(Added Pub. L. 117–167, div. A, §107(a), Aug. 9, 2022, 136 Stat. 1393.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (b)(5), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

Section 9901(6) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, referred to in subsec. (c)(1), means section 9901(6) of Pub. L. 116–283, but probably should be a reference to section 9901(8) of the Act, which defines ''foreign entity of concern'' and which is classified to section 4651(8) of Title 15, Commerce and Trade.

The date of the enactment of this section, referred to in subsec. (d)(2)(B), is the date of enactment of Pub. L. 117–167, which was approved Aug. 9. 2022.

PRIOR PROVISIONS

A prior section 48D, added Pub. L. 111–148, title IX, §9023(a), Mar. 23, 2010, 124 Stat. 877, provided for a qualifying therapeutic discovery project credit, prior to repeal by Pub. L. 115–141, div. U, title IV, §401(d)(3)(A), Mar. 23, 2018, 132 Stat. 1209.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section applicable to property placed in service after Dec. 31, 2022, and, for any property the construction of which begins prior to Jan. 1, 2023, only to the extent of the basis thereof attributable to the construction, reconstruction, or erection after Aug. 9, 2022, see section 107(f) of Pub. L. 117–167, set out as an Effective Date of 2022 Amendment note under section 905 of Title 2, The Congress.

§ 48E. Clean electricity investment credit

(a) Investment credit for qualified property

(1) In general

For purposes of section 46, the clean electricity investment credit for any taxable year is an amount equal to the applicable percentage of the qualified investment for such taxable year with respect to—

(A) any qualified facility, and

(B) any energy storage technology.

(2) Applicable percentage

(A) Qualified facilities

Subject to paragraph (3)—

(i) Base rate

In the case of any qualified facility which is not described in subclause (I) or (II) of clause (ii) and does not satisfy the requirements described in subclause (III) of such clause, the applicable percentage shall be 6 percent.

(ii) Alternative rate

In the case of any qualified facility—

(I) with a maximum net output of less than 1 megawatt (as measured in alternating current),

(II) the construction of which begins prior to the date that is 60 days after the Secretary publishes guidance with respect to the requirements of paragraphs (3) and (4) of subsection (d), or

(III) which—

(aa) satisfies the requirements of subsection (d)(3), and

(bb) with respect to the construction of such facility, satisfies the requirements of subsection (d)(4),

the applicable percentage shall be 30 percent.

(B) Energy storage technology

Subject to paragraph (3)—

(i) Base rate

In the case of any energy storage technology which is not described in subclause (I) or (II) of clause (ii) and does not satisfy the requirements described in subclause (III) of such clause, the applicable percentage shall be 6 percent.

(ii) Alternative rate

In the case of any energy storage technology—

(I) with a capacity of less than 1 megawatt,

(II) the construction of which begins prior to the date that is 60 days after the Secretary publishes guidance with respect to the requirements of paragraphs (3) and (4) of subsection (d), or

(III) which—

(aa) satisfies the requirements of subsection (d)(3), and

(bb) with respect to the construction of such property, satisfies the requirements of subsection (d)(4),

the applicable percentage shall be 30 percent.

(3) Increase in credit rate in certain cases

(A) Energy communities

(i) In general

In the case of any qualified investment with respect to a qualified facility or with respect to energy storage technology which is placed in service within an energy community (as defined in section 45(b)(11)(B)), for purposes of applying paragraph (2) with respect to such property or investment, the applicable percentage shall be increased by the applicable credit rate increase.

(ii) Applicable credit rate increase

For purposes of clause (i), the applicable credit rate increase shall be an amount equal to—

(I) in the case of any qualified investment with respect to a qualified facility described in paragraph (2)(A)(i) or with respect to energy storage technology described in paragraph (2)(B)(i), 2 percentage points, and

(II) in the case of any qualified investment with respect to a qualified facility described in paragraph (2)(A)(ii) or with respect to energy storage technology described in paragraph (2)(B)(ii), 10 percentage points.

(B) Domestic content

Rules similar to the rules of section 48(a)(12) shall apply.

(b) Qualified investment with respect to a qualified facility

(1) In general

For purposes of subsection (a), the qualified investment with respect to any qualified facility for any taxable year is the sum of—

(A) the basis of any qualified property placed in service by the taxpayer during such taxable year which is part of a qualified facility, plus

(B) the amount of any expenditures which are—

(i) paid or incurred by the taxpayer for qualified interconnection property—

(I) in connection with a qualified facility which has a maximum net output of not greater than 5 megawatts (as measured in alternating current), and

(II) placed in service during the taxable year of the taxpayer, and

(ii) properly chargeable to capital account of the taxpayer.

