

Part I

Section 45H. --Credit for Production of Low Sulfur Diesel Fuel

Rev. Proc. 2007-69

SECTION 1. PURPOSE

This revenue procedure provides the procedure under which small business refiners may obtain from the Internal Revenue Service a certification that satisfies the requirements of § 45H(f)(1) of the Internal Revenue Code, relating to certifications that costs with respect to a facility will result in compliance with the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency (EPA).

SECTION 2. BACKGROUND AND DEFINITIONS

.01 Section 45H, which was added to the Code by § 339(a) of the American Jobs Creation Act of 2004 (Public Law No. 108-357), provides a low sulfur diesel fuel production credit for low sulfur diesel fuel produced by a small business refiner. Section 45H(a) provides that the amount of the credit is 5 cents per gallon of low sulfur diesel fuel produced by a small business refiner.

.02 Section 45H(b)(1) provides that the aggregate credit determined under ' 45H(a) for any taxable year with respect to any facility shall not exceed--

(1) 25 percent of the qualified capital costs incurred by the small business refiner with respect to the facility, reduced by

(2) The aggregate credits determined under ' 45H for all prior taxable years with respect to the facility.

.03 Under ' 45H(b)(2), in the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on December 31, 2002, in excess of 155,000 barrels, the number of percentage points described in ' 45H(b)(1) (25 percentage points) shall be reduced (not below zero) by the product of such number (before the application of ' 45H(b)(2)) and the ratio of the excess to 50,000 barrels.

.04 Section 45H(c)(1) defines the term "small business refiner" to mean, with respect to any taxable year, a refiner of crude oil that meets the following requirements:

(1) Not more than 1,500 individuals are engaged in the refinery operations of the business on any day during the taxable year; and

(2) The average daily domestic refinery run or average retained production for all facilities of the taxpayer for the 1-year period ending on December 31, 2002, did not exceed 205,000 barrels.

.05 Section 45H(c)(2) defines the term “qualified capital costs.” The qualified capital costs with respect to any facility are those costs that are paid or incurred during the applicable period for compliance with the applicable EPA regulations with respect to the facility, including expenditures for the construction of new process operations units or the dismantling and reconstruction of existing process units to be used in the production of low sulfur diesel fuel, associated adjacent or offsite equipment (including tankage, catalyst, and power supply), engineering, construction period interest, and sitework.

.06 Section 45H(c)(3) defines the term “applicable EPA regulations” as the Highway Diesel Fuel Sulfur Control Requirements of the EPA (applicable EPA regulations). Heavy-duty highway vehicles for the 2007 and later model years must be fueled with highway diesel fuel that meets a maximum sulfur standard of 15 parts per million (ppm). The applicable EPA regulations generally require petroleum refiners that produce diesel fuel for heavy-duty highway vehicles to produce this low sulfur diesel fuel beginning June 1, 2006. However, the applicable EPA regulations provide additional time to comply with the 15 ppm sulfur standard under certain circumstances.

.07 Section 45H(c)(4) defines the term “applicable period.” The applicable period with respect to any facility is the period beginning on January 1, 2003, and ending on the earlier of the date that is one year after the date on which the taxpayer must comply with the applicable EPA regulations with respect to that facility, or December 31, 2009.

.08 Section 45H(c)(5) defines the term “low sulfur diesel fuel” as diesel fuel with a sulfur content of 15 ppm or less.

.09 Section 45H(f)(1) provides that no credit for the production of low sulfur diesel fuel under ' 45H shall be allowed unless, not later than the date that is 30 months after the first day of the first taxable year in which the low sulfur diesel fuel production credit is determined with respect to a facility, the small business refiner obtains certification from the Secretary, after consultation with the Administrator of the EPA, that the taxpayer's qualified costs with respect to the facility will result in compliance with the applicable EPA regulations.

.10 Section 45H(f)(2) provides that an application for certification shall include relevant information regarding unit capacities and operating characteristics sufficient for the Secretary, after consultation with the Administrator of the EPA, to determine that the qualified capital costs are necessary for compliance with the applicable EPA regulations.

