***Faulkner v. Commissioner, 88 T. C. 623 (1987)***

A qualified corporate lessor may pass through the Investment Tax Credit (ITC) to a lessee or sublessor who does not independently qualify for the credit.

**Summary**

In Faulkner v. Commissioner, the U. S. Tax Court addressed whether a qualified corporate lessor could pass the Investment Tax Credit (ITC) to a subchapter S corporation or noncorporate lessee/sublessor without the recipient independently qualifying for the credit. The court held that a valid election under section 48(d) of the Internal Revenue Code allows the ITC to be passed through to lessees or sublessors regardless of their independent eligibility. This decision was based on a plain reading of the statute and the legislative intent to encourage investment in certain depreciable property, emphasizing that the lessor's qualification was sufficient for a valid pass-through.

**Facts**

Supreme Leasing Co. , Inc. (Supreme), a subchapter S corporation, leased automobiles from Genway Corp. , a qualified corporate lessor. Genway elected under section 48(d) to pass the Investment Tax Credit (ITC) through to Supreme. Supreme then leased the cars to its customers. Henry Faulkner, Jr. , a shareholder of Supreme, claimed the ITC on his personal tax returns. The IRS contended that Supreme needed to independently qualify for the ITC, which it did not. The parties stipulated that Genway's election was valid and met all requirements of section 48(d).

**Procedural History**

The case was submitted fully stipulated to the U. S. Tax Court. The IRS issued statutory notices of deficiency to both Henry Faulkner, Jr. , and Supreme Leasing Co. , Inc. , regarding their claims for the Investment Tax Credit. The Tax Court was tasked with deciding whether the ITC could be validly passed through to Supreme and its shareholder without Supreme independently qualifying under sections 46(e)(3) and 46(c)(8) of the Internal Revenue Code.

**Issue(s)**

1. Whether a qualified corporate lessor's valid election under section 48(d) to pass the Investment Tax Credit to a lessee or sublessor requires that the lessee or sublessor independently qualify for the credit under sections 46(e)(3) and 46(c)(8).

**Holding**

1. No, because a qualified corporate lessor's valid election under section 48(d) allows the Investment Tax Credit to be passed through to a lessee or sublessor

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without the recipient needing to independently qualify under sections 46(e)(3) and 46(c)(8).

### Court's Reasoning

The Tax Court relied on a plain reading of section 48(d) and the regulations, emphasizing that the statute allows a qualified corporate lessor to elect to treat the lessee as having acquired the property for ITC purposes. The court rejected the IRS's argument that sections 46(e)(3) and 46(c)(8) must be read in pari materia with section 48(d), as such an interpretation would effectively nullify the pass-through provision. The court noted that the legislative history of section 46(e)(3) supported a liberal policy to encourage investment, even suggesting that a lessor could pass the ITC to a qualifying lessee. The court highlighted that Supreme's inability to independently qualify under the cited sections did not affect the validity of Genway's election. The decision was influenced by the policy goal of encouraging investment in depreciable property, and the court declined to impose additional qualification requirements on the lessee or sublessor that would undermine this goal.

### Practical Implications

This decision clarifies that a qualified corporate lessor can effectively pass the Investment Tax Credit to lessees or sublessors who would not otherwise qualify, simplifying tax planning for leasing arrangements. It affects how tax professionals structure lease agreements to optimize tax benefits, particularly in industries like automobile leasing where such arrangements are common. The ruling emphasizes the importance of the lessor's status in determining the validity of an ITC pass-through, rather than the lessee's or sublessor's independent eligibility. This case has been influential in subsequent tax planning and has been referenced in discussions about the application of section 48(d) elections, ensuring that the intent to encourage investment through ITCs is upheld.

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