

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 48 of this title] shall apply to electricity produced and sold after the date of the enactment of this Act [Oct. 22, 2004], in taxable years ending after such date.

“(2) CERTAIN BIOMASS FACILITIES.—With respect to any facility described in section 45(d)(3)(A)(ii) of the Internal Revenue Code of 1986, as added by subsection (b)(1), which is placed in service before the date of the enactment of this Act, the amendments made by this section shall apply to electricity produced and sold after December 31, 2004, in taxable years ending after such date.

“(3) CREDIT RATE AND PERIOD FOR NEW FACILITIES.—The amendments made by subsection (c) [amending this section] shall apply to electricity produced and sold after December 31, 2004, in taxable years ending after such date.

“(4) NONAPPLICATION OF AMENDMENTS TO PREEFFECTIVE DATE POULTRY WASTE FACILITIES.—The amendments made by this section shall not apply with respect to any poultry waste facility (within the meaning of section 45(c)(3)(C), as in effect on the day before the date of the enactment of this Act) placed in service before January 1, 2005.

“(5) REFINED COAL PRODUCTION FACILITIES.—Section 45(e)(8) of the Internal Revenue Code of 1986, as added by this section, shall apply to refined coal produced and sold after the date of the enactment of this Act.”

Pub. L. 108-311, title III, §313(b), Oct. 4, 2004, 118 Stat. 1181, provided that: “The amendments made by subsection (a) [amending this section] shall apply to facilities placed in service after December 31, 2003.”

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-147, title VI, §603(b), Mar. 9, 2002, 116 Stat. 59, provided that: “The amendments made by subsection (a) [amending this section] shall apply to facilities placed in service after December 31, 2001.”

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-170, title V, §507(d), Dec. 17, 1999, 113 Stat. 1923, provided that: “The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 17, 1999].”

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1992, see section 1914(e) of Pub. L. 102-486, set out as an Effective Date of 1992 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:

2021—Internal Revenue Notice 2021-32.
 2020—Internal Revenue Notice 2020-38.
 2019—Internal Revenue Notice 2019-41, Internal Revenue Notice 2020-9.
 2018—Internal Revenue Notice 2018-50, Internal Revenue Notice 2020-9.
 2017—Internal Revenue Notice 2017-33, Internal Revenue Notice 2018-36.
 2016—Internal Revenue Notice 2016-34.
 2015—Internal Revenue Notice 2015-32, Internal Revenue Notice 2016-11.
 2014—Internal Revenue Notice 2014-36.
 2013—Internal Revenue Notice 2013-33.
 2012—Internal Revenue Notice 2012-35.
 2011—Internal Revenue Notice 2011-40.
 2010—Internal Revenue Notice 2010-37.
 2009—Internal Revenue Notice 2009-40.
 2008—Internal Revenue Notice 2008-48.
 2007—Internal Revenue Notice 2007-40.
 2006—Internal Revenue Notice 2006-51.
 2005—Internal Revenue Notice 2005-37.
 2004—Internal Revenue Notice 2004-29.

2003—Internal Revenue Notice 2003-29.
 2002—Internal Revenue Notice 2002-39.
 2001—Internal Revenue Notice 2001-33.
 2000—Internal Revenue Notice 2000-52.
 1999—Internal Revenue Notice 99-26.
 1998—Internal Revenue Notice 98-27.
 1997—Internal Revenue Notice 97-30.
 1996—Internal Revenue Notice 96-25.

§ 45A. Indian employment credit

(a) Amount of credit

For purposes of section 38, the amount of the Indian employment credit determined under this section with respect to any employer for any taxable year is an amount equal to 20 percent of the excess (if any) of—

(1) the sum of—

(A) the qualified wages paid or incurred during such taxable year, plus

(B) qualified employee health insurance costs paid or incurred during such taxable year, over

(2) the sum of the qualified wages and qualified employee health insurance costs (determined as if this section were in effect) which were paid or incurred by the employer (or any predecessor) during calendar year 1993.

(b) Qualified wages; qualified employee health insurance costs

For purposes of this section—

(1) Qualified wages

(A) In general

The term “qualified wages” means any wages paid or incurred by an employer for services performed by an employee while such employee is a qualified employee.

(B) Coordination with work opportunity credit

The term “qualified wages” shall not include wages attributable to service rendered during the 1-year period beginning with the day the individual begins work for the employer if any portion of such wages is taken into account in determining the credit under section 51. If any portion of wages are taken into account under subsection (e)(1)(A) of section 51, the preceding sentence shall be applied by substituting “2-year period” for “1-year period”.