.11 Under ' 45H(f)(3), any application shall be reviewed and notice of certification, if applicable, shall be made within 60 days of receipt of the application. In the event the Secretary does not notify the taxpayer of the results of the certification within this time period, the taxpayer may presume the certification to be issued until so notified.

.12 Section 45H(f)(4) provides that, with respect to the credit allowed under § 45H--

(1) The statutory period for assessment of any deficiency attributable to the credit shall not expire before the end of the 3-year period ending on the date that the review period described in § 45H(f)(3) ends with respect to the taxpayer; and

(2) The deficiency may be assessed before the expiration of the 3-year period notwithstanding the provisions of any other law or rule of law that would otherwise prevent the assessment.

.13 Section 45H is effective for expenses paid or incurred after December 31, 2002, in taxable years ending after that date.

SECTION 3. SCOPE

This revenue procedure applies to small business refiners that pay or incur qualified capital costs after December 31, 2002, in taxable years ending after that date.

SECTION 4. PROCEDURE FOR OBTAINING CERTIFICATION

.01 The certification required under § 45H(f)(1) (relating to certifications by the Secretary that the taxpayer's qualified costs with respect to the facility will result in compliance with the applicable EPA regulations) is issued by the Internal Revenue Service after consultation with the EPA. A taxpayer seeking to obtain such a certification must submit one paper copy and one electronic version on a floppy disc or CD of the application for certification under section 45H(f) to the Internal Revenue Service and one paper copy and one electronic version of the application to the EPA. Applications for certification under section 45H(f) should be marked: SECTION 45H(f) APPLICATION FOR CERTIFICATION. There is no user fee for these applications. The application for a certification with respect to a facility must contain the following information:

- (1) The taxpayer's name, address, and taxpayer identification number;
- (2) A description of the facility;
- (3) The unit capacities and operating characteristics of the facility;

(4) Whether the facility is currently producing low sulfur diesel fuel; and

(5) A description of the qualified capital costs with respect to the facility.

.02 The electronic version of the application MUST be formatted in one of the following software applications:

Microsoft Word™ 2002 or later edition
Microsoft Excel™ 2002 or later edition
Adobe Acrobat™ PDF 6.0 or later edition

Information submitted using the Excel™ spreadsheet must include calculation formulas and assumptions.

.03 A separate application is required for each facility for which qualified capital costs are paid or incurred.

.04 The following declaration must accompany an application: "Under penalties of perjury, I declare that I have examined this application, including accompanying documents, and to the best of my knowledge and belief, the facts presented are true, correct, and complete." The declaration must be signed by a person authorized to submit the application on behalf of the taxpayer.

.05 The applications should be sent to the following addresses:

(1) Applications to the Internal Revenue Service:

(a) Applications submitted by U.S. mail must be sent to:

Internal Revenue Service
Industry Director, Natural Resources and Construction
Attn: Executive Assistant
1919 Smith Street
Stop HOU 1000
Houston, TX 77002

(b) Applications submitted by a private delivery service must be sent to:

Internal Revenue Service
Industry Director, Natural Resources and Construction
Attn: Executive Assistant
1919 Smith Street, Floor P2
Stop HOU 1000
Houston, TX 77002

(c) Applications may also be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. Central time to:

Internal Revenue Service
Industry Director, Natural Resources and Construction
Attn: Executive Assistant
1919 Smith Street, Floor P2
Stop HOU 1000
Houston, TX 77002

(2) Applications to the Environmental Protection Agency:

(a) Applications submitted by U.S. mail must be sent to:

Environmental Protection Agency
Director, Compliance and Innovative Strategies Division
1200 Pennsylvania Ave, NW (6403J)
Washington, DC 20460

(b) Applications submitted by a private delivery service must be sent to:

Environmental Protection Agency
Director, Compliance and Innovative Strategies Division
1310 L Street, NW - 6th Floor Mail Code 6403J
Washington, DC 20005

