

any property the basis of which was reduced under subparagraph (A), the basis of such property (immediately before the event resulting in such recapture) shall be increased by an amount equal to such recapture amount. For purposes of the preceding sentence, the term “recapture amount” means any increase in tax (or adjustment in carrybacks or carryovers) determined under subsection (d).

(2) Other deductions and credits

No deduction or credit shall be allowed under any other provision of this chapter with respect to the amount of the credit determined under this section.

(Added Pub. L. 107–16, title II, §205(a), June 7, 2001, 115 Stat. 50; amended Pub. L. 107–147, title IV, §411(d)(1), Mar. 9, 2002, 116 Stat. 46.)

Editorial Notes

AMENDMENTS

2002—Subsec. (d)(4)(B). Pub. L. 107–147 substituted “this chapter or for purposes of section 55” for “subpart A, B, or D of this part”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2001, see section 205(c) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 38 of this title.

§ 45G. Railroad track maintenance credit

(a) General rule

For purposes of section 38, the railroad track maintenance credit determined under this section for the taxable year is an amount equal to 40 percent (50 percent in the case of any taxable year beginning before January 1, 2023) of the qualified railroad track maintenance expenditures paid or incurred by an eligible taxpayer during the taxable year.

(b) Limitation

(1) In general

The credit allowed under subsection (a) for any taxable year shall not exceed the product of—

(A) \$3,500, multiplied by

(B) the sum of—

(i) the number of miles of railroad track owned or leased by the eligible taxpayer as of the close of the taxable year, and

(ii) the number of miles of railroad track assigned for purposes of this subsection to the eligible taxpayer by a Class II or Class III railroad which owns or leases such railroad track as of the close of the taxable year.

(2) Assignments

With respect to any assignment of a mile of railroad track under paragraph (1)(B)(ii)—

(A) such assignment may be made only once per taxable year of the Class II or Class III railroad and shall be treated as made as of the close of such taxable year,

(B) such mile may not be taken into account under this section by such railroad for such taxable year, and

(C) such assignment shall be taken into account for the taxable year of the assignee which includes the date that such assignment is treated as effective.

(c) Eligible taxpayer

For purposes of this section, the term “eligible taxpayer” means—

(1) any Class II or Class III railroad, and

(2) any person who transports property using the rail facilities of a Class II or Class III railroad or who furnishes railroad-related property or services to a Class II or Class III railroad, but only with respect to miles of railroad track assigned to such person by such Class II or Class III railroad for purposes of subsection (b).

(d) Qualified railroad track maintenance expenditures

For purposes of this section, the term “qualified railroad track maintenance expenditures” means gross expenditures (whether or not otherwise chargeable to capital account) for maintaining railroad track (including roadbed, bridges, and related track structures) owned or leased as of January 1, 2015, by a Class II or Class III railroad (determined without regard to any consideration for such expenditures given by the Class II or Class III railroad which made the assignment of such track).

(e) Other definitions and special rules

(1) Class II or Class III railroad

For purposes of this section, the terms “Class II railroad” and “Class III railroad” have the respective meanings given such terms by the Surface Transportation Board.

(2) Controlled groups

Rules similar to the rules of paragraph (1) of section 41(f) shall apply for purposes of this section.

(3) Basis adjustment

For purposes of this subtitle, if a credit is allowed under this section with respect to any railroad track, the basis of such track shall be reduced by the amount of the credit so allowed.

(Added Pub. L. 108–357, title II, §245(a), Oct. 22, 2004, 118 Stat. 1447; amended Pub. L. 109–135, title IV, §403(f), Dec. 21, 2005, 119 Stat. 2623; Pub. L. 109–432, div. A, title IV, §423(a), Dec. 20, 2006, 120 Stat. 2973; Pub. L. 110–343, div. C, title III, §316(a), Oct. 3, 2008, 122 Stat. 3872; Pub. L. 111–312, title VII, §734(a), Dec. 17, 2010, 124 Stat. 3318; Pub. L. 112–240, title III, §306(a), Jan. 2, 2013, 126 Stat. 2329; Pub. L. 113–295, div. A, title I, §116(a), Dec. 19, 2014, 128 Stat. 4014; Pub. L. 114–113, div. Q, title I, §162(a), (b), Dec. 18, 2015, 129 Stat. 3066; Pub. L. 115–123, div. D, title I, §40302(a), Feb. 9, 2018, 132 Stat. 145; Pub. L. 116–94, div. Q, title I, §112(a), Dec. 20, 2019, 133 Stat. 3228; Pub. L. 116–260, div. EE, title I, §105(a), (b), Dec. 27, 2020, 134 Stat. 3041.)

