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Internal Revenue Code Section 45(b)(11)(B)

Electricity produced from certain renewable resources, etc.

(a) General rule.

For purposes of section 38 , the renewable electricity production credit for any taxable year is an amount equal to the product of-

(1) 0.3 cents, multiplied by

(2) the kilowatt hours of electricity-

(A) produced by the taxpayer-

(i) from qualified energy resources, and

(ii) at a qualified facility during the 10-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) Limitations and adjustments.

(1) Phaseout of credit.

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-

(A) the amount by which the reference price for the calendar year in which the sale occurs exceeds 8 cents, bears to

(B) 3 cents.

(2) Credit and phaseout adjustment based on inflation.

The 0.3 cent amount in subsection (a) , the 8 cent amount in paragraph (1) , the \$4.375 amount in subsection (e)(8)(A) , the \$2 amount in subsection (e)(8)(D)(ii)(I) , and in subsection (e)(8)(B)(i) the reference price of fuel used as a feedstock (within the meaning of subsection (c)(7)(A)) in 2002 shall each be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If the 0.3 cent amount as increased under the preceding sentence is not a multiple of 0.05 cent, such amount shall be rounded to the nearest multiple of 0.05 cent. In any other case, if an amount as increased under this paragraph is not a multiple of 0.1 cent, such amount shall be rounded to the nearest multiple of 0.1 cent.

(3) Credit reduced for tax-exempt bonds.

The amount of the credit determined under subsection (a) with respect to any facility 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 the lesser of 15 percent or a fraction-

(A) the numerator of which is the sum, for the taxable year and all prior taxable years, of proceeds of an issue of any obligations the interest on which is exempt from tax under section 103 and which is used to provide financing for the qualified facility, and

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

The amounts under the preceding sentence for any taxable year shall be determined as of the close of the taxable year.

(4) Credit rate and period for electricity produced and sold from certain facilities.

Note: Section 45(b)(4)(A), below, applied to facilities placed in service before January 1, 2023.

(A) Credit rate. In the case of electricity produced and sold in any calendar year after 2003 at any qualified facility described in paragraph (3) , (5) , (6) , (7) , (9) , or (11) of subsection (d) , the amount in effect under subsection (a)(1) for such calendar year (determined before the application of the last two sentences of paragraph (2) of this subsection) shall be reduced by one-half.

Note: Section 45(b)(4)(A), below, applies to facilities placed in service after December 31, 2022.

(A) Credit rate. In the case of electricity produced and sold in any calendar year after 2003 at any qualified facility described in paragraph (3) , (5) , (6) , or (7) of subsection (d) , the amount in effect under subsection (a)(1) for such calendar year (determined before the application of the last two sentences of paragraph (2) of this subsection) shall be reduced by one-half.

(B) Credit period.

(i) In general. Except as provided in clause (ii) or clause (iii) , in the case of any facility described in paragraph (3) , (4) , (5) , (6) , or (7) of subsection (d) , the 5-year period beginning on the date the facility was originally placed in service shall be substituted for the 10-year period in subsection (a)(2)(A)(ii) .

(ii) Certain open-loop biomass facilities. In the case of any facility described in subsection (d)(3)(A)(ii) placed in service before the date of the enactment of this paragraph , the 5-year period beginning on January 1, 2005, shall be substituted for the 10-year period in subsection (a)(2)(A)(ii) .

(iii) Termination. Clause (i) shall not apply to any facility placed in service after the date of the enactment of this clause .

(5) Phaseout of credit for wind facilities.

In the case of any facility using wind to produce electricity which is placed in service before January 1, 2022, the amount of the credit determined under subsection (a)

(determined after the application of paragraphs (1) , (2) , and (3) and without regard to this paragraph) shall be reduced by-

(A) in the case of any facility the construction of which begins after December 31, 2016, and before January 1, 2018, 20 percent,

(B) in the case of any facility the construction of which begins after December 31, 2017, and before January 1, 2019, 40 percent,

(C) in the case of any facility the construction of which begins after December 31, 2018, and before January 1, 2020, 60 percent, and

(D) in the case of any facility the construction of which begins after December 31, 2019, and before January 1, 2022, 40 percent.

