

108-357, set out as an Effective Date of 2004 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:

- 2020—Internal Revenue Notice 2021-34.
- 2019—Internal Revenue Notice 2020-21.
- 2018—Internal Revenue Notice 2019-37.
- 2017—Internal Revenue Notice 2018-52.
- 2016—Internal Revenue Notice 2017-51.

§ 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 with respect to any facility for any taxable year shall not exceed the amount which bears the same ratio to such amount of credit as—

- (A) the national megawatt capacity limitation allocated to the facility, bears to
- (B) the total megawatt nameplate capacity of such facility.

(2) Amount of national limitation

The aggregate amount of national megawatt capacity limitation allocated by the Secretary under paragraph (3) shall not exceed 6,000 megawatts.

(3) Allocation of limitation

The Secretary shall allocate the national megawatt capacity limitation in such manner as the Secretary may prescribe.

(4) Regulations

Not later than 6 months after the date of the enactment of or any amendment to this section, the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations shall provide a certification process under which the Secretary, after consultation with the Secretary of Energy, shall approve and allocate the national megawatt capacity limitation.

(5) Allocation of unutilized limitation

(A) In general

Any unutilized national megawatt capacity limitation shall be allocated by the Secretary under paragraph (3) as rapidly as is practicable after December 31, 2020—

- (i) first to facilities placed in service on or before such date to the extent that such

facilities did not receive an allocation equal to their full nameplate capacity, and (ii) then to facilities placed in service after such date in the order in which such facilities are placed in service.

(B) Unutilized national megawatt capacity limitation

The term “unutilized national megawatt capacity limitation” means the excess (if any) of—

- (i) 6,000 megawatts, over
- (ii) the aggregate amount of national megawatt capacity limitation allocated by the Secretary before January 1, 2021, reduced by any amount of such limitation which was allocated to a facility which was not placed in service before such date.

(C) Coordination with other provisions

In the case of any unutilized national megawatt capacity limitation allocated by the Secretary pursuant to this paragraph—

- (i) such allocation shall be treated for purposes of this section in the same manner as an allocation of national megawatt capacity limitation, and
- (ii) subsection (d)(1)(B) shall not apply to any facility which receives such allocation.

(c) Other limitations

(1) Annual limitation

The amount of the credit allowable under subsection (a) (after the application of subsection (b)) for any taxable year with respect to any facility shall not exceed an amount which bears the same ratio to \$125,000,000 as—

- (A) the national megawatt capacity limitation allocated under subsection (b) to the facility, bears to
- (B) 1,000.

(2) Phaseout of credit

(A) In general

The amount of the credit determined under subsection (a) shall be reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to this paragraph) as—

- (i) the amount by which the reference price (as defined in section 45(e)(2)(C)) for the calendar year in which the sale occurs exceeds 8 cents, bears to
- (ii) 3 cents.

(B) Phaseout adjustment based on inflation

The 8 cent amount in subparagraph (A) shall be adjusted by multiplying such amount by the inflation adjustment factor (as defined in section 45(e)(2)(B)) for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, such amount shall be rounded to the nearest multiple of 0.1 cent.

(d) Advanced nuclear power facility

For purposes of this section—

(1) In general

The term “advanced nuclear power facility” means any advanced nuclear facility—

(A) which is owned by the taxpayer and which uses nuclear energy to produce electricity, and

(B) which is placed in service after the date of the enactment of this paragraph and before January 1, 2021.

(2) Advanced nuclear facility

For purposes of paragraph (1), the term “advanced nuclear facility” means any nuclear facility the reactor design for which is approved after December 31, 1993, by the Nuclear Regulatory Commission (and such design or a substantially similar design of comparable capacity was not approved on or before such date).

