§ 181.7 [Amended]

■ 4. § 181.7 is amended as follows:
■ A. In paragraph (b): By removing ''Assistant Secretary of State for Congressional Relations'' and adding in its place ''Assistant Legal Adviser for Treaty Affairs''; and removing ''House Committee on Foreign Affairs'' and adding in its place ''House Committee on International Relations''.
■ B. In paragraph (c):
■ 1. By removing '', the negotiations, the effect of the agreement,'' in the third sentence; and
■ 2. By removing, in the last sentence the phrase ''Assistant Secretary of State for Congressional Relations'' and adding in its place ''Assistant Legal Adviser for Treaty Affairs'', and removing the phrase''House Committee on Foreign Affairs'' and adding in its place ''House Committee on International Relations''.
■ C. In paragraph (d), by removing ''Assistant Secretary of State for Congressional Relations'' and ''Assistant Secretary for Congressional Relations'' wherever each appears and adding in its place ''Assistant Legal Adviser for Treaty Affairs''.
■ 5. § 181.8 is amended as follows by:
■ A. Adding paragraphs (a)(10) through (13);
■ B. Adding a sentence to the end of paragraph (b); and
■ C. Adding a new paragraph (d) to read as follows:

§ 181.8 Publication.

(a) * * *

(10) Bilateral agreements with other governments that apply to specific activities and programs financed with foreign assistance funds administered by the United States Agency for International Development pursuant to the Foreign Assistance Act, as amended, and the Agricultural Trade Development and Assistance Act of 1954, as amended;

(11) Letters of agreements and memoranda of understanding with other governments that apply to bilateral assistance for counter-narcotics and other anti-crime purposes furnished pursuant to the Foreign Assistance Act, as amended;

(12) Bilateral agreements that apply to specified education and leadership development programs designed to acquaint U.S. and foreign armed forces, law enforcement, homeland security, or related personnel with limited, specialized aspects of each other's practices or operations; and

(13) Bilateral agreements between aviation agencies governing specified aviation technical assistance projects for the provision of managerial, operational, and technical assistance in developing and modernizing the civil aviation infrastructure; and

(b) * * * Agreements on the subjects listed in paragraphs (a)(10) through (13) of this section that had not been published as of September 8, 2006.

* * * * *

(d) The Assistant Legal Adviser for Treaty Affairs shall annually submit to Congress a report that contains an index of all international agreements, listed by country, date, title, and summary of each such agreement (including a description of the duration of activities under the agreement and the agreement itself), that the United States:

(1) Has signed, proclaimed, or with reference to which any other final formality has been executed, or that has been extended or otherwise modified, during the preceding calendar year; and

(2) Has not been published, or is not proposed to be published, in the compilation entitled ''United States Treaties and Other International Agreements.''

■ 6. Add new § 181.9 to read as follows:

§ 181.9 Internet Web site publication.

The Office of the Assistant Legal Adviser for Treaty Affairs, with the cooperation of other bureaus in the Department, shall be responsible for making publicly available on the Internet Web site of the Department of State each treaty or international agreement proposed to be published in the compilation entitled ''United States Treaties and Other International Agreements'' not later than 180 days after the date on which the treaty or agreement enters into force.

Dated: August 21, 2006.

John J. Kim,

Assistant Legal Adviser for Treaty Affairs, Department of State.

[FR Doc. E6–14850 Filed 9–7–06; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9286]

RIN 1545–BE91

Railroad Track Maintenance Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide rules for claiming the railroad track maintenance credit under section 45G of the Internal Revenue Code for qualified railroad track maintenance expenditures paid or incurred by a Class II railroad or Class III railroad and other eligible taxpayers during the taxable year. These temporary regulations reflect changes to the law made by the American Jobs Creation Act of 2004 and the Gulf Opportunity Zone Act of 2005. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective September 8, 2006.

Applicability Date: For dates of applicability, see § 1.45G–1T(g).

FOR FURTHER INFORMATION CONTACT: Winston H. Douglas, (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed, and pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–2031. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to 26 CFR part 1 to provide regulations

under section 45G of the Internal Revenue Code (Code). Section 45G was added to the Code by section 245(a) of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418) (AJCA), and was modified by section 403(f) of the Gulf Opportunity Zone Act of 2005, Public Law 109–135 (119 Stat. 2577).

General Overview

Section 38 allows a credit for the taxable year for, among other things, the current year business credit. The current year business credit is the sum of the credits listed in section 38(b). Section 245(c)(1) of the AJCA amended section 38(b) of the Code to add to the list of credits the railroad track maintenance credit (RTMC) determined under section 45G(a).

Section 45G(a) provides that, for purposes of section 38, the RTMC for the taxable year is an amount equal to 50 percent of the qualified railroad track maintenance expenditures (QRTME) paid or incurred by an eligible taxpayer during the taxable year. Section 45G(d) defines the term QRTME to mean expenditures (whether or not chargeable to capital account) for maintaining railroad track owned by, or leased to, a Class II railroad or Class III railroad as of January 1, 2005. Section 45G(e) defines the terms Class II railroad and Class III railroad to have the respective meanings given those terms by the Surface Transportation Board (STB). Section 45G(c) defines an eligible taxpayer to mean any Class II railroad or Class III railroad, and any person who transports property using the rail facilities of such a railroad, or who furnishes railroad-related property or services to such a railroad, but only with respect to miles of railroad track assigned to such person by such a railroad.

Section 45G(b) imposes limitations on the amount of the RTMC for any taxable year. The credit allowed under section 45G(a) may not exceed $3,500 multiplied by the sum of (1) the number of miles of railroad track owned by, or leased to, the eligible taxpayer as of the close of the taxable year, and (2) the number of miles of railroad track assigned to the eligible taxpayer by a Class II railroad or Class III railroad that owns or leases the track as of the close of the taxable year.

Section 45G applies to QRTME paid or incurred during taxable years beginning after December 31, 2004, and before January 1, 2008.

Scope

The temporary regulations define several terms, including eligible taxpayer, QRTME, rail facilities, railroad-related property, and railroad-related services. The temporary regulations also instruct an eligible taxpayer how to determine the RTMC for the taxable year. Further, the temporary regulations provide guidance on assignments of miles of railroad track for purposes of section 45G, adjustments to basis for the RTMC, and the treatment of controlled groups under section 45G.

Explanation of Provisions

Eligible Taxpayer

The temporary regulations provide that only an eligible taxpayer may claim the RTMC. An eligible taxpayer is defined in the temporary regulations as: (1) A Class II railroad or Class III railroad during the taxable year; (2) any person that transports property using the rail facilities of a Class II railroad or Class III railroad during the taxable year; or (3) any person that furnishes railroad-related property or railroad-related services to a Class II railroad or Class III railroad during the taxable year. A Class I railroad is an eligible taxpayer only if the Class I railroad is in the second or third category above and is assigned miles of railroad track for the taxable year by a Class II railroad or Class III railroad. A taxpayer in the second or third category is an eligible taxpayer only with respect to the miles of railroad track assigned to the person for the taxable year by a Class II railroad or Class III railroad.

Consistent with section 45G(e)(1), the temporary regulations provide that the terms Class II railroad and Class III railroad have the respective meanings given these terms by the STB. As determined by the STB, Class II railroads have annual carrier operating revenues of less than $250 million but in excess of $20 million after applying the railroad revenue deflator formula (Current Year's Revenues x (1991 Average Railroad Freight Price Index/ Current Year's Average Railroad Freight Price Index)). 49 CFR part 1201, subpart A, § 1–1(a). In general, Class III railroads have annual carrier operating revenues of $20 million or less after applying the railroad revenue deflator formula. 49 CFR part 1201, subpart A, § 1–1(a).

The temporary regulations also provide that the rail facilities of a Class II railroad or Class III railroad include railroad yards, tracks, bridges, tunnels, wharves, docks, stations, and other related assets that are used in the transport of freight by a railroad and that are owned or leased by the Class II railroad or Class III railroad.

Railroad-related property is defined in the temporary regulations as meaning property that is provided directly to, and is unique to, a railroad. Further, this property must be property that, in the hands of a Class II railroad or Class III railroad, is described in asset classes 40.1 through 40.54 of Rev. Proc. 87–56 (1987–2 CB 674), with certain modifications, and is described in the STB property accounts for grading, tunnels and subways, and storage warehouses.

The temporary regulations define railroad-related services as meaning services that are provided directly to, and are unique to, a railroad. In addition, these services must relate to railroad shipping, loading and unloading of railroad freight, or repairs of rail facilities or railroad-related property. Examples of railroad-related services are the transport of freight by rail, the loading and unloading of freight transported by rail, locomotive leasing or rental, and maintenance of a railroad's right-of-way (including vegetation control). Examples of services that are not railroad-related services are general business services, cleaning services, banking services (including financing of railroad-related property), and office building rental.