(6) Increased credit amount for qualified facilities.

(A) In general. In the case of any qualified facility which satisfies the requirements of subparagraph (B) , the amount of the credit determined under subsection (a) (determined after the application of paragraphs (1) through (5) and without regard to this paragraph) shall be equal to such amount multiplied by 5.

(B) Qualified facility requirements. A qualified facility meets the requirements of this subparagraph if it is one of the following:

(i) A facility with a maximum net output of less than 1 megawatt (as measured in alternating current).

(ii) A facility the construction of which begins prior to the date that is 60 days after the Secretary publishes guidance with respect to the requirements of paragraphs (7)(A) and (8) .

(iii) A facility which satisfies the requirements of paragraphs (7)(A) and (8) .

(7) Prevailing wage requirements.

(A) In general. The requirements described in this subparagraph with respect to any qualified facility are that the taxpayer shall ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in-

(i) the construction of such facility, and

(ii) with respect to any taxable year, for any portion of such taxable year which is within the period described in subsection (a)(2)(A)(ii) , the alteration or repair of such facility,

shall be paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such facility is located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code. For purposes of determining an increased credit amount under paragraph (6)(A) for a taxable year, the requirement under clause (ii) is applied to such taxable year in which the alteration or repair of the qualified facility occurs.

(B) Correction and penalty related to failure to satisfy wage requirements.

(i) In general. In the case of any taxpayer which fails to satisfy the requirement under subparagraph (A) with respect to the construction of any qualified facility or with respect to the alteration or repair of a facility in any year during the period described in subparagraph (A)(ii) , such taxpayer shall be deemed to have satisfied such requirement under such subparagraph with respect to such facility for any year if, with respect to any laborer or mechanic who was paid wages at a rate below the rate described in such subparagraph for any period during such year, such taxpayer-

(I) makes payment to such laborer or mechanic in an amount equal to the sum of-

(aa) an amount equal to the difference between-

(AA) the amount of wages paid to such laborer or mechanic during such period, and

(BB) the amount of wages required to be paid to such laborer or mechanic pursuant to such subparagraph during such period, plus

(bb) interest on the amount determined under item (aa) at the underpayment rate established under section 6621 (determined by substituting "6 percentage points" for "3 percentage points" in subsection (a)(2) of such section) for the period described in such item, and

(II) makes payment to the Secretary of a penalty in an amount equal to the product of-

(aa) \$5,000, multiplied by

(bb) the total number of laborers and mechanics who were paid wages at a rate below the rate described in subparagraph (A) for any period during such year.

(ii) Deficiency procedures not to apply. Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply with respect to the assessment or collection of any penalty imposed by this paragraph.

(iii) Intentional disregard. If the Secretary determines that any failure described in clause (i) is due to intentional disregard of the requirements under subparagraph (A) , such clause shall be applied-

(I) in subclause (I) , by substituting "three times the sum" for "the sum", and

(II) in subclause (II) , by substituting "\$10,000" for "5,000" in item (aa) thereof.

(iv) Limitation on period for payment. Pursuant to rules issued by the Secretary, in the case of a final determination by the Secretary with respect to any failure by the taxpayer to satisfy the requirement under subparagraph (A) , subparagraph (B)(i) shall not apply unless the payments described in subclauses (I) and (II) of such subparagraph are made by the taxpayer on or before the date which is 180 days after the date of such determination.

(8) Apprenticeship requirements.

The requirements described in this paragraph with respect to the construction of any qualified facility are as follows:

(A) Labor hours.

(i) Percentage of total labor hours. Taxpayers shall ensure that, with respect to the construction of any qualified facility, not less than the applicable percentage of the total labor hours of the construction, alteration, or repair work (including such work performed by any contractor or subcontractor) with respect to such facility shall, subject to subparagraph (B) , be performed by qualified apprentices.

