

## **§45K. Credit for producing fuel from a nonconventional source**

### **(a) Allowance of credit**

For purposes of section 38, the nonconventional source production credit determined under this section for the taxable year is an amount equal to-

- (1) \$3, multiplied by
- (2) the barrel-of-oil equivalent of qualified fuels-
  - (A) sold by the taxpayer to an unrelated person during the taxable year, and
  - (B) the production of which is attributable to the taxpayer.

### **(b) Limitations and adjustments**

#### **(1) Phaseout of credit**

The amount of the credit allowable under subsection (a) shall be reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to this paragraph) as-

- (A) the amount by which the reference price for the calendar year in which the sale occurs exceeds \$23.50, bears to
- (B) \$6.

#### **(2) Credit and phaseout adjustment based on inflation**

The \$3 amount in subsection (a) and the \$23.50 and \$6 amounts in paragraph (1) shall each be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. In the case of gas from a tight formation, the \$3 amount in subsection (a) shall not be adjusted.

#### **(3) Credit reduced for grants, tax-exempt bonds, and subsidized energy financing**

##### **(A) In general**

The amount of the credit allowable under subsection (a) with respect to any project for any taxable year (determined after the application of paragraphs (1) and (2)) shall be reduced by the amount which is the product of the amount so determined for such year and a fraction-

- (i) the numerator of which is the sum, for the taxable year and all prior taxable years, of-
  - (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 any issue of State or local government obligations used to provide financing for the project the interest on which is exempt from tax under section 103, and
  - (III) the aggregate amount of subsidized energy financing (within the meaning of section 48(a)(4)(C)) provided in connection with the project, and
- (ii) 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.

##### **(B) Amounts determined at close of year**

The amounts under subparagraph (A) for any taxable year shall be determined as of the close of the taxable year.

#### **(4) Credit reduced for energy credit**

The amount allowable as a credit under subsection (a) with respect to any project for any taxable year (determined after the application of paragraphs (1), (2), and (3)) shall be reduced by the excess of-

- (A) the aggregate amount allowed under section 38 for the taxable year or any prior taxable year by reason of the energy percentage with respect to property used in the project, over
- (B) the aggregate amount recaptured with respect to the amount described in subparagraph (A)-
  - (i) under section 49(b) or 50(a) for the taxable year or any prior taxable year, or
  - (ii) under this paragraph for any prior taxable year.

The amount recaptured under section 49(b) or 50(a) with respect to any property shall be appropriately reduced to take into account any reduction in the credit allowed by this section by reason of the preceding sentence.

**(5) Credit reduced for enhanced oil recovery credit**

The amount allowable as a credit under subsection (a) with respect to any project for any taxable year (determined after application of paragraphs (1), (2), (3), and (4)) shall be reduced by the excess (if any) of-

(A) the aggregate amount allowed under section 38 for the taxable year and any prior taxable year by reason of any enhanced oil recovery credit determined under section 43 with respect to such project, over

(B) the aggregate amount recaptured with respect to the amount described in subparagraph (A) under this paragraph for any prior taxable year.

**(c) Definition of qualified fuels**

For purposes of this section-

**(1) In general**

The term "qualified fuels" means-

(A) oil produced from shale and tar sands,

(B) gas produced from-

(i) geopressured brine, Devonian shale, coal seams, or a tight formation, or

(ii) biomass, and

(C) liquid, gaseous, or solid synthetic fuels produced from coal (including lignite), including such fuels when used as feedstocks.

**(2) Gas from geopressured brine, etc.**

**(A) In general**

Except as provided in subparagraph (B), the determination of whether any gas is produced from geopressured brine, Devonian shale, coal seams, or a tight formation shall be made in accordance with section 503 of the Natural Gas Policy Act of 1978 (as in effect before the repeal of such section).

**(B) Special rules for gas from tight formations**

The term "gas produced from a tight formation" shall only include gas from a tight formation-

(i) which, as of April 20, 1977, was committed or dedicated to interstate commerce (as defined in section 2(18) of the Natural Gas Policy Act of 1978, as in effect on the date of the enactment of this clause), or

(ii) which is produced from a well drilled after such date of enactment.

**(3) Biomass**

The term "biomass" means any organic material other than-

(A) oil and natural gas (or any product thereof), and

(B) coal (including lignite) or any product thereof.