Editorial Notes**AMENDMENTS**

2020—Subsec. (a). Pub. L. 116-260, §105(b), substituted “40 percent (50 percent in the case of any taxable year beginning before January 1, 2023)” for “50 percent”.

Subsec. (f). Pub. L. 116-260, §105(a), struck out subsec. (f). Text read as follows: “This section shall apply to qualified railroad track maintenance expenditures paid or incurred during taxable years beginning after December 31, 2004, and before January 1, 2023.”

2019—Subsec. (f). Pub. L. 116-94 substituted “January 1, 2023” for “January 1, 2018”.

2018—Subsec. (f). Pub. L. 115-123 substituted “January 1, 2018” for “January 1, 2017”.

2015—Subsec. (d). Pub. L. 114-113, §162(b), substituted “January 1, 2015” for “January 1, 2005”.

Subsec. (f). Pub. L. 114-113, §162(a), substituted “January 1, 2017” for “January 1, 2015”.

2014—Subsec. (f). Pub. L. 113-295 substituted “January 1, 2015” for “January 1, 2014”.

2013—Subsec. (f). Pub. L. 112-240 substituted “January 1, 2014” for “January 1, 2012”.

2010—Subsec. (f). Pub. L. 111-312 substituted “January 1, 2012” for “January 1, 2010”.

2008—Subsec. (f). Pub. L. 110-343 substituted “January 1, 2010” for “January 1, 2008”.

2006—Subsec. (d). Pub. L. 109-432 inserted “gross” after “means” and “(determined without regard to any consideration for such expenditures given by the Class II or Class III railroad which made the assignment of such track)” before period at end.

2005—Subsec. (b). Pub. L. 109-135, §403(f)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The credit allowed under subsection (a) for any taxable year shall not exceed the product of—

“(1) \$3,500, and

“(2) the number of miles of railroad track owned or leased by the eligible taxpayer as of the close of the taxable year.

A mile of railroad track may be taken into account by a person other than the owner only if such mile is assigned to such person by the owner for purposes of this subsection. Any mile which is so assigned may not be taken into account by the owner for purposes of this subsection.”

Subsec. (c)(2). Pub. L. 109-135, §403(f)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “any person who transports property using the rail facilities of a person described in paragraph (1) or who furnishes railroad-related property or services to such a person.”

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 2020 AMENDMENT**

Pub. L. 116-260, div. EE, title I, §105(c), Dec. 27, 2020, 134 Stat. 3041, provided that: “The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Dec. 27, 2020].”

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116-94, div. Q, title I, §112(c), Dec. 20, 2019, 133 Stat. 3229, provided that: “The amendment made by this section [amending this section] shall apply to expenditures paid or incurred during taxable years beginning after December 31, 2017.”

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115-123, div. D, title I, §40302(b), Feb. 9, 2018, 132 Stat. 145, provided that:

“(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to expenditures paid or incurred in taxable years beginning after December 31, 2016.

“(2) SAFE HARBOR ASSIGNMENTS.—Assignments, including related expenditures paid or incurred, under

paragraph (2) of section 45G(b) of the Internal Revenue Code of 1986 for taxable years ending after January 1, 2017, and before January 1, 2018, shall be treated as effective as of the close of such taxable year if made pursuant to a written agreement entered into no later than 90 days following the date of the enactment of this Act [Feb. 9, 2018].”

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-113, div. Q, title I, §162(c), Dec. 18, 2015, 129 Stat. 3066, provided that:

“(1) EXTENSION.—The amendment made by subsection (a) [amending this section] shall apply to expenditures paid or incurred in taxable years beginning after December 31, 2014.

“(2) MODIFICATION.—The amendment made by subsection (b) [amending this section] shall apply to expenditures paid or incurred in taxable years beginning after December 31, 2015.”

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-295, div. A, title I, §116(b), Dec. 19, 2014, 128 Stat. 4014, provided that: “The amendment made by this section [amending this section] shall apply to expenditures paid or incurred in taxable years beginning after December 31, 2013.”

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-240, title III, §306(b), Jan. 2, 2013, 126 Stat. 2329, provided that: “The amendment made by this section [amending this section] shall apply to expenditures paid or incurred in taxable years beginning after December 31, 2011.”

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-312, title VII, §734(b), Dec. 17, 2010, 124 Stat. 3318, provided that: “The amendment made by this section [amending this section] shall apply to expenditures paid or incurred in taxable years beginning after December 31, 2009.”