(2) Qualified property

For purposes of this section, the term ''qualified property'' means property—

(A) 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 facility,

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

(C)(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.

(3) Qualified facility

(A) In general

For purposes of this section, the term ''qualified facility'' means a facility—

(i) which is used for the generation of electricity,

(ii) which is placed in service after December 31, 2024, and

(iii) for which the anticipated greenhouse gas emissions rate (as determined under subparagraph (B)(ii)) is not greater than zero.

(B) Additional rules

(i) Expansion of facility; incremental production

Rules similar to the rules of section 45Y(b)(1)(C) shall apply for purposes of this paragraph.

(ii) Greenhouse gas emissions rate

Rules similar to the rules of section 45Y(b)(2) shall apply for purposes of this paragraph.

(C) Exclusion

The term ''qualified facility'' shall not include any facility for which—

(i) a renewable electricity production credit determined under section 45,

(ii) an advanced nuclear power facility production credit determined under section 45J,

(iii) a carbon oxide sequestration credit determined under section 45Q,

(iv) a zero-emission nuclear power production credit determined under section 45U,

(v) a clean electricity production credit determined under section 45Y,

(vi) an energy credit determined under section 48, or

(vii) a qualifying advanced coal project credit under section 48A,

is allowed under section 38 for the taxable year or any prior taxable year.

(4) Qualified interconnection property

For purposes of this paragraph, the term ''qualified interconnection property'' has the meaning given such term in section 48(a)(8)(B).

(5) Coordination with rehabilitation credit

The qualified investment with respect to any qualified facility for any taxable year shall not include that portion of the basis of any property which is attributable to qualified rehabilitation expenditures (as defined in section 47(c)(2)).

(6) Definitions

For purposes of this subsection, the terms ''CO2e per KWh'' and ''greenhouse gas emissions rate'' have the same meaning given such terms under section 45Y.

(c) Qualified investment with respect to energy storage technology

(1) Qualified investment

For purposes of subsection (a), the qualified investment with respect to energy storage technology for any taxable year is the basis of any energy storage technology placed in service by the taxpayer during such taxable year.

(2) Energy storage technology

For purposes of this section, the term ''energy storage technology'' has the meaning given such term in section 48(c)(6) (except that subparagraph (D) of such section shall not apply).

(d) Special rules

(1) 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).

(2) Special rule for property financed by subsidized energy financing or private activity bonds

Rules similar to the rules of section 45(b)(3) shall apply.

(3) Prevailing wage requirements

Rules similar to the rules of section 48(a)(10) shall apply.

(4) Apprenticeship requirements

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

(5) Domestic content requirement for elective payment

In the case of a taxpayer making an election under section 6417 with respect to a credit under this section, rules similar to the rules of section 45Y(g)(12) shall apply.

(e) Credit phase-out

(1) In general

The amount of the clean electricity investment credit under subsection (a) for any qualified investment with respect to any qualified facility or energy storage technology the construction of which begins during a calendar year described in paragraph (2) shall be equal to the product of—

(A) the amount of the credit determined under subsection (a) without regard to this subsection, multiplied by

(B) the phase-out percentage under paragraph (2).

(2) Phase-out percentage

The phase-out percentage under this paragraph is equal to—

(A) for any qualified investment with respect to any qualified facility or energy storage technology the construction of which begins during the first calendar year following the applicable year, 100 percent,

(B) for any qualified investment with respect to any qualified facility or energy storage technology the construction of which begins during the second calendar year following the applicable year, 75 percent,

(C) for any qualified investment with respect to any qualified facility or energy storage technology the construction of which begins during the third calendar year following the applicable year, 50 percent, and

(D) for any qualified investment with respect to any qualified facility or energy storage technology the construction of which begins during any calendar year subsequent to the calendar year described in subparagraph (C), 0 percent.

(3) Applicable year

For purposes of this subsection, the term ''applicable year'' has the same meaning given such term in section 45Y(d)(3).

(f) Greenhouse gas

In this section, the term ''greenhouse gas'' has the same meaning given such term under section 45Y(e)(2).

(g) Recapture of credit

For purposes of section 50, if the Secretary determines that the greenhouse gas emissions rate for a qualified facility is greater than 10 grams of CO_2e per KWh, any property for which a credit was allowed under this section with respect to such facility shall cease to be investment credit property in the taxable year in which the determination is made.