(2) Qualified employee health insurance costs

(A) In general

The term “qualified employee health insurance costs” means any amount paid or incurred by an employer for health insurance to the extent such amount is attributable to coverage provided to any employee while such employee is a qualified employee.

(B) Exception for amounts paid under salary reduction arrangements

No amount paid or incurred for health insurance pursuant to a salary reduction arrangement shall be taken into account under subparagraph (A).

(3) Limitation

The aggregate amount of qualified wages and qualified employee health insurance costs

taken into account with respect to any employee for any taxable year (and for the base period under subsection (a)(2)) shall not exceed \$20,000.

(c) Qualified employee

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term “qualified employee” means, with respect to any period, any employee of an employer if—

(A) the employee is an enrolled member of an Indian tribe or the spouse of an enrolled member of an Indian tribe,

(B) substantially all of the services performed during such period by such employee for such employer are performed within an Indian reservation, and

(C) the principal place of abode of such employee while performing such services is on or near the reservation in which the services are performed.

(2) Individuals receiving wages in excess of \$30,000 not eligible

An employee shall not be treated as a qualified employee for any taxable year of the employer if the total amount of the wages paid or incurred by such employer to such employee during such taxable year (whether or not for services within an Indian reservation) exceeds the amount determined at an annual rate of \$30,000.

(3) Inflation adjustment

The Secretary shall adjust the \$30,000 amount under paragraph (2) for years beginning after 1994 at the same time and in the same manner as under section 415(d), except that the base period taken into account for purposes of such adjustment shall be the calendar quarter beginning October 1, 1993.

(4) Employment must be trade or business employment

An employee shall be treated as a qualified employee for any taxable year of the employer only if more than 50 percent of the wages paid or incurred by the employer to such employee during such taxable year are for services performed in a trade or business of the employer. Any determination as to whether the preceding sentence applies with respect to any employee for any taxable year shall be made without regard to subsection (e)(2).

(5) Certain employees not eligible

The term “qualified employee” shall not include—

(A) any individual described in subparagraph (A), (B), or (C) of section 51(i)(1),

(B) any 5-percent owner (as defined in section 416(i)(1)(B)), and

(C) any individual if the services performed by such individual for the employer involve the conduct of class I, II, or III gaming as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703), or are performed in a building housing such gaming activity.

(6) Indian tribe defined

The term “Indian tribe” means any Indian tribe, band, nation, pueblo, or other organized

group or community, including any Alaska Native village, or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(7) Indian reservation defined

The term “Indian reservation” has the meaning given such term by section 168(j)(6).

(d) Early termination of employment by employer

(1) In general

If the employment of any employee is terminated by the taxpayer before the day 1 year after the day on which such employee began work for the employer—

(A) no wages (or qualified employee health insurance costs) with respect to such employee shall be taken into account under subsection (a) for the taxable year in which such employment is terminated, and

(B) the tax under this chapter for the taxable year in which such employment is terminated shall be increased by the aggregate credits (if any) allowed under section 38(a) for prior taxable years by reason of wages (or qualified employee health insurance costs) taken into account with respect to such employee.

(2) Carrybacks and carryovers adjusted

In the case of any termination of employment to which paragraph (1) applies, the carrybacks and carryovers under section 39 shall be properly adjusted.

(3) Subsection not to apply in certain cases

(A) In general

Paragraph (1) shall not apply to—

(i) a termination of employment of an employee who voluntarily leaves the employment of the taxpayer,

(ii) a termination of employment of an individual who before the close of the period referred to in paragraph (1) becomes disabled to perform the services of such employment unless such disability is removed before the close of such period and the taxpayer fails to offer reemployment to such individual, or

(iii) a termination of employment of an individual if it is determined under the applicable State unemployment compensation law that the termination was due to the misconduct of such individual.

(B) Changes in form of business

For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated—

(i) by a transaction to which section 381(a) applies if the employee continues to be employed by the acquiring corporation, or

(ii) by reason of a mere change in the form of conducting the trade or business of the taxpayer if the employee continues to

be employed in such trade or business and the taxpayer retains a substantial interest in such trade or business.

(4) Special rule

Any increase in tax under paragraph (1) shall not be treated as a tax imposed by this chapter for purposes of—

(A) determining the amount of any credit allowable under this chapter, and

(B) determining the amount of the tax imposed by section 55.

(e) Other definitions and special rules

For purposes of this section—

(1) Wages

The term “wages” has the same meaning given to such term in section 51.

(2) Controlled groups

(A) All employers treated as a single employer under section (a) or (b) of section 52 shall be treated as a single employer for purposes of this section.

