

- (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.)

Editorial Notes

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)."

Statutory Notes and Related Subsidiaries

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—

(A) oil produced from shale and tar sands,

(B) gas produced from—

(i) geopressured brine, Devonian shale, coal seams, or a tight formation, or

(ii) biomass, and

(C) liquid, gaseous, or solid synthetic fuels produced from coal (including lignite), including such fuels when used as feedstocks.

(2) Gas from geopressured brine, etc.

(A) In general

Except as provided in subparagraph (B), the determination of whether any gas is produced from geopressured brine, Devonian shale, coal seams, or a tight formation shall be made in accordance with section 503 of the Natural Gas Policy Act of 1978 (as in effect before the repeal of such section).

(B) Special rules for gas from tight formations

The term “gas produced from a tight formation” shall only include gas from a tight formation—

(i) which, as of April 20, 1977, was committed or dedicated to interstate commerce (as defined in section 2(18) of the Natural Gas Policy Act of 1978, as in effect on the date of the enactment of this clause), or

(ii) which is produced from a well drilled after such date of enactment.

(3) Biomass

The term “biomass” means any organic material other than—

(A) oil and natural gas (or any product thereof), and

(B) coal (including lignite) or any product thereof.

(d) Other definitions and special rules

For purposes of this section—

(1) Only production within the United States taken into account

Sales shall be taken into account under this section only with respect to qualified fuels the production 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) Computation of inflation adjustment factor and reference price

(A) In general

The Secretary shall, not later than April 1 of each calendar year, determine and publish

in the Federal Register the inflation adjustment factor and the reference price for the preceding calendar year in accordance with this paragraph.

(B) Inflation adjustment factor

The term “inflation adjustment factor” means, with respect to a calendar year, a fraction the numerator of which is the GNP implicit price deflator for the calendar year and the denominator of which is the GNP implicit price deflator for calendar year 1979. The term “GNP implicit price deflator” means the first revision of the implicit price deflator for the gross national product as computed and published by the Department of Commerce.

(C) Reference price

The term “reference price” means with respect to a calendar year the Secretary’s estimate of the annual average wellhead price per barrel for all domestic crude oil the price of which is not subject to regulation by the United States.

(3) Production attributable to the taxpayer

In the case of a property or facility in which more than 1 person has an interest, except to the extent provided in regulations prescribed by the Secretary, production from the property or facility (as the case may be) shall be allocated among such persons in proportion to their respective interests in the gross sales from such property or facility.

(4) Gas from geopressed brine, Devonian shale, coal seams, or a tight formation

The amount of the credit allowable under subsection (a) shall be determined without regard to any production attributable to a property from which gas from Devonian shale, coal seams, geopressed brine, or a tight formation was produced in marketable quantities before January 1, 1980.

(5) Barrel-of-oil equivalent

The term “barrel-of-oil equivalent” with respect to any fuel means that amount of such fuel which has a Btu content of 5.8 million; except that in the case of qualified fuels described in subparagraph (C) of subsection (c)(1), the Btu content shall be determined without regard to any material from a source not described in such subparagraph.

(6) Barrel defined

The term “barrel” means 42 United States gallons.

(7) Related persons

Persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b). In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling qualified fuels to an unrelated person if such fuels are sold to such a person by another member of such group.

(8) 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.

(e) Application of section

This section shall apply with respect to qualified fuels—

(1) which are—

(A) produced from a well drilled after December 31, 1979, and before January 1, 1993, or

(B) produced in a facility placed in service after December 31, 1979, and before January 1, 1993, and

(2) which are sold before January 1, 2003.

(f) Extension for certain facilities

(1) In general

In the case of a facility for producing qualified fuels described in subparagraph (B)(ii) or (C) of subsection (c)(1)—

(A) for purposes of subsection (e)(1)(B), such facility shall be treated as being placed in service before January 1, 1993, if such facility is placed in service before July 1, 1998, pursuant to a binding written contract in effect before January 1, 1997, and

(B) if such facility is originally placed in service after December 31, 1992, paragraph (2) of subsection (e) shall be applied with respect to such facility by substituting “January 1, 2008” for “January 1, 2003”.

