

Part III - Administrative, Procedural, and Miscellaneous

Guidance for Phase II of the Qualifying Advanced Coal Program under Section 48A and the Qualifying Gasification Program under Section 48B

Notice 2011-24

SECTION 1. PURPOSE

This notice updates the rules relating to the qualifying advanced coal project program under § 48A and the qualifying gasification project program under § 48B of the Internal Revenue Code. Specifically, this notice applies to any qualifying project that includes equipment that separates and sequesters such project's total carbon dioxide emissions. Except as specifically provided in this notice, the qualifying advanced coal project program and the qualifying gasification project program will be conducted in the manner and under the procedures provided in Notice 2009-24, 2009-16 I.R.B. 817, and Notice 2009-23, 2009-16 I.R.B. 802.

SECTION 2. BACKGROUND

.01 Section 46 provides that the amount of the investment credit for any taxable year is the sum of the credits listed in § 46. That list includes the qualifying advanced coal project credit under § 48A and the qualifying gasification project credit under § 48B.

.02 Section 48A allows a qualifying advanced coal project credit in an amount equal to (1) 20 percent of the qualified investment (as defined in § 48A(b)) for that

taxable year in qualifying advanced coal projects (as defined in § 48A(c)(1) and (e)) described in § 48A(d)(3)(B)(i), (2) 15 percent of the qualified investment for that taxable year in qualified advanced coal projects described in § 48A(d)(3)(B)(ii), and (3) 30 percent of the qualified investment for that taxable year in qualifying advanced coal projects described in § 48A(d)(3)(B)(iii).

.03 Section 48A(d)(3)(B)(iii), as added by section 111 of the Energy Improvement and Extension Act of 2008, Pub. L. No. 110-343, 122 Stat. 3765 (October 3, 2008), provides for a second phase of the qualifying advanced coal project program and authorizes the Secretary to certify \$1.25 billion of additional credits for advanced coal-based generation technology projects (“the Phase II advanced coal program” and “the Phase II advanced coal projects.”)

.04 Under § 48A(e)(1)(G), any project the application for which is submitted under the Phase II advanced coal program must include equipment that separates and sequesters—

(1) At least 65 percent of such project’s total carbon dioxide (“CO₂”) emissions in the case of an application other than an application for reallocated credits under § 48A(d)(4); and

(2) At least 70 percent of such project’s total CO₂ emissions in the case of an application for reallocated credits under § 48A(d)(4).

.05 On April 20, 2009, the Internal Revenue Service (“Service”) issued Notice 2009-24 to announce procedures for the allocation of credits under the Phase II advanced coal program.

.06 Section 48B(a) allows a qualifying gasification project credit for a taxable year in an amount equal to 20 percent (30 percent in the case of projects for which credits are allocated under § 48B(d)(1)(B)) of the qualified investment for such taxable year.

.07 Section 48B(d)(1)(B), as added by section 112 of the Energy Improvement and Extension Act of 2008 provides for a second phase of the qualifying gasification project program and authorizes the Secretary to certify an additional \$250 million of credits to qualifying projects that include equipment that separates and sequesters at least 75 percent of such project's total CO₂ emissions ("Phase II gasification program" and "Phase II gasification projects.")

.08 On April 20, 2009, the Service issued Notice 2009-23 to announce procedures for the allocation of credit under the Phase II gasification program.

.09 On September 27, 2010, the Service issued Announcement 2010-56, 2010-39 I.R.B. 398, setting forth the results of the first round of allocations under the Phase II advanced coal program and the Phase II gasification program.

SECTION 3. RULE RELATED TO SEPARATION AND SEQUESTRATION OF CARBON DIOXIDE EMISSIONS.

.01 In General. Section 48A(i) requires a recapture of the qualifying advanced coal project credit with respect to any project that fails to attain or maintain the separation and sequestration requirements of § 48A(e)(1)(G). Section 7.04 of Notice 2009-24 states that the § 48A credit allocated to a Phase II advanced coal project will be recaptured if, at any time during the applicable recovery period (as defined in

§ 168(c)) for such project, the project fails to attain or maintain the separation and sequestration requirements for such project under § 48A(e)(1)(G).

Similarly, § 48B(f) requires a recapture of the qualifying gasification project credit with respect to any project that fails to attain or maintain the separation and sequestration requirements for such project under § 48B(d)(1)(B). Section 6.04 of Notice 2009-23 provides that the § 48B credit allocated to a Phase II gasification project will be recaptured if, at any time during the applicable recovery period (as defined in § 168(c)) for such project, the project fails to attain or maintain the separation and sequestration requirements for such project under § 48B(d)(1)(B).

Additionally, credits allowed under § 48A and § 48B are subject to the recapture rules of § 50(a) as provided under section 2.12 of Notice 2009-24 and section 2.07 of Notice 2009-23, respectively. Section 50(a)(1) provides, generally, for recapture of the investment credit if, during any taxable year, investment tax credit property is disposed of or otherwise ceases to be investment credit property with respect to the taxpayer before the close of the recapture period. The recapture period under § 50(a) is the 5-year period beginning on the date the property is placed in service.

.02 Applicability of the Recapture Rule of § 50(a). The Service recognizes that § 168(c) provides a wide range of recovery periods that apply to Phase II advanced coal projects or Phase II gasification projects. This may create uncertainty for taxpayers regarding which recovery period to use if a project fails to attain or maintain the separation and sequestration requirements of § 48A and § 48B.

Moreover, different recapture periods provided under § 168(c) and § 50(a) may create further confusion and difficulty to taxpayers and to the Service. Therefore, the Service has determined that the recapture rules under § 50(a) will apply for all events that trigger recapture of the credits allowed under § 48A or § 48B, including a failure to attain or maintain the separation and sequestration requirements of § 48A(e)(1)(G) or § 48B(d)(1)(B).

.03 Annual Basis During Normal Plant Operations. For purposes of determining whether a project meets the requirements of § 48A(e)(1)(G) or § 48B(d)(1)(B), the amount of the project's total CO₂ emissions and the amount of CO₂ separated and sequestered will be measured on an annual basis during normal plant operations. An annual period other than the taxpayer's taxable year may be used for these purposes if the same period is consistently used. If a period other than the taxable year is used, any failure to meet the requirements of § 48A(e)(1)(G) or § 48B(d)(1)(B) will be treated as occurring in the taxable year that includes the last day of the annual period in which the failure occurs. The term "normal plant operations" is defined as operations other than during periods of initial plant certification, plant startup, plant shutdown, integrated gasifier shutdown for gasification system maintenance, or interruption of the coal supply to the project resulting from an event of force majeure (including an act of God, war, strike, or other similar event beyond the control of the taxpayer).

SECTION 4. EFFECT ON OTHER DOCUMENTS

Notice 2009-23 and Notice 2009-24 are modified.

SECTION 5. EFFECTIVE DATE

This notice is effective for all projects that receive either § 48A credits under the Phase II advanced coal program or § 48B credits under the Phase II gasification program.

SECTION 6. DRAFTING INFORMATION

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