(h) Special rules for certain facilities placed in service in connection with low-income communities

(1) In general

In the case of any applicable facility with respect to which the Secretary makes an allocation of environmental justice capacity limitation under paragraph (4)—

(A) the applicable percentage otherwise determined under subsection (a)(2) with respect to any eligible property which is part of such facility shall be increased by—

(i) in the case of a facility described in subclause (I) of paragraph (2)(A)(iii) and not described in subclause (II) of such paragraph, 10 percentage points, and

(ii) in the case of a facility described in subclause (II) of paragraph (2)(A)(iii), 20 percentage points, and

(B) the increase in the credit determined under subsection (a) by reason of this subsection for any taxable year with respect to all property which is part of such facility shall not exceed the amount which bears the same ratio to the amount of such increase (determined without regard to this subparagraph) as—

(i) the environmental justice capacity limitation allocated to such facility, bears to

(ii) the total megawatt nameplate capacity of such facility, as measured in direct current.

(2) Applicable facility

For purposes of this subsection—

(A) In general

The term ''applicable facility'' means any qualified facility—

(i) which is not described in section 45Y(b)(2)(B),

(ii) which has a maximum net output of less than 5 megawatts (as measured in alternating current), and

(iii) which—

(I) is located in a low-income community (as defined in section 45D(e)) or on Indian land (as defined in section 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2))), or

(II) is part of a qualified low-income residential building project or a qualified low-income economic benefit project.

(B) Qualified low-income residential building project

A facility shall be treated as part of a qualified low-income residential building project if—

(i) such facility is installed on a residential rental building which participates in a covered housing program (as defined in section 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a)(3)),[1] a housing assistance program administered by the Department of Agriculture under title V of the Housing Act of 1949, a housing program administered by a tribally designated housing entity (as defined in section 4(22) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103(22))) or such other affordable housing programs as the Secretary may provide, and

(ii) the financial benefits of the electricity produced by such facility are allo-

[1] So in original. Another closing parenthesis probably should precede the comma.

cated equitably among the occupants of the dwelling units of such building.

(C) Qualified low-income economic benefit project

A facility shall be treated as part of a qualified low-income economic benefit project if at least 50 percent of the financial benefits of the electricity produced by such facility are provided to households with income of—

(i) less than 200 percent of the poverty line (as defined in section 36B(d)(3)(A)) applicable to a family of the size involved, or

(ii) less than 80 percent of area median gross income (as determined under section 142(d)(2)(B)).

(D) Financial benefit

For purposes of subparagraphs (B) and (C), electricity acquired at a below-market rate shall not fail to be taken into account as a financial benefit.

(3) Eligible property

For purposes of this subsection, the term ''eligible property'' means a qualified investment with respect to any applicable facility.

(4) Allocations

(A) In general

Not later than January 1, 2025, the Secretary shall establish a program to allocate amounts of environmental justice capacity limitation to applicable facilities. In establishing such program and to carry out the purposes of this subsection, the Secretary shall provide procedures to allow for an efficient allocation process, including, when determined appropriate, consideration of multiple projects in a single application if such projects will be placed in service by a single taxpayer.

(B) Limitation

The amount of environmental justice capacity limitation allocated by the Secretary under subparagraph (A) during any calendar year shall not exceed the annual capacity limitation with respect to such year.

(C) Annual capacity limitation

For purposes of this paragraph, the term ''annual capacity limitation'' means 1.8 gigawatts of direct current capacity for each calendar year during the period beginning on January 1, 2025, and ending on December 31 of the applicable year (as defined in section 45Y(d)(3)), and zero thereafter.

(D) Carryover of unused limitation

(i) In general

If the annual capacity limitation for any calendar year exceeds the aggregate amount allocated for such year under this paragraph, such limitation for the succeeding calendar year shall be increased by the amount of such excess. No amount may be carried under the preceding sentence to any calendar year after the third calendar year following the applicable year (as defined in section 45Y(d)(3)).

(ii) Carryover from section 48 for calendar year 2025

If the annual capacity limitation for calendar year 2024 under section 48(e)(4)(D) exceeds the aggregate amount allocated for such year under such section, such excess amount may be carried over and applied to the annual capacity limitation under this subsection for calendar year 2025. The annual capacity limitation for calendar year 2025 shall be increased by the amount of such excess.

(E) Placed in service deadline

(i) In general

Paragraph (1) shall not apply with respect to any property which is placed in service after the date that is 4 years after the date of the allocation with respect to the facility of which such property is a part.

(ii) Application of carryover

Any amount of environmental justice capacity limitation which expires under clause (i) during any calendar year shall be taken into account as an excess described in subparagraph (D)(i) (or as an increase in such excess) for such calendar year, subject to the limitation imposed by the last sentence of such subparagraph.