(2) Special rule

Paragraph (1) shall not apply to any facility which produces coke or coke gas unless the original use of the facility commences with the taxpayer.

(g) Extension for facilities producing coke or coke gas

Notwithstanding subsection (e)—

(1) In general

In the case of a facility for producing coke or coke gas (other than from petroleum based products) which was placed in service before January 1, 1993, or after June 30, 1998, and before January 1, 2010, this section shall apply with respect to coke and coke gas produced in such facility and sold during the period—

(A) beginning on the later of January 1, 2006, or the date that such facility is placed in service, and

(B) ending on the date which is 4 years after the date such period began.

(2) Special rules

In determining the amount of credit allowable under this section solely by reason of this subsection—

(A) Daily limit

The amount of qualified fuels sold during any taxable year which may be taken into account by reason of this subsection with respect to any facility shall not exceed an average barrel-of-oil equivalent of 4,000 barrels per day. Days before the date the facility is placed in service shall not be taken into account in determining such average.

(B) Extension period to commence with unadjusted credit amount

For purposes of applying subsection (b)(2) to the \$3 amount in subsection (a), in the

case of fuels sold after 2005, subsection (d)(2)(B) shall be applied by substituting “2004” for “1979”.

(C) Denial of double benefit

This subsection shall not apply to any facility producing qualified fuels for which a credit was allowed under this section for the taxable year or any preceding taxable year by reason of subsection (f).

(D) Nonapplication of phaseout

Subsection (b)(1) shall not apply.

(E) Coordination with section 45

No credit shall be allowed with respect to any coke or coke gas which is produced using steel industry fuel (as defined in section 45(c)(7)) as feedstock if a credit is allowed to any taxpayer under section 45 with respect to the production of such steel industry fuel.

(Added Pub. L. 96-223, title II, §231(a), Apr. 2, 1980, 94 Stat. 268, §44D; amended Pub. L. 97-34, title VI §611(a), Aug. 13, 1981, 95 Stat. 339; Pub. L. 97-354, §5(a)(1), Oct. 19, 1982, 96 Stat. 1692; Pub. L. 97-448, title II, §202(a), Jan. 12, 1983, 96 Stat. 2396; renumbered §29 and amended Pub. L. 98-369, div. A, title IV, §§471(c), 474(h), title VI, §612(e)(1), title VII, §722(d)(1), (2), July 18, 1984, 98 Stat. 826, 831, 912, 973; Pub. L. 99-514, title VII, §701(c)(3), title XVIII, §1879(c)(1), Oct. 22, 1986, 100 Stat. 2340, 2906; Pub. L. 100-647, title VI, §6302, Nov. 10, 1988, 102 Stat. 3755; Pub. L. 101-508, title XI, §§11501(a), (b)(1), (c)(1), 11813(b)(1), 11816, Nov. 5, 1990, 104 Stat. 1388-479, 1388-550, 1388-558; Pub. L. 102-486, title XIX, §1918, Oct. 24, 1992, 106 Stat. 3025; Pub. L. 104-188, title I, §§1205(d)(3), 1207(a), Aug. 20, 1996, 110 Stat. 1776; renumbered §45K and amended Pub. L. 109-58, title XIII, §§1321(a), 1322(a)(1), (3)(E), (F), (b), Aug. 8, 2005, 119 Stat. 1010-1012; Pub. L. 109-135, title IV, §§402(g), 412(l), Dec. 21, 2005, 119 Stat. 2611, 2637; Pub. L. 109-432, div. A, title II, §211(a), (b), Dec. 20, 2006, 120 Stat. 2947, 2948; Pub. L. 110-343, div. B, title I, §108(d)(2), Oct. 3, 2008, 122 Stat. 3821; Pub. L. 113-295, div. A, title II, §210(a), Dec. 19, 2014, 128 Stat. 4031.)

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.