(e) Transfer of credit by certain public entities

(1) In general

If, with respect to a credit under subsection (a) for any taxable year—

(A) a qualified public entity would be the taxpayer (but for this paragraph), and

(B) such entity elects the application of this paragraph for such taxable year with respect to all (or any portion specified in such election) of such credit,

the eligible project partner specified in such election, and not the qualified public entity, shall be treated as the taxpayer for purposes of this title with respect to such credit (or such portion thereof).

(2) Definitions

For purposes of this subsection—

(A) Qualified public entity

The term “qualified public entity” means—

(i) a Federal, State, or local government entity, or any political subdivision, agency, or instrumentality thereof,

(ii) a mutual or cooperative electric company described in section 501(c)(12) or 1381(a)(2), or

(iii) a not-for-profit electric utility which had or has received a loan or loan guarantee under the Rural Electrification Act of 1936.

(B) Eligible project partner

The term “eligible project partner” means any person who—

(i) is responsible for, or participates in, the design or construction of the advanced nuclear power facility to which the credit under subsection (a) relates,

(ii) participates in the provision of the nuclear steam supply system to such facility,

(iii) participates in the provision of nuclear fuel to such facility,

(iv) is a financial institution providing financing for the construction or operation of such facility, or

(v) has an ownership interest in such facility.

(3) Special rules

(A) Application to partnerships

In the case of a credit under subsection (a) which is determined at the partnership level—

(i) for purposes of paragraph (1)(A), a qualified public entity shall be treated as the taxpayer with respect to such entity’s distributive share of such credit, and

(ii) the term “eligible project partner” shall include any partner of the partnership.

(B) Taxable year in which credit taken into account

In the case of any credit (or portion thereof) with respect to which an election is made under paragraph (1), such credit shall be taken into account in the first taxable year of the eligible project partner ending with, or after, the qualified public entity’s taxable year with respect to which the credit was determined.

(C) Treatment of transfer under private use rules

For purposes of section 141(b)(1), any benefit derived by an eligible project partner in connection with an election under this subsection shall not be taken into account as a private business use.

(f) Other rules to apply

Rules similar to the rules of paragraphs (1), (3), (4), and (5) of section 45(e) shall apply for purposes of this section.

(Added Pub. L. 109–58, title XIII, §1306(a), Aug. 8, 2005, 119 Stat. 997; amended Pub. L. 109–135, title IV, §402(d), Dec. 21, 2005, 119 Stat. 2610; Pub. L. 110–172, §6(a), Dec. 29, 2007, 121 Stat. 2479; Pub. L. 115–123, div. D, title I, §40501(a), (b)(1), Feb. 9, 2018, 132 Stat. 153.)

REFERENCES IN TEXT

The date of the enactment of this section and the date of the enactment of this paragraph, referred to in subsecs. (b)(4) and (d)(1)(B), are the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

The Rural Electrification Act of 1936, referred to in subsec. (e)(2)(A)(iii), is act May 20, 1936, ch. 432, 49 Stat. 1363, which is classified generally to chapter 31 (§901 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 901 of Title 7 and Tables.

AMENDMENTS

2018—Subsec. (b)(4). Pub. L. 115–123, §40501(a)(1), inserted “or any amendment to” after “enactment of”.

Subsec. (b)(5). Pub. L. 115–123, §40501(a)(2), added par. (5).

Subsecs. (e), (f). Pub. L. 115–123, §40501(b)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

2007—Subsec. (b)(2). Pub. L. 110–172 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The national megawatt capacity limitation shall be 6,000 megawatts.”

2005—Subsec. (c)(2). Pub. L. 109–135, §402(d)(1), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “Rules similar to the rules of section 45(b)(1) shall apply for purposes of this section.”

Subsec. (e). Pub. L. 109–135, §402(d)(2), struck out “(2),” after “(1),”.

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–123, div. D, title I, §40501(c), Feb. 9, 2018, 132 Stat. 154, provided that:

“(1) TREATMENT OF UNUTILIZED LIMITATION AMOUNTS.—The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Feb. 9, 2018].”

