

title I, §1704(j)(2), Aug. 20, 1996, 110 Stat. 1881; Pub. L. 107-147, title VI, §606(a), Mar. 9, 2002, 116 Stat. 60; Pub. L. 108-311, title III, §319(a), Oct. 4, 2004, 118 Stat. 1182; Pub. L. 109-58, title XIII, §1348, Aug. 8, 2005, 119 Stat. 1056, related to deduction for clean-fuel vehicles and certain refueling property. Repeal was executed to this section, which is in part VI of subchapter B of chapter 1, to reflect the probable intent of Congress, notwithstanding directory language of Pub. L. 113-295, which repealed section 179A in part VI of subchapter A of chapter 1.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as an Effective Date of 2014 Amendment note under section 1 of this title.

§ 179B. Deduction for capital costs incurred in complying with Environmental Protection Agency sulfur regulations

(a) Allowance of deduction

In the case of a small business refiner (as defined in section 45H(c)(1)) which elects the application of this section, there shall be allowed as a deduction an amount equal to 75 percent of qualified costs (as defined in section 45H(c)(2)) which are paid or incurred by the taxpayer during the taxable year and which are properly chargeable to capital account.

(b) Reduced percentage

In the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on December 31, 2002, in excess of 155,000 barrels, the number of percentage points described in subsection (a) shall be reduced (not below zero) by the product of such number (before the application of this subsection) and the ratio of such excess to 50,000 barrels.

(c) Basis reduction

(1) In general

For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

(2) Ordinary income recapture

For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

(d) Coordination with other provisions

Section 280B shall not apply to amounts which are treated as expenses under this section.

(e) Election to allocate deduction to cooperative owner

(1) In general

If—

(A) a small business refiner to which subsection (a) applies is an organization to which part I of subchapter T applies, and

(B) one or more persons directly holding an ownership interest in the refiner are organizations to which part I of subchapter T apply,

the refiner may elect to allocate all or a portion of the deduction allowable under subsection (a) to such persons. Such allocation shall be equal to the person's ratable share of the total amount allocated, determined on the basis of the person's ownership interest in the taxpayer. The taxable income of the refiner shall not be reduced under section 1382 by reason of any amount to which the preceding sentence applies.

(2) Form and effect of election

An election under paragraph (1) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

(3) Written notice to owners

If any portion of the deduction available under subsection (a) is allocated to owners under paragraph (1), the cooperative shall provide any owner receiving an allocation written notice of the amount of the allocation. Such notice shall be provided before the date on which the return described in paragraph (2) is due.

(Added Pub. L. 108-357, title III, §338(a), Oct. 22, 2004, 118 Stat. 1480; amended Pub. L. 109-58, title XIII, §1324(a), Aug. 8, 2005, 119 Stat. 1015; Pub. L. 110-172, §7(a)(3)(A), (C), Dec. 29, 2007, 121 Stat. 2482.)

Editorial Notes

AMENDMENTS

2007—Subsec. (a). Pub. L. 110-172 substituted “qualified costs” for “qualified capital costs” and inserted “and which are properly chargeable to capital account” before period at end.

2005—Subsec. (e). Pub. L. 109-58 added subsec. (e).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 7(e) of Pub. L. 110-172, set out as a note under section 1092 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-58, title XIII, §1324(b), Aug. 8, 2005, 119 Stat. 1015, provided that: “The amendment made by this section [amending this section] shall take effect as if included in the amendment made by section 338(a) of the American Jobs Creation Act of 2004 [Pub. L. 108-357, enacting this section].”

EFFECTIVE DATE

Pub. L. 108-357, title III, §338(c), Oct. 22, 2004, 118 Stat. 1481, provided that: “The amendment made by this section [enacting this section and amending sections 263, 263A, 312, 1016, and 1245 of this title] shall apply to expenses paid or incurred after December 31, 2002, in taxable years ending after such date.”

§ 179C. Election to expense certain refineries

(a) Treatment as expenses

A taxpayer may elect to treat 50 percent of the cost of any qualified refinery property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the qualified refinery property is placed in service.

(b) Election**(1) In general**

An election under this section for any taxable year shall be made on the taxpayer's return of the tax imposed by this chapter for the taxable year. Such election shall be made in such manner as the Secretary may by regulations prescribe.

(2) Election irrevocable

Any election made under this section may not be revoked except with the consent of the Secretary.

(c) Qualified refinery property**(1) In general**

The term "qualified refinery property" means any portion of a qualified refinery—

(A) the original use of which commences with the taxpayer,

(B) which is placed in service by the taxpayer after the date of the enactment of this section and before January 1, 2014,

(C) in the case any portion of a qualified refinery (other than a qualified refinery which is separate from any existing refinery), which meets the requirements of subsection (e),

(D) which meets all applicable environmental laws in effect on the date such portion was placed in service,

(E) no written binding contract for the construction of which was in effect on or before June 14, 2005, and

(F)(i) the construction of which is subject to a written binding construction contract entered into before January 1, 2010,

(ii) which is placed in service before January 1, 2010, or

(iii) in the case of self-constructed property, the construction of which began after June 14, 2005, and before January 1, 2010.

(2) Special rule for sale-leasebacks

For purposes of paragraph (1)(A), if property is—

(A) originally placed in service after the date of the enactment of this section by a person, and

(B) sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the lease-back referred to in subparagraph (B).

(3) Effect of waiver under Clean Air Act

A waiver under the Clean Air Act shall not be taken into account in determining whether the requirements of paragraph (1)(D) are met.

(d) Qualified refinery

For purposes of this section, the term "qualified refinery" means any refinery located in the United States which is designed to serve the primary purpose of processing liquid fuel from crude oil or qualified fuels (as defined in section 45K(c)), or directly from shale or tar sands.

