

Part I

Section 45.—Electricity Produced From Certain Renewable Resources

Rev. Rul. 2006-9

ISSUE

Is the credit under ' 45 of the Internal Revenue Code for electricity produced from qualified energy resources at a qualified facility reduced under ' 45(b)(3) on account of a state or local tax credit?

FACTS

State *X* provides tax credits for wind-powered electric generation facilities located in State *X*. Corporation *P* constructs in State *X* a wind-powered electric generation facility that is a qualified facility under ' 45(d)(1). The electricity produced from the facility qualifies for the production credit under ' 45. In addition, the facility qualifies for the State *X* tax credits.

LAW AND ANALYSIS

Section 45(a) provides a renewable electricity production credit for any taxable year in an amount equal to the product of 1.5 cents multiplied by the kilowatt-hours of electricity--

(A) produced by the taxpayer (i) from qualified energy resources, and (ii) at a qualified facility during the credit period beginning on the date the facility was originally placed in service; and

(B) sold by the taxpayer to an unrelated person during the taxable year.

Under § 45(b)(1), the amount of the credit determined under § 45(a) is reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to § 45(b)(1)) as--

(A) the amount by which the reference price for the calendar year in which the sale occurs exceeds 8 cents, bears to

(B) 3 cents.

Under § 45(b)(2), the 1.5 cent amount in § 45(a) is adjusted by multiplying that amount by the inflation adjustment factor for the calendar year in which the sale occurs.

Under § 45(c)(1)(A), the term "qualified energy resource" includes wind.

Under section 45(d)(1), in the case of a facility using wind to produce electricity, the term "qualified facility" means any facility owned by the taxpayer that is originally placed in service after December 31, 1993, and before January 1, 2008.

Under § 45(b)(3), the amount of the credit determined under § 45(a) (determined after the application of § 45(b)(1) and (2)) with respect to any project for any taxable year (the otherwise allowable credit for the project) is reduced if specified governmental

assistance has been provided with respect to the project. The amount of the reduction is equal to the otherwise allowable credit for the project multiplied by the lesser of one-half or a fraction--

(A) the numerator of which is the sum, for the taxable year and all prior taxable years, of the specified governmental assistance provided with respect to the project; and

(B) the denominator of which is the aggregate amount of additions to the capital account for the project for the taxable year and all prior taxable years.

The following governmental assistance is taken into account in determining the numerator of the fraction:

(i) grants provided by the United States, a state, or a political subdivision of a state for use in connection with the project;

(ii) proceeds of an issue of state or local government obligations used to provide financing for the project the interest on which is exempt from tax under § 103,

(iii) the aggregate amount of subsidized energy financing provided (directly or indirectly) under a federal, state, or local program provided in connection with the project, and

(iv) the amount of “any other credit allowable” with respect to any property that is part of the project.

The amounts under the preceding sentence for any taxable year are determined as of the close of the taxable year.

Neither § 45(b)(3)(A)(iv), which provides for the reduction on account of otherwise allowable credits, nor the legislative history underlying section 45 (H.R. Rep. No. 102-1018 (1992) (Conf. Rep.), at 404, 405, 1993-1 C.B. 273, 274) contains any reference to states or localities. Accordingly, the term “any other credit allowable” in section 45(b)(3)(A)(iv) will be construed to include only federal tax credits allowable under the Code with respect to property that is part of a project, and not to include state or local credits. Thus, Corporation *P*'s § 45 credit is not reduced under § 45(b)(3) on account of the State *X* tax credits. The result would be the same if, instead of a wind facility, Corporation *P* had constructed a qualified facility using another qualified energy resource subject to § 45(b)(3).

HOLDING

The credit under § 45 for electricity produced from qualified energy resources at a qualified facility is not reduced under § 45(b)(3) on account of a state or local tax credit.

DRAFTING INFORMATION

The principal author of this revenue ruling is David Selig of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue ruling, contact David Selig at (202) 622-3040 (not a toll-free call).