

## 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.

**(f) Cooperative organizations****(1) Apportionment of credit****(A) In general**

In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a) for the taxable year may, at the election of the organization, be apportioned among patrons eligible to share in patronage dividends on the basis of the quantity or value of business done with or for such patrons for the taxable year.

**(B) Form and effect of election**

An election under subparagraph (A) 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.

**(2) Treatment of organizations and patrons****(A) Organizations**

The amount of the credit not apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the taxable year of the organization.

**(B) Patrons**

The amount of the credit apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on

which the patron receives notice from the cooperative of the apportionment.

**(3) Special rule**

If the amount of a credit which has been apportioned to any patron under this subsection is decreased for any reason—

(A) such amount shall not increase the tax imposed on such patron, and

(B) the tax imposed by this chapter on such organization shall be increased by such amount.

The increase under subparagraph (B) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

**(g) Election to not take credit**

No credit shall be determined under subsection (a) for the taxable year if the taxpayer elects not to have subsection (a) apply to such taxable year.

(Added Pub. L. 108-357, title III, §339(a), Oct. 22, 2004, 118 Stat. 1481; amended Pub. L. 110-172, §7(a)(1)(A), (2)(A), (3)(A), (B), Dec. 29, 2007, 121 Stat. 2481, 2482; Pub. L. 115-141, div. U, title IV, §401(a)(19), Mar. 23, 2018, 132 Stat. 1185.)

**Editorial Notes**

## AMENDMENTS

2018—Subsec. (d). Pub. L. 115-141 substituted “purposes of this” for “purposes this”.

2007—Subsec. (b)(1)(A). Pub. L. 110-172, §7(a)(3)(A), substituted “qualified costs” for “qualified capital costs”.

Subsec. (c)(2). Pub. L. 110-172, §7(a)(3)(B), struck out “capital” before “costs” in heading.

Pub. L. 110-172, §7(a)(3)(A), substituted “qualified costs” for “qualified capital costs”.

Subsec. (d). Pub. L. 110-172, §7(a)(1)(A), redesignated subsec. (e) as (d) and struck out heading and text of former subsec. (d). Text read as follows: “For purposes of this subtitle, if a credit is determined under this section for any expenditure with respect to any property, the increase in basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so determined.”

Subsec. (e). Pub. L. 110-172, §7(a)(1)(A), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (e)(1), (2). Pub. L. 110-172, §7(a)(3)(A), substituted “qualified costs” for “qualified capital costs”.

Subsec. (f). Pub. L. 110-172, §7(a)(1)(A), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 110-172, §7(a)(2)(A), added subsec. (g). Former subsec. (g) redesignated (f).

**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

Section applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 339(f) of Pub. L. 108-357, set out as an Effective Date of 2004 Amendment note under section 38 of this title.

**§ 45I. Credit for producing oil and gas from marginal wells**

**(a) General rule**

For purposes of section 38, the marginal well production credit for any taxable year is an amount equal to the product of—

- (1) the credit amount, and
- (2) the qualified crude oil production and the qualified natural gas production which is attributable to the taxpayer.

**(b) Credit amount**

For purposes of this section—

**(1) In general**

The credit amount is—

- (A) \$3 per barrel of qualified crude oil production, and
- (B) 50 cents per 1,000 cubic feet of qualified natural gas production.

**(2) Reduction as oil and gas prices increase**

**(A) In general**

The \$3 and 50 cents amounts under paragraph (1) shall each be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as—

- (i) the excess (if any) of the applicable reference price over \$15 (\$1.67 for qualified natural gas production), bears to
- (ii) \$3 (\$0.33 for qualified natural gas production).

The applicable reference price for a taxable year is the reference price of the calendar year preceding the calendar year in which the taxable year begins.

**(B) Inflation adjustment**

In the case of any taxable year beginning in a calendar year after 2005, each of the dollar amounts contained in subparagraph (A) shall be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year (determined under section 43(b)(3)(B) by substituting “2004” for “1990”).

**(C) Reference price**

For purposes of this paragraph, the term “reference price” means, with respect to any calendar year—

- (i) in the case of qualified crude oil production, the reference price determined under section 45K(d)(2)(C), and
- (ii) in the case of qualified natural gas production, the Secretary’s estimate of the annual average wellhead price per 1,000 cubic feet for all domestic natural gas.

**(c) Qualified crude oil and natural gas production**

For purposes of this section—

**(1) In general**

The terms “qualified crude oil production” and “qualified natural gas production” mean domestic crude oil or natural gas which is produced from a qualified marginal well.

**(2) Limitation on amount of production which may qualify**

**(A) In general**

Crude oil or natural gas produced during any taxable year from any well shall not be

treated as qualified crude oil production or qualified natural gas production to the extent production from the well during the taxable year exceeds 1,095 barrels or barrel-of-oil equivalents (as defined in section 45K(d)(5)).

**(B) Proportionate reductions**

**(i) Short taxable years**

In the case of a short taxable year, the limitations under this paragraph shall be proportionately reduced to reflect the ratio which the number of days in such taxable year bears to 365.

**(ii) Wells not in production entire year**

In the case of a well which is not capable of production during each day of a taxable year, the limitations under this paragraph applicable to the well shall be proportionately reduced to reflect the ratio which the number of days of production bears to the total number of days in the taxable year.

**(3) Definitions**

**(A) Qualified marginal well**

The term “qualified marginal well” means a domestic well—

- (i) the production from which during the taxable year is treated as marginal production under section 613A(c)(6), or
- (ii) which, during the taxable year—

- (I) has average daily production of not more than 25 barrel-of-oil equivalents (as so defined), and
- (II) produces water at a rate not less than 95 percent of total well effluent.

**(B) Crude oil, etc.**

The terms “crude oil”, “natural gas”, “domestic”, and “barrel” have the meanings given such terms by section 613A(e).

**(d) Other rules**

**(1) Production attributable to the taxpayer**

In the case of a qualified marginal well in which there is more than one owner of operating interests in the well and the crude oil or natural gas production exceeds the limitation under subsection (c)(2), qualifying crude oil production or qualifying natural gas production attributable to the taxpayer shall be determined on the basis of the ratio which taxpayer’s revenue interest in the production bears to the aggregate of the revenue interests of all operating interest owners in the production.

**(2) Operating interest required**

Any credit under this section may be claimed only on production which is attributable to the holder of an operating interest.

**(3) Production from nonconventional sources excluded**

In the case of production from a qualified marginal well which is eligible for the credit allowed under section 45K for the taxable year, no credit shall be allowable under this section unless the taxpayer elects not to claim the credit under section 45K with respect to the well.