Computation of Railroad Track Maintenance Credit

For purposes of section 38, the temporary regulations provide that the RTMC generally is equal to 50 percent of the QRTME paid or incurred by an eligible taxpayer during the taxable year. However, this credit amount cannot exceed the credit limitation provided by the temporary regulations. The credit limitation for a Class II railroad or Class III railroad differs from the credit limitation for other eligible taxpayers.

If an eligible taxpayer is a Class II railroad or Class III railroad, the temporary regulations provide that the RTMC cannot exceed $3,500 multiplied by the sum of: (1) The number of miles of railroad track owned or leased by the Class II railroad or Class III railroad within the United States at the close of its taxable year (''eligible railroad track''), reduced by the number of miles of eligible railroad track assigned by the Class II railroad or Class III railroad to another eligible taxpayer for that year; and (2) the number of miles of eligible railroad track owned or leased by another Class II railroad or Class III railroad that are assigned to the Class II railroad or Class III railroad for the taxable year.

If an eligible taxpayer is not a Class II railroad or Class III railroad, the temporary regulations provide that the RTMC cannot exceed $3,500 multiplied

by the number of miles of eligible railroad track assigned to the eligible taxpayer by a Class II railroad or Class III railroad for the taxable year.

Determination of QRTME Paid or Incurred

The temporary regulations provide that QRTME is equal to the amount of expenditures paid or incurred during the taxable year by an eligible taxpayer for maintaining railroad track, roadbed, bridges, and related track structures that are located within the United States and owned or leased as of January 1, 2005, by a Class II railroad or Class III railroad. These expenditures may or may not be chargeable to a capital account. The regulations also define railroad track, roadbed, bridges, and related track structures as meaning property described in certain STB property accounts (''qualifying railroad structure'').

The temporary regulations also define the term ''paid or incurred'' with respect to a taxpayer using an accrual method of accounting. In this case, paid or incurred means a liability incurred within the meaning of § 1.446–1(c)(1)(ii). Consequently, a liability may not be taken into account under section 45G prior to the taxable year during which the liability is incurred. Further, the temporary regulations provide that QRTME is not paid or incurred during the taxable year to the extent that a taxpayer is entitled to reimbursement of any such expenditures. The temporary regulations provide that reimbursements may consist of amounts paid either directly or indirectly to the taxpayer. Examples of indirect reimbursements are discounted freight shipping rates, price markups of railroad-related property, debt forgiveness, or other similar arrangements. Thus, the temporary regulations limit the QRTME paid or incurred to the actual out-of-pocket expenditures paid or incurred by a taxpayer.

If an eligible taxpayer (assignee) pays a Class II railroad or Class III railroad (assignor) an amount in exchange for an assignment of one or more miles of eligible railroad track, the temporary regulations provide that the amount is treated as QRTME paid or incurred by the assignee, and not the assignor railroad, at the time and to the extent the assignor pays or incurs QRTME. Consistent with the preceding paragraph, this QRTME would be reduced by any direct or indirect reimbursements made to the assignee during the taxable year with respect to that assignment.

Assignment of Railroad Track Miles

For purposes of section 45G, the temporary regulations provide that an assignment of a mile of railroad track is not a legal transfer of title, but merely a designation. This designation must be in writing and must include the names and taxpayer identification numbers of the Class II railroad or Class III railroad (assignor) making, and the eligible taxpayer (assignee) receiving, the assignment of eligible railroad track miles, the date of this assignment, and the number of miles of eligible railroad track that is assigned by the assignor to the assignee for a taxable year. The regulations also provide that the designation need not specify the location of the assigned mile of eligible railroad track and the assigned mile of eligible railroad track does not have to correspond to the mile of eligible railroad track on which the QRTME is paid or incurred by an eligible taxpayer.

Consistent with section 45G(b), the temporary regulations provide that only a Class II railroad or Class III railroad may assign a mile of eligible railroad track. Thus, if a Class II railroad or Class III railroad assigns a railroad track mile to an eligible taxpayer, the assignee is not permitted to reassign any eligible railroad track mile to another eligible taxpayer. The regulations also provide that the maximum number of miles of eligible railroad track that may be assigned by a Class II railroad or Class III railroad (assignor) for any taxable year are the total miles of eligible railroad track owned by, or leased to, the assignor reduced by the eligible railroad track miles that the assignor retains for itself in determining the RTMC.

The temporary regulations also provide that the assignment is treated as being made by the Class II railroad or Class III railroad at the close of Class II railroad's or Class III railroad's taxable year in which the assignment is made. The assignee takes the assignment into account for its taxable year that includes the date the assignment is treated as being made by the assignor railroad under the preceding sentence.

The temporary regulations require that a taxpayer must file Form 8900, ''Qualified Railroad Track Maintenance Credit,'' with its timely filed (including extensions) Federal income tax return for the taxable year for which the taxpayer: (1) Claims the RTMC; (2) assigns any miles of eligible railroad track; or (3) receives an assignment of any miles of eligible railroad track. Thus, for example, a Class II railroad or Class III railroad (assignor) that assigns all of its miles of eligible railroad track during a taxable year will need to file Form 8900 even though the assignor is not claiming any RTMC for that year.

As required by the temporary regulations, an assignor must attach to its Form 8900 an information statement identifying the name and taxpayer identification number (TIN) of each assignee, the total number of the assignor's eligible railroad track miles, the number of eligible railroad track miles assigned by the assignor to each assignee for the taxable year, and the total number of eligible railroad track miles assigned by the assignor to all assignees for the taxable year. Further, an eligible taxpayer (assignee) that received an assignment of railroad track miles during its taxable year from an assignor Class II railroad or Class III railroad and that claims the RTMC for that taxable year must attach to its Form 8900 a statement providing the total number of eligible railroad track miles assigned to the assignee for the taxable year and attesting that the assignee has in writing, and has retained as part of the assignee's records for purposes of § 1.6001–1(a), information identifying the name and TIN of each assignor railroad, the date of each assignment, and the number of eligible railroad track miles assigned by each assignor railroad for the assignee's taxable year. If the Federal income tax return of a Class II railroad or Class III railroad, or another eligible taxpayer, for a taxable year ending after December 31, 2004, and ending before September 7, 2006, is filed before October 10, 2006, and the Class II railroad, Class III railroad, or other eligible taxpayer wants to apply the temporary regulations to that taxable year but did not include with that return the applicable information statement specified above, the regulations require the information statement to be attached to the taxpayer's next filed Federal income tax return or to the taxpayer's amended Federal income tax return filed pursuant to the effective date provisions in the temporary regulations (discussed later), provided this amended return is filed before the taxpayer's next filed Federal income tax return.

The temporary regulations also address situations in which a Class II railroad or Class III railroad (assignor) assigns more miles of eligible railroad track than the total number of miles that it owns or that are leased to it at the end of the taxable year in which the assignment is made. If the assignor does not own or have leased to it any eligible railroad track at the end of that year, the temporary regulations provide that any assignment made during that year is not valid, regardless of whether the

assignment is properly reported. Similarly, if an assignor assigns more miles of eligible railroad track than it owned or are leased to it as of the end of the taxable year in which the assignment is made, the temporary regulations provide that the assignment is valid only with respect to the name of the assignee and the number of miles listed by the assignor on the information statement attached to its Form 8900 for that year and only to the extent of the maximum number of miles of eligible railroad track that may be assigned by the assignor Class II railroad or Class III railroad for the taxable year.

Special Rules

The temporary regulations provide rules for adjusting basis for the amount of the RTMC claimed by an eligible taxpayer. All or some of the QRTME paid or incurred by an eligible taxpayer during the taxable year may be required to be capitalized under section 263(a) as a tangible asset or as an intangible asset (see, for example, § 1.263(a)–4(d)(8), which generally requires capitalization of amounts paid or incurred by a taxpayer to produce or improve real property owned by another). The basis of the tangible asset or intangible asset includes the capitalized amount of the QRTME. Thus, for purposes of section 45G(e)(3), the regulations provide that railroad track is qualifying railroad structure (railroad track, roadbed, bridges, and related track structures) and intangible assets to which the QRTME is capitalized.

Consequently, if an eligible taxpayer claims the RTMC, the temporary regulations provide that the adjusted basis of these tangible and intangible assets must be reduced by the amount of the RTMC allowable. This reduction is taken into account at the time the QRTME is paid or incurred by an eligible taxpayer and before the depreciation deduction is determined for the taxable year for which the RTMC is allowable. If the amount of the QRTME is capitalized to more than one asset (for example, railroad track and bridges), whether tangible or intangible, the reduction to the basis of these assets is allocated among each of the assets subject to the reduction in proportion to the unadjusted basis of each asset at the time the QRTME is paid or incurred during that taxable year.

