employee, so much of the differential wage payments (as defined in section 3401(h)(2)) paid to such employee for the taxable year as does not exceed $20,000.

(2) Qualified employee

The term ''qualified employee'' means a person who has been an employee of the taxpayer for the 91-day period immediately preceding the period for which any differential wage payment is made.

(3) Controlled groups

All persons treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 shall be treated as a single employer.

(c) Coordination with other credits

The amount of credit otherwise allowable under this chapter with respect to compensation paid to any employee shall be reduced by the credit determined under this section with respect to such employee.

(d) Disallowance for failure to comply with employment or reemployment rights of members of the reserve components of the Armed Forces of the United States

No credit shall be allowed under subsection (a) to a taxpayer for—

(1) any taxable year, beginning after the date of the enactment of this section, in which the taxpayer is under a final order, judgment, or other process issued or required by a district court of the United States under section 4323 of title 38 of the United States Code with respect to a violation of chapter 43 of such title, and

(2) the 2 succeeding taxable years.

(e) Certain rules to apply

For purposes of this section, rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply.

(Added Pub. L. 110–245, title I, §111(a), June 17, 2008, 122 Stat. 1634; amended Pub. L. 111–312, title VII, §736(a), Dec. 17, 2010, 124 Stat. 3318; Pub. L. 112–240, title III, §308(a), Jan. 2, 2013, 126 Stat. 2329; Pub. L. 113–295, div. A, title I, §118(a), Dec. 19, 2014, 128 Stat. 4015; Pub. L. 114–113, div. Q, title I, §122(a), (b), Dec. 18, 2015, 129 Stat. 3052.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (d)(1), is the date of the enactment of Pub. L. 110–245, which was approved June 17, 2008.

AMENDMENTS

2015—Subsec. (a). Pub. L. 114–113, §122(b)(1), struck out '', in the case of an eligible small business employer'' after ''section 38''.

Subsec. (b)(3). Pub. L. 114–113, §122(b)(2), amended par. (3) generally. Prior to amendment, par. (3) defined ''eligible small business employer''.

Subsec. (f). Pub. L. 114–113, §122(a), struck out subsec. (f). Text read as follows: ''This section shall not apply to any payments made after December 31, 2014.''

2014—Subsec. (f). Pub. L. 113–295 substituted ''December 31, 2014'' for ''December 31, 2013''.

2013—Subsec. (f). Pub. L. 112–240 substituted ''December 31, 2013'' for ''December 31, 2011''.

2010—Subsec. (f). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, div. Q, title I, §122(c), Dec. 18, 2015, 129 Stat. 3052, provided that:

''(1) EXTENSION.—The amendment made by subsection (a) [amending this section] shall apply to payments made after December 31, 2014.

''(2) MODIFICATION.—The amendments made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 2015.''

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–295, div. A, title I, §118(b), Dec. 19, 2014, 128 Stat. 4015, provided that: ''The amendment made by this section [amending this section] shall apply to payments made after December 31, 2013.''

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §308(b), Jan. 2, 2013, 126 Stat. 2329, provided that: ''The amendment made by this section [amending this section] shall apply to payments made after December 31, 2011.''

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §736(b), Dec. 17, 2010, 124 Stat. 3318, provided that: ''The amendment made by this section [amending this section] shall apply to payments made after December 31, 2009.''

EFFECTIVE DATE

Section applicable to amounts paid after June 17, 2008, see section 111(e) of Pub. L. 110–245, set out as an Effective Date of 2008 Amendment note under section 38 of this title.

§45Q. Credit for carbon oxide sequestration

(a) General rule

For purposes of section 38, the carbon oxide sequestration credit for any taxable year is an amount equal to the sum of—

(1) $20 per metric ton of qualified carbon oxide which is—

(A) captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility before the date of the enactment of the Bipartisan Budget Act of 2018, and

(B) disposed of by the taxpayer in secure geological storage and not used by the taxpayer as described in paragraph (2)(B),

(2) $10 per metric ton of qualified carbon oxide which is—

(A) captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility before the date of the enactment of the Bipartisan Budget Act of 2018, and

(B)(i) used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project and disposed of by the taxpayer in secure geological storage, or

(ii) utilized by the taxpayer in a manner described in subsection (f)(5),

(3) the applicable dollar amount (as determined under subsection (b)(1)) per metric ton of qualified carbon oxide which is—

(A) captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility on or after the date of the enactment of the Bipartisan Budget Act of 2018, during the 12-year period beginning on the date the equipment was originally placed in service, and

(B) disposed of by the taxpayer in secure geological storage and not used by the taxpayer as described in paragraph (4)(B), and

(4) the applicable dollar amount (as determined under subsection (b)(1)) per metric ton of qualified carbon oxide which is—

(A) captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility on or after the date of the enactment of the Bipartisan Budget Act of 2018, during the 12-year period beginning on the date the equipment was originally placed in service, and

(B)(i) used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project and disposed of by the taxpayer in secure geological storage, or

(ii) utilized by the taxpayer in a manner described in subsection (f)(5).