(e) Production capacity

The requirements of this subsection are met if the portion of the qualified refinery—

(1) enables the existing qualified refinery to increase total volume output (determined without regard to asphalt or lube oil) by 5 percent or more on an average daily basis, or

(2) enables the existing qualified refinery to process shale, tar sands, or qualified fuels (as defined in section 45K(c)) at a rate which is equal to or greater than 25 percent of the total throughput of such qualified refinery on an average daily basis.

(f) Ineligible refinery property

No deduction shall be allowed under subsection (a) for any qualified refinery property—

(1) the primary purpose of which is for use as a topping plant, asphalt plant, lube oil facility, crude or product terminal, or blending facility, or

(2) which is built solely to comply with consent decrees or projects mandated by Federal, State, or local governments.

(g) Election to allocate deduction to cooperative owner**(1) In general**

If—

(A) a taxpayer to which subsection (a) applies is an organization to which part I of subchapter T applies, and

(B) one or more persons directly holding an ownership interest in the taxpayer are organizations to which part I of subchapter T apply,

the taxpayer may elect to allocate all or a portion of the deduction allowable under subsection (a) to such persons. Such allocation shall be equal to the person's ratable share of the total amount allocated, determined on the basis of the person's ownership interest in the taxpayer. The taxable income of the taxpayer shall not be reduced under section 1382 by reason of any amount to which the preceding sentence applies.

(2) Form and effect of election

An election under paragraph (1) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

(3) Written notice to owners

If any portion of the deduction available under subsection (a) is allocated to owners under paragraph (1), the cooperative shall provide any owner receiving an allocation written notice of the amount of the allocation. Such notice shall be provided before the date on which the return described in paragraph (2) is due.

(h) Reporting

No deduction shall be allowed under subsection (a) to any taxpayer for any taxable year unless such taxpayer files with the Secretary a report containing such information with respect to the operation of the refineries of the taxpayer as the Secretary shall require.

(Added Pub. L. 109-58, title XIII, §1323(a), Aug. 8, 2005, 119 Stat. 1013; amended Pub. L. 110-343, div. B, title II, §209(a), (b), Oct. 3, 2008, 122 Stat. 3840.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (c)(1)(B), (2)(A), is the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

The Clean Air Act, referred to in subsec. (c)(3), is act July 14, 1955, ch. 360, 69 Stat. 322, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

AMENDMENTS

2008—Subsec. (c)(1)(B). Pub. L. 110–343, §209(a)(1), substituted “January 1, 2014” for “January 1, 2012”.

Subsec. (c)(1)(F). Pub. L. 110–343, §209(a)(2), substituted “January 1, 2010” for “January 1, 2008” wherever appearing.

Subsec. (d). Pub. L. 110–343, §209(b)(1), inserted “, or directly from shale or tar sands” after “(as defined in section 45K(c))”.

Subsec. (e)(2). Pub. L. 110–343, §209(b)(2), inserted “shale, tar sands, or” before “qualified fuels”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title II, §209(c), Oct. 3, 2008, 122 Stat. 3840, provided that: “The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 3, 2008].”

EFFECTIVE DATE

Pub. L. 109–58, title XIII, §1323(c), Aug. 8, 2005, 119 Stat. 1015, provided that: “The amendments made by this section [enacting this section and amending sections 263, 312, and 1245 of this title] shall apply to properties placed in service after the date of the enactment of this Act [Aug. 8, 2005].”

§ 179D. Energy efficient commercial buildings deduction**(a) In general**

There shall be allowed as a deduction an amount equal to the cost of energy efficient commercial building property placed in service during the taxable year.

(b) Maximum amount of deduction**(1) In general**

The deduction under subsection (a) with respect to any building for any taxable year shall not exceed the excess (if any) of—

(A) the product of—

- (i) the applicable dollar value, and
- (ii) the square footage of the building, over

(B) the aggregate amount of the deductions under subsections (a) and (f) with respect to the building for the 3 taxable years immediately preceding such taxable year (or, in the case of any such deduction allowable to a person other than the taxpayer, for any taxable year ending during the 4-taxable-year period ending with such taxable year).

(2) Applicable dollar value

For purposes of paragraph (1)(A)(i), the applicable dollar value shall be an amount equal to \$0.50 increased (but not above \$1.00) by \$0.02 for each percentage point by which the total

annual energy and power costs for the building are certified to be reduced by a percentage greater than 25 percent.

(3) Increased deduction amount for certain property**(A) In general**

In the case of any property which satisfies the requirements of subparagraph (B), paragraph (2) shall be applied by substituting “\$2.50” for “\$0.50”, “.10” for “.02”, and “\$5.00” for “\$1.00”.

(B) Property requirements

In the case of any energy efficient commercial building property, energy efficient building retrofit property, or property installed pursuant to a qualified retrofit plan, such property shall meet the requirements of this subparagraph if—

(i) installation of such property begins prior to the date that is 60 days after the Secretary publishes guidance with respect to the requirements of paragraphs (4)(A) and (5), or

(ii) installation of such property satisfies the requirements of paragraphs (4)(A) and (5).

(4) Prevailing wage requirements**(A) In general**

The requirements described in this subparagraph with respect to any property are that the taxpayer shall ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the installation of any property 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 property 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.

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

Rules similar to the rules of section 45(b)(7)(B) shall apply.

(5) Apprenticeship requirements

Rules similar to the rules of section 45(b)(8) shall apply.

(6) Regulations

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.

(c) Definitions

For purposes of this section—

(1) Energy efficient commercial building property

The term “energy efficient commercial building property” means property—

(A) with respect to which depreciation (or amortization in lieu of depreciation) is allowable,