will make the records, if any, available to you.

(2) *Appeals concerning amendments.* If your appeal concerns amendment of a record, the response will describe any amendment made and advise you of your right to obtain a copy of the amended record. We will notify all persons, organizations or Federal agencies to which we previously disclosed the record, if an accounting of that disclosure was made, that the record has been amended. Whenever the record is subsequently disclosed, the record will be disclosed as amended. If our response denies your request for an amendment to a record, we will advise you of your right to file a statement of disagreement under paragraph (f) of this section.

(f) *Statements of disagreement*—(1) *What is a statement of disagreement?* A statement of disagreement is a concise written statement in which you clearly identify each part of any record that you dispute and explain your reason(s) for disagreeing with our denial in whole or in part of your appeal requesting amendment.

(2) *How do I file a statement of disagreement?* You should mark both your letter and the envelope, or the subject of your email, ''Privacy Act Statement of Disagreement.'' To avoid mail delivery delays caused by heightened security, we strongly suggest that you email a statement of disagreement to *foia@ondcp.eop.gov.* Our mailing address is: Executive Office of the President, Office of National Drug Control Policy, 1800 G Street NW, 9th Floor, Washington, DC 20006, Attn: Office of General Counsel.

(3) *What will we do with your statement of disagreement?* We shall clearly note any portion of the record that is disputed and provide copies of the statement and, if we deem appropriate, copies of our statement that denied your request for an appeal for amendment, to persons or other agencies to whom the disputed record has been disclosed.

(g) *When appeal is required.* Under this section, you generally first must submit a timely administrative appeal, before seeking review of an adverse determination or denial request by a court.

§ 1401.27 What does it cost to get records under the Privacy Act?

(a) *Agreement to pay fees.* Your request is an agreement to pay fees. We consider your Privacy Act request as your agreement to pay all applicable fees unless you specify a limit on the amount of fees you agree to pay. We will not exceed the specified limit without your written agreement.

(b) *How do we calculate fees?* We will charge a fee for duplication of a record under the Privacy Act in the same way we charge for duplication of records under the FOIA in § 1401.14(d). There are no fees to search for or review records requested under the Privacy Act.

Michael J. Passante,

Acting General Counsel.

[FR Doc. 2020–09826 Filed 5–20–20; 8:45 am]

BILLING CODE 3280–F5–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–124327–19]

RIN 1545–BP56

Rehabilitation Credit Allocated Over a 5-Year Period

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations concerning the rehabilitation credit, including rules to coordinate the new 5-year period over which the credit may be claimed with other special rules for investment credit property. These proposed regulations affect taxpayers that claim the rehabilitation credit.

DATES: Written or electronic comments and requests for a public hearing must be received by July 21, 2020. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–124327–19) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket. Send paper submissions to: CC:PA:LPD:PR (REG–124327–19), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, call Barbara J. Campbell, (202) 317–4137; concerning submissions of comments and requests for a public hearing, call Regina Johnson, (202) 317–5177 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to Title 26 part 1 under section 47 of the Internal Revenue Code (Code). The rehabilitation credit under section 47 is listed as an investment credit under section 46, and the investment credit under section 46 is a current year general business credit under section 38. On December 22, 2017, section 47 was amended by section 13402 of Public Law 115–97, 131 Stat. 2054 (2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA).

Prior to the TCJA, former section 47(a) provided a two-tier credit for qualified rehabilitation expenditures (QREs) incurred in connection with the rehabilitation of a qualified rehabilitated building (QRB). Former section 47(a)(2) allowed a 20-percent credit for QREs with respect to a certified historic structure, and former section 47(a)(1) allowed a 10-percent credit for QREs with respect to a QRB other than a certified historic structure (for certain buildings first placed in service before 1936 (pre-1936 buildings)). Under former section 47, both the 20-percent and 10-percent credits were fully allowed in the taxable year the QRB was placed in service.

