

Part III - Administrative, Procedural, and Miscellaneous

Nonconventional Source Fuel Credit, Section 45K Inflation Adjustment Factor, and Section 45K Reference Price

Notice 2008-44

SECTION 1. PURPOSE

This notice publishes the nonconventional source fuel credit, inflation adjustment factor, and reference price under § 45K of the Internal Revenue Code for calendar year 2007. These are used to determine the credit allowable under § 45K for fuel produced from a nonconventional source. The calendar year 2007 inflation-adjusted credit applies to the sales of barrel-of-oil equivalent of qualified fuels sold by a taxpayer to an unrelated person during the 2007 calendar year, the domestic production of which is attributable to the taxpayer.

SECTION 2. BACKGROUND

Section 45K(a) provides for a credit for producing fuel from a nonconventional source, measured in barrel-of-oil equivalent of qualified fuels, the production of which is attributable to the taxpayer and is sold by the taxpayer to an unrelated person during the tax year. The credit is equal to the product of \$3.00 and the appropriate inflation adjustment factor.

Section 45K(b)(1) and (2) provides for a phase-out of the credit. The credit allowable under § 45K(a) must be reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to § 45K(b)(1)) as the amount by which the reference price for the calendar year in which the sale occurs exceeds \$23.50 bears to \$6.00. The \$3.00 in § 45K(a) and the \$23.50 and \$6.00 each must be adjusted by multiplying these amounts by the appropriate inflation adjustment factor.

Section 45K(c)(1), in part, defines the term "qualified fuels" to include gas produced from biomass and liquid, gaseous, or solid synthetic fuels produced from coal (including lignite), including such fuels when used as feedstocks.

Section 45K(d)(1) provides that the credit applies only to sales of qualified fuels the production of which is within the United States (within the meaning of § 638(1)) or a possession of the United States (within the meaning of § 638(2)).

Section 45K(d)(2)(A) requires that the Secretary, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor and the reference price for the preceding calendar year.

Section 45K(d)(2)(B) defines "inflation adjustment factor" for a calendar year as a fraction the numerator of which is the GNP implicit price deflator for the calendar year and the denominator of which is the GNP implicit price deflator for calendar year 1979. The term "GNP implicit price deflator" means the first revision of the implicit price deflator for the gross national product as computed and published by the Department of Commerce.

Section 45K(d)(2)(C) defines "reference price" to mean with respect to a calendar year the Secretary's estimate of the annual average wellhead price per barrel for all

domestic crude oil the price of which is not subject to regulation by the United States.

Section 45K(d)(5) provides that the term "barrel-of-oil equivalent" with respect to any fuel generally means that amount of the fuel that has a Btu content of 5.8 million.

Section 45K(g)(1) provides that in the case of a facility for producing coke or coke gas, which was placed in service before January 1, 1993, or after June 30, 1998, and before January 1, 2010, § 45K(g) shall apply with respect to coke and coke gas produced in such facility and sold during the period beginning on the later of January 1, 2006, or the date that such facility is placed in service, and ending on the date which is 4 years after the date such period began.

Section 45K(g)(2)(B) provides that in determining the amount of credit allowable under § 45K solely by reason of § 45K(g), § 45K(d)(2)(B) shall be applied by substituting "2004" for "1979." Accordingly, for purposes of § 45K(g), the inflation adjustment factor for a calendar year is a fraction the numerator of which is the GNP implicit price deflator for the calendar year and the denominator of which is the GNP implicit price deflator for calendar year 2004.

Section 45K(g)(2)(D) provides that the phase-out of the credit under § 45K(b)(1) does not apply in the case of facilities producing coke or coke gas.

SECTION 3. REFERENCE PRICE

The reference price for calendar year 2007 is \$66.52.

SECTION 4. INFLATION ADJUSTMENT AND CREDIT AMOUNT

.01 Gas Produced from Biomass and Liquid, Gaseous, or Solid Synthetic Fuel Produced from Coal.

In the case of gas produced from biomass and liquid, gaseous, or solid synthetic

fuel produced from coal, the inflation adjustment factor for calendar year 2007 is 2.4160.

Because the calendar year 2007 reference price exceeds \$23.50 multiplied by the inflation adjustment factor, the credit per barrel equivalent of qualified fuel sold in calendar year 2007 is reduced by \$4.87, which is the amount that bears the same ratio to the amount of the credit (determined without regard to § 45K(b)(1)) as the amount by which the reference price for the calendar year 2007 exceeds \$23.50 (adjusted for inflation) bears to \$6.00 (adjusted for inflation).

The phase-out amount is computed as follows:

$$(\$3.00 \times 2.4160) \times [(\$66.52 - (\$23.50 \times 2.4160)) / (\$6.00 \times 2.4160)] = \$4.87$$

The nonconventional source fuel credit under § 45K(a) is \$2.38 per barrel-of-oil equivalent of qualified fuels [(\$3.00 x 2.4160) - \$4.87].

.02 Facilities for Producing Coke or Coke Gas. In case of facilities producing coke or coke gas, the inflation adjustment factor for calendar year 2007 is 1.0936. The nonconventional source fuel credit is \$3.28 per barrel-of-oil equivalent (\$3.00 x 1.0936).

SECTION 5. DRAFTING INFORMATION CONTACT

The principal author of this notice is Jennifer Bernardini of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice contact Ms. Bernardini at (202) 622-3110 (not a toll-free call).