

## Internal Revenue Code Section 48

### Energy credit.

(a) Energy credit.

(1) In general. For purposes of section 46, except as provided in paragraphs (1)(B), (2)(B), (3)(B), and (4)(B) of subsection (c), the energy credit for any taxable year is the energy percentage of the basis of each energy property placed in service during such taxable year.

(2) Energy percentage.

(A) In general. The energy percentage is—

(i) 30 percent in the case of—

(I) qualified fuel cell property,

(II) energy property described in paragraph (3)(A)(i) but only with respect to periods ending before January 1, 2017,

(III) energy property described in paragraph (3)(A)(ii), and

(IV) qualified small wind energy property, and

(ii) in the case of any energy property to which clause (i) does not apply, 10 percent.

(B) Coordination with rehabilitation credit. The energy percentage shall not apply to that portion of the basis of any property which is attributable to qualified rehabilitation expenditures.

(3) Energy property. For purposes of this subpart, the term "energy property" means any property—

(A) which is—

(i) equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, excepting property used to generate energy for the purposes of heating a swimming pool,

- (ii) equipment which uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight but only with respect to periods ending before January 1, 2017,
  - (iii) equipment used to produce, distribute, or use energy derived from a geothermal deposit (within the meaning of section 613(e)(2)), but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage,
  - (iv) qualified fuel cell property or qualified microturbine property,
  - (v) combined heat and power system property,
  - (vi) qualified small wind energy property, or
  - (vii) equipment which uses the ground or ground water as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure, but only with respect to periods ending before January 1, 2017,
- (B).
- (i) the construction, reconstruction, or erection of which is completed by the taxpayer, or
  - (ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer,
- (C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable, and
- (D) which meets the performance and quality standards (if any) which—
- (i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy), and
  - (ii) are in effect at the time of the acquisition of the property.

Such term shall not include any property which is part of a facility the production from which is allowed as a credit under section 45 for the taxable year or any prior taxable year.

- (4) Special rule for property financed by subsidized energy financing or industrial development bonds.

- (A) Reduction of basis. For purposes of applying the energy percentage to any property, if such property is financed in whole or in part by—
- (i) subsidized energy financing, or

- (ii) the proceeds of a private activity bond (within the meaning of section 141) the interest on which is exempt from tax under section 103, the amount taken into account as the basis of such property shall not exceed the amount which (but for this subparagraph) would be so taken into account multiplied by the fraction determined under subparagraph (B).
  - (B) Determination of fraction. For purposes of subparagraph (A), the fraction determined under this subparagraph is 1 reduced by a fraction—
    - (i) the numerator of which is that portion of the basis of the property which is allocable to such financing or proceeds, and
    - (ii) the denominator of which is the basis of the property.
  - (C) Subsidized energy financing. For purposes of subparagraph (A), the term 'subsidized energy financing' means financing provided under a Federal, State, or local program a principal purpose of which is to provide subsidized financing for projects designed to conserve or produce energy.
  - (D) Termination. This paragraph shall not apply to periods after December 31, 2008, under rules similar to the rules of section 48(m) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).
- (5) Election to treat qualified facilities as energy property.
- (A) In general. In the case of any qualified property which is part of a qualified investment credit facility—
    - (i) such property shall be treated as energy property for purposes of this section, and
    - (ii) the energy percentage with respect to such property shall be 30 percent.
  - (B) Denial of production credit. No credit shall be allowed under section 45 for any taxable year with respect to any qualified investment credit facility.
  - (C) Qualified investment credit facility. For purposes of this paragraph, the term "qualified investment credit facility" means any of the following facilities if no credit has been allowed under section 45 with respect to such facility and the taxpayer makes an irrevocable election to have this paragraph apply to such facility:
    - (i) Wind facilities. Any qualified facility (within the meaning of section 45) described in paragraph (1) of section 45(d) if such facility is placed in service in 2009, 2010, 2011, or 2012.
    - (ii) Other facilities. Any qualified facility (within the meaning of section 45) described in paragraph (2), (3), (4), (6), (7), (9), or (11) of section 45(d) if such facility is placed in service in 2009, 2010, 2011, 2012, or 2013.

(D) Qualified property. For purposes of this paragraph, the term "qualified property" means property—

(i) which is—

(I) tangible personal property, or

(II) other tangible property (not including a building or its structural components), but only if such property is used as an integral part of the qualified investment credit facility, and

(ii) with respect to which depreciation (or amortization in lieu of depreciation) is allowable.

(b) Certain progress expenditure rules made applicable. Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of subsection (a).

(c) Definitions. For purposes of this section—

(1) Qualified fuel cell property.

(A) In general. The term "qualified fuel cell property" means a fuel cell power plant which—

(i) has a nameplate capacity of at least 0.5 kilowatt of electricity using an electrochemical process, and

(ii) has an electricity-only generation efficiency greater than 30 percent.

(B) Limitation. In the case of qualified fuel cell property placed in service during the taxable year, the credit otherwise determined under subsection (a) for such year with respect to such property shall not exceed an amount equal to \$1500 for each 0.5 kilowatt of capacity of such property.

(C) Fuel cell power plant. The term "fuel cell power plant" means an integrated system comprised of a fuel cell stack assembly and associated balance of plant components which converts a fuel into electricity using electrochemical means.

