taxable years preceding the unused credit year, and

(B) a business credit carry forward to each of the 15 taxable years following the unused credit year,

and, subject to the limitations imposed by subsections (b) and (c), shall be taken into account under the provisions of section 38(a) in the manner provided in section 38(a).

(2) Amount carried to each year. --

(A) Entire amount carried to first year. -- The entire amount for the unused credit for an unused credit year shall be carried to the earliest of the 18 taxable years to which (by reason of paragraph (1)) such credit may be carried.

(B) Amount carried to other 17 years. -- The amount of the unused credit for the unused credit year shall be carried to each of the other 17 taxable years to the extent that such unused credit may not be taken into account under section 38(a) for a prior taxable year because of the limitations of subsections (b) and (c).

(b) Limitations on carry backs. -- The amount of the unused credit which may be taken into account under section 38(a)(1) for any succeeding taxable year shall not exceed the amount by which the limitation imposed by section 38(c) for such taxable year exceeds the sum of the amounts which, by reason of this section, are carried to such taxable year and are attributable to taxable years preceding the unused credit year.

(d) Transitional rules. --

(5) No carryback of enhanced oil recovery credit before 1991. -- No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 43(a) (relating to enhanced oil recovery credit) may be carried to a taxable year beginning before January 1, 1991.

(5) No carryback of section 44 credit before enactment. -- No portion of the unused business credit for any taxable year which is attributable to the disabled access credit determined under section 44 may be carried to a taxable year ending before the date of the enactment of section 44.

### 40. Alcohol used as fuel

- (a) General rule. -- For purposes of section 38, the alcohol fuels credit determined under this section for the taxable year is an amount equal to the sum of --
- (1) the alcohol mixture credit, plus
  - (2) the alcohol credit, plus
  - (3) in the case of an eligible small ethanol producer, the small ethanol producer credit.
- (b) Definition of alcohol mixture credit, alcohol credit, and small ethanol producer credit. --
- For purposes of this section, and except as provided in subsection (h) --
- (1) Alcohol mixture credit. --
    - (A) In general. -- The alcohol mixture credit of any taxpayer for any taxable year is 60 cents for each gallon of alcohol used by the taxpayer in the production of a qualified mixture.
    - (B) Qualified mixture. -- The term "qualified mixture" means a mixture of alcohol and gasoline or of alcohol and a special fuel which ---
      - (i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or
      - (ii) is used as a fuel by the taxpayer producing such mixture.
    - (C) Sale or use must be in trade or business, etc. -- Alcohol used in the production of a qualified mixture shall be taken into account --
      - (i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and
      - (ii) for the taxable year in which such sale or use occurs.
    - (D) Casual off-farm production not eligible. -- No credit shall be allowed under this section with respect to any casual off-farm production of a qualified mixture.
  - (2) Alcohol credit. --
    - (A) In general. -- the alcohol credit of any taxpayer for any taxable year is 60 cents for each gallon of alcohol which is not in a mixture with gasoline or a special fuel (other than any denaturant) and which during the taxable year --
      - (i) is used by the taxpayer as a fuel in a trade or business, or
      - (ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle.
    - (B) User credit not to apply to alcohol sold at retail. -- No credit shall be allowed under subparagraph (A)(i) with respect to any alcohol which was sold in a retail sale described in subparagraph (A)(ii).
    - (3) Smaller credit for lower proof alcohol. -- In the case of any alcohol with a proof which is at least 150 but less than 190, paragraphs (1)(A) and (2)(A) shall be applied by substituting "45 cents" for "60 cents".
    - (4) Small ethanol producer credit. --
      - (A) In general. -- The small ethanol producer credit of any eligible small ethanol producer for any taxable year is 10 cents for each gallon of qualified ethanol fuel production of such producer.
      - (B) Qualified ethanol fuel production. -- For purposes of this paragraph, the term "qualified ethanol fuel production" means any alcohol which is ethanol which is produced by an eligible small ethanol producer, and which during the taxable year --
        - (i) is sold by such producer to another person --
          - (I) for use by such other person in the production of a qualified mixture in such other person's trade or business (other than casual off-farm production ),
          - (II) for use by such other person as a fuel in a trade or business, or
          - (III) who sells such ethanol at retail to another person and places such ethanol in the fuel tank of such other person, or
        - (ii) is used or sold by such producer for any purpose described in clause (i).

(C) Limitation. -- The qualified ethanol fuel production of any producer for any taxable year shall not exceed 15,000,000 gallons.

(D) Additional distillation excluded. -- The qualified ethanol fuel production of any producer for any taxable year shall not include any alcohol which is purchased by the producer and with respect to which such producer increases the proof of the alcohol by additional distillation.

(5) Adding of denaturants not treated as mixture. -- The adding of any denaturant to alcohol shall not be treated as the production of a mixture.

(c) Coordination with exemption from excise tax. -- The amount of the credit determined under this section with respect to any alcohol shall, under regulations prescribed by the Secretary, be properly reduced to take into account any benefit provided with respect to such alcohol solely by reason of the application of subsection (b)(2), (k), or (m) of section 4041, section 4081(c), or section 4091(c).

