for the taxable year may, at the election of the organization, be apportioned among patrons eligible to share in patronage dividends on the basis of the quantity or value of business done with or for such patrons for the taxable year.

(B) Form and effect of election

An election under subparagraph (A) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

(2) Treatment of organizations and patrons

(A) Organizations

The amount of the credit not apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the taxable year of the organization.

(B) Patrons

The amount of the credit apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

(3) Special rule

If the amount of a credit which has been apportioned to any patron under this subsection is decreased for any reason—

(A) such amount shall not increase the tax imposed on such patron, and

(B) the tax imposed by this chapter on such organization shall be increased by such amount.

The increase under subparagraph (B) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(g) Election to not take credit

No credit shall be determined under subsection (a) for the taxable year if the taxpayer elects not to have subsection (a) apply to such taxable year.

(Added Pub. L. 108–357, title III, § 339(a), Oct. 22, 2004, 118 Stat. 1481; amended Pub. L. 110–172, § 7(a)(1)(A), (2)(A), (3)(A), (B), Dec. 29, 2007, 121 Stat. 2481, 2482.)

AMENDMENTS

2007—Subsec. (b)(1)(A). Pub. L. 110–172, § 7(a)(3)(A), substituted ‘‘qualified costs’’ for ‘‘qualified capital costs’’.

Subsec. (c)(2). Pub. L. 110–172, § 7(a)(3)(B), struck out ‘‘capital’’ before ‘‘costs’’ in heading.

Pub. L. 110–172, § 7(a)(3)(A), substituted ‘‘qualified costs’’ for ‘‘qualified capital costs’’.

Subsec. (d). Pub. L. 110–172, § 7(a)(1)(A), redesignated subsec. (e) as (d) and struck out heading and text of former subsec. (d). Text read as follows: ‘‘For purposes of this subtitle, if a credit is determined under this section for any expenditure with respect to any property, the increase in basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so determined.’’

Subsec. (e). Pub. L. 110–172, § 7(a)(1)(A), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (e)(1), (2). Pub. L. 110–172, § 7(a)(3)(A), substituted ‘‘qualified costs’’ for ‘‘qualified capital costs’’.

Subsec. (f). Pub. L. 110–172, § 7(a)(1)(A), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 110–172, § 7(a)(2)(A), added subsec. (g). Former subsec. (g) redesignated (f).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 7(e) of Pub. L. 110–172, set out as a note under section 1092 of this title.

EFFECTIVE DATE

Section applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 339(f) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendment note under section 38 of this title.

§ 45I. Credit for producing oil and gas from marginal wells

(a) General rule

For purposes of section 38, the marginal well production credit for any taxable year is an amount equal to the product of—

(1) the credit amount, and

(2) the qualified crude oil production and the qualified natural gas production which is attributable to the taxpayer.

(b) Credit amount

For purposes of this section—

(1) In general

The credit amount is—

(A) $3 per barrel of qualified crude oil production, and

(B) 50 cents per 1,000 cubic feet of qualified natural gas production.

(2) Reduction as oil and gas prices increase

(A) In general

The $3 and 50 cents amounts under paragraph (1) shall each be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as—

(i) the excess (if any) of the applicable reference price over $15 ($1.67 for qualified natural gas production), bears to

(ii) $3 ($0.33 for qualified natural gas production).

The applicable reference price for a taxable year is the reference price of the calendar year preceding the calendar year in which the taxable year begins.

(B) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2005, each of the dollar amounts contained in subparagraph (A) shall be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year (determined under section 43(b)(3)(B) by substituting ‘‘2004’’ for ‘‘1990’’).

(C) Reference price

For purposes of this paragraph, the term ''reference price'' means, with respect to any calendar year—

(i) in the case of qualified crude oil production, the reference price determined under section 45K(d)(2)(C), and

(ii) in the case of qualified natural gas production, the Secretary's estimate of the annual average wellhead price per 1,000 cubic feet for all domestic natural gas.