(ii) Applicable percentage. For purposes of clause (i) , the applicable percentage shall be-

(I) in the case of a qualified facility the construction of which begins before January 1, 2023, 10 percent,

(II) in the case of a qualified facility the construction of which begins after December 31, 2022, and before January 1, 2024, 12.5 percent, and

(III) in the case of a qualified facility the construction of which begins after December 31, 2023, 15 percent.

(B) Apprentice to journeyworker ratio. The requirement under subparagraph (A)(i) shall be subject to any applicable requirements for apprentice-to-journeyworker ratios of the Department of Labor or the applicable State apprenticeship agency.

(C) Participation. Each taxpayer, contractor, or subcontractor who employs 4 or more individuals to perform construction, alteration, or repair work with respect to the construction of a qualified facility shall employ 1 or more qualified apprentices to perform such work.

(D) Exception.

(i) In general. A taxpayer shall not be treated as failing to satisfy the requirements of this paragraph if such taxpayer-

(I) satisfies the requirements described in clause (ii), or

(II) subject to clause (iii), in the case of any failure by the taxpayer to satisfy the requirement under subparagraphs (A) and (C) with

respect to the construction, alteration, or repair work on any qualified facility to which subclause (I) does not apply, makes payment to the Secretary of a penalty in an amount equal to the product of-

(aa) \$50, multiplied by

(bb) the total labor hours for which the requirement described in such subparagraph was not satisfied with respect to the construction, alteration, or repair work on such qualified facility.

(ii) Good faith effort. For purposes of clause (i), a taxpayer shall be deemed to have satisfied the requirements under this paragraph with respect to a qualified facility if such taxpayer has requested qualified apprentices from a registered apprenticeship program, as defined in section 3131(e)(3)(B) , and-

(I) such request has been denied, provided that such denial is not the result of a refusal by the taxpayer or any contractors or subcontractors engaged in the performance of construction, alteration, or repair work with respect to such qualified facility to comply with the established standards and requirements of the registered apprenticeship program, or

(II) the registered apprenticeship program fails to respond to such request within 5 business days after the date on which such registered apprenticeship program received such request.

(iii) Intentional disregard. If the Secretary determines that any failure described in subclause (i)(II) is due to intentional disregard of the requirements under subparagraphs (A) and (C) , subclause (i)(II) shall be applied by substituting "\$500" for "\$50" in item (aa) thereof.

(E) Definitions. For purposes of this paragraph-

(i) Labor hours. The term "labor hours"-

(I) means the total number of hours devoted to the performance of construction, alteration, or repair work by any individual employed by the taxpayer or by any contractor or subcontractor, and

(II) excludes any hours worked by-

(aa) foremen,

(bb) superintendents,

(cc) owners, or

(dd) persons employed in a bona fide executive, administrative, or professional capacity (within the meaning of those terms in part 541 of title 29, Code of Federal Regulations).

(ii) Qualified apprentice. The term "qualified apprentice" means an individual who is employed by the taxpayer or by any contractor or subcontractor and who is participating in a registered apprenticeship program, as defined in section 3131(e)(3)(B) .

Note: Section 45(b)(9), below, applies to facilities placed in service before January 1, 2023.

(9) Regulations and guidance.

The Secretary shall issue such regulations or other guidance as the Secretary determines necessary to carry out the purposes of this subsection, including regulations or other guidance which provides for requirements for recordkeeping or information reporting for purposes of administering the requirements of this subsection.

Note: Section 45(b)(9)-(12), below, applies to facilities placed in service after December 31, 2022.

(9) Domestic content bonus credit amount.

(A) In general. In the case of any qualified facility which satisfies the requirement under subparagraph (B)(i), the amount of the credit determined under subsection (a) (determined after the application of paragraphs (1) through (8)) shall be increased by an amount equal to 10 percent of the amount so determined.