(B) The credit (if any) determined under this section with respect to each such employer shall be its proportionate share of the wages and qualified employee health insurance costs giving rise to such credit.

(3) Certain other rules made applicable

Rules similar to the rules of section 51(k) and subsections (c), (d), and (e) of section 52 shall apply.

(4) Coordination with nonrevenue laws

Any reference in this section to a provision not contained in this title shall be treated for purposes of this section as a reference to such provision as in effect on the date of the enactment of this paragraph.

(5) Special rule for short taxable years

For any taxable year having less than 12 months, the amount determined under subsection (a)(2) shall be multiplied by a fraction, the numerator of which is the number of days in the taxable year and the denominator of which is 365.

(f) Termination

This section shall not apply to taxable years beginning after December 31, 2021.

(Added Pub. L. 103-66, title XIII, §13322(b), Aug. 10, 1993, 107 Stat. 559; amended Pub. L. 104-188, title I, §1201(e)(1), Aug. 20, 1996, 110 Stat. 1772; Pub. L. 105-206, title VI, §6023(1), July 22, 1998, 112 Stat. 824; Pub. L. 107-147, title VI, §613(a), Mar. 9, 2002, 116 Stat. 61; Pub. L. 108-311, title III, §315, title IV, §404(b)(1), Oct. 4, 2004, 118 Stat. 1181, 1188; Pub. L. 109-432, div. A, title I, §111(a), Dec. 20, 2006, 120 Stat. 2940; Pub. L. 110-343, div. C, title III, §314(a), Oct. 3, 2008, 122 Stat. 3872; Pub. L. 111-312, title VII, §732(a), Dec. 17, 2010, 124 Stat. 3317; Pub. L. 112-240, title III, §304(a), Jan. 2, 2013, 126 Stat. 2329; Pub. L. 113-295, div. A, title I, §114(a), title II, §216(a), Dec. 19, 2014, 128 Stat. 4014, 4034; Pub. L. 114-113, div. Q, title I, §161(a), Dec. 18, 2015, 129 Stat. 3066; Pub. L. 115-123, div. D, title I, §40301(a), Feb. 9, 2018, 132 Stat. 145; Pub. L. 116-94, div. Q, title I, §111(a), Dec. 20, 2019, 133 Stat. 3228; Pub. L. 116-260, div. EE, title I, §135(a), Dec. 27, 2020, 134 Stat. 3053.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

Editorial Notes

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (c)(6), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The date of the enactment of this paragraph, referred to in subsec. (e)(4), is the date of enactment of Pub. L. 103-66, which was approved Aug. 10, 1993.

AMENDMENTS

2020—Subsec. (f). Pub. L. 116-260 substituted “December 31, 2021” for “December 31, 2020”.

2019—Subsec. (f). Pub. L. 116-94 substituted “December 31, 2020” for “December 31, 2017”.

2018—Subsec. (f). Pub. L. 115-123 substituted “December 31, 2017” for “December 31, 2016”.

2015—Subsec. (f). Pub. L. 114-113 substituted “December 31, 2016” for “December 31, 2014”.

2014—Subsec. (b)(1)(B). Pub. L. 113-295, §216(a), inserted at end “If any portion of wages are taken into account under subsection (e)(1)(A) of section 51, the preceding sentence shall be applied by substituting ‘2-year period’ for ‘1-year period’.”

Subsec. (f). Pub. L. 113-295, §114(a), 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”.

2008—Subsec. (f). Pub. L. 110-343 substituted “December 31, 2009” for “December 31, 2007”.

2006—Subsec. (f). Pub. L. 109-432 substituted “2007” for “2005”.

2004—Subsec. (c)(3). Pub. L. 108-311, §404(b)(1), inserted “, except that the base period taken into account for purposes of such adjustment shall be the calendar quarter beginning October 1, 1993” before period at end.

Subsec. (f). Pub. L. 108-311, §315, substituted “December 31, 2005” for “December 31, 2004”.

2002—Subsec. (f). Pub. L. 107-147 substituted “December 31, 2004” for “December 31, 2003”.

1998—Subsec. (b)(1)(B). Pub. L. 105-206 substituted “work opportunity credit” for “targeted jobs credit” in heading.

1996—Subsec. (b)(1)(B). Pub. L. 104-188, which directed that subsec. (b)(1)(B) of this section be amended in the text by substituting “work opportunity credit” for “targeted jobs credit”, could not be executed because the words “targeted jobs credit” did not appear in the text.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116-260, div. EE, title I, §135(b), Dec. 27, 2020, 134 Stat. 3053, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2020.”