Editorial Notes

REFERENCES IN TEXT

Section 503 of the Natural Gas Policy Act of 1978 (as in effect before the repeal of such section), referred to in subsec. (c)(2)(A), was classified to section 3413 of Title 15, Commerce and Trade, prior to repeal by Pub. L. 101-60, §3(b)(5), July 26, 1989, 103 Stat. 159, effective Jan. 1, 1993.

Section 2(18) of the Natural Gas Policy Act of 1978, referred to in subsec. (c)(2)(B)(i), is classified to section 3301(18) of Title 15, Commerce and Trade.

The date of the enactment of this clause, and such date of enactment, referred to in subsec. (c)(2)(B), probably mean the date of enactment of Pub. L. 101-508, which amended subsec. (c)(2)(B) of this section generally, and which was approved Nov. 5, 1990.

AMENDMENTS

2014—Subsec. (g)(2)(E). Pub. L. 113-295 amended subpar. (E) generally. Prior to amendment, text read as

follows: “No credit shall be allowed with respect to any qualified fuel which is steel industry fuel (as defined in section 45(c)(7)) if a credit is allowed to the taxpayer for such fuel under section 45.”

2008—Subsec. (g)(2)(E). Pub. L. 110-343 added subpar. (E).

2006—Subsec. (g)(1). Pub. L. 109-432, §211(b), inserted “(other than from petroleum based products)” after “producing coke or coke gas” in introductory provisions.

Subsec. (g)(2)(D). Pub. L. 109-432, §211(a), added subpar. (D).

2005—Pub. L. 109-58, §1322(a)(1), renumbered section 29 of this title as this section.

Subsec. (a). Pub. L. 109-135, §402(g), struck out “if the taxpayer elects to have this section apply,” after “For purposes of section 38,” in introductory provisions.

Pub. L. 109-58, §1322(a)(3)(E), substituted “For purposes of section 38, if the taxpayer elects to have this section apply, the nonconventional source production credit determined under this section for the taxable year is” for “There shall be allowed as a credit against the tax imposed by this chapter for the taxable year” in introductory provisions.

Subsec. (b)(6). Pub. L. 109-58, §1322(a)(3)(F), struck out heading and text of par. (6). Text read as follows: “The credit allowed by subsection (a) for any taxable year shall not exceed the excess (if any) of—

“(A) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and section 27, over

“(B) the tentative minimum tax for the taxable year.”

Subsec. (c)(2)(A). Pub. L. 109-58, §1322(b)(1)(A), inserted “(as in effect before the repeal of such section)” after “1978”.

Subsecs. (e), (f). Pub. L. 109-58, §1322(b)(1)(B), redesignated subsecs. (f) and (g) as (e) and (f), respectively, and struck out former subsec. (e), which related to application of section with the Natural Gas Policy Act of 1978.

Subsec. (g). Pub. L. 109-135, §412(l)(1), substituted “subsection (e)” for “subsection (f)” in introductory provisions.

Pub. L. 109-58, §1322(b)(1)(B), redesignated subsec. (h) as (g).

Subsec. (g)(1)(A). Pub. L. 109-58, §1322(b)(2)(A), substituted “subsection (e)(1)(B)” for “subsection (f)(1)(B)”.

Subsec. (g)(1)(B). Pub. L. 109-58, §1322(b)(2)(B), substituted “subsection (e)” for “subsection (f)”.

Subsec. (g)(2)(C). Pub. L. 109-135, §412(l)(2), substituted “subsection (f)” for “subsection (g)”.

Subsec. (h). Pub. L. 109-58, §1322(b)(1)(B), redesignated subsec. (h) as (g).

Pub. L. 109-58, §1321(a), added subsec. (h).

1996—Subsec. (b)(6)(A). Pub. L. 104-188, §1205(d)(3), substituted “section 27” for “sections 27 and 28”.

Subsec. (g)(1)(A). Pub. L. 104-188, §1207(a), substituted “July 1, 1998” for “January 1, 1997” and “January 1, 1997” for “January 1, 1996”.