(5) Recapture

The Secretary shall, by regulations or other guidance, provide for recapturing the benefit of any increase in the credit allowed under subsection (a) by reason of this subsection with respect to any property which ceases to be property eligible for such increase (but which does not cease to be investment credit property within the meaning of section 50(a)). The period and percentage of such recapture shall be determined under rules similar to the rules of section 50(a). To the extent provided by the Secretary, such recapture may not apply with respect to any property if, within 12 months after the date the taxpayer becomes aware (or reasonably should have become aware) of such property ceasing to be property eligible for such increase, the eligibility of such property for such increase is restored. The preceding sentence shall not apply more than once with respect to any facility.

(i) Guidance

Not later than January 1, 2025, the Secretary shall issue guidance regarding implementation of this section.

(Added Pub. L. 117–169, title I, § 13702(a), Aug. 16, 2022, 136 Stat. 1990.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (d)(1), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

The Housing Act of 1949, referred to in subsec. (h)(2)(B)(i), is act July 15, 1949, ch. 338, 63 Stat. 413. Title V of the Act is classified generally to subchapter III (§ 1471 et seq.) of chapter 8A 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 1441 of Title 42 and Tables.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 117–169, title I, §13702(c), Aug. 16, 2022, 136 Stat. 1997, provided that: ''The amendments made by this section [enacting this section and amending sections 46, 49, and 50 of this title] shall apply to property placed in service after December 31, 2024.''

§ 49. At-risk rules

(a) General rule

(1) Certain nonrecourse financing excluded from credit base

(A) Limitation

The credit base of any property to which this paragraph applies shall be reduced by the nonqualified nonrecourse financing with respect to such credit base (as of the close of the taxable year in which placed in service).

(B) Property to which paragraph applies

This paragraph applies to any property which—

(i) is placed in service during the taxable year by a taxpayer described in section 465(a)(1), and

(ii) is used in connection with an activity with respect to which any loss is subject to limitation under section 465.

(C) Credit base defined

For purposes of this paragraph, the term ''credit base'' means—

(i) the portion of the basis of any qualified rehabilitated building attributable to qualified rehabilitation expenditures,

(ii) the basis of any energy property,

(iii) the basis of any property which is part of a qualifying advanced coal project under section 48A,

(iv) the basis of any property which is part of a qualifying gasification project under section 48B,

(v) the basis of any property which is part of a qualifying advanced energy project under section 48C,

(vi) the basis of any qualified property (as defined in subsection (b)(2) of section 48D) which is part of an advanced manufacturing facility (as defined in subsection (b)(3) of such section),

(vii) the basis of any qualified property which is part of a qualified facility under section 48E, and

(viii) the basis of any energy storage technology under section 48E.

(D) Nonqualified nonrecourse financing

(i) In general

For purposes of this paragraph and paragraph (2), the term ''nonqualified nonrecourse financing'' means any nonrecourse financing which is not qualified commercial financing.

(ii) Qualified commercial financing

For purposes of this paragraph, the term ''qualified commercial financing'' means any financing with respect to any property if—

(I) such property is acquired by the taxpayer from a person who is not a related person,

(II) the amount of the nonrecourse financing with respect to such property does not exceed 80 percent of the credit base of such property, and

(III) such financing is borrowed from a qualified person or represents a loan from any Federal, State, or local government or instrumentality thereof, or is guaranteed by any Federal, State, or local government.

Such term shall not include any convertible debt.

(iii) Nonrecourse financing

For purposes of this subparagraph, the term ''nonrecourse financing'' includes—

(I) any amount with respect to which the taxpayer is protected against loss through guarantees, stop-loss agreements, or other similar arrangements, and

(II) except to the extent provided in regulations, any amount borrowed from a person who has an interest (other than as a creditor) in the activity in which the property is used or from a related person to a person (other than the taxpayer) having such an interest.

In the case of amounts borrowed by a corporation from a shareholder, subclause (II) shall not apply to an interest as a shareholder.

(iv) Qualified person

For purposes of this paragraph, the term ''qualified person'' means any person which is actively and regularly engaged in the business of lending money and which is not—

(I) a related person with respect to the taxpayer,

(II) a person from which the taxpayer acquired the property (or a related person to such person), or

(III) a person who receives a fee with respect to the taxpayer's investment in the property (or a related person to such person).

(v) Related person

For purposes of this subparagraph, the term ''related person'' has the meaning given such term by section 465(b)(3)(C). Except as otherwise provided in regulations prescribed by the Secretary, the determination of whether a person is a related person shall be made as of the close of the taxable year in which the property is placed in service.

(E) Application to partnerships and S corporations

For purposes of this paragraph and paragraph (2)—

(i) In general

Except as otherwise provided in this subparagraph, in the case of any partnership