(d) Definitions and special rules. -- For purposes of this section --

(1) Alcohol defined. --

(A) In general. -- The term "alcohol" includes methanol and ethanol but does not include --

(i) alcohol produced from petroleum, natural gas, or coal (including peat), or

(ii) alcohol with a proof of less than 150.

(B) Determination of proof. -- The determination of the proof of any alcohol shall be made without regard to any added denaturants.

(2) Special fuel defined. -- The term "special fuel" includes any liquid fuel (other than gasoline) which is suitable for use in an internal combustion engine.

(3) Mixture or alcohol not used as a fuel, etc. --

(A) Mixtures. -- If --

(i) any credit was determined under this section with respect to alcohol used in the production of any qualified mixture, and

(ii) any person --

(I) separates the alcohol from the mixture, or

(II) without separation, uses the mixture other than as a fuel, then there is hereby imposed on such person a tax equal to 60 cents a gallon (45 cents in the case of alcohol with a proof less than 190) for each gallon of alcohol in such mixture.

(B) Alcohol. --If

(i) any credit was determined under this section with respect to the retail sale of any alcohol, and

(ii) any person mixes such alcohol or uses such alcohol other than as a fuel, then there is hereby imposed on such person a tax equal to 60 cents a gallon (45 cents in the case of alcohol with a proof less than 190) for each gallon of such alcohol.

(C) Producer credit. --If--

(i) any credit was determined under subsection (a)(3), and

(ii) any person does not use such fuel for a purpose described in subsection (b)(4)(B).

then there is hereby imposed on such person a tax equal to 10 cents a gallon for each gallon of such alcohol.

(D) Applicable laws. -- All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A), (B), or (C) as if such tax were imposed by section 4081 and not by this chapter.

(4) Volume of alcohol. -- For purposes of determining --

(A) under subsection (a) the number of gallons of alcohol with respect to which a credit is allowable under subsection (a), or

(B) under section 4041(k) or 4081(c) the percentage of any mixture which consists of

alcohol,

the volume of alcohol shall include the volume of any denaturant (including gasoline) which is added under any formulas approved by the Secretary to the extent that such denaturants do not exceed 5 percent of the volume of such alcohol (including denaturants).

95) Pass-thru in the case of estates and trusts. -- Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(e) Termination. --

(1) In general. -- This section shall not apply to any sale or use --

(A) for any period after December 31, 2000, or

(B) for any period before January 1, 2001, during which the Highway Trust Fund financing rate under section 4081(a)(2) is not in effect.

(2) No carryovers to certain years after expiration. -- If this section ceases to apply for any period by reason of paragraph (1), no amount attributable to any sale or use before the first day of such period may be carried under section 39 by reason of this section (treating the amount allowed by reason of this section as the first amount allowed by this subpart to any taxable year beginning after the 3-taxable-year period beginning with the taxable year in which such first day occurs.

(f) Election to have alcohol fuels credit no apply. --

(1) In general. -- A taxpayer may elect to have this section not apply for any taxable year.

(2) Time for making election. -- An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

(3) Manner of making election. -- An election under paragraph (1) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe.

(g) Definitions and special rules for eligible small ethanol producer credit. --

For purposes of this section --

(1) Eligible small ethanol producer. -- The term "eligible small ethanol producer" means a person who, at all times during the taxable year, has a productive capacity for alcohol (as defined in subsection(d)(1)(A) without regard to clauses (i) and 9ii)) not in excess of 30,000,000 gallons.

(2) Aggregation rule. -- For purposes of the 15,000,000 gallon limitations under subsection (b)(4)(C) and the 30,000,000 gallon limitation under paragraph (1), all members of the same controlled groups of corporations (within the meaning of section 267(f) and all persons under common control (within the meaning of section 52(b) but determined by treating an interest of more than 50 percent as a controlling interest) shall be treated as 1 person.

(3) Partnership, S corporations, and other pass-thru entities. --- In the case of a partnership, trust, S corporation, or other pass-thru entity, the limitations contained in subsection (b)(4)(C) and paragraph (1) shall be applied at the entity level and at the partner or similar level.

(4) Allocation. -- For purposes of this subsection, in the case of a facility in which more than 1 person has an interest, productive capacity shall be allocated among such persons in such manner as the Secretary may prescribe.

(5) regulations. -- The Secretary may prescribe such regulations as may be necessary --

(A) to prevent the credit provided for in subsection (a)(3) from directly or indirectly benefiting any person with a direct ;or indirect productive capacity of more than 30,000,000 gallons of alcohol during the taxable year, or

(B) to prevent any person from directly or indirectly benefiting with respect to more than 15,000,000 gallons during the taxable year.

(h) Reduced credit for ethanol blenders. -- In the case of any alcohol mixture credit or alcohol credit with respect to any alcohol which is ethanol --

- (1) subsections (b)(1)(A) and (b)(2)(A) shall be applied by substituting "54 cents" for "60 cents";
- (2) subsection (b)(3) shall be applied by substituting "40 cents" for "45 cents" and "54 cents" for "60 cents"; and
- (3) subparagraphs (A) and (B) of subsection (d)(3) shall be applied by substituting "54 cents" for "60 cents" and "40 cents" for "45 cents".