**(d) Other definitions and special rules**

For purposes of this section-

**(1) Only production within the United States taken into account**

Sales shall be taken into account under this section only with respect to qualified fuels the production of which is within-

(A) the United States (within the meaning of section 638(1)), or

(B) a possession of the United States (within the meaning of section 638(2)).

**(2) Computation of inflation adjustment factor and reference price**

**(A) In general**

The Secretary shall, 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 in accordance with this paragraph.

**(B) Inflation adjustment factor**

The term "inflation adjustment factor" means, with respect to a calendar year, 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.

**(C) Reference price**

The term "reference price" means 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.

**(3) Production attributable to the taxpayer**

In the case of a property or facility in which more than 1 person has an interest, except to the extent provided in regulations prescribed by the Secretary, production from the property or facility (as the case may be) shall be allocated among such persons in proportion to their respective interests in the gross sales from such property or facility.

**(4) Gas from geopressured brine, Devonian shale, coal seams, or a tight formation**

The amount of the credit allowable under subsection (a) shall be determined without regard to any production attributable to a property from which gas from Devonian shale, coal seams, geopressured brine, or a tight formation was produced in marketable quantities before January 1, 1980.

**(5) Barrel-of-oil equivalent**

The term "barrel-of-oil equivalent" with respect to any fuel means that amount of such fuel which has a Btu content of 5.8 million; except that in the case of qualified fuels described in subparagraph (C) of subsection (c)(1), the Btu content shall be determined without regard to any material from a source not described in such subparagraph.

**(6) Barrel defined**

The term "barrel" means 42 United States gallons.

**(7) Related persons**

Persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b). In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling qualified fuels to an unrelated person if such fuels are sold to such a person by another member of such group.

**(8) Pass-thru in the case of estates and trusts**

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

**(e) Application of section**

This section shall apply with respect to qualified fuels-

(1) which are-

(A) produced from a well drilled after December 31, 1979, and before January 1, 1993, or

(B) produced in a facility placed in service after December 31, 1979, and before January 1, 1993, and

(2) which are sold before January 1, 2003.

**(f) Extension for certain facilities**

**(1) In general**

In the case of a facility for producing qualified fuels described in subparagraph (B)(ii) or (C) of subsection (c)(1)-

(A) for purposes of subsection (e)(1)(B), such facility shall be treated as being placed in service before January 1, 1993, if such facility is placed in service before July 1, 1998, pursuant to a binding written contract in effect before January 1, 1997, and

(B) if such facility is originally placed in service after December 31, 1992, paragraph (2) of subsection (e) shall be applied with respect to such facility by substituting "January 1, 2008" for "January 1, 2003".

**(2) Special rule**

Paragraph (1) shall not apply to any facility which produces coke or coke gas unless the original use of the facility commences with the taxpayer.

**(g) Extension for facilities producing coke or coke gas**

Notwithstanding subsection (e)-

**(1) In general**

In the case of a facility for producing coke or coke gas (other than from petroleum based products) which was placed in service before January 1, 1993, or after June 30, 1998, and before January 1, 2010, this section shall apply with respect to coke and coke gas produced in such facility and sold during the period-

(A) beginning on the later of January 1, 2006, or the date that such facility is placed in service, and

(B) ending on the date which is 4 years after the date such period began.

**(2) Special rules**

In determining the amount of credit allowable under this section solely by reason of this subsection-

**(A) Daily limit**

The amount of qualified fuels sold during any taxable year which may be taken into account by reason of this subsection with respect to any facility shall not exceed an average barrel-of-oil equivalent of 4,000 barrels per day. Days before the date the facility is placed in service shall not be taken into account in determining such average.

**(B) Extension period to commence with unadjusted credit amount**

For purposes of applying subsection (b)(2) to the \$3 amount in subsection (a), in the case of fuels sold after 2005, subsection (d)(2)(B) shall be applied by substituting "2004" for "1979".

**(C) Denial of double benefit**

This subsection shall not apply to any facility producing qualified fuels for which a credit was allowed under this section for the taxable year or any preceding taxable year by reason of subsection (f).

**(D) Nonapplication of phaseout**

Subsection (b)(1) shall not apply.

**(E) Coordination with section 45**

No credit shall be allowed with respect to any coke or coke gas which is produced using steel industry fuel (as defined in section 45(c)(7)) as feedstock if a credit is allowed to any taxpayer under section 45 with respect to the production of such steel industry fuel.