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116-94, div. Q, title I, §111(b), Dec. 20, 2019, 133 Stat. 3228, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.”

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115-123, div. D, title I, §40301(b), Feb. 9, 2018, 132 Stat. 145, provided that: “The amendment made by

this section [amending this section] shall apply to taxable years beginning after December 31, 2016.”

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-113, div. Q, title I, §161(b), Dec. 18, 2015, 129 Stat. 3066, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2014.”

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-295, div. A, title I, §114(b), Dec. 19, 2014, 128 Stat. 4014, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2013.”

Pub. L. 113-295, div. A, title II, §216(b), Dec. 19, 2014, 128 Stat. 4034, provided that: “The amendment made by this section [amending this section] shall take effect as if included in the provision of the Tax Relief and Health Care Act of 2006 [Pub. L. 109-432] to which it relates.”

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-240, title III, §304(b), Jan. 2, 2013, 126 Stat. 2329, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2011.”

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-312, title VII, §732(b), Dec. 17, 2010, 124 Stat. 3317, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.”

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. C, title III, §314(b), Oct. 3, 2008, 122 Stat. 3872, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.”

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. A, title I, §111(b), Dec. 20, 2006, 120 Stat. 2940, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.”

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-311, title IV, §404(f), Oct. 4, 2004, 118 Stat. 1188, provided that: “The amendments made by this section [amending this section and sections 403, 408, 415, 530, and 4972 of this title] shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107-16] to which they relate.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to individuals who begin work for the employer after Sept. 30, 1996, see section 1201(g) of Pub. L. 104-188, set out as a note under section 38 of this title.

EFFECTIVE DATE

Section applicable to wages paid or incurred after Dec. 31, 1993, see section 1332(f) of Pub. L. 103-66, set out as an Effective Date of 1993 Amendment note under section 38 of this title.

§ 45B. Credit for portion of employer social security taxes paid with respect to employee cash tips

(a) General rule

For purposes of section 38, the employer social security credit determined under this section for the taxable year is an amount equal to the excess employer social security tax paid or incurred by the taxpayer during the taxable year.

(b) Excess employer social security tax

For purposes of this section—

(1) In general

The term “excess employer social security tax” means any tax paid by an employer under section 3111 with respect to tips received by an employee during any month, to the extent such tips—

(A) are deemed to have been paid by the employer to the employee pursuant to section 3121(q) (without regard to whether such tips are reported under section 6053), and

(B) exceed the amount by which the wages (excluding tips) paid by the employer to the employee during such month are less than the total amount which would be payable (with respect to such employment) at the minimum wage rate applicable to such individual under section 6(a)(1) of the Fair Labor Standards Act of 1938 (as in effect on January 1, 2007, and determined without regard to section 3(m) of such Act).

(2) Only tips received for food or beverages taken into account

In applying paragraph (1), there shall be taken into account only tips received from customers in connection with the providing, delivering, or serving of food or beverages for consumption if the tipping of employees delivering or serving food or beverages by customers is customary.

(c) Denial of double benefit

No deduction shall be allowed under this chapter for any amount taken into account in determining the credit under this section.

(d) Election not to claim credit

This section shall not apply to a taxpayer for any taxable year if such taxpayer elects to have this section not apply for such taxable year.

(Added Pub. L. 103-66, title XIII, §13443(a), Aug. 10, 1993, 107 Stat. 568; amended Pub. L. 104-188, title I, §1112(a)(1), (b)(1), Aug. 20, 1996, 110 Stat. 1759; Pub. L. 110-28, title VIII, §8213(a), May 25, 2007, 121 Stat. 193.)

Editorial Notes

REFERENCES IN TEXT

Sections 3(m) and 6(a)(1) of the Fair Labor Standards Act of 1938, referred to in subsec. (b)(1)(B), are classified to sections 203(m) and 206(a)(1), respectively, of Title 29, Labor.

AMENDMENTS

2007—Subsec. (b)(1)(B). Pub. L. 110-28 inserted “as in effect on January 1, 2007, and” before “determined without regard to”.

1996—Subsec. (b)(1)(A). Pub. L. 104-188, §1112(a)(1), inserted “(without regard to whether such tips are reported under section 6053)” after “section 3121(q)”.

Subsec. (b)(2). Pub. L. 104-188, §1112(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “ONLY TIPS RECEIVED AT FOOD AND BEVERAGE ESTABLISHMENTS TAKEN INTO ACCOUNT.—In applying paragraph (1), there shall be taken into account only tips received from customers in connection with the provision of food or beverages for consumption on the premises of an establishment with respect to which the tipping of employees serving food or beverages by customers is customary.”