The temporary regulations also address the issue of how section 45G coordinates with section 61. Except as specifically provided in the Code, section 61 and § 1.61–1(a) provide that gross income means all income from whatever source derived. Section 1.61–1(a) further provides that gross income includes income realized in any form, whether in money, property, or services. Section 45G does not provide, and its legislative history does not refer to, any exception to this rule. Accordingly, pursuant to section 61 and the regulations under section 61, the owner of the tangible assets (for example, railroad track and roadbed) with respect to which the QRTME is paid or incurred by another person that does not have a depreciable interest in those assets has gross income in the amount of that QRTME. However, the application of section 61 to QRTME paid or incurred with respect to eligible railroad track that is leased by a Class II railroad or Class III railroad raises a question as to under what circumstances the owner or lessee should recognize gross income with respect to QRTME. The IRS and Treasury Department request comments on this issue.

Finally, if an eligible taxpayer is a member of a controlled group of corporations, section 45G(e)(2) provides that rules similar to rules of section 41(f)(1) apply. Accordingly, the temporary regulations provide rules similar to those of § 1.41–6T for determining the amount of the controlled group's RTMC, and rules for allocating the credit among members of the group.

Effective Date

These temporary regulations apply to taxable years ending on or after the date these regulations are filed in the **Federal Register** and beginning before January 1, 2008. However, a taxpayer may apply the temporary regulations to taxable years beginning after December 31, 2004, and ending before these regulations are filed in the **Federal Register**, provided that the taxpayer applies all provisions in these regulations to the taxable year.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f), these temporary regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

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

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are 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 1.45G–0T is added to read as follows:

§ 1.45G–0T Table of contents for the railroad track maintenance credit rules (temporary).

This section lists the major paragraphs contained in § 1.45G–1T.

§ 1.45G–1T Railroad track maintenance credit (temporary).

(a) In general.
(b) Definitions.
(1) Class II railroad and Class III railroad.
(2) Eligible railroad track.
(3) Eligible taxpayer.
(4) Qualifying railroad structure.
(5) Qualified railroad track maintenance expenditures.
(6) Rail facilities.
(7) Railroad-related property.
(8) Railroad-related services.
(9) Railroad track.
(10) Form 8900.
(11) Examples.
(c) Determination of amount of railroad track maintenance credit for the taxable year.
(1) General amount.
(2) Limitation on the credit.
(i) Eligible taxpayer is a Class II railroad or Class III railroad.
(ii) Eligible taxpayer is not a Class II railroad or Class III railroad.
(iii) Effect of double track.
(3) Determination of amount of QRTME paid or incurred.

(i) In general.
(ii) Effect of reimbursements.
(4) Examples.
(d) Assignment of track miles.
(1) In general.
(2) Assignment eligibility.
(3) Effective date of assignment.
(4) Assignment information statement.
(i) In general.
(ii) Assignor.
(iii) Assignee.
(iv) Special rule for 2005 returns.
(5) Special rules.
(i) Effect of subsequent dispositions of eligible railroad track during the assignment year.
(ii) Effect of multiple assignments of eligible railroad track miles during the same taxable year.
(6) Examples.
(e) Special rules.
(1) Adjustments to basis.
(i) In general.
(ii) Basis adjustment made to railroad track.
(iii) Examples.
(2) Coordination with section 61.
(f) Controlled groups.
(1) In general.
(2) Definitions.
(i) Trade or business.
(ii) Group and controlled group.
(iii) Group credit.
(iv) Consolidated group.
(v) Credit year.
(3) Computation of the group credit.
(4) Allocation of the group credit.
(i) In general.
(ii) Stand-alone entity credit.
(5) Special rules for consolidated groups.
(i) In general.
(ii) Special rule for allocation of group credit among consolidated group members.
(6) Tax accounting periods used.
(i) In general.
(ii) Special rule when timing of QRTME is manipulated.
(7) Membership during taxable year in more than one group.
(8) Intra-group transactions.
(i) In general.
(ii) Payment for QRTME.
(g) Effective date.
(1) In general.
(2) Application of regulation project REG–142270–05 to pre-effective date.
(3) Special rules for 2005 returns.

■ **Par. 3.** Section 1.45G–1T is added to read as follows:

§ 1.45G–1T Railroad track maintenance credit (temporary).

(a) *In general.* For purposes of section 38, the railroad track maintenance credit (RTMC) for qualified railroad track maintenance expenditures (QRTME) paid or incurred by an eligible taxpayer during the taxable year is determined under this section. A taxpayer claiming the RTMC must do so by filing Form 8900, ''Qualified Railroad Track Maintenance Credit,'' with its timely filed (including extensions) Federal income tax return for the taxable year for which the RTMC is claimed. Paragraph (b) of this section provides definitions of terms. Paragraph (c) of this section provides rules for computing the RTMC, including rules regarding limitations on the amount of the credit. Paragraph (d) of this section provides rules for assigning miles of railroad track. Paragraph (e) of this section contains special rules. Paragraph (f) of this section contains rules for computing the amount of the RTMC in the case of a controlled group, and for the allocation of the group credit among members of the controlled group.

(b) *Definitions.* For purposes of section 45G and this section, the following definitions apply:

(1) *Class II railroad and Class III railroad* have the respective meanings given to these terms by the Surface Transportation Board (STB).

(2) *Eligible railroad track* is railroad track located within the United States that is owned or leased by a Class II railroad or Class III railroad at the close of its taxable year. For purposes of section 45G and this section, a Class II railroad or Class III railroad owns railroad track if the railroad track is subject to the allowance for depreciation under section 167 by the Class II railroad or Class III railroad.

(3) *Eligible taxpayer* is—

(i) A Class II railroad or Class III railroad during the taxable year;

(ii) Any person that transports property using the rail facilities of a Class II railroad or Class III railroad during the taxable year, but only with respect to the miles of eligible railroad track assigned to the person for that taxable year by that Class II railroad or Class III railroad under paragraph (d) of this section; or

(iii) Any person that furnishes railroad-related property or railroad-related services to a Class II railroad or Class III railroad during the taxable year, but only with respect to the miles of eligible railroad track assigned to the person for that taxable year by that Class II railroad or Class III railroad under paragraph (d) of this section.

(4) *Qualifying railroad structure* is property located within the United States that is described in the following STB property accounts in 49 CFR part 1201, subpart A:

(i) Property Account 3, Grading.

(ii) Property Account 4, Other right-of-way expenditures.

(iii) Property Account 5, Tunnels and subways.

(iv) Property Account 6, Bridges, trestles, and culverts.

(v) Property Account 7, Elevated structures.

(vi) Property Account 8, Ties.

(vii) Property Account 9, Rails and other track material.

(viii) Property Account 11, Ballast.

(ix) Property Account 13, Fences, snowsheds, and signs.

(x) Property Account 27, Signals and interlockers.

(xi) Property Account 39, Public improvements; construction.

(5) *Qualified railroad track maintenance expenditures (QRTME)* are expenditures for maintaining, repairing, and improving qualifying railroad structure that is owned or leased as of January 1, 2005, by a Class II railroad or Class III railroad. These expenditures may or may not be chargeable to a capital account.

(6) *Rail facilities* of a Class II railroad or Class III railroad are railroad yards, tracks, bridges, tunnels, wharves, docks, stations, and other related assets that are used in the transport of freight by a railroad and that are owned or leased by the Class II railroad or Class III railroad.

(7) *Railroad-related property* is property that is provided directly to, and is unique to, a railroad and that, in the hands of a Class II railroad or Class III railroad, is described in—

(i) The STB property accounts 3, Grading; 5, Tunnels and subways; and 22, Storage warehouses, in 49 CFR part 1201, subpart A; and

(ii) Asset classes 40.1 through 40.54 in the guidance issued by the Internal Revenue Service under section 168(i)(1) (for further guidance, for example, see Rev. Proc. 87–56 (1987–2 CB 674), and § 601.601(d)(2)(ii)(*b*) of this chapter), except that any office building, any passenger train car, and any miscellaneous structure if such structure is not provided directly to, and is not unique to, a railroad are excluded from the definition of railroad-related property.

(8) *Railroad-related services* are services that are provided directly to, and are unique to, a railroad and that relate to railroad shipping, loading and unloading of railroad freight, or repairs of rail facilities or railroad-related property. Examples of railroad-related services are the transport of freight by rail; the loading and unloading of freight transported by rail; railroad bridge services; railroad track construction; providing railroad track material or equipment; locomotive leasing or rental; maintenance of railroad's right-of-way (including vegetation control);

piggyback trailer ramping; rail deramping services; and freight train cars repair services. Examples of services that are not railroad-related services are general business services, such as, accounting and bookkeeping, marketing, legal services; cleaning services; office building rental; banking services (including financing of railroad-related property); and purchasing of, or services performed on, property not described in paragraph (b)(7) of this section.

(9) Except as provided in paragraph (e)(1) of this section, *railroad track* is property described in STB property accounts 8 (ties), 9 (rails and other track material), and 11 (ballast) in 49 CFR part 1201, subpart A.

(10) *Form 8900.* If Form 8900 is revised or renumbered, any reference in this section to that form shall be treated as a reference to the revised or renumbered form.