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. C, title III, §316(c)(1), Oct. 3, 2008, 122 Stat. 3872, provided that: “The amendment made by subsection (a) [amending this section] shall apply to expenditures paid or incurred during taxable years beginning after December 31, 2007.”

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. A, title IV, §423(b), Dec. 20, 2006, 120 Stat. 2973, provided that: “The amendment made by this section [amending this section] shall take effect as if included in the amendment made by section 245(a) of the American Jobs Creation Act of 2004 [Pub. L. 108-357].”

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-135 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 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2004, see section 245(e) of Pub. L. 108-357, set out as an Effective Date of 2004 Amendment note under section 38 of this title.

SAFE HARBOR ASSIGNMENTS

Pub. L. 116-94, div. Q, title I, §112(b), Dec. 20, 2019, 133 Stat. 3228, provided that: “Any assignment, including related expenditures paid or incurred, under section 45G(b)(2) of the Internal Revenue Code of 1986 for a taxable year beginning on or after January 1, 2018, and ending before January 1, 2020, shall be treated as effective as of the close of such taxable year if made pursuant to a written agreement entered into no later than

90 days following the date of the enactment of this Act [Dec. 20, 2019].”

§ 45H. Credit for production of low sulfur diesel fuel

(a) In general

For purposes of section 38, the amount of the low sulfur diesel fuel production credit determined under this section with respect to any facility of a small business refiner is an amount equal to 5 cents for each gallon of low sulfur diesel fuel produced during the taxable year by such small business refiner at such facility.

(b) Maximum credit

(1) In general

The aggregate credit determined under subsection (a) for any taxable year with respect to any facility shall not exceed—

(A) 25 percent of the qualified costs incurred by the small business refiner with respect to such facility, reduced by

(B) the aggregate credits determined under this section for all prior taxable years with respect to such facility.

(2) 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 paragraph (1) shall be reduced (not below zero) by the product of such number (before the application of this paragraph) and the ratio of such excess to 50,000 barrels.

(c) Definitions and special rule

For purposes of this section—

(1) Small business refiner

The term “small business refiner” means, with respect to any taxable year, a refiner of crude oil—

(A) with respect to which not more than 1,500 individuals are engaged in the refinery operations of the business on any day during such taxable year, and

(B) the average daily domestic refinery run or average retained production of which for all facilities of the taxpayer for the 1-year period ending on December 31, 2002, did not exceed 205,000 barrels.

(2) Qualified costs

The term “qualified costs” means, with respect to any facility, those costs paid or incurred during the applicable period for compliance with the applicable EPA regulations with respect to such facility, including expenditures for the construction of new process operation units or the dismantling and reconstruction of existing process units to be used in the production of low sulfur diesel fuel, associated adjacent or offsite equipment (including tankage, catalyst, and power supply), engineering, construction period interest, and sitework.

(3) Applicable EPA regulations

The term “applicable EPA regulations” means the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency.

(4) Applicable period

The term “applicable period” means, with respect to any facility, the period beginning on January 1, 2003, and ending on the earlier of the date which is 1 year after the date on which the taxpayer must comply with the applicable EPA regulations with respect to such facility or December 31, 2009.

(5) Low sulfur diesel fuel

The term “low sulfur diesel fuel” means diesel fuel with a sulfur content of 15 parts per million or less.

(d) Special rule for determination of refinery runs

For purposes of this section and section 179B(b), in the calculation of average daily domestic refinery run or retained production, only refineries which on April 1, 2003, were refineries of the refiner or a related person (within the meaning of section 613A(d)(3)), shall be taken into account.

(e) Certification

(1) Required

No credit shall be allowed unless, not later than the date which is 30 months after the first day of the first taxable year in which the low sulfur diesel fuel production credit is determined with respect to a facility, the small business refiner obtains certification from the Secretary, after consultation with the Administrator of the Environmental Protection Agency, that the taxpayer’s qualified costs with respect to such facility will result in compliance with the applicable EPA regulations.

(2) Contents of application

An application for certification shall include relevant information regarding unit capacities and operating characteristics sufficient for the Secretary, after consultation with the Administrator of the Environmental Protection Agency, to determine that such qualified costs are necessary for compliance with the applicable EPA regulations.

(3) Review period

Any application shall be reviewed and notice of certification, if applicable, shall be made within 60 days of receipt of such application. In the event the Secretary does not notify the taxpayer of the results of such certification within such period, the taxpayer may presume the certification to be issued until so notified.

(4) Statute of limitations

With respect to the credit allowed under this section—

(A) the statutory period for the assessment of any deficiency attributable to such credit shall not expire before the end of the 3-year period ending on the date that the review period described in paragraph (3) ends with respect to the taxpayer, and

(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.