(b) Applicable dollar amount; additional equipment; election

(1) Applicable dollar amount

(A) In general

The applicable dollar amount shall be an amount equal to—

(i) for any taxable year beginning in a calendar year after 2016 and before 2027—

(I) for purposes of paragraph (3) of subsection (a), the dollar amount established by linear interpolation between $22.66 and $50 for each calendar year during such period, and

(II) for purposes of paragraph (4) of such subsection, the dollar amount established by linear interpolation between $12.83 and $35 for each calendar year during such period, and

(ii) for any taxable year beginning in a calendar year after 2026—

(I) for purposes of paragraph (3) of subsection (a), an amount equal to the product of $50 and the inflation adjustment factor for such calendar year determined under section 43(b)(3)(B) for such calendar year, determined by substituting ''2025'' for ''1990'', and

(II) for purposes of paragraph (4) of such subsection, an amount equal to the product of $35 and the inflation adjustment factor for such calendar year determined under section 43(b)(3)(B) for such calendar year, determined by substituting ''2025'' for ''1990''.

(B) Rounding

The applicable dollar amount determined under subparagraph (A) shall be rounded to the nearest cent.

(2) Installation of additional carbon capture equipment on existing qualified facility

In the case of a qualified facility placed in service before the date of the enactment of the Bipartisan Budget Act of 2018, for which additional carbon capture equipment is placed in service on or after the date of the enactment of such Act, the amount of qualified carbon oxide which is captured by the taxpayer shall be equal to—

(A) for purposes of paragraphs (1)(A) and (2)(A) of subsection (a), the lesser of—

(i) the total amount of qualified carbon oxide captured at such facility for the taxable year, or

(ii) the total amount of the carbon dioxide capture capacity of the carbon capture equipment in service at such facility on the day before the date of the enactment of the Bipartisan Budget Act of 2018, and

(B) for purposes of paragraphs (3)(A) and (4)(A) of such subsection, an amount (not less than zero) equal to the excess of—

(i) the amount described in clause (i) of subparagraph (A), over

(ii) the amount described in clause (ii) of such subparagraph.

(3) Election

For purposes of determining the carbon oxide sequestration credit under this section, a taxpayer may elect to have the dollar amounts applicable under paragraph (1) or (2) of subsection (a) apply in lieu of the dollar amounts applicable under paragraph (3) or (4) of such subsection for each metric ton of qualified carbon oxide which is captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility on or after the date of the enactment of the Bipartisan Budget Act of 2018.

(c) Qualified carbon oxide

For purposes of this section—

(1) In general

The term ''qualified carbon oxide'' means—

(A) any carbon dioxide which—

(i) is captured from an industrial source by carbon capture equipment which is originally placed in service before the date of the enactment of the Bipartisan Budget Act of 2018,

(ii) would otherwise be released into the atmosphere as industrial emission of greenhouse gas or lead to such release, and

(iii) is measured at the source of capture and verified at the point of disposal, injection, or utilization,

(B) any carbon dioxide or other carbon oxide which—

(i) is captured from an industrial source by carbon capture equipment which is originally placed in service on or after the date of the enactment of the Bipartisan Budget Act of 2018,

(ii) would otherwise be released into the atmosphere as industrial emission of greenhouse gas or lead to such release, and

(iii) is measured at the source of capture and verified at the point of disposal, injection, or utilization, or

(C) in the case of a direct air capture facility, any carbon dioxide which—

(i) is captured directly from the ambient air, and

(ii) is measured at the source of capture and verified at the point of disposal, injection, or utilization.

(2) Recycled carbon oxide

The term ''qualified carbon oxide'' includes the initial deposit of captured carbon oxide used as a tertiary injectant. Such term does not include carbon oxide that is recaptured, recycled, and re-injected as part of the enhanced oil and natural gas recovery process.