Section 13402(a) of the TCJA repealed the 10-percent credit for pre-1936 buildings and modified the rules for claiming the 20-percent credit for certified historic structures. Section 13402(c)(1) of the TCJA provides that these amendments are generally applicable to QRE amounts paid or incurred after December 31, 2017, subject to a transition rule provided in section 13402(c)(2) of the TCJA. This statutory transition rule provides that in the case of QREs (for either a certified historic structure eligible for a 20-percent credit or a pre-1936 building eligible for a 10-percent credit prior to December 31, 2017), with respect to any building owned or leased (as provided under present law) by the taxpayer at all times on and after January 1, 2018, the

24-month period selected by the taxpayer (section 47(c)(1)(B)(i), as amended by section 13402(b)), or the 60-month period selected by the taxpayer under the rule for phased rehabilitation (section 47(c)(1)(B)(ii), as amended by section 13402(b)), is to begin not later than the end of the 180-day period beginning on December 22, 2017, and the amendments made by section 13402 of the TCJA apply to such QREs paid or incurred after the end of the taxable year in which such 24-month or 60-month period ends.

As amended by the TCJA, section 47(a)(1) provides that for purposes of the investment credit under section 46, for any taxable year during the 5-year period beginning in the taxable year in which a QRB is placed in service, the rehabilitation credit for such taxable year is an amount equal to the ratable share for the year. Also, as amended by the TCJA, section 47(a)(2) defines the ratable share for any taxable year during the credit period as the amount equal to 20 percent of the QREs with respect to the QRB, as allocated ratably to each year during the credit period. Section 47(b)(1), which the TCJA did not amend, provides that QREs with respect to any QRB are taken into account for the taxable year in which the QRB is placed in service.

Explanation of Provisions

I. Overview

As noted in the Background, the rehabilitation credit is no longer fully allowed in the taxable year the QRB is placed in service. Instead, the rehabilitation credit must be claimed ratably over the 5-year period beginning in the taxable year in which a QRB is placed in service. The Treasury Department and the IRS are aware that taxpayers and practitioners have questioned how the 5-year period impacts taxpayers claiming the rehabilitation credit, including how to apply the special rules of section 50 relating to recapture, basis adjustment, and leased property. In particular, practitioners have questioned whether the rehabilitation credit is determined in the year the QRB is placed in service and allocated ratably over the 5-year period, or whether five separate rehabilitation credits are determined during each year of the 5-year period.

As explained in Part II of this Explanation of Provisions, these proposed regulations provide that the rehabilitation credit is properly determined in the year the QRB is placed in service (consistent with prior law) but allocated ratably over the 5-year period as required by the TCJA, rather than resulting in the determination of five separate rehabilitation credits. Similarly, as explained in Part III of this Explanation of Provisions, these proposed regulations follow this same prior law approach for the determination of a single rehabilitation credit for purposes of applying the rules of section 50. Therefore, taxpayers claiming the rehabilitation credit under section 47 with respect to QREs paid or incurred after December 31, 2017, generally will have the same Federal income tax consequences from the rules under section 50 for recapture, basis adjustment, and leased property as taxpayers claiming the rehabilitation credit under prior law.

The proposed regulations add § 1.47–7(a) through (e) and include: A general rule for calculating the rehabilitation credit; definitions of *ratable share* and *rehabilitation credit determined;* and a rule coordinating the changes to section 47 with the special rules in section 50. The proposed regulations also contain examples, including examples illustrating the interaction of section 47 with rules in section 50(a) (recapture in case of dispositions, etc.), section 50(c) (basis adjustment to investment credit property), and section 50(d)(5) (relating to certain leased property when the lessee is treated as owner and subject to an income inclusion requirement).

II. Proposed § 1.47–7(a), (b), and (c): Rehabilitation Credit Allocated Over a 5-Year Period

Consistent with section 47(a)(1), proposed § 1.47–7(a) provides a general rule that, for purposes of the investment credit under section 46, for any taxable year during the 5-year period the rehabilitation credit for the year is the ratable share.