(11) *Examples.* The application of this paragraph (b) is illustrated by the following examples. In all examples, the taxpayers use a calendar taxable year, and are not members of a controlled group:

Example 1. A is a manufacturer that in 2006, transports its products by rail using the railroad tracks owned by B, a Class II railroad that owns 500 miles of railroad track within the United States on December 31, 2006. B properly assigns for purposes of section 45G 100 miles of eligible railroad track to A in 2006. A is an eligible taxpayer for 2006 with respect to the 100 miles of eligible railroad track.

Example 2. C is a bank that loans money to several Class III railroads. In 2006, C loans money to D, a Class III railroad, who in turn uses the loan proceeds to purchase track material. Because providing loans is not a service that is unique to a railroad, C is not providing railroad-related services and, thus, C is not an eligible taxpayer, even if D assigns miles of eligible railroad track to C for purposes of section 45G.

Example 3. E leases locomotives directly to Class I, Class II, and Class III railroads. In 2006, E leases locomotives to F, a Class II railroad that owns 200 miles of railroad track within the United States on December 31, 2006. F properly assigns for purposes of section 45G 200 miles of eligible railroad track to E. Because locomotives are property that is unique to a railroad, and E leases these locomotives directly to F in 2006, E is an eligible taxpayer for 2006 with respect to the 200 miles of eligible railroad track assigned to E by F.

(c) *Determination of amount of railroad track maintenance credit for the taxable year*—(1) *General amount.* Except as provided in paragraph (c)(2) of this section, for purposes of section 38, the RTMC determined under section 45G(a) for the taxable year is equal to 50 percent of the QRTME paid or incurred (as determined under paragraph (c)(3) of this section) by an eligible taxpayer during the taxable year.

(2) *Limitation on the credit*—(i) *Eligible taxpayer is a Class II railroad or Class III railroad.* If an eligible taxpayer is a Class II railroad or Class III railroad, the RTMC determined under paragraph (c)(1) of this section for the Class II railroad or Class III railroad for any taxable year must not exceed $3,500 multiplied by the sum of—

(A) The number of miles of eligible railroad track owned or leased by the Class II railroad or Class III railroad, reduced by the number of miles of eligible railroad track assigned under paragraph (d) of this section by the Class II railroad or Class III railroad to another eligible taxpayer for that taxable year; and

(B) The number of miles of eligible railroad track owned or leased by another Class II railroad or Class III railroad that are assigned under paragraph (d) of this section to the Class II railroad or Class III railroad for the taxable year.

(ii) *Eligible taxpayer is not a Class II railroad or Class III railroad.* If an eligible taxpayer is not a Class II railroad or Class III railroad, the RTMC determined under paragraph (c)(1) of this section for the eligible taxpayer for any taxable year must not exceed $3,500 multiplied by the number of miles of eligible railroad track assigned under paragraph (d) of this section by a Class II railroad or Class III railroad to the eligible taxpayer for the taxable year.

(iii) *Effect of double track.* For purposes of this paragraph (c)(2), double track is treated as multiple lines of railroad track, rather than as a single line of railroad track. Thus, one mile of single track is one mile, but one mile of double track is two miles.

(3) *Determination of amount of QRTME paid or incurred*—(i) *In general.* The term *paid or incurred* means, in the case of a taxpayer using an accrual method of accounting, a liability incurred (within the meaning of § 1.446–1(c)(1)(ii)). A liability may not be taken into account under section 45G and this section prior to the taxable year during which the liability is incurred.

(ii) *Effect of reimbursements.* The amount of QRTME treated as paid or incurred during the taxable year shall be reduced by any amount to which the taxpayer is entitled to be reimbursed, directly or indirectly, whether or not such reimbursement takes place during the taxable year in which the QRTME is, but for this sentence, paid or incurred by the taxpayer. Examples of indirect reimbursements include discounted freight shipping rates, markup of the price for track materials, and debt forgiveness. Similarly, any amount that an eligible taxpayer (assignee) pays a Class II railroad or Class III railroad (assignor) in exchange for an assignment of one or more miles of eligible railroad track under paragraph (d) of this section, is treated, for purposes of this section, as QRTME paid or incurred by the assignee, and not by the assignor, at the time and to the extent the assignor pays or incurs QRTME.

(4) *Examples.* The application of this paragraph (c) is illustrated by the following examples. In all examples, the taxpayers use an accrual method of accounting and a calendar taxable year, and are not members of a controlled group:

Example 1. Computation of RTMC; section 45G credit limitation is not exceeded. (i) G is a Class II railroad that owns or has leased to it 1,000 miles of railroad track within the United States on December 31, 2006. H is a manufacturer that in 2006, transports its products by rail using the rail facilities of G. In 2006, for purposes of section 45G, G assigns 100 miles of eligible railroad track to H and does not make any other assignments of railroad track miles. H did not receive any other assignments of railroad track miles in 2006. During 2006, G incurred QRTME in the amount of $2.5 million and H incurred QRTME in the amount of $200,000.

(ii) For 2006, G determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $1,250,000 (50% multiplied by $2,500,000 QRTME incurred by G during 2006). G further determines G's credit limitation under paragraph (c)(2)(i) of this section for 2006 to be $3,150,000 ($3,500 multiplied by 900 miles of eligible railroad track (1,000 miles owned by, or leased to, G on December 31, 2006, less 100 miles assigned by G to H in 2006)). Because G's tentative amount of RTMC does not exceed G's credit limitation amount for 2006, G may claim a RTMC for 2006 in the amount of $1,250,000.

(iii) For 2006, H determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $100,000 (50% multiplied by $200,000 QRTME incurred by H during 2006). H further determines H's credit limitation under paragraph (c)(2)(ii) of this section for 2006 to be $350,000 ($3,500 multiplied by 100 miles of eligible railroad track assigned by G to H in 2006). Because H's tentative amount of RTMC does not exceed H's credit limitation amount for 2006, H may claim a RTMC in the amount of $100,000.

Example 2. Computation of RTMC; section 45G credit limitation is exceeded. (i) The facts are the same as in *Example 1,* except that G assigned for purposes of section 45G only 50 miles of railroad track to H in 2006 and, during 2006, H incurred QRTME in the amount of $400,000.

(ii) For 2006, G determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $1,250,000 (50% multiplied by $2,500,000 QRTME incurred by G during 2006). G further determines G's credit

limitation under paragraph (c)(2)(i) of this section for 2006 to be $3,325,000 ($3,500 multiplied by 950 miles of eligible railroad track (1,000 miles owned by, or leased to, G on December 31, 2006, less 50 miles assigned by G to H in 2006)). Because G's tentative amount of RTMC does not exceed G's credit limitation amount for 2006, G may claim a RTMC in the amount of $1,250,000.

(iii) For 2006, H determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $200,000 (50% multiplied by $400,000 QRTME incurred by H during 2006). H further determines H's credit limitation under paragraph (c)(2)(ii) of this section for 2006 to be $175,000 ($3,500 multiplied by 50 miles of eligible railroad track assigned by G to H in 2006). Because H's tentative amount of RTMC exceeds H's credit limitation amount for 2006, H may claim a RTMC in the amount of $175,000 (the credit limitation amount). There is no carryover of the amount of $25,000 (the tentative amount of $200,000 less the credit limitation amount of $175,000).

Example 3. Railroad track miles assigned for payment. (i) J is a Class II railroad that owns or has leased to it 1,000 miles of railroad track within the United States on December 31, 2006. K is a corporation that sells ties, ballast, and other track material to Class I, Class II, and Class III railroads. During 2006, K sold these items to J and J incurred QRTME in the amount of $1 million. Also, on December 6, 2006, J assigned for purposes of section 45G 150 miles of eligible railroad track to K and K paid J $800,000 for that assignment. K did not pay or incur any QRTME during 2006.

(ii) For 2006, in accordance with paragraph (c)(3)(ii) of this section, J is treated as having incurred QRTME in the amount of $200,000 ($1 million QRTME actually incurred by J less the $800,000 paid by K to J for the assignment of the railroad track miles in 2006). For 2006, J determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $100,000 (50% multiplied by $200,000 QRTME treated as incurred by J during 2006). J further determines J's credit limitation amount under paragraph (c)(2)(i) of this section for 2006 to be $2,975,000 ($3,500 multiplied by 850 miles of eligible railroad track (1,000 miles owned by, or leased to, J on December 31, 2006, less 150 miles assigned by J to K in 2006)). Because J's tentative amount of RTMC does not exceed J's credit limitation amount for 2006, J may claim a RTMC in the amount of $100,000.

(iii) For 2006, K is an eligible taxpayer because, during 2006, K provided railroad-related property to J and received an assignment of eligible railroad track miles from J. Under paragraph (c)(3)(ii) of this section, K is treated as having incurred QRTME in the amount of $800,000 (the amount paid by K to J for the assignment of the railroad track miles in 2006). For 2006, K determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $400,000 (50% multiplied by $800,000 QRTME treated as incurred by K during 2006). K further determines K's credit limitation amount under paragraph (c)(2)(ii) of this section for 2006 to be $525,000 ($3,500 multiplied by 150 miles of eligible railroad track assigned by J in 2006). Because K's tentative amount of RTMC does not exceed K's credit limitation amount for 2006, K may claim a RTMC in the amount of $400,000.