(d) Qualified facility

For purposes of this section, the term ''qualified facility'' means any industrial facility or direct air capture facility—

(1) the construction of which begins before January 1, 2024, and—

(A) construction of carbon capture equipment begins before such date, or

(B) the original planning and design for such facility includes installation of carbon capture equipment, and

(2) which captures—

(A) in the case of a facility which emits not more than 500,000 metric tons of carbon oxide into the atmosphere during the taxable year, not less than 25,000 metric tons of qualified carbon oxide during the taxable year which is utilized in a manner described in subsection (f)(5),

(B) in the case of an electricity generating facility which is not described in subparagraph (A), not less than 500,000 metric tons of qualified carbon oxide during the taxable year, or

(C) in the case of a direct air capture facility or any facility not described in subparagraph (A) or (B), not less than 100,000 metric tons of qualified carbon oxide during the taxable year.

(e) Definitions

For purposes of this section—

(1) Direct air capture facility

(A) In general

Subject to subparagraph (B), the term ''direct air capture facility'' means any facility which uses carbon capture equipment to capture carbon dioxide directly from the ambient air.

(B) Exception

The term ''direct air capture facility'' shall not include any facility which captures carbon dioxide—

(i) which is deliberately released from naturally occurring subsurface springs, or

(ii) using natural photosynthesis.

(2) Qualified enhanced oil or natural gas recovery project

The term ''qualified enhanced oil or natural gas recovery project'' has the meaning given the term ''qualified enhanced oil recovery project'' by section 43(c)(2), by substituting ''crude oil or natural gas'' for ''crude oil'' in subparagraph (A)(i) thereof.

(3) Tertiary injectant

The term ''tertiary injectant'' has the same meaning as when used within section 193(b)(1).

(f) Special rules

(1) Only qualified carbon oxide captured and disposed of or used within the united states taken into account

The credit under this section shall apply only with respect to qualified carbon oxide the capture and disposal, use, or utilization of which is within—

(A) the United States (within the meaning of section 638(1)), or

(B) a possession of the United States (within the meaning of section 638(2)).

(2) Secure geological storage

The Secretary, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, and the Secretary of the Interior, shall establish regulations for determining adequate security measures for the geological storage of qualified carbon oxide under subsection (a) such that the qualified carbon oxide does not escape into the atmosphere. Such term shall include storage at deep saline formations, oil and gas reservoirs, and unminable coal seams under such conditions as the Secretary may determine under such regulations.

(3) Credit attributable to taxpayer

(A) In general

Except as provided in subparagraph (B) or in any regulations prescribed by the Secretary, any credit under this section shall be attributable to—

(i) in the case of qualified carbon oxide captured using carbon capture equipment which is originally placed in service at a qualified facility before the date of the enactment of the Bipartisan Budget Act of 2018, the person that captures and physically or contractually ensures the disposal, utilization, or use as a tertiary injectant of such qualified carbon oxide, and

(ii) in the case of qualified carbon oxide captured using carbon capture equipment which is originally placed in service at a qualified facility on or after the date of the enactment of the Bipartisan Budget Act of 2018, the person that owns the carbon capture equipment and physically or contractually ensures the capture and disposal, utilization, or use as a tertiary injectant of such qualified carbon oxide.

(B) Election

If the person described in subparagraph (A) makes an election under this subparagraph in such time and manner as the Secretary may prescribe by regulations, the credit under this section—

(i) shall be allowable to the person that disposes of the qualified carbon oxide, utilizes the qualified carbon oxide, or uses the qualified carbon oxide as a tertiary injectant, and

(ii) shall not be allowable to the person described in subparagraph (A).

(4) Recapture

The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any qualified carbon oxide which ceases to be captured, disposed of, or used as a tertiary injectant in a manner consistent with the requirements of this section.

(5) Utilization of qualified carbon oxide

(A) In general

For purposes of this section, utilization of qualified carbon oxide means—

(i) the fixation of such qualified carbon oxide through photosynthesis or chemosynthesis, such as through the growing of algae or bacteria,

(ii) the chemical conversion of such qualified carbon oxide to a material or chemical compound in which such qualified carbon oxide is securely stored, or

(iii) the use of such qualified carbon oxide for any other purpose for which a commercial market exists (with the exception of use as a tertiary injectant in a qualified enhanced oil or natural gas recovery project), as determined by the Secretary.