Proposed § 1.47–7(b) generally follows the definition of ratable share in section 47(a)(2) but, for clarification, replaces ''QREs'' with the term ''rehabilitation credit determined'' as defined in proposed § 1.47–7(c). Specifically, proposed § 1.47–7(b) defines the term *ratable share* as the amount equal to 20 percent of the rehabilitation credit determined with respect to the QRB, as allocated ratably to each taxable year during the 5-year credit period. Proposed § 1.47–7(c) defines the term *rehabilitation credit determined* as the amount equal to 20 percent of the QREs, as defined in section 47(c)(2) and § 1.48–12(c) of the Income Tax Regulations, taken into account under section 47(b)(1) for the taxable year in which the QRB is placed in service. However, if the taxpayer claims the additional first year depreciation for the QREs pursuant to § 1.168(k)–2(g)(9), proposed § 1.47–7(c) defines the rehabilitation credit determined as the amount equal to 20 percent of the remaining rehabilitated basis, as defined in § 1.168(k)–2(g)(9)(i)(B), of the QRB for the taxable year in which such building is placed in service. Proposed § 1.47–7(c) is included to clarify that the rehabilitation credit is determined in the year the QRB is placed in service and allocated ratably over the 5-year period under proposed § 1.47–7(b).

Determining the total amount of the credit in the first year the QRB is placed in service and allocating the credit over the 5-year period is consistent with the text of the statute, as well as the intent of Congress, because the determination does not change the total amount of rehabilitation credit over the 5-year period or the amount of rehabilitation credit for purposes of section 46 in any individual year of the 5-year period. The plain language in section 47(a)(1), (a)(2), and (b)(1) makes clear that one rehabilitation credit is allocated ratably over a 5-year period. First, section 47(a)(1) and (a)(2) effectively allocate the 20-percent rehabilitation credit over a 5-year period. Second, section 47(b)(1) requires that QREs are taken into account in the taxable year the QRB is placed in service, which is the first year in the 5-year period. Because QREs are taken into account in the first taxable year the QRB is placed in service under section 47(b)(1), the rehabilitation credit for a QRB is effectively fixed, or determined, as of that first year. In sum, the overall structure of section 47(a) and (b)(1) functions to allocate the rehabilitation credit that is determined in the taxable year the QRB is placed in service over a 5-year period for each of those taxable years, rather than creating five separate rehabilitation credits for a single QRB.

Further, this reading of the statutory text is consistent with the conference report accompanying the TCJA (H.R. Rept. No. 466, 115th Cong.435–436 (2017)) (Conference Report) and the Joint Committee on Taxation's General Explanation of Public Law 115–97, 210 (Staff of the Joint Committee on Taxation, 115th Cong., General Explanation of Public Law 115–97 (Comm. Print 2018) (Bluebook)). The Conference Report states that Congress ''intended that the sum of the ratable shares for the taxable years during the five-year period does not exceed 100 percent of the credit for qualified rehabilitation expenditures for the qualified rehabilitated building.'' See Conference Report, at 435–436; Bluebook, at 210. By determining the

rehabilitation credit based on 100 percent of the QREs in the year QREs are taken into account under section 47(b)(1), that is, the year in which the QRB is placed in service, and ratably allocating the amount determined over the 5-year period, the proposed regulations ensure that the sum of the ratable shares will never violate Congressional intent. Comments are requested with respect to any specific concerns taxpayers may have with this plain reading of the operative statutory text.

III. Proposed § 1.47–7(d) and (e): Coordination With Section 50 and Examples

Proposed § 1.47–7(d) describes the coordination with the special rules of section 50 and makes clear that, for purposes of applying the rules in section 50, the full rehabilitation credit amount is determined in the first year of the 5-year period, and then allocated ratably over that 5-year period. Determining the credit in the same manner for purposes of sections 47 and 50 provides certainty and reduces the complexity under section 50 that would result if taxpayers were required to determine five separate rehabilitation credits. For example, if five separate rehabilitation credits were determined, then there would be five separate recapture periods under section 50(a) with respect to a single QRB. This would increase the length of the recapture period and increase the recapture amount as compared to results under section 50(a) prior to the TCJA changes to section 47. The proposed regulations ensure that this is not the result under section 50.

