

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.

(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”.