1992—Subsec. (g). Pub. L. 102-486 added subsec. (g).

1990—Subsec. (b)(3)(A)(i)(III). Pub. L. 101-508, §11813(b)(1)(A), substituted “section 48(a)(4)(C)” for “section 48(l)(11)(C)”.

Subsec. (b)(4). Pub. L. 101-508, §11813(b)(1)(B), substituted “section 49(b) or 50(a)” for “section 47” in two places.

Subsec. (b)(5), (6). Pub. L. 101-508, §11501(c)(1), added par. (5) and redesignated former par. (5) as (6).

Subsec. (c)(1)(B) to (E). Pub. L. 101-508, §11816(a), inserted “and” at end of subpar. (B), substituted a period for a comma at end of subpar. (C), and struck out subpar. (D) which related to qualifying processed wood fuels, and subpar. (E) which related to steam produced from solid agricultural byproducts (not including timber byproducts).

Subsec. (c)(2)(B). Pub. L. 101-508, §11501(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “The term ‘gas produced from a tight formation’ shall only include—

“(i) gas the price of which is regulated by the United States, and

“(ii) gas for which the maximum lawful price applicable under the Natural Gas Policy Act of 1978 is at least 150 percent of the then applicable price under section 103 of such Act.”

Subsec. (c)(3). Pub. L. 101-508, § 11813(b)(1)(C), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “The term ‘biomass’ means any organic material which is an alternate substance (as defined in section 48(l)(3)(B)) other than coal (including lignite) or any product of such coal.”

Subsec. (c)(4). Pub. L. 101-508, § 11816(b)(1), struck out par. (4) “Qualifying processed wood fuel” which read as follows:

“(A) IN GENERAL.—The term ‘qualifying processed wood fuel’ means any processed solid wood fuel (other than charcoal, fireplace products, or a product used for ornamental or recreational purposes) which has a Btu content per unit of volume or weight, determined without regard to any nonwood elements, which is at least 40 percent greater per unit of volume or weight than the Btu content of the wood from which it is produced (determined immediately before the processing).

“(B) ELECTION.—A taxpayer shall elect, at such time and in such manner as the Secretary by regulations may prescribe, as to whether Btu content per unit shall be determined for purposes of this paragraph on a volume or weight basis. Any such election—

“(i) shall apply to all production from a facility; and

“(ii) shall be effective for the taxable year with respect to which it is made and for all subsequent taxable years and, once made, may be revoked only with the consent of the Secretary.”

Subsec. (c)(5). Pub. L. 101-508, § 11816(b)(1), struck out par. (5) “Agricultural byproduct steam” which read as follows: “Steam produced from solid agricultural byproducts which is used by the taxpayer in his trade or business shall be treated as having been sold by the taxpayer to an unrelated person on the date on which it is used.”

Subsec. (d)(4). Pub. L. 101-508, § 11816(b)(2), amended par. (4) generally, striking out “Special rules applicable to” before “Gas” in heading, redesignating former subpar. (A) as par. (4), striking out subpar. (B) which related to the reference price and application of phase-out for Devonian shale, and making minor changes in phraseology.

Subsec. (d)(5), (6). Pub. L. 101-508, § 11816(b)(3), (4), redesignated par. (6) as (5), substituted “subparagraph (C)” for “subparagraph (C), (D), or (E)”, and struck out former par. (5) which read as follows: “In the case of a facility for the production of—

“(A) qualifying processed wood fuel,

or

“(B) steam from solid agricultural byproducts, paragraph (1) of subsection (b) shall not apply with respect to the amount of the credit allowable under subsection (a) for fuels sold during the 3-year period beginning on the date the facility is placed in service.”

Subsec. (d)(7) to (9). Pub. L. 101-508, § 11816(b)(3), redesignated pars. (7) to (9) as (6) to (8), respectively.

Subsec. (f). Pub. L. 101-508, § 11816(b)(5), amended subsec. (f) generally, redesignating former par. (1) as subsec. (f), making minor changes in phraseology, substituting par. (2) for former par. (1)(B) which read as follows: “which are sold after December 31, 1979, and before January 1, 2003.”, and striking out former par. (2) which related to special rules applicable to qualified processed wood and solid agricultural byproduct steam.