Moreover, in coordinating the rules between sections 47 and 50, the Treasury Department and the IRS considered the fact that that there is no indication that, in changing section 47, Congress intended to modify the application of section 50. The Conference Report and the Bluebook explain that the TCJA's amendments to section 47 retain the 20-percent credit for QREs with respect to a certified historic structure while extending the credit period from one year to five years, but nowhere in the Conference Report or the Bluebook is there any suggestion that the results for taxpayers claiming the rehabilitation credit under the rules of section 50 were intended to be different. See Conference Report, at 435–436; Bluebook, at 210. Further, the TCJA made no changes to section 50. Accordingly, the proposed regulations generally place taxpayers claiming the rehabilitation credit after the TCJA in the same position with respect to the rules of section 50 as taxpayers prior to the TCJA. Comments are requested with respect to any specific concerns taxpayers may have with this plain reading of the operative statutory text.

Proposed § 1.47–7(e) provides examples that illustrate these rules with respect to the most relevant fact patterns. In addition to examples that show the general calculation for claiming the rehabilitation credit, proposed § 1.47–7(e) demonstrates the interaction with section 50(a) (recapture in case of dispositions, etc.), section 50(c) (basis adjustment to investment credit property), and two examples to illustrate interaction with section 50(d)(5) (relating to certain leased property when the lessee is treated as owner and subject to an income inclusion requirement). The first example illustrating the interaction with section 50(d)(5) describes a transaction in which the lessee is a corporation, and in the second example the lessee is a partnership that is subject to special rules under § 1.50–1(b)(3)(i).

The Treasury Department and the IRS request comments on these examples and whether any additional examples illustrating the coordination of section 47 with other provisions of the Code and regulations are necessary. The Treasury Department and the IRS are aware that other provisions of the Code and regulations require computations that are impacted by the amount of the rehabilitation credit determined with respect to a QRB and the adjusted basis of a QRB. The Treasury Department and the IRS also request comments regarding whether special rules are needed to address how the amount of the rehabilitation credit determined and the adjusted basis of a QRB interact with those other provisions of the Code and regulations.

Proposed Applicability Date

These regulations are proposed to apply to taxable years beginning on or after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**. Taxpayers may rely on these proposed regulations for QREs paid or incurred after December 31, 2017, in taxable years beginning before the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**, provided the taxpayers follow the proposed regulations in their entirety and in a consistent manner.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

In accordance with the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Although the rules may affect small entities, data are not readily available about the number of taxpayers affected. The economic impact of these regulations is not likely to be significant, however, because these proposed regulations substantially incorporate statutory changes made to section 47 by the TCJA that have been effective for QREs paid of incurred after December 31, 2017. The proposed regulations will assist taxpayers in understanding the changes to section 47 and make it easier for taxpayers to comply with those changes and section 50, which was not changed by the TCJA. Notwithstanding this certification, the Treasury Department and the IRS welcome comments on the impact of these regulations on small entities.

Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at *www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020–4, 2020–17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal author of these proposed regulations is Barbara J. Campbell, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.47–7 is added to read as follows:

§ 1.47–7 Rehabilitation credit allocated over a 5-year period.

(a) *In general.* For purposes of section 46, for any taxable year during the 5-year period beginning in the taxable year in which a qualified rehabilitated building, as defined in section 47(c)(1) and § 1.48–12(b), is placed in service, the rehabilitation credit for the taxable year is an amount equal to the ratable share for the taxable year, provided the requirements of section 47 are satisfied. Except as provided by section 13402(c)(2) of Public Law 115–97, 131 Stat. 2054 (2017), this section applies with respect to qualified rehabilitation expenditures, as defined in section 47(c)(2) and § 1.48–12(c), paid or incurred after December 31, 2017.

(b) *Ratable share.* For purposes of paragraph (a) of this section, the term *ratable share* means, for any taxable year during the 5-year period described in such paragraph, the amount equal to 20 percent of the rehabilitation credit determined with respect to the qualified rehabilitated building, allocated ratably to each year during such period.

(c) *Rehabilitation credit determined.* The term *rehabilitation credit determined* means the amount equal to 20 percent of the qualified rehabilitation expenditures, as defined in section 47(c)(2) and § 1.48–12(c), taken into account under section 47(b)(1) for the taxable year in which the qualified rehabilitated building is placed in service. However, if the taxpayer claims the additional first year depreciation for the qualified rehabilitation expenditures pursuant to § 1.168(k)–2(g)(9), the term *rehabilitation credit determined* means the amount equal to 20 percent of the remaining rehabilitated basis, as defined in § 1.168(k)–2(g)(9)(i)(B), of the qualified rehabilitation building for the taxable year in which such building is placed in service.