(B) Requirement.

(i) In general. The requirement described in this clause is satisfied with respect to any qualified facility if the taxpayer certifies to the Secretary (at such time, and in such form and manner, as the Secretary may prescribe) that any steel, iron, or manufactured product which is a component of such facility (upon completion of construction) was produced in the United States (as determined under section 661 of title 49, Code of Federal Regulations).

(ii) Steel and iron. In the case of steel or iron, clause (i) shall be applied in a manner consistent with section 661.5 of title 49, Code of Federal Regulations.

(iii) Manufactured product. For purposes of clause (i), the manufactured products which are components of a qualified facility upon completion of construction shall be deemed to have been produced in the United States if not less than the adjusted percentage (as determined under subparagraph (C)) of the total costs of all such manufactured products of such facility are attributable to manufactured products (including components) which are mined, produced, or manufactured in the United States.

(C) Adjusted percentage.

(i) In general. Subject to subclause (ii), for purposes of subparagraph (B)(iii), the adjusted percentage shall be 40 percent.

(ii) Offshore wind facility. For purposes of subparagraph (B)(iii), in the case of a qualified facility which is an offshore wind facility, the adjusted percentage shall be 20 percent.

(10) Phaseout for elective payment.

(A) In general. In the case of a taxpayer making an election under section 6417 with respect to a credit under this section, the amount of such credit shall be replaced with-

(i) the value of such credit (determined without regard to this paragraph), multiplied by

(ii) the applicable percentage.

(B) 100 Percent applicable percentage for certain qualified facilities. In the case of any qualified facility-

(i) which satisfies the requirements under paragraph (9)(B), or

(ii) with a maximum net output of less than 1 megawatt (as measured in alternating current), the applicable percentage shall be 100 percent.

(C) Phased domestic content requirement. Subject to subparagraph (D), in the case of any qualified facility which is not described in subparagraph (B), the applicable percentage shall be-

(i) if construction of such facility began before January 1, 2024, 100 percent, and

(ii) if construction of such facility began in calendar year 2024, 90 percent.

(D) Exception.

(i) In general. For purposes of this paragraph, the Secretary shall provide exceptions to the requirements under this paragraph if-

(I) the inclusion of steel, iron, or manufactured products which are produced in the United States increases the overall costs of construction of qualified facilities by more than 25 percent, or

(II) relevant steel, iron, or manufactured products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality.

(ii) Applicable percentage. In any case in which the Secretary provides an exception pursuant to clause (i), the applicable percentage shall be 100 percent.

(11) Special rule for qualified facility located in energy community.

(A) In general. In the case of a qualified facility which is located in an energy community, the credit determined under subsection (a) (determined after the application of paragraphs (1) through (10), without the application of paragraph (9)) shall be increased by an amount equal to 10 percent of the amount so determined.



(B) Energy community. For purposes of this paragraph, the term "energy community" means-

(i) a brownfield site (as defined in subparagraphs (A), (B), and (D)(ii)(III) of section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(39))),

(ii) a metropolitan statistical area or non-metropolitan statistical area which-

(I) has (or, at any time during the period beginning after December 31, 2009, had) 0.17 percent or greater direct employment or 25 percent or greater local tax revenues related to the extraction, processing, transport, or storage of coal, oil, or natural gas (as determined by the Secretary), and

(II) has an unemployment rate at or above the national average unemployment rate for the previous year (as determined by the Secretary), or

(iii) a census tract-

(I) in which-

(aa) after December 31, 1999, a coal mine has closed, or

(bb) after December 31, 2009, a coal-fired electric generating unit has been retired, or

(II) which is directly adjoining to any census tract described in subclause (I).

(12) Regulations and guidance.

The Secretary shall issue such regulations or other guidance as the Secretary determines necessary to carry out the purposes of this subsection, including regulations or other guidance which provides for requirements for recordkeeping or information reporting for purposes of administering the requirements of this subsection.

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