Subsec. (f)(1)(A)(i), (ii). Pub. L. 101-508, § 11501(a)(1), substituted “1993” for “1991”.

Subsec. (f)(1)(B). Pub. L. 101-508, § 11501(a)(2), substituted “2003” for “2001”.

1988—Subsec. (f)(1)(A)(i), (ii). Pub. L. 100-647 substituted “1991” for “1990”.

1986—Subsec. (b)(5). Pub. L. 99-514, § 701(c)(3), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “The credit allowed by subsection (a) for a tax-

able year shall not exceed the taxpayer’s tax liability for the taxable year (as defined in section 26(b)), reduced by the sum of the credits allowable under subpart A and sections 27 and 28.”

Subsec. (d)(8). Pub. L. 99-514, § 1879(c)(1), inserted provision directing that a corporation which is a member of an affiliated group of corporations filing a consolidated return shall be treated as selling qualified fuels to an unrelated person if such fuels are sold to such person by another member of such group.

1984—Pub. L. 98-369, § 471(c), renumbered section 44D of this title as this section.

Subsec. (b)(1)(A). Pub. L. 98-369, § 722(d)(1), substituted “in which the sale occurs” for “in which the taxable year begins”.

Subsec. (b)(2). Pub. L. 98-369, § 722(d)(2), substituted “in which the sale occurs” for “in which a taxable year begins”.

Subsec. (b)(5). Pub. L. 98-369, § 612(e)(1), substituted “section 26(b)” for “section 25(b)”.

Pub. L. 98-369, § 474(h), amended par. (5) generally, substituting “shall not exceed the taxpayer’s tax liability for the taxable year (as defined in section 25(b)), reduced by the sum of the credits allowable under subpart A and sections 27 and 28” for “shall not exceed the tax imposed by this chapter for such taxable year, reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than the credits allowable by sections 31, 39, and 43. For purposes of the preceding sentence, the term ‘tax imposed by this chapter’ shall not include any tax treated as not imposed by this chapter under the last sentence of section 53(a)”.

1983—Subsec. (f)(1)(B), (2)(A)(i). Pub. L. 97-448 substituted “December 31, 1979” for “December 3, 1979”.

1982—Subsec. (d)(9). Pub. L. 97-354 substituted “Pass-thru in the case of estates and trusts” for “Pass-through in the case of subchapter S corporations, etc.” in par. heading, and substituted provisions relating to the applicability of rules similar to rules of subsec. (d) of section 52 for provisions relating to the applicability of rules similar to rules of subsecs. (d) and (e) of section 52.

1981—Subsec. (e). Pub. L. 97-34 substituted provisions respecting application with the Natural Gas Policy Act of 1978 for prior provision reading “If the taxpayer makes an election under section 107(d) of the Natural Gas Policy Act of 1978 to have subsections (a) and (b) of section 107 of that Act, and subtitle B of title I of that Act, apply with respect to gas described in subsection (c)(1)(B)(i) produced from any well on a property, then the credit allowable by subsection (a) shall not be allowed with respect to any gas produced on that property.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective as if included in the provisions of the Energy Improvement and Extension Act of 2008, Pub. L. 110-343, div. B, to which such amendment relates, see section 210(h) of Pub. L. 113-295, set out as a note under section 45 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-343 applicable to fuel produced and sold after Sept. 30, 2008, see section 108(e) of Pub. L. 110-343, set out as a note under section 45 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. A, title II, § 211(c), Dec. 20, 2006, 120 Stat. 2948, provided that: “The amendments made by this section [amending this section] shall take effect as if included in section 1321 of the Energy Policy Act of 2005 [Pub. L. 109-58].”

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by section 402(g) of 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 an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

Pub. L. 109-58, title XIII, §1321(b), Aug. 8, 2005, 119 Stat. 1011, provided that: "The amendment made by this section [amending this section] shall apply to fuel produced and sold after December 31, 2005, in taxable years ending after such date."