Example 4. Reimbursement of QRTME. (i) L is a Class III railroad that owns or has leased to it 500 miles of railroad track within the United States on December 31, 2006. M is a manufacturer that in 2006 transports its products by rail using the rail facilities of L. During 2006, L did not incur any QRTME. Also, in 2006, L assigned for purposes of section 45G 200 miles of eligible railroad track to M and agreed to reduce L's freight shipping rates to M by $250,000 in exchange for M upgrading these railroad track miles. Consequently, during 2006, M incurred QRTME of $500,000 to upgrade these 200 miles of railroad track and L reduced L's freight shipping rates for M by $250,000.

(ii) For 2006, M is an eligible taxpayer because, during 2006, M transported property using the rail facilities of L and received an assignment of eligible railroad track miles from L. Under paragraph (c)(3)(ii) of this section, the amount of QRTME paid or incurred by M during 2006 is $250,000 ($500,000 QRTME actually incurred by M, less the reimbursement of $250,000 by L to M). For 2006, M determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $125,000 (50% multiplied by $250,000 QRTME incurred by M during 2006). M further determines M's credit limitation amount under paragraph (c)(2)(ii) of this section for 2006 to be $700,000 ($3,500 multiplied by 200 miles of eligible railroad track assigned by L to M in 2006). Because M's tentative amount of RTMC does not exceed M's credit limitation amount for 2006, M may claim a RTMC in the amount of $125,000.

(d) *Assignment of track miles*—(1) *In general.* An assignment of any mile of eligible railroad track under this paragraph (d) is a designation by a Class II railroad or Class III railroad that is made solely for purposes of section 45G and this section of a specific number of miles of eligible railroad track as being assigned to another eligible taxpayer for a taxable year. A designation must be in writing and must include the name and taxpayer identification number of the assignee, and the information required under the rules of paragraph (d)(4)(iii)(B) of this section. A designation requires no transfer of legal title or other indicia of ownership of the eligible railroad track, and need not specify the location of any assigned mile of eligible railroad track. Further, an assigned mile of eligible railroad track need not correspond to any specific mile of eligible railroad track with respect to which the eligible taxpayer actually pays or incurs the QRTME. For purposes of this paragraph (d), double track is treated as multiple lines of railroad track, rather than as a single line of railroad track. Thus, one mile of single track is one mile, but one mile of double track is two miles.

(2) *Assignment eligibility.* Only a Class II railroad or Class III railroad may assign a mile of eligible railroad track. If a Class II railroad or Class III railroad assigns a mile of eligible railroad track to an eligible taxpayer, the assignee is not permitted to reassign any mile of eligible railroad track to another eligible taxpayer. The maximum number of miles of eligible railroad track that may be assigned by a Class II railroad or Class III railroad for any taxable year is its total miles of eligible railroad track less the miles of eligible railroad track that the Class II railroad or Class III railroad retains for itself in determining its RTMC for the taxable year.

(3) *Effective date of assignment.* If a Class II railroad or Class III railroad assigns a mile of eligible railroad track, the assignment is treated as being made by the Class II railroad or Class III railroad at the close of its taxable year in which the assignment was made. With respect to the assignee, the assignment of a mile of eligible railroad track is taken into account for the taxable year of the assignee that includes the date the assignment is treated as being made by the assignor Class II railroad or Class III railroad under this paragraph (d)(3).

(4) *Assignment information statement*—(i) *In general.* A taxpayer must file Form 8900, ''Qualified Railroad Track Maintenance Credit,'' with its timely filed (including extensions) Federal income tax return for the taxable year for which the taxpayer assigns any mile of eligible railroad track, even if the taxpayer is not itself claiming the RTMC for that taxable year.

(ii) *Assignor.* Except as provided in paragraph (d)(4)(iv) of this section, a Class II railroad or Class III railroad (assignor) that assigns one or more miles of eligible railroad track during a taxable year to one or more eligible taxpayers must attach to the assignor's Form 8900 for that taxable year an information statement providing—

(A) The name and taxpayer identification number of each assignee;

(B) The total number of miles of the assignor's eligible railroad track;

(C) The number of miles of eligible railroad track assigned by the assignor to each assignee for the taxable year; and

(D) The total number of miles of eligible railroad track assigned by the assignor to all assignees for the taxable year.

(iii) *Assignee.* Except as provided in paragraph (d)(4)(iv) of this section, an eligible taxpayer (assignee) that has

received an assignment of miles of eligible railroad track during its taxable year from a Class II railroad or Class III railroad, and that claims the RTMC for that taxable year, must attach to the assignee's Form 8900 for that taxable year a statement—

(A) Providing the total number of miles of eligible railroad track assigned to the assignee for the assignee's taxable year; and

(B) Attesting that the assignee has in writing, and has retained as part of the assignee's records for purposes of § 1.6001–1(a), the following information from each assignor:

(*1*) The name and taxpayer identification number of each assignor;

(*2*) The date of each assignment made by each assignor (as determined under paragraph (d)(3) of this section) to the assignee; and

(*3*) The number of miles of eligible railroad track assigned by each assignor to the assignee for the assignee's taxable year.

(iv) *Special rule for 2005 returns.* If an eligible taxpayer's Federal income tax return for a taxable year beginning after December 31, 2004, and ending before September 7, 2006, is filed before October 10, 2006, and the eligible taxpayer wants to apply paragraph (g)(2) of this section but did not include with that return the information specified in paragraph (d)(4)(ii) or (iii) of this section, as applicable, the eligible taxpayer must attach a statement containing the information specified in paragraph (d)(4)(ii) or (iii) of this section, as applicable, to either—

(A) The eligible taxpayer's next filed original Federal income tax return; or

(B) The eligible taxpayer's amended Federal income tax return that is filed pursuant to paragraph (g)(2) of this section, provided that amended Federal income tax return is filed by the eligible taxpayer before its next filed original Federal income tax return.

(5) *Special rules*—(i) *Effect of subsequent dispositions of eligible railroad track during the assignment year.* If a Class II railroad or Class III railroad assigns one or more miles of eligible railroad track that it owned or leased as of the actual date of the assignment, but does not own or lease any eligible railroad track at the close of the taxable year in which the assignment is made by the Class II railroad or Class III railroad, the assignment is not valid for that taxable year for purposes of section 45G and this section.

(ii) *Effect of multiple assignments of eligible railroad track miles during the same taxable year.* If a Class II railroad or Class III railroad assigns more miles of eligible railroad track than it owned or leased as of the close of the taxable year in which the assignment is made by the Class II railroad or Class III railroad, the assignment is valid for purposes of section 45G and this section only with respect to the name of the assignee and the number of miles listed by the assignor Class II railroad or Class III railroad on the statement required under paragraph (d)(4)(ii) of this section and only to the extent of the maximum miles of eligible railroad track that may be assigned by the assignor Class II railroad or Class III railroad as determined under paragraph (d)(2) of this section. If the total number of miles on this statement exceeds the maximum miles of eligible railroad track that may be assigned by the assignor Class II railroad or Class III railroad (as determined under paragraph (d)(2) of this section), the total number of miles on the statement shall be reduced by the excess amount of miles. This reduction is allocated among each assignee listed on the statement in proportion to the total number of miles listed on the statement for that assignee.

(6) *Examples.* The application of this paragraph (d) is illustrated by the following examples. In none of the examples are the taxpayers members of a controlled group:

Example 1. Assignor and assignee have the same taxable year. (i) N, a calendar year taxpayer, is a Class II railroad that owns 500 miles of railroad track within the United States on December 31, 2006. O, a calendar year taxpayer, is not a railroad, but is a taxpayer that provides railroad-related property to N during 2006. On November 7, 2006, N assigns for purposes of section 45G 300 miles of eligible railroad track to O. O receives no other assignment of eligible railroad track in 2006. O pays or incurs QRTME in the amount of $100,000 in November 2006, and $50,000 in February 2007. N and O each file Form 8900 with their timely filed Federal income tax returns for 2006 and attach the statement required by paragraph (d)(4)(ii) and (iii), respectively, of this section reporting the assignment of the 300 miles of eligible railroad track to O.

(ii) The assignment of the 300 miles of eligible railroad track made by N to O on November 7, 2006, is treated as made on December 31, 2006 (at the close of the N's taxable year). Consequently, the assignment is taken into account by O for O's taxable year ending on December 31, 2006. For 2006, O is an eligible taxpayer because, during 2006, O provides railroad-related property to N and receives an assignment of 300 eligible railroad track miles from N. For 2006, O determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $50,000 (50% multiplied by $100,000 QRTME paid or incurred by O during 2006). O further determines the credit limitation amount under paragraph (c)(2)(i) of this section for 2006 to be $1,050,000 ($3,500 multiplied by 300 miles of eligible railroad track assigned by N to O on December 31, 2006). Because O's tentative amount of RTMC does not exceed O's credit limitation amount for 2006, O may claim a RMTC for 2006 in the amount of $50,000.