“(2) TRANSFER OF CREDIT BY CERTAIN PUBLIC ENTITIES.—The amendments made by subsection (b) [amending this section and section 501 of this title] shall apply to taxable years beginning after the date of the enactment of this Act.”

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-172 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109-58, to which such amendment relates, see section 6(e) of Pub. L. 110-172, set out as a note under section 30C of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109-58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109-135, set out as a note under section 23 of this title.

EFFECTIVE DATE

Section applicable to production in taxable years beginning after Aug. 8, 2005, see section 1306(d) of Pub. L. 109-58, set out as an Effective Date of 2005 Amendment note under section 38 of this title.

§ 45K. Credit for producing fuel from a non-conventional source

(a) Allowance of credit

For purposes of section 38, the nonconventional source production credit determined under this section for the taxable year is an amount equal to—

- (1) \$3, multiplied by
- (2) the barrel-of-oil equivalent of qualified fuels—
 - (A) sold by the taxpayer to an unrelated person during the taxable year, and
 - (B) the production of which is attributable to the taxpayer.

(b) Limitations and adjustments

(1) Phaseout of credit

The amount of the credit allowable under subsection (a) shall be reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to this paragraph) as—

- (A) the amount by which the reference price for the calendar year in which the sale occurs exceeds \$23.50, bears to
- (B) \$6.

(2) Credit and phaseout adjustment based on inflation

The \$3 amount in subsection (a) and the \$23.50 and \$6 amounts in paragraph (1) shall each be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. In the case of gas from a tight formation, the \$3 amount in subsection (a) shall not be adjusted.

(3) Credit reduced for grants, tax-exempt bonds, and subsidized energy financing

(A) In general

The amount of the credit allowable under subsection (a) with respect to any project for any taxable year (determined after the application of paragraphs (1) and (2)) shall be reduced by the amount which is the product of the amount so determined for such year and a fraction—

(i) the numerator of which is the sum, for the taxable year and all prior taxable years, of—

(I) grants provided by the United States, a State, or a political subdivision of a State for use in connection with the project,

(II) proceeds of any issue of State or local government obligations used to provide financing for the project the interest on which is exempt from tax under section 103, and

(III) the aggregate amount of subsidized energy financing (within the meaning of section 48(a)(4)(C)) provided in connection with the project, and

(ii) the denominator of which is the aggregate amount of additions to the capital account for the project for the taxable year and all prior taxable years.

(B) Amounts determined at close of year

The amounts under subparagraph (A) for any taxable year shall be determined as of the close of the taxable year.

(4) Credit reduced for energy credit

The amount allowable as a credit under subsection (a) with respect to any project for any taxable year (determined after the application of paragraphs (1), (2), and (3)) shall be reduced by the excess of—

(A) the aggregate amount allowed under section 38 for the taxable year or any prior taxable year by reason of the energy percentage with respect to property used in the project, over

(B) the aggregate amount recaptured with respect to the amount described in subparagraph (A)—

- (i) under section 49(b) or 50(a) for the taxable year or any prior taxable year, or
- (ii) under this paragraph for any prior taxable year.

The amount recaptured under section 49(b) or 50(a) with respect to any property shall be appropriately reduced to take into account any reduction in the credit allowed by this section by reason of the preceding sentence.

(5) Credit reduced for enhanced oil recovery credit

The amount allowable as a credit under subsection (a) with respect to any project for any taxable year (determined after application of paragraphs (1), (2), (3), and (4)) shall be reduced by the excess (if any) of—

(A) the aggregate amount allowed under section 38 for the taxable year and any prior taxable year by reason of any enhanced oil recovery credit determined under section 43 with respect to such project, over

(B) the aggregate amount recaptured with respect to the amount described in subparagraph (A) under this paragraph for any prior taxable year.

(c) Definition of qualified fuels

For purposes of this section—

(1) In general

The term “qualified fuels” means—