(c) Applications may also be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. Eastern time to:

Environmental Protection Agency
Director, Compliance and Innovative Strategies Division
1310 L Street, NW - 6th Floor Mail Code 6403J
Washington, DC 20005

.06 The 60-day review period under ' 45H(f)(3) does not begin until the Service receives a complete application. An application will not be considered complete if the Service, after the consultation with the EPA, determines that the application does not contain all of the information necessary to determine whether the taxpayer's costs with respect to the facility result in compliance with the applicable EPA regulations. If the Service does not notify the taxpayer that the application is incomplete within 60 days of receipt of the taxpayer's application, a taxpayer may presume the application to be complete.

.07 The certification will ordinarily be granted with respect to a facility if the application is complete, nothing in the application is inconsistent with a finding that the taxpayer's qualified capital costs with respect to the facility will result in compliance with the applicable EPA regulations, and the taxpayer has not been subject to a penalty under the applicable EPA regulations for a violation relating to that facility. If the taxpayer has been subject to a penalty under the applicable EPA regulations for a violation relating to the facility, the Service, after consultation with the EPA, will take all relevant information into account in determining whether certification will be granted or denied.

.08 The Service will notify the taxpayer whether certification has been granted or denied. If the Service does not notify the taxpayer whether certification has been granted or denied within 60 days of receipt of the taxpayer's complete application (or within 60 days of receipt of an application that is presumed to be complete under section 4.06), the taxpayer may presume that the certification has been granted during the period that begins 60 days after the receipt of the complete (or presumptively complete) application

and ends on the date the taxpayer is notified that the application is denied or incomplete. If the taxpayer is permitted under this section 4.08 to presume for any period that the certification with respect to a facility has been granted--

(1) The taxpayer will be treated as satisfying the certification requirement of section 45H(f)(1) in determining whether the credit under section 45H is allowable with respect to fuel produced at the facility during that period; and

(2) The running of the 30-month period applicable to the facility under section 45H(f)(1) will be suspended for the period during which the taxpayer is permitted to presume the certification with respect to the facility has been granted.

.09 All inquiries regarding the status of a certification request should be sent to the Service at the address listed in section 4.05(1) (or the taxpayer may call (713) 209-3615 (not a toll free call)).

SECTION 5. EFFECT OF CERTIFICATION

.01 Granting the certification establishes only that the taxpayer has satisfied the requirement of section 45H(f) and does not preclude the Service from examining a taxpayer's return with respect to the low sulfur diesel fuel production credit. The certification does not establish that the taxpayer is a small business refiner, that fuel produced by the taxpayer is low sulfur diesel fuel, or that any expenditure is a qualified capital cost. Thus, the certification is not a determination by the Service that the costs the taxpayer identifies as qualified capital costs on the application for certification are, in fact, qualified capital costs.

.02 Only one certification is required with respect to a facility. Thus, a taxpayer that incurs additional qualified capital costs with respect to a facility after obtaining a certification with respect to the facility is not required to obtain a new certification with respect to that facility.

SECTION 6. EFFECTIVE DATE AND TRANSITION RULE

.01 This revenue procedure is effective for applications filed after November 9, 2007.

.02 Any certification issued before June 30, 2008, will be treated as issued before the end of the 30-month period described in section 45H(f)(1).

SECTION 7. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-2074.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in section 4. This information will be used to determine if the qualified capital costs of a small business refiner are necessary for compliance with the applicable EPA regulations. This information collection is voluntary.

The likely respondents are small business refiners within the meaning of ' 45H(c)(1). The estimated total annual reporting burden is 75 hours. The estimated

annual burden per respondent varies from 1 hour to 2 hours, depending on individual circumstances, with an estimated average of 1.5 hours. The estimated total number of respondents is 50. The estimated frequency of responses is once per respondent.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is David Selig of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Nicole Cimino at (202) 622-3110 (not a toll-free call).