Example 2. Assignor and assignee have different taxable years. (i) The facts are the same as in *Example 1,* except that O's taxable year ends on March 31.

(ii) The assignment of the 300 miles of eligible railroad track made by N to O on November 7, 2006, is treated as made on December 31, 2006. As a result, the assignment is taken into account by O for O's taxable year ending on March 31, 2007. Thus, for the taxable year ending on March 31, 2007, O determines the tentative amount of RMTC under paragraph (c)(1) of this section to be $75,000 (50% multiplied by $150,000 QRTME incurred by O during its taxable year ending March 31, 2007). Because O's tentative amount of RTMC does not exceed O's credit limitation amount for 2006, O may claim a RMTC for 2006 in the amount of $75,000.

Example 3. Assignment location differs from QRTME location. (i) P, a calendar-year taxpayer, is a Class III railroad that owns or has leased to it 200 miles of railroad track within the United States on December 31, 2006. P owns 50 miles of this railroad track and leases 150 miles of this railroad track from Q, a Class I railroad. On February 8, 2006, P assigns for purposes of section 45G 50 miles of eligible railroad track to R. R is not a railroad, but is a taxpayer that ships products using the 50 miles of eligible railroad track owned by P, and R paid $100,000 in 2006 to P to enable P to upgrade these 50 miles of eligible railroad track. In March 2006, P also assigns for purposes of section 45G 150 miles of eligible railroad track to S. S is not a railroad, but is a taxpayer that provides railroad-related property to P, and S paid $400,000 to P to enable P to upgrade P's 200 miles of eligible railroad track. For 2006, P pays or incurs QRTME in the amount of $500,000 to upgrade the 150 miles of eligible railroad track that it leases from Q and pays or incurs no QRTME on the 50 miles of eligible railroad track that it owns. For 2006, P receives no other assignment of eligible railroad track miles and did not retain any eligible railroad track miles for itself. Also, R and S do not pay or incur any other amounts that would qualify as QRTME during 2006. P, R, and S each file Form 8900 with their timely filed Federal income tax returns for 2006 and attach the statement required by paragraph (d)(4)(ii) or (iii) of this section, whichever applies, reporting the assignment of eligible railroad track by P to R or S in 2006.

(ii) For 2006, in accordance with paragraph (c)(3)(ii) of this section, P is treated as having incurred QRTME in the amount of $0 ($500,000 QRTME actually incurred by P less the $100,000 paid by R to P for the assignment of the 50 miles of eligible railroad track and the $400,000 paid by S to P for the assignment of the 150 miles of eligible railroad track). Further, P assigned all of its eligible railroad track miles to R and S for 2006. Accordingly, for 2006, P may not claim any RTMC.

(iii) For 2006, R is an eligible taxpayer because, during 2006, R ships property using the rail facilities of P and receives an assignment of 50 eligible railroad track miles from P. In accordance with paragraph (c)(3)(ii) of this section, R is treated as having incurred QRTME in the amount of $100,000 (the amount paid by R to P for the assignment of the eligible railroad track miles in 2006) even though no work was performed on the 50 miles of eligible railroad track that was assigned by P to R. For 2006, R determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $50,000 (50% multiplied by $100,000 QRTME treated as incurred by R during 2006). R further determines the credit limitation amount under paragraph (c)(2)(ii) of this section to be $175,000 ($3,500 multiplied by 50 miles of eligible railroad track assigned by P to R in 2006). Because R's tentative amount of RTMC does not exceed R's credit limitation amount for 2006, R may claim a RTMC for 2006 in the amount of $50,000.

(iv) For 2006, S is an eligible taxpayer because, during 2006, S provides railroad-related property to P and receives an assignment of 150 eligible railroad track miles from P. In accordance with paragraph (c)(3)(ii) of this section, S is treated as having incurred QRTME in the amount of $400,000 (amount paid by S to P for the assignment of the eligible railroad track miles in 2006). For 2006, S determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $200,000 (50% multiplied by $400,000 QRTME treated as incurred by S during 2006). S further determines the credit limitation amount under paragraph (c)(2)(ii) of this section to be $525,000 ($3,500 multiplied by 150 miles of eligible railroad track assigned by P to S in 2006). Because S's tentative amount of RTMC does not exceed S's credit limitation amount for 2006, S may claim a RTMC for 2006 in the amount of $200,000.

Example 4. Multiple assignments of track miles. (i) T, a calendar-year taxpayer, is a Class III railroad that owns or has leased to it 200 miles of railroad track within the United States on December 31, 2006. T owns 75 miles of this railroad track and leases 125 miles of this railroad track from U, a Class I railroad. V and W are not railroads, but are both taxpayers that provide railroad-related services to T during 2006. On January 15, 2006, T assigns for purposes of section 45G 200 miles of eligible railroad track to V. V agrees to incur, in 2006, $1.4 million of QRTME to upgrade a portion of/segment of these 200 miles of eligible railroad track. Due to unexpected financial difficulties, V only incurs $250,000 of QRTME during 2006 and on May 15, 2006, T learns that V is unable to incur the remainder of the QRTME. On June 15, 2006, T assigns for purposes of section 45G the 200 miles of railroad track to W. In 2006, W incurs $1,100,000 of QRTME to upgrade a portion of/segment of the railroad track. For 2006, T receives no other assignment of eligible railroad track miles and did not retain any eligible railroad track miles for itself. V and W do not receive any other assignments of miles of eligible railroad track miles from a Class II railroad or Class III railroad during 2006. T and W each file Form 8900 with their timely filed Federal income tax returns for 2006, and attach the statement required by paragraph (d)(4)(ii) and (iii), respectively, of this section, reporting the assignment of 200 miles of eligible railroad track to W.

(ii) Because T did not retain any miles of eligible railroad track for itself for 2006, the maximum miles of eligible railroad track that may be assigned by T for 2006 is 200 miles pursuant to paragraph (d)(2) of this section. On the statement required by paragraph (d)(4)(ii) of this section, T assigned a total of 200 miles of eligible railroad track to W. Consequently, because T did not list V as an assignee on T's statement required by paragraph (d)(4)(ii) of this section, V did not receive an assignment of eligible railroad track miles from T during 2006 and V is not an eligible taxpayer for 2006. Thus, for 2006, V may not claim any RTMC even though V incurred QRTME in the amount of $250,000.

(iii) For 2006, W is an eligible taxpayer because, during 2006, W provides railroad-related services to T and receives an assignment of 200 eligible railroad track miles from T. W determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $550,000 (50% multiplied by $1,100,000 QRTME incurred by W during 2006). W further determines the credit limitation amount under paragraph (c)(2)(ii) of this section to be $700,000 ($3,500 multiplied by the 200 miles of eligible railroad track assigned by T to W in 2006). Because W's tentative amount of RTMC does not exceed W's credit limitation amount for 2006, W may claim a RTMC for 2006 in the amount of $550,000.

Example 5. Multiple assignments of track miles. (i) Same facts as in *Example 4*, except T, to its Form 8900 for 2006, attaches the statement required by paragraph (d)(4)(ii) of this section assigning 200 miles of eligible railroad track to W and 200 miles of eligible railroad track to V.

(ii) Because T did not retain any miles of eligible railroad track for itself for 2006, the maximum miles of eligible railroad track that may be assigned by T for 2006 is 200 miles pursuant to paragraph (d)(2) of this section. However, on the statement required by paragraph (d)(4)(ii) of this section, T assigned a total of 400 miles of eligible railroad track (200 miles to W and 200 miles to V). Consequently, the 400 miles of eligible railroad track on this statement must be reduced to the 200 maximum miles of eligible railroad track available for assignment for 2006. Because the statement reports 200 miles of eligible railroad track assigned to each W and V, the reduction of 200 miles (400 total miles of eligible railroad track on the statement less 200 maximum miles of eligible railroad track available for assignment) is allocated pro-rata between W and V and, therefore, 100 miles each to W and V. Thus, pursuant to paragraph (d)(5)(ii) of this section, the number of miles of eligible railroad track assigned by T to W and V for 2006 is 100 miles each.

(iii) For 2006, V is an eligible taxpayer because, during 2006, V provides railroad-related services to T and receives an assignment of 100 eligible railroad track miles from T. V determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $125,000 (50% multiplied by $250,000 QRTME incurred by V during 2006). V further determines the credit limitation amount under paragraph (c)(2)(ii) of this section to be $350,000 ($3,500 multiplied by the 100 miles of eligible railroad track assigned by T to V in 2006). Because V's tentative amount of RTMC does not exceed W's credit limitation amount for 2006, V may claim a RTMC for 2006 in the amount of $125,000.

