

REVENUE RULE 94-31

1994-1 C.B. 16, 1994-21 I.R.B. 4.

Internal Revenue Service
Revenue Ruling

ELECTRICITY PRODUCED FROM WIND ENERGY UNDER SECTION 45

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Section 45. - Electricity Produced From Certain Renewable Resources

Electricity produced from wind energy under section 45. This ruling provides that each wind turbine together with its tower and supporting pad owned by a taxpayer that is originally placed in service after December 31, 1993, and before July 1, 1999, is a separate qualified facility under section 45(c)(3) of the Code.

ISSUE

In determining whether s 45 of the Internal Revenue Code applies to electricity produced from wind energy, what is a qualified facility under s 45(c)(3)?

FACTS

The Taxpayer owns and operates a windfarm. The windfarm consists of an array of wind turbines, towers, pads, transformers, roadways, fencing, on-site power collection systems, and monitoring and meteorological equipment. A utility company purchases the electricity produced on the windfarm under an agreement.

A wind turbine consists of blades, a mechanical gear box, a generator, and a mechanism for control and communication. All of these items, except for the blades, are housed in a nacelle, or capsule. The wind turbine is mounted on a platform atop a tower, which sits on a supporting pad. The tower provides the height necessary for optimal flow of the wind against the blades. The Taxpayer can monitor and meter the electrical production of each wind turbine.

In 1994, the Taxpayer replaces some of the existing wind turbines and their towers and supporting pads with new turbines, towers, and pads. As each new turbine is installed, it begins producing electricity and operates independently of the other turbines. All of the replacement wind turbines and their towers and supporting pads are originally placed in service during 1994.

LAW AND ANALYSIS

Section 45, as added by s 1914 of the Energy Policy Act of 1992, 1993-1 C.B. 246, 250-51, provides a credit for electricity produced from certain renewable resources. Under s 45(a), the credit amount equals the product of 1.5 cents multiplied by the kilowatt hours of electricity: (1) produced by the taxpayer from qualified energy resources at a qualified facility during the 10-year period beginning on the date the facility was originally placed in service, and (2) sold by the taxpayer to an unrelated person during the taxable year.

Section 45(c)(1) defines qualified energy resources as wind and closed-loop biomass. Section 45(c)(3) defines a qualified facility as any facility owned by the taxpayer that is originally placed in service after December 31, 1993 (December 31, 1992, for a facility using closed-loop biomass to produce electricity), and before July 1, 1999.

A wind turbine together with its tower and supporting pad comprise the property on the windfarm necessary for the production of electricity from wind energy. Moreover, each wind turbine on the windfarm can be separately operated and metered and can begin producing electricity when it is mounted atop a tower. Thus, the term "facility" under s 45(c)(3) means the wind turbine, together with the tower on which the wind turbine is mounted and the pad on which the tower is situated.

Accordingly, each wind turbine together with its tower and supporting pad installed by the Taxpayer during 1994 is a separate facility. Each of these facilities is a qualified facility under s 45(c)(3) because each facility is owned by the Taxpayer and originally placed in service after December 31, 1993, and before July 1, 1999.

A facility would also qualify as originally placed in service even though it contains some used property, provided the fair market value of the used property is not more than 20 percent of the facility's total value (the cost of the new property plus the value of the used property). Cf. Rev. Rul. 68-111, 1968-1 C.B. 29 (holding that a railroad locomotive was new section 38 property where the cost of used materials and parts was not more than 20 percent of the total cost of materials and parts used in constructing it).

HOLDING

Each wind turbine together with its tower and supporting pad owned by a taxpayer that is originally placed in service after December 31, 1993, and before July 1, 1999, is a separate qualified facility under s 45(c)(3). A facility would also qualify as originally placed in service even though it contains some used property, provided the fair market value of the used property is not more than 20 percent of the facility's total value (the cost of the new property plus the value of the used property).

DRAFTING INFORMATION

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