Pub. L. 109-58, title XIII, §1322(c), Aug. 8, 2005, 119 Stat. 1012, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 30, 38, 43, 45, 45I, 53, 55, 613A, and 772 of this title and renumbering section 29 of this title as this section] shall apply to credits determined under the Internal Revenue Code of 1986 for taxable years ending after December 31, 2005.

"(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 8, 2005]."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-188, title I, §1205(e), Aug. 20, 1996, 110 Stat. 1776, provided that: "The amendments made by this section [amending this section and sections 30, 38, 39, 45C, 53, 55, and 280C of this title] shall apply to amounts paid or incurred in taxable years ending after June 30, 1996."

Pub. L. 104-188, title I, §1207(b), Aug. 20, 1996, 110 Stat. 1776, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 20, 1996]."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title XI, §11501(b)(2), Nov. 5, 1990, 104 Stat. 1388-479, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to gas produced after December 31, 1990."

Pub. L. 101-508, title XI, §11501(c)(2), Nov. 5, 1990, 104 Stat. 1388-480, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1990."

Pub. L. 101-508, title XI, §11813(c), Nov. 5, 1990, 104 Stat. 1388-555, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 50 of this title and amending this section and sections 38, 42, 46 to 49, 52, 55, 108, 145, 147, 168, 170, 179, 196, 280F, 312, 465, 469, 861, 865, 1016, 1033, 1245, 1274A, 1371, 1388 and 1503 of this title] shall apply to property placed in service after December 31, 1990.

"(2) EXCEPTIONS.—The amendments made by this section shall not apply to—

"(A) any transition property (as defined in section 49(e) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act [Nov. 5, 1990]),

"(B) any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of such Code (as so in effect), and

"(C) any property described in section 46(b)(2)(C) of such Code (as so in effect)."

Pub. L. 101-508, title XI, §11821(a), Nov. 5, 1990, 104 Stat. 1388-558, provided that: "Except as otherwise provided in this part, the amendments made by this part [part I (§§11801-11821) of subtitle H of title XI of Pub. L. 101-508, see Tables for classification] shall take effect on the date of the enactment of this Act [Nov. 5, 1990]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 701(c)(3) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99-514, set out as an Effective Date note under section 55 of this title.

Pub. L. 99-514, title XVIII, §1879(c)(2), Oct. 22, 1986, 100 Stat. 2906, provided that: "The amendment made by

paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 231 of Public Law 96-223 [see Effective Date note below]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(h) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 612(e)(1) of Pub. L. 98-369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98-369, set out as an Effective Date note under section 25 of this title.

Pub. L. 98-369, title VII, §722(d)(3), July 18, 1984, 98 Stat. 974, provided that: "The amendments made by this subsection [amending this section] shall apply to taxable years ending after December 31, 1979."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. 96-223 to which such amendment relates, see section 203(a) of Pub. L. 97-448, set out as a note under section 6652 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97-354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-34, title VI, §611(b), Aug. 13, 1981, 95 Stat. 339, provided that: "The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 1979."

EFFECTIVE DATE

Pub. L. 96-223, title II, §231(c), Apr. 2, 1980, 94 Stat. 272, provided that: "The amendments made by this section [enacting this section and amending section 6096 of this title] shall apply to taxable years ending after December 31, 1979."

SAVINGS PROVISION

Pub. L. 101-508, title XI, §11821(b), Nov. 5, 1990, 104 Stat. 1388-558, provided that: "If—

"(1) any provision amended or repealed by this part [part I (§§11801-11821) of subtitle H of title XI of Pub. L. 101-508, see Tables for classification] applied to—

"(A) any transaction occurring before the date of the enactment of this Act [Nov. 5, 1990],

"(B) any property acquired before such date of enactment, or

"(C) any item of income, loss, deduction, or credit taken into account before such date of enactment, and

"(2) the treatment of such transaction, property, or item under such provision would (without regard to the amendments made by this part) affect liability for tax for periods ending after such date of enactment,

nothing in the amendments made by this part shall be construed to affect the treatment of such transaction, property, or item for purposes of determining liability for tax for periods ending after such date of enactment."