(iv) For 2006, W is an eligible taxpayer because, during 2006, W provides railroad-related services to T and receives an assignment of 100 eligible railroad track miles from T. W determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $550,000 (50% multiplied by $1,100,000 QRTME incurred by W during 2006). W further determines the credit limitation amount under paragraph (c)(2)(ii) of this section to be $350,000 ($3,500 multiplied by the 100 miles of eligible railroad track assigned by T to W in 2006). Because W's tentative amount of RTMC exceeds W's credit limitation amount for 2006, W may claim a RTMC for 2006 in the amount of $350,000 (the credit limitation). There is no carryover of the amount of $200,000 (the tentative amount of $550,000 less the credit limitation amount of $350,000).

(e) *Special rules*—(1) *Adjustments to basis*—(i) *In general.* All or some of the QRTME paid or incurred by an eligible taxpayer during the taxable year may be required to be capitalized under section 263(a) as a tangible asset or as an intangible asset. See, for example, § 1.263(a)–4(d)(8), which requires capitalization of amounts paid or incurred by a taxpayer to produce or improve real property owned by another (except to the extent the taxpayer is selling services at fair market value to produce or improve the real property) if the real property can reasonably be expected to produce significant economic benefits for the taxpayer. The basis of the tangible asset or intangible asset includes the capitalized amount of the QRTME.

(ii) *Basis adjustment made to railroad track.* An eligible taxpayer must reduce the adjusted basis of any railroad track with respect to which the eligible taxpayer claims the RTMC. For purposes of section 45G(e)(3) and this paragraph (e)(1), the adjusted basis of any railroad track with respect to which the eligible taxpayer claims the RTMC is limited to the amount of QRTME, if any, that is required to be capitalized into the qualifying railroad structure or an intangible asset. The adjusted basis of the railroad track is reduced by the amount of the RTMC allowable (as determined under paragraph (c) of this section) by the eligible taxpayer for the taxable year, but not below zero. This reduction is taken into account at the

time the QRTME is paid or incurred by an eligible taxpayer and before the depreciation deduction with respect to such railroad track is determined for the taxable year for which the RTMC is allowable. If all or some of the QRTME paid or incurred by an eligible taxpayer during the taxable year is capitalized under section 263(a) to more than one asset, whether tangible or intangible (for example, railroad track and bridges), the reduction to the basis of these assets under this paragraph (e)(1)(ii) is allocated among each of the assets subject to the reduction in proportion to the unadjusted basis of each asset at the time the QRTME is paid or incurred during that taxable year.

(iii) *Examples.* The application of this paragraph (e)(1) is illustrated by the following examples. In each example, all taxpayers use a calendar taxable year, and no taxpayers are members of a controlled group.

Example 1. (i) X is a Class II railroad that owns 500 miles of railroad track within the United States on December 31, 2006. During 2006, X incurs $1 million of QRTME for maintaining this railroad track. X uses the track maintenance allowance method for track structure expenditures (for further guidance, see Rev. Proc. 2002–65 (2002–2 CB 700) and § 601.601(d)(2)(ii)(b) of this chapter). Assume all of the $1 million QRTME is track structure expenditures and none of it was expended for new track structure.

(ii) For 2006, X determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $500,000 (50% multiplied by $1 million QRTME incurred by X during 2006). X further determines the credit limitation amount under paragraph (c)(2)(i) of this section for 2006 to be $1,750,000 ($3,500 multiplied by 500 miles of eligible railroad track). Because X's tentative amount of RTMC does not exceed X's credit limitation amount for 2006, X may claim a RTMC for 2006 in the amount of $500,000.

(iii) Of the $1 million QRTME incurred by X during 2006, X determines under the track maintenance allowance method that $750,000 is the track maintenance allowance under section 162 and $250,000 is the capitalized amount for the track structure. In accordance with paragraph (e)(1)(ii) of this section, X reduces the capitalized amount of $250,000 by the RTMC of $500,000 claimed by X for 2006, but not below zero. Thus, the capitalized amount of $250,000 is reduced to zero. X also deducts under section 162 a track maintenance allowance of $750,000 on its 2006 Federal income tax return.

Example 2. (i) Y is a Class II railroad that owns or has leased to it 500 miles of eligible railroad track within the United States on December 31, 2006. Z is not a railroad, but is a taxpayer that, in 2006, transports its products using the rail facilities of Y. In 2006, Y assigns for purposes of section 45G 300 miles of eligible railroad track to Z. Z does not receive any other assignments of eligible railroad track miles in 2006. During 2006, Z incurs QRTME in the amount of $1 million, and Y does not incur any QRTME. Y and Z each file Form 8900 with their timely filed Federal income tax returns for 2006 and attach the statement required by paragraph (d)(4)(ii) and (iii), respectively, of this section reporting the assignment of the 300 miles of eligible railroad track to Z.

(ii) For 2006, Z determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $500,000 (50% multiplied by $1 million QRTME incurred by Z during 2006). Z further determines the credit limitation amount under paragraph (c)(2)(ii) of this section for 2006 to be $1,050,000 ($3,500 multiplied by 300 miles of eligible railroad track assigned by Y to Z in 2006). Because Z's tentative amount of RTMC does not exceed Z's credit limitation amount for 2006, Z may claim a RTMC for 2006 in the amount of $500,000.

(iii) For 2006, Z also must determine the portion of the $1 million QRTME that Z incurs that is required to be capitalized under section 263(a), and the portion that is a section 162 expense. Because Z is not a Class II railroad or Class III railroad, Z cannot use the track maintenance allowance method. Assume that all of the QRTME constitutes an intangible asset under § 1.263(a)–4(d)(8) and, therefore, is required to be capitalized by Z under section 263(a) as an intangible asset. In accordance with paragraph (e)(1)(ii) of this section, Z reduces the capitalized amount of $1 million by the RTMC of $500,000 claimed by Z for 2006. Thus, the capitalized amount of $1 million for the intangible asset is reduced to $500,000. Further, pursuant to § 1.167(a)–3(b)(1)(iv), Z may treat this intangible asset with an adjusted basis of $500,000 as having a useful life of 25 years for purposes of the depreciation allowance under section 167(a).

(2) *Coordination with section 61.* Except as specifically provided in the Code and regulations under the Code, the owner of qualifying railroad structure has gross income if another person paid or incurred QRTME for the owner's qualifying railroad structure and that person does not have a depreciable interest in the tangible improvements made by the QRTME. See, for example, section 109, which excludes from gross income of the lessor, the value of property attributable to buildings or other improvements made by a lessee.

(f) *Controlled groups*—(1) *In general.* Pursuant to section 45G(e)(2), if an eligible taxpayer is a member of a controlled group of corporations, rules similar to the rules in § 1.41–6T apply for determining the amount of the RTMC under section 45G(a) and this section. To determine the amount of RTMC (if any) allowable to a trade or business that at the end of its taxable year is a member of a controlled group, a taxpayer must—

(i) Compute the group credit in the manner described in paragraph (f)(3) of this section; and

(ii) Allocate the group credit among the members of the group in the manner described in paragraph (f)(4) of this section.

(2) *Definitions.* For purposes of section 45G(e)(2) and paragraph (f) of this section—

(i) A *trade or business* is a sole proprietorship, a partnership, a trust, an estate, or a corporation that is carrying on a trade or business (within the meaning of section 162). Any corporation that is a member of a commonly controlled group shall be deemed to be carrying on a trade or business if any other member of that group is carrying on any trade or business;

(ii) *Group* and *controlled group* means a controlled group of corporations, as defined in section 41(f)(5), or a group of trades or businesses under common control. For rules for determining whether trades or businesses are under common control, see § 1.52–1 (b) through (g);

(iii) *Group credit* means the RTMC (if any) allowable to a controlled group;

(iv) *Consolidated group* has the meaning set forth in § 1.1502–1(h); and

(v) *Credit year* means the taxable year for which the member is computing the RTMC.

(3) *Computation of the group credit.* All members of a controlled group are treated as a single taxpayer for purposes of computing the RTMC. The group credit is computed by applying all of the section 45G computational rules (including the rules set forth in this section) on an aggregate basis.

(4) *Allocation of the group credit*—(i) *In general.* (A) To the extent the group credit (if any) computed under paragraph (f)(3) of this section does not exceed the sum of the stand-alone entity credits of all of the members of a controlled group, computed under paragraph (f)(4)(ii) of this section, such group credit shall be allocated among the members of the controlled group in proportion to the stand-alone entity credits of the members of the controlled group, computed under paragraph (f)(4)(ii) of this section:

$$\text{group credit that does not exceed sum of all the members' stand-along entity credits} \times \frac{\text{member's stand-alone entity credit}}{\text{Sum of all the members' stand-alone entity credits.}}$$

(B) To the extent that the group credit (if any) computed under paragraph (f)(3) of this section exceeds the sum of the stand-alone entity credits of all of the members of the controlled group, computed under paragraph (f)(4)(ii) of this section, such excess shall be allocated among the members of a controlled group in proportion to the QRTMEs of the members of the controlled group:

$$\text{(group credit less the sum of all the members' stand-alone entity credits)} \times \frac{\text{QRTMEs of members that are eligible taxpayers}}{\text{sum of QRTMEs of all members that are eligible taxpayers.}}$$

(ii) *Stand-alone entity credit.* The term *stand-alone entity credit* means the RTMC (if any) that would be allowable to a member of a controlled group if the credit were computed as if section 45G(e)(2) did not apply, except that the member must apply the rules provided in paragraphs (f)(5) (relating to consolidated groups) and (f)(8) (relating to intra-group transactions) of this section.

