

agrees in writing to assume the recapture liability of the person disposing of such interest in effect immediately before such disposition. In the event of such an assumption, the person acquiring the interest in the facility shall be treated as the taxpayer for purposes of assessing any recapture liability (computed as if there had been no change in ownership).

**(4) Special rules**

**(A) Tax benefit rule**

The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

**(B) No credits against tax**

Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

**(C) No recapture by reason of casualty loss**

The increase in tax under this subsection shall not apply to a cessation of operation of the facility as a qualified child care facility by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

**(e) Special rules**

For purposes of this section—

**(1) Aggregation rules**

All persons which are treated as a single employer under subsections (a) and (b) of section 52 shall be treated as a single taxpayer.

**(2) Pass-thru in the case of estates and trusts**

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

**(3) Allocation in the case of partnerships**

In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

**(f) No double benefit**

**(1) Reduction in basis**

For purposes of this subtitle—

**(A) In general**

If a credit is determined under this section with respect to any property by reason of expenditures described in subsection (c)(1)(A), the basis of such property shall be reduced by the amount of the credit so determined.

**(B) Certain dispositions**

If, during any taxable year, there is a recapture amount determined with respect to any property the basis of which was reduced under subparagraph (A), the basis of such property (immediately before the event resulting in such recapture) shall be increased by an amount equal to such recapture

amount. For purposes of the preceding sentence, the term “recapture amount” means any increase in tax (or adjustment in carrybacks or carryovers) determined under subsection (d).

**(2) Other deductions and credits**

No deduction or credit shall be allowed under any other provision of this chapter with respect to the amount of the credit determined under this section.

(Added Pub. L. 107-16, title II, §205(a), June 7, 2001, 115 Stat. 50; amended Pub. L. 107-147, title IV, §411(d)(1), Mar. 9, 2002, 116 Stat. 46.)

AMENDMENTS

2002—Subsec. (d)(4)(B). Pub. L. 107-147 substituted “this chapter or for purposes of section 55” for “subpart A, B, or D of this part”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, to which such amendment relates, see section 411(x) of Pub. L. 107-147, set out as a note under section 25B of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2001, see section 205(c) of Pub. L. 107-16, set out as an Effective Date of 2001 Amendment note under section 38 of this title.

**§ 45G. Railroad track maintenance credit**

**(a) General rule**

For purposes of section 38, the railroad track maintenance credit determined under this section for the taxable year is an amount equal to 50 percent of the qualified railroad track maintenance expenditures paid or incurred by an eligible taxpayer during the taxable year.

**(b) Limitation**

**(1) In general**

The credit allowed under subsection (a) for any taxable year shall not exceed the product of—

- (A) \$3,500, multiplied by
- (B) the sum of—

- (i) the number of miles of railroad track owned or leased by the eligible taxpayer as of the close of the taxable year, and

- (ii) the number of miles of railroad track assigned for purposes of this subsection to the eligible taxpayer by a Class II or Class III railroad which owns or leases such railroad track as of the close of the taxable year.

**(2) Assignments**

With respect to any assignment of a mile of railroad track under paragraph (1)(B)(ii)—

- (A) such assignment may be made only once per taxable year of the Class II or Class III railroad and shall be treated as made as of the close of such taxable year,

- (B) such mile may not be taken into account under this section by such railroad for such taxable year, and

- (C) such assignment shall be taken into account for the taxable year of the assignee which includes the date that such assignment is treated as effective.

**(c) Eligible taxpayer**

For purposes of this section, the term “eligible taxpayer” means—

(1) any Class II or Class III railroad, and

(2) any person who transports property using the rail facilities of a Class II or Class III railroad or who furnishes railroad-related property or services to a Class II or Class III railroad, but only with respect to miles of railroad track assigned to such person by such Class II or Class III railroad for purposes of subsection (b).

**(d) Qualified railroad track maintenance expenditures**

For purposes of this section, the term “qualified railroad track maintenance expenditures” means gross expenditures (whether or not otherwise chargeable to capital account) for maintaining railroad track (including roadbed, bridges, and related track structures) owned or leased as of January 1, 2015, by a Class II or Class III railroad (determined without regard to any consideration for such expenditures given by the Class II or Class III railroad which made the assignment of such track).

**(e) Other definitions and special rules****(1) Class II or Class III railroad**

For purposes of this section, the terms “Class II railroad” and “Class III railroad” have the respective meanings given such terms by the Surface Transportation Board.

**(2) Controlled groups**

Rules similar to the rules of paragraph (1) of section 41(f) shall apply for purposes of this section.