(D) Termination. The term "qualified fuel cell property" shall not include any property for any period after December 31, 2016.

(E) [Redesignated]

(2) Qualified microturbine property.

(A) In general. The term "qualified microturbine property" means a stationary microturbine power plant which—

- (i) has a nameplate capacity of less than 2,000 kilowatts, and
- (ii) has an electricity-only generation efficiency of not less than 26 percent at International Standard Organization conditions.

(B) Limitation. In the case of qualified microturbine property placed in service during the taxable year, the credit otherwise determined under subsection (a) for such year with respect to such property shall not exceed an amount equal \$200 for each kilowatt of capacity of such property.

(C) Stationary microturbine power plant. The term "stationary microturbine power plant" means an integrated system comprised of a gas turbine engine, a combustor, a recuperator or regenerator, a generator or alternator, and associated balance of plant components which converts a fuel into electricity and thermal energy. Such term also includes all secondary components located between the existing infrastructure for fuel delivery and the existing infrastructure for power distribution, including equipment and controls for meeting relevant power standards, such as voltage, frequency, and power factors.

(D) Termination. The term "qualified microturbine property" shall not include any property for any period after December 31, 2016.

(E) [Redesignated]

(3) Combined heat and power system property.

(A) Combined heat and power system property. The term "combined heat and power system property" means property comprising a system—

- (i) which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications),

- (ii) which produces—

- (I) at least 20 percent of its total useful energy in the form of thermal energy which is not used to produce electrical or mechanical power (or combination thereof), and

- (II) at least 20 percent of its total useful energy in the form of electrical or mechanical power (or combination thereof),

- (iii) the energy efficiency percentage of which exceeds 60 percent, and

- (iv) which is placed in service before January 1, 2017.

(B) Limitation.

- (i) In general. In the case of combined heat and power system property with an electrical capacity in excess of the applicable capacity placed in service during the taxable year, the credit under subsection (a)(1) (determined without regard to this paragraph) for such year shall be equal to the amount which bears the same ratio to such credit as the applicable capacity bears to the capacity of such property.
- (ii) Applicable capacity. For purposes of clause (i), the term "applicable capacity" means 15 megawatts or a mechanical energy capacity of more than 20,000 horsepower or an equivalent combination of electrical and mechanical energy capacities.
- (iii) Maximum capacity. The term "combined heat and power system property" shall not include any property comprising a system if such system has a capacity in excess of 50 megawatts or a mechanical energy capacity in excess of 67,000 horsepower or an equivalent combination of electrical and mechanical energy capacities.

(C) Special rules.

- (i) Energy efficiency percentage. For purposes of this paragraph, the energy efficiency percentage of a system is the fraction—
  - (I) the numerator of which is the total useful electrical, thermal, and mechanical power produced by the system at normal operating rates, and expected to be consumed in its normal application, and
  - (II) the denominator of which is the lower heating value of the fuel sources for the system.
- (ii) Determinations made on btu basis. The energy efficiency percentage and the percentages under subparagraph (A)(ii) shall be determined on a Btu basis.
- (iii) Input and output property not included. The term "combined heat and power system property" does not include property used to transport the energy source to the facility or to distribute energy produced by the facility.

(D) Systems using biomass. If a system is designed to use biomass (within the meaning of paragraphs (2) and (3) of section 45(c) without regard to the last sentence of paragraph (3)(A)) for at least 90 percent of the energy source—

- (i) subparagraph (A)(iii) shall not apply, but
- (ii) the amount of credit determined under subsection (a) with respect to such system shall not exceed the amount which bears the same ratio to such amount of credit (determined without regard to this subparagraph) as the energy efficiency percentage of such system bears to 60 percent.

(4) Qualified small wind energy property.

(A) In general. The term "qualified small wind energy property" means property which uses a qualifying small wind turbine to generate electricity.

(B) Qualifying small wind turbine. The term "qualifying small wind turbine" means a wind turbine which has a nameplate capacity of not more than 100 kilowatts.

(C) Termination. The term "qualified small wind energy property" shall not include any property for any period after December 31, 2016.

(D) [Redesignated]

(d) Coordination with Department of Treasury grants. In the case of any property with respect to which the Secretary makes a grant under section 1603 of the American Recovery and Reinvestment Tax Act of 2009—

(1) Denial of production and investment credits. No credit shall be determined under this section or section 45 with respect to such property for the taxable year in which such grant is made or any subsequent taxable year.

(2) Recapture of credits for progress expenditures made before grant. If a credit was determined under this section with respect to such property for any taxable year ending before such grant is made—

(A) the tax imposed under subtitle A on the taxpayer for the taxable year in which such grant is made shall be increased by so much of such credit as was allowed under section 38,

(B) the general business carryforwards under section 39 shall be adjusted so as to recapture the portion of such credit which was not so allowed, and

(C) the amount of such grant shall be determined without regard to any reduction in the basis of such property by reason of such credit.

(3) Treatment of grants. Any such grant shall—

(A) not be includible in the gross income of the taxpayer, but

(B) shall be taken into account in determining the basis of the property to which such grant relates, except that the basis of such property shall be reduced under section 50(c) in the same manner as a credit allowed under subsection (a).