(d) *Coordination with section 50.* For purposes of section 50 and § 1.50–1, the amount of the rehabilitation credit determined is the amount defined in paragraph (c) of this section.

(e) *Examples.* The provisions of paragraphs (a) through (d) of this section are illustrated by the following examples. Assume that the additional first year depreciation deduction provided by section 168(k) is not allowed or allowable for the qualified rehabilitation expenditures.

(1) *Example 1: Rehabilitation Credit Determined and Ratable Share.* Between February 1, 2021 and October 1, 2021, X, a calendar year C corporation, incurred qualified rehabilitation expenditures of $200,000 with respect to a qualified rehabilitated building. X placed the building in service on October 15, 2021. X's rehabilitation credit determined in 2021 under paragraph (c) of this section is $40,000 ($200,000 × 0.20). For purposes of section 46, for each taxable year during the 5-year period beginning in 2021, the ratable share allocated under paragraph (b) of this section for the year is $8,000 ($40,000 × 0.20).

(2) *Example 2: Coordination with section 50(c).* The facts are the same as in paragraph (e)(1) of this section (Example 1). For purposes of determining the amount of X's basis adjustment in 2021 under section 50(c), the amount of the rehabilitation credit determined under paragraph (c) of this section is $40,000.

(3) *Example 3: Coordination with section 50(a).* The facts are the same as in paragraph (e)(1) of this section (Example 1). In 2021 and 2022, X claimed the full amount of the ratable share allowed under section 46, or $8,000 per taxable year. X's total allowable ratable share for 2023 through 2025 is $24,000 ($8,000 allowable per taxable year). On November 1, 2023, X disposes of the qualified rehabilitated building. Under section 50(a)(1)(B)(iii), because the period of time between when the qualified rehabilitated building was placed in service is more than two, but less than 3 full years, the applicable recapture percentage is 60%. Based on these facts, X has an increase in tax of $9,600 under section 50(a) ($16,000 of credit claimed in 2021 and 2022 × 0.60) and has $3,200 of credits remaining in each of 2023 through 2025, after forgoing $4,800 in credits in each of the years 2023 through 2025 ($8,000 × 0.60).

(4) *Example 4: Coordination with section 50(d)(5) and § 1.50–1; C corporation lessee.* X, a calendar year C corporation, leases nonresidential real property from Y. The property is a qualified rehabilitated building that is placed in service on October 15, 2021. Under paragraph (c) of this section, the amount of the rehabilitation credit determined is $100,000. Y elects under § 1.48–4 to treat X as having acquired the property. The shortest recovery period that could be available to the property under section 168 is 39 years. Because Y has elected to treat X as having acquired the property, Y does not reduce its basis in the property under section 50(c). Instead, pursuant to section 50(d)(5) and § 1.50–1, X, the lessee of the property, must include ratably in gross income over 39 years an amount equal to the rehabilitation credit determined with respect to such property.

(5) *Example 5: Coordination with section 50(d)(5) and § 1.50–1; partnership lessee.* A and B, calendar year taxpayers, form a partnership, the AB partnership, that leases nonresidential real property from Y. The property is a qualified rehabilitation building that is placed in service on October 15, 2021. Under paragraph (c) of this section, the amount of the rehabilitation credit determined is $200,000. Y elects under § 1.48–4 to treat the AB partnership as having acquired the property. The shortest recovery period that could be available to the property under section 168 is 39 years. Because Y has elected to treat the AB partnership as having acquired the property, Y does not reduce its basis in the building under section 50(c). Instead, A and B, the ultimate credit claimants, as defined in § 1.50–(b)(3)(ii), must include the amount of the rehabilitation credit determined under paragraph (c) of this section with respect to A and B ratably in gross income over 39 years, the shortest recovery period available with respect to such property.

(f) *Applicability date.* These regulations are proposed to apply to taxable years beginning on or after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2020–09879 Filed 5–21–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2020–0143]

RIN 1625–AA08

Special Local Regulation; Upper Potomac River, National Harbor, MD

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking; re-opening of public comment period.

SUMMARY: On April 2, 2020, the Coast Guard published a notice of proposed