(B) Measurement

(i) In general

For purposes of determining the amount of qualified carbon oxide utilized by the taxpayer under paragraph (2)(B)(ii) or (4)(B)(ii) of subsection (a), such amount shall be equal to the metric tons of qualified carbon oxide which the taxpayer demonstrates, based upon an analysis of lifecycle greenhouse gas emissions and subject to such requirements as the Secretary, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, determines appropriate, were—

(I) captured and permanently isolated from the atmosphere, or

(II) displaced from being emitted into the atmosphere,

through use of a process described in subparagraph (A).

(ii) Lifecycle greenhouse gas emissions

For purposes of clause (i), the term ''lifecycle greenhouse gas emissions'' has the same meaning given such term under subparagraph (H) of section 211(*o*)(1) of the Clean Air Act (42 U.S.C. 7545(*o*)(1)), as in effect on the date of the enactment of the Bipartisan Budget Act of 2018, except that ''product'' shall be substituted for ''fuel'' each place it appears in such subparagraph.

(6) Election for applicable facilities

(A) In general

For purposes of this section, in the case of an applicable facility, for any taxable year in which such facility captures not less than 500,000 metric tons of qualified carbon oxide during the taxable year, the person described in paragraph (3)(A)(ii) may elect to have such facility, and any carbon capture equipment placed in service at such facility, deemed as having been placed in service on the date of the enactment of the Bipartisan Budget Act of 2018.

(B) Applicable facility

For purposes of this paragraph, the term ''applicable facility'' means a qualified facility—

(i) which was placed in service before the date of the enactment of the Bipartisan Budget Act of 2018, and

(ii) for which no taxpayer claimed a credit under this section in regards to such facility for any taxable year ending before the date of the enactment of such Act.

(7) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2009, there shall be substituted for each dollar amount contained in paragraphs (1) and (2) of subsection (a) an amount equal to the product of—

(A) such dollar amount, multiplied by

(B) the inflation adjustment factor for such calendar year determined under section 43(b)(3)(B) for such calendar year, determined by substituting ''2008'' for ''1990''.

(g) Application of section for certain carbon capture equipment

In the case of any carbon capture equipment placed in service before the date of the enactment of the Bipartisan Budget Act of 2018, the credit under this section shall apply with respect to qualified carbon oxide captured using such equipment before the end of the calendar year in which the Secretary, in consultation with the Administrator of the Environmental Protection Agency, certifies that, during the period beginning after October 3, 2008, a total of 75,000,000 metric tons of qualified carbon oxide have been taken into account in accordance with—

(1) subsection (a) of this section, as in effect on the day before the date of the enactment of the Bipartisan Budget Act of 2018, and

(2) paragraphs (1) and (2) of subsection (a) of this section.

(h) Regulations

The Secretary may prescribe such regulations and other guidance as may be necessary or appropriate to carry out this section, including regulations or other guidance to—

(1) ensure proper allocation under subsection (a) for qualified carbon oxide captured by a taxpayer during the taxable year ending after the date of the enactment of the Bipartisan Budget Act of 2018, and

(2) determine whether a facility satisfies the requirements under subsection (d)(1) during such taxable year.

(Added Pub. L. 110–343, div. B, title I, §115(a), Oct. 3, 2008, 122 Stat. 3829; amended Pub. L. 111–5, div. B, title I, §1131(a), (b), Feb. 17, 2009, 123 Stat. 325; Pub. L. 113–295, div. A, title II, §209(j)(1), Dec. 19, 2014, 128 Stat. 4030; Pub. L. 115–123, div. D, title II, §41119(a), Feb. 9, 2018, 132 Stat. 162.)

INFLATION ADJUSTED ITEMS FOR CERTAIN TAX YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table below.

REFERENCES IN TEXT

The date of the enactment of the Bipartisan Budget Act of 2018 and the date of the enactment of such Act, referred to in text, is the date of enactment of Pub. L. 115–123, which was approved Feb. 9, 2018.

AMENDMENTS

2018—Pub. L. 115–123 amended section generally. Prior to amendment, section related to credit for carbon dioxide sequestration.

2014—Subsec. (d)(2). Pub. L. 113–295 substituted ''Administrator of the Environmental Protection Agency, the Secretary of Energy, and the Secretary of the Interior, shall establish'' for ''Administrator of the Environmental Protection Agency the Secretary of Energy, and the Secretary of the Interior,, shall establish''.