(5) *Special rules for consolidated groups*—(i) *In general.* For purposes of applying paragraph (f)(4) of this section, a consolidated group whose members are members of a controlled group is treated as a single member of the controlled group and a single stand-alone entity credit is computed for the consolidated group.

(ii) *Special rule for allocation of group credit among consolidated group members.* The portion of the group credit that is allocated to a consolidated group is allocated to the members of the consolidated group in accordance with the principles of paragraph (f)(4) of this section. However, for this purpose, the stand-alone entity credit of a member of a consolidated group is computed without regard to section 45G(e)(2).

(6) *Tax accounting periods used*—(i) *In general.* The credit allowable to a member of a controlled group is that member's share of the group credit computed as of the end of that member's taxable year. In computing the group credit for a group whose members have different taxable years, a member generally should treat the taxable year of another member that ends with or within the credit year of the computing member as the credit year of that other member. For example, Q, R, and S are members of a controlled group of corporations. Both Q and R are calendar year taxpayers. S files a return using a fiscal year ending June 30. For purposes of computing the group credit at the end of Q's and R's taxable year on December 31, S's fiscal year ending June 30, which ends within Q's and R's taxable year, is treated as S's credit year.

(ii) *Special rule when timing of QRTME is manipulated.* If the timing of QRTME by members using different tax accounting periods is manipulated to generate a credit in excess of the amount that would be allowable if all members of the group used the same tax accounting period, then the appropriate Internal Revenue Service official in the operating division that has examination jurisdiction of the return may require each member of the group to calculate the credit in the current taxable year and all future years as if all members of the group had the same taxable year and base period as the computing member.

(7) *Membership during taxable year in more than one group.* A trade or business may be a member of only one group for a taxable year. If, without application of this paragraph (f)(7), a business would be a member of more than one group at the end of its taxable year, the business shall be treated as a member of the group in which it was included for its preceding taxable year. If the business was not included for its preceding taxable year in any group in which it could be included as of the end of its taxable year, the business shall designate in its timely filed (including extensions) federal income tax return for the taxable year the group in which it is being included. If the business does not so designate, then the appropriate Internal Revenue Service official in the operating division that has examination jurisdiction of the return will determine the group in which the business is to be included. If the Federal income tax return for a taxable year beginning after December 31, 2004, and ending before September 7, 2006, is filed before October 10, 2006, and the business wants to apply paragraph (g)(2) of this section but did not designate its group membership in that return, the business must designate its group membership for that year either—

(i) In its next filed original Federal income tax return; or

(ii) In its amended Federal income tax return that is filed pursuant to paragraph (g)(2) of this section, provided that amended Federal income tax return is filed by the business before its next filed original Federal income tax return.

(8) *Intra-group transactions*—(i) *In general.* Because all members of a group under common control are treated as a single taxpayer for purposes of determining the RTMC, transfers between members of the group are generally disregarded.

(ii) *Payment for QRTME.* Amounts paid or incurred by the owner (or lessor) of eligible railroad track to another member of the group for QRTME shall be taken into account as QRTME by the owner (or lessor) of the eligible railroad track for purposes of section 45G only to the extent of the lesser of—

(A) The amount paid or incurred to the other member; or

(B) The amount that would have been considered paid or incurred by the other member for the QRTME, if the QRTME was not reimbursed by the owner (or lessor) of the eligible railroad track.

(g) *Effective date*—(1) *In general.* (i) Except as provided in paragraphs (g)(2) and (g)(3) of this section, this section applies to taxable years ending on or after September 7, 2006, and beginning before January 1, 2008.

(ii) The applicability of this section expires on September 7, 2009.

(2) *Application of regulation project REG–142270–05 to pre-effective date.* A taxpayer may apply this section to taxable years beginning after December 31, 2004, and ending before September 7, 2006, provided that the taxpayer applies all provisions in this section to the taxable year.

(3) *Special rules for 2005 returns.* If a taxpayer's Federal income tax return for

a taxable year beginning after December 31, 2004, and ending before September 7, 2006 is filed before October 10, 2006, and the taxpayer is not filing an amended Federal income tax return for that taxable year pursuant to paragraph (g)(2) of this section before the taxpayer's next filed original Federal income tax return, see paragraphs (d)(3)(iv) and (f)(7) of this section for the statements that must be attached to the taxpayer's next filed original Federal income tax return.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 4.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 5.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.45G–1T	1545–
* * * * *	

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E6–14858 Filed 9–7–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD44

Cape Lookout National Seashore, Personal Watercraft Use

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule designates areas where personal watercraft (PWC) may be used to access Cape Lookout National Seashore, North Carolina. This final rule implements the provisions of the National Park Service (NPS) general regulations authorizing park areas to allow the use of PWC by promulgating a special regulation. Individual parks must determine whether PWC use is appropriate for a specific park area based on an evaluation of that area's enabling legislation, resources and values, other visitor uses, and overall management objectives.

DATES: *Effective Date:* This rule is effective September 8, 2006.

ADDRESSES: Mail inquiries to Superintendent, Cape Lookout National Seashore, 131 Charles Street, Harkers Island, NC 28531.

FOR FURTHER INFORMATION CONTACT: Jerry Case, Regulations Program Manager, National Park Service, 1849 C Street, NW., Room 7241, Washington, DC 20240. Phone: (202) 208–4206. E-mail: *jerry_case@nps.gov*.

SUPPLEMENTARY INFORMATION:

Background

Personal Watercraft Regulation

On March 21, 2000, the NPS published a regulation (36 CFR 3.24) on the management of PWC use within all units of the national park system (65 FR 15077). The regulation prohibits PWC use in all national park units unless the NPS determines that this type of water-based recreational activity is appropriate for the specific park unit based on the legislation establishing that park, the park's resources and values, other visitor uses of the area, and overall management objectives. The regulation banned PWC use in all park units effective April 20, 2000, except for 21 parks, lakeshores, seashores, and recreation areas. The regulation established a 2-year grace period following the final rule publication to provide these 21 park units time to consider whether PWC use should be permitted to continue.

Description of Cape Lookout National Seashore

Cape Lookout National Seashore was established by Congress in 1966 to conserve and preserve for public use and enjoyment the outstanding natural, cultural, and recreational values of a dynamic coastal barrier island environment for future generations. Cape Lookout National Seashore is a low, narrow, ribbon of sand located three miles off the mainland coast in the central coastal area of North Carolina and occupies more than 29,000 acres of land and water from Ocracoke Inlet on the northeast to Beaufort Inlet to the southwest. The national seashore consists of four main barrier islands (North Core Banks, Middle Core Banks, South Core Banks, and Shackleford Banks), which consist mostly of wide, bare beaches with low dunes covered by scattered grasses, flat grasslands bordered by dense vegetation, and large expanses of salt marsh alongside the sound. Congressionally established boundaries include 150′ of water from the mean low waterline on the sound side of all islands. There are no road connections to the mainland or between the islands.

Coastal barrier islands, such as those located in Cape Lookout National Seashore, are unique land forms that provide protection for diverse aquatic habitats and serve as the mainland's first line of defense against the impacts of severe coastal storms and erosion. Located at the interface of land and sea, the dominant physical factors responsible for shaping coastal landforms are tidal range, wave energy, and sediment supply from rivers and older, pre-existing coastal sand bodies. Relative changes in local sea level also profoundly affect coastal barrier island diversity. Coastal barrier islands exhibit the following six characteristics:

- Subject to the impacts of coastal storms and sea level rise.
- Buffer the mainland from the impact of storms.
- Protect and maintain productive estuarine systems which support the nation's fishing and shellfishing industries.
- Consist primarily of unconsolidated sediments.
- Subject to wind, wave, and tidal energies.
- Include associated landward aquatic habitats which the non-wetland portion of the coastal barrier island protects from direct wave attack.

Coastal barrier islands protect the aquatic habitats between the barrier island and the mainland. Together with their adjacent wetland, marsh, estuarine, inlet, and nearshore water habitats, coastal barriers support a tremendous variety of organisms. Millions of fish, shellfish, birds, mammals, and other wildlife depend on barriers and their associated wetlands for vital feeding, spawning, nesting, nursery, and resting habitat.

Shackleford Banks contains the park's most extensive maritime forest as well as wild horses that have adapted to this environment over the centuries. The islands are an excellent place to see birds, particularly during spring and fall migrations. A number of tern species, egrets, herons, and shorebirds nest here. Loggerhead turtles climb the beaches at nesting time.