**(3) Basis adjustment**

For purposes of this subtitle, if a credit is allowed under this section with respect to any railroad track, the basis of such track shall be reduced by the amount of the credit so allowed.

**(f) Application of section**

This section shall apply to qualified railroad track maintenance expenditures paid or incurred during taxable years beginning after December 31, 2004, and before January 1, 2018.

(Added Pub. L. 108-357, title II, §245(a), Oct. 22, 2004, 118 Stat. 1447; amended Pub. L. 109-135, title IV, §403(f), Dec. 21, 2005, 119 Stat. 2623; Pub. L. 109-432, div. A, title IV, §423(a), Dec. 20, 2006, 120 Stat. 2973; Pub. L. 110-343, div. C, title III, §316(a), Oct. 3, 2008, 122 Stat. 3872; Pub. L. 111-312, title VII, §734(a), Dec. 17, 2010, 124 Stat. 3318; Pub. L. 112-240, title III, §306(a), Jan. 2, 2013, 126 Stat. 2329; Pub. L. 113-295, div. A, title I, §116(a), Dec. 19, 2014, 128 Stat. 4014; Pub. L. 114-113, div. Q, title I, §162(a), (b), Dec. 18, 2015, 129 Stat. 3066; Pub. L. 115-123, div. D, title I, §40302(a), Feb. 9, 2018, 132 Stat. 145.)

## AMENDMENTS

2018—Subsec. (f). Pub. L. 115-123 substituted “January 1, 2018” for “January 1, 2017”.

2015—Subsec. (d). Pub. L. 114-113, §162(b), substituted “January 1, 2015” for “January 1, 2005”.

Subsec. (f). Pub. L. 114-113, §162(a), substituted “January 1, 2017” for “January 1, 2015”.

2014—Subsec. (f). Pub. L. 113-295 substituted “January 1, 2015” for “January 1, 2014”.

2013—Subsec. (f). Pub. L. 112-240 substituted “January 1, 2014” for “January 1, 2012”.

2010—Subsec. (f). Pub. L. 111-312 substituted “January 1, 2012” for “January 1, 2010”.

2008—Subsec. (f). Pub. L. 110-343 substituted “January 1, 2010” for “January 1, 2008”.

2006—Subsec. (d). Pub. L. 109-432 inserted “gross” after “means” and “(determined without regard to any consideration for such expenditures given by the Class II or Class III railroad which made the assignment of such track)” before period at end.

2005—Subsec. (b). Pub. L. 109-135, §403(f)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The credit allowed under subsection (a) for any taxable year shall not exceed the product of—

“(1) \$3,500, and

“(2) the number of miles of railroad track owned or leased by the eligible taxpayer as of the close of the taxable year.

A mile of railroad track may be taken into account by a person other than the owner only if such mile is assigned to such person by the owner for purposes of this subsection. Any mile which is so assigned may not be taken into account by the owner for purposes of this subsection.”

Subsec. (c)(2). Pub. L. 109-135, §403(f)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “any person who transports property using the rail facilities of a person described in paragraph (1) or who furnishes railroad-related property or services to such a person.”

## EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115-123, div. D, title I, §40302(b), Feb. 9, 2018, 132 Stat. 145, provided that:

“(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to expenditures paid or incurred in taxable years beginning after December 31, 2016.

“(2) SAFE HARBOR ASSIGNMENTS.—Assignments, including related expenditures paid or incurred, under paragraph (2) of section 45G(b) of the Internal Revenue Code of 1986 for taxable years ending after January 1, 2017, and before January 1, 2018, shall be treated as effective as of the close of such taxable year if made pursuant to a written agreement entered into no later than 90 days following the date of the enactment of this Act [Feb. 9, 2018].”

## EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-113, div. Q, title I, §162(c), Dec. 18, 2015, 129 Stat. 3066, provided that:

“(1) EXTENSION.—The amendment made by subsection (a) [amending this section] shall apply to expenditures paid or incurred in taxable years beginning after December 31, 2014.

“(2) MODIFICATION.—The amendment made by subsection (b) [amending this section] shall apply to expenditures paid or incurred in taxable years beginning after December 31, 2015.”

## EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-295, div. A, title I, §116(b), Dec. 19, 2014, 128 Stat. 4014, provided that: “The amendment made by this section [amending this section] shall apply to expenditures paid or incurred in taxable years beginning after December 31, 2013.”

## EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-240, title III, §306(b), Jan. 2, 2013, 126 Stat. 2329, provided that: “The amendment made by this section [amending this section] shall apply to expenditures paid or incurred in taxable years beginning after December 31, 2011.”

## EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-312, title VII, §734(b), Dec. 17, 2010, 124 Stat. 3318, provided that: “The amendment made by

this section [amending this section] shall apply to expenditures paid or incurred in taxable years beginning after December 31, 2009.”

**EFFECTIVE DATE OF 2008 AMENDMENT**

Pub. L. 110-343, div. C, title III, §316(c)(1), Oct. 3, 2008, 122 Stat. 3872, provided that: “The amendment made by subsection (a) [amending this section] shall apply to expenditures paid or incurred during taxable years beginning after December 31, 2007.”

**EFFECTIVE DATE OF 2006 AMENDMENT**

Pub. L. 109-432, div. A, title IV, §423(b), Dec. 20, 2006, 120 Stat. 2973, provided that: “The amendment made by this section [amending this section] shall take effect as if included in the amendment made by section 245(a) of the American Jobs Creation Act of 2004 [Pub. L. 108-357].”

**EFFECTIVE DATE OF 2005 AMENDMENT**

Amendment by Pub. L. 109-135 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 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

**EFFECTIVE DATE**

Section applicable to taxable years beginning after Dec. 31, 2004, see section 245(e) of Pub. L. 108-357, set out as an Effective Date of 2004 Amendment note under section 38 of this title.

**§ 45H. Credit for production of low sulfur diesel fuel**

**(a) In general**

For purposes of section 38, the amount of the low sulfur diesel fuel production credit determined under this section with respect to any facility of a small business refiner is an amount equal to 5 cents for each gallon of low sulfur diesel fuel produced during the taxable year by such small business refiner at such facility.

**(b) Maximum credit**

**(1) In general**

The aggregate credit determined under subsection (a) for any taxable year with respect to any facility shall not exceed—

(A) 25 percent of the qualified costs incurred by the small business refiner with respect to such facility, reduced by

(B) the aggregate credits determined under this section for all prior taxable years with respect to such facility.

**(2) Reduced percentage**

In the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on December 31, 2002, in excess of 155,000 barrels, the number of percentage points described in paragraph (1) shall be reduced (not below zero) by the product of such number (before the application of this paragraph) and the ratio of such excess to 50,000 barrels.

**(c) Definitions and special rule**

For purposes of this section—

**(1) Small business refiner**

The term “small business refiner” means, with respect to any taxable year, a refiner of crude oil—

(A) with respect to which not more than 1,500 individuals are engaged in the refinery

operations of the business on any day during such taxable year, and

(B) the average daily domestic refinery run or average retained production of which for all facilities of the taxpayer for the 1-year period ending on December 31, 2002, did not exceed 205,000 barrels.

**(2) Qualified costs**

The term “qualified costs” means, with respect to any facility, those costs paid or incurred during the applicable period for compliance with the applicable EPA regulations with respect to such facility, including expenditures for the construction of new process operation units or the dismantling and reconstruction of existing process units to be used in the production of low sulfur diesel fuel, associated adjacent or offsite equipment (including tankage, catalyst, and power supply), engineering, construction period interest, and sitework.

**(3) Applicable EPA regulations**

The term “applicable EPA regulations” means the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency.

**(4) Applicable period**

The term “applicable period” means, with respect to any facility, the period beginning on January 1, 2003, and ending on the earlier of the date which is 1 year after the date on which the taxpayer must comply with the applicable EPA regulations with respect to such facility or December 31, 2009.

**(5) Low sulfur diesel fuel**

The term “low sulfur diesel fuel” means diesel fuel with a sulfur content of 15 parts per million or less.

**(d) Special rule for determination of refinery runs**

For purposes of this section and section 179B(b), in the calculation of average daily domestic refinery run or retained production, only refineries which on April 1, 2003, were refineries of the refiner or a related person (within the meaning of section 613A(d)(3)), shall be taken into account.

**(e) Certification**

**(1) Required**

No credit shall be allowed unless, not later than the date which is 30 months after the first day of the first taxable year in which the low sulfur diesel fuel production credit is determined with respect to a facility, the small business refiner obtains certification from the Secretary, after consultation with the Administrator of the Environmental Protection Agency, that the taxpayer’s qualified costs with respect to such facility will result in compliance with the applicable EPA regulations.

**(2) Contents of application**

An application for certification shall include relevant information regarding unit capacities and operating characteristics sufficient for the Secretary, after consultation with the Administrator of the Environmental Protection