2009—Subsec. (a)(1)(B). Pub. L. 111–5, §1131(b)(2), inserted ''and not used by the taxpayer as described in paragraph (2)(B)'' after ''storage''.

Subsec. (a)(2)(C). Pub. L. 111–5, §1131(a), added subpar. (C).

Subsec. (d)(2). Pub. L. 111–5, §1131(b)(1), inserted ''the Secretary of Energy, and the Secretary of the Interior,'' after ''Environmental Protection Agency'' and substituted ''paragraph (1)(B) or (2)(C) of subsection (a)'' for ''subsection (a)(1)(B)'' and '', oil and gas reservoirs, and unminable coal seams'' for ''and unminable coal seems''.

Subsec. (e). Pub. L. 111–5, §1131(b)(3), substituted ''taken into account in accordance with subsection (a)'' for ''captured and disposed of or used as a tertiary injectant''.

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–123, div. D, title II, §41119(b), Feb. 9, 2018, 132 Stat. 168, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.''

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective as if included in the provisions of the American Recovery and Reinvestment Tax Act of 2009, Pub. L. 111–5, div. B, title I, to which such amendment relates, see section 209(k) of Pub. L. 113–295, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1131(c), Feb. 17, 2009, 123 Stat. 325, provided that: ''The amendments made by this section [amending this section] shall apply to carbon dioxide captured after the date of the enactment of this Act [Feb. 17, 2009].''

EFFECTIVE DATE

Section applicable to carbon dioxide captured after Oct. 3, 2008, see section 115(d) of Pub. L. 110–343, set out as an Effective Date of 2008 Amendment note under section 38 of this title.

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

Provisions relating to inflation adjustment of items in this section for certain years were contained in the following:

2018—Internal Revenue Notice 2018–40.
2017—Internal Revenue Notice 2017–32.
2016—Internal Revenue Notice 2016–53.
2015—Internal Revenue Notice 2015–44.
2014—Internal Revenue Notice 2014–40.
2013—Internal Revenue Notice 2013–34.
2012—Internal Revenue Notice 2012—42.
2011—Internal Revenue Notice 2011–50.
2010—Internal Revenue Notice 2010–75.

§45R. Employee health insurance expenses of small employers

(a) General rule

For purposes of section 38, in the case of an eligible small employer, the small employer health insurance credit determined under this section for any taxable year in the credit period is the amount determined under subsection (b).

(b) Health insurance credit amount

Subject to subsection (c), the amount determined under this subsection with respect to any eligible small employer is equal to 50 percent (35 percent in the case of a tax-exempt eligible small employer) of the lesser of—

(1) the aggregate amount of nonelective contributions the employer made on behalf of its employees during the taxable year under the arrangement described in subsection (d)(4) for premiums for qualified health plans offered by the employer to its employees through an Exchange, or

(2) the aggregate amount of nonelective contributions which the employer would have made during the taxable year under the arrangement if each employee taken into account under paragraph (1) had enrolled in a qualified health plan which had a premium equal to the average premium (as determined by the Secretary of Health and Human Services) for the small group market in the rating area in which the employee enrolls for coverage.

(c) Phaseout of credit amount based on number of employees and average wages

The amount of the credit determined under subsection (b) without regard to this subsection shall be reduced (but not below zero) by the sum of the following amounts:

(1) Such amount multiplied by a fraction the numerator of which is the total number of full-time equivalent employees of the employer in excess of 10 and the denominator of which is 15.

(2) Such amount multiplied by a fraction the numerator of which is the average annual wages of the employer in excess of the dollar amount in effect under subsection (d)(3)(B) and the denominator of which is such dollar amount.

(d) Eligible small employer

For purposes of this section—

(1) In general

The term ''eligible small employer'' means, with respect to any taxable year, an employer—

(A) which has no more than 25 full-time equivalent employees for the taxable year,

(B) the average annual wages of which do not exceed an amount equal to twice the dollar amount in effect under paragraph (3)(B) for the taxable year, and

(C) which has in effect an arrangement described in paragraph (4).

(2) Full-time equivalent employees

(A) In general

The term ''full-time equivalent employees'' means a number of employees equal to the number determined by dividing—

(i) the total number of hours of service for which wages were paid by the employer to employees during the taxable year, by

(ii) 2,080.

Such number shall be rounded to the next lowest whole number if not otherwise a whole number.

(B) Excess hours not counted

If an employee works in excess of 2,080 hours of service during any taxable year, such excess shall not be taken into account under subparagraph (A).