(c) Qualified crude oil and natural gas production

For purposes of this section—

(1) In general

The terms ''qualified crude oil production'' and ''qualified natural gas production'' mean domestic crude oil or natural gas which is produced from a qualified marginal well.

(2) Limitation on amount of production which may qualify

(A) In general

Crude oil or natural gas produced during any taxable year from any well shall not be treated as qualified crude oil production or qualified natural gas production to the extent production from the well during the taxable year exceeds 1,095 barrels or barrel-of-oil equivalents (as defined in section 45K(d)(5)).

(B) Proportionate reductions

(i) Short taxable years

In the case of a short taxable year, the limitations under this paragraph shall be proportionately reduced to reflect the ratio which the number of days in such taxable year bears to 365.

(ii) Wells not in production entire year

In the case of a well which is not capable of production during each day of a taxable year, the limitations under this paragraph applicable to the well shall be proportionately reduced to reflect the ratio which the number of days of production bears to the total number of days in the taxable year.

(3) Definitions

(A) Qualified marginal well

The term ''qualified marginal well'' means a domestic well—

(i) the production from which during the taxable year is treated as marginal production under section 613A(c)(6), or

(ii) which, during the taxable year—

(I) has average daily production of not more than 25 barrel-of-oil equivalents (as so defined), and

(II) produces water at a rate not less than 95 percent of total well effluent.

(B) Crude oil, etc.

The terms ''crude oil'', ''natural gas'', ''domestic'', and ''barrel'' have the meanings given such terms by section 613A(e).

(d) Other rules

(1) Production attributable to the taxpayer

In the case of a qualified marginal well in which there is more than one owner of operating interests in the well and the crude oil or natural gas production exceeds the limitation under subsection (c)(2), qualifying crude oil production or qualifying natural gas production attributable to the taxpayer shall be determined on the basis of the ratio which taxpayer's revenue interest in the production bears to the aggregate of the revenue interests of all operating interest owners in the production.

(2) Operating interest required

Any credit under this section may be claimed only on production which is attributable to the holder of an operating interest.

(3) Production from nonconventional sources excluded

In the case of production from a qualified marginal well which is eligible for the credit allowed under section 45K for the taxable year, no credit shall be allowable under this section unless the taxpayer elects not to claim the credit under section 45K with respect to the well.

(Added Pub. L. 108–357, title III, §341(a), Oct. 22, 2004, 118 Stat. 1485; amended Pub. L. 109–58, title XIII, §1322(a)(3)(B), (D), Aug. 8, 2005, 119 Stat. 1011; Pub. L. 109–135, title IV, §412(k), Dec. 21, 2005, 119 Stat. 2637.)

AMENDMENTS

2005—Subsec. (a)(2). Pub. L. 109–135 substituted ''qualified crude oil production'' for ''qualified credit oil production''.

Subsec. (b)(2)(C)(i). Pub. L. 109–58, §1322(a)(3)(B), substituted ''section 45K(d)(2)(C)'' for ''section 29(d)(2)(C)''.

Subsec. (c)(2)(A). Pub. L. 109–58, §1322(a)(3)(D)(i), substituted ''section 45K(d)(5))'' for ''section 29(d)(5))''.

Subsec. (d)(3). Pub. L. 109–58, §1322(a)(3)(D)(ii), substituted ''section 45K'' for ''section 29'' in two places.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

EFFECTIVE DATE

Section applicable to production in taxable years beginning after Dec. 31, 2004, see section 341(e) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendment note under section 38 of this title.

§45J. Credit for production from advanced nuclear power facilities

(a) General rule

For purposes of section 38, the advanced nuclear power facility production credit of any taxpayer for any taxable year is equal to the product of—

(1) 1.8 cents, multiplied by

(2) the kilowatt hours of electricity—

(A) produced by the taxpayer at an advanced nuclear power facility during the 8-year period beginning on the date the facility was originally placed in service, and

(B) sold by the taxpayer to an unrelated person during the taxable year.

(b) National limitation

(1) In general

The amount of credit which would (but for this subsection and subsection (c)) be allowed