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(c)(3) of Pub. L. 99-514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I

of Pub. L. 100-647 be treated as if it had been included in the provision of Pub. L. 99-514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100-647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

INFLATION ADJUSTED ITEMS AND REFERENCE PRICE FOR
CERTAIN YEARS

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

2020—Internal Revenue Notice 2021-29.
2019—Internal Revenue Notice 2020-28.
2018—Internal Revenue Notice 2019-28.
2017—Internal Revenue Notice 2018-32.
2016—Internal Revenue Notice 2017-24.
2015—Internal Revenue Notice 2016-43.
2014—Internal Revenue Notice 2015-45.
2013—Internal Revenue Notice 2014-25.
2012—Internal Revenue Notice 2013-25.
2011—Internal Revenue Notice 2012-30.
2010—Internal Revenue Notice 2011-30.
2009—Internal Revenue Notice 2010-31.
2008—Internal Revenue Notice 2009-32.
2007—Internal Revenue Notice 2008-44.
2006—Internal Revenue Notice 2007-38.

§ 45L. New energy efficient home credit

(a) Allowance of credit

(1) In general

For purposes of section 38, in the case of an eligible contractor, the new energy efficient home credit for the taxable year is the applicable amount for each qualified new energy efficient home which is—

(A) constructed by the eligible contractor, and

(B) acquired by a person from such eligible contractor for use as a residence during the taxable year.

(2) Applicable amount

For purposes of paragraph (1), the applicable amount is an amount equal to—

(A) in the case of a dwelling unit described in paragraph (1) or (2) of subsection (c), \$2,000, and

(B) in the case of a dwelling unit described in paragraph (3) of subsection (c), \$1,000.

(b) Definitions

For purposes of this section—

(1) Eligible contractor

The term “eligible contractor” means—

(A) the person who constructed the qualified new energy efficient home, or

(B) in the case of a qualified new energy efficient home which is a manufactured home, the manufactured home producer of such home.

(2) Qualified new energy efficient home

The term “qualified new energy efficient home” means a dwelling unit—

(A) located in the United States,

(B) the construction of which is substantially completed after the date of the enactment of this section, and

(C) which meets the energy saving requirements of subsection (c).

(3) Construction

The term “construction” includes substantial reconstruction and rehabilitation.

(4) Acquire

The term “acquire” includes purchase.

(c) Energy saving requirements

A dwelling unit meets the energy saving requirements of this subsection if such unit is—

(1) certified—

(A) to have a level of annual heating and cooling energy consumption which is at least 50 percent below the annual level of heating and cooling energy consumption of a comparable dwelling unit—

(i) which is constructed in accordance with the standards of chapter 4 of the 2006 International Energy Conservation Code, as such Code (including supplements) is in effect on January 1, 2006, and

(ii) for which the heating and cooling equipment efficiencies correspond to the minimum allowed under the regulations established by the Department of Energy pursuant to the National Appliance Energy Conservation Act of 1987 and in effect at the time of completion of construction, and

(B) to have building envelope component improvements account for at least 1/3 of such 50 percent.

(2) a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (part 3280 of title 24, Code of Federal Regulations) and which meets the requirements of paragraph (1), or

(3) a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (part 3280 of title 24, Code of Federal Regulations) and which—

(A) meets the requirements of paragraph (1) applied by substituting “30 percent” for “50 percent” both places it appears therein and by substituting “1/3” for “1/2” in subparagraph (B) thereof, or

(B) meets the requirements established by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program.

(d) Certification

(1) Method of certification

A certification described in subsection (c) shall be made in accordance with guidance prescribed by the Secretary, after consultation with the Secretary of Energy. Such guidance shall specify procedures and methods for calculating energy and cost savings.

(2) Form

Any certification described in subsection (c) shall be made in writing in a manner which specifies in readily verifiable fashion the en-