

Renewable Electricity, Refined Coal, and Indian Coal Production Credit

Department of the Treasury
Internal Revenue Service

▶ Attach to your tax return.

Attachment
Sequence No. **95**

Name(s) shown on return

Identifying number

Section A. Electricity produced at qualified facilities placed in service prior to October 23, 2004

1	Kilowatt-hours produced and sold (see instructions)	×	0.02	1	
2	Phaseout adjustment (see instructions)	\$	×	2	
3	Credit before reduction. Subtract line 2 from line 1			3	
Reduction for government grants, subsidized financing, and other credits:					
4	Total of government grants, proceeds of tax-exempt government obligations, subsidized energy financing, and any federal tax credits allowed for the project for this and all prior tax years (see instructions)			4	
5	Total of additions to the capital account for the project for this and all prior tax years			5	
6	Divide line 4 by line 5. Show as a decimal carried to at least 4 places			6	.
7	Multiply line 3 by line 6			7	
8	Subtract line 7 from line 3			8	
9	Section A renewable electricity production credit from partnerships, S corporations, cooperatives, estates, and trusts			9	0.021
10	Add lines 8 and 9. Cooperatives, estates, and trusts, go to line 11; partnerships and S corporations, report this amount on Schedule K; all others, report this amount on Form 3800, line 1f			10	
11	Amount allocated to patrons of the cooperative or beneficiaries of the estate or trust (see instructions)			11	
12	Cooperatives, estates, and trusts. Subtract line 11 from line 10. Report the credit on Form 3800, line 1f			12	

Section B. Electricity and refined coal produced at qualified facilities placed in service after October 22, 2004, and Indian coal produced at facilities placed in service after August 8, 2005

Part I Current Year Credit

Electricity produced at qualified facilities using wind, closed-loop biomass, geothermal, and solar					
1	Kilowatt-hours produced and sold (see instructions)	×	0.02	1	
Electricity produced at qualified facilities using open-loop biomass, small irrigation power, landfill gas, trash combustion, and hydropower					
2	Kilowatt-hours produced and sold (see instructions)	×	.01	2	
3	Add lines 1 and 2			3	
4	Phaseout adjustment (see instructions)	\$	×	4	
5	Subtract line 4 from line 3			5	
Refined coal produced at a qualified refined coal production facility					
6	Tons produced and sold (see instructions)	×	\$5.877	6	\$6.061
7	Phaseout adjustment (see instructions)	\$	×	7	
8	Subtract line 7 from line 6			8	
Indian Coal produced at a qualified Indian coal production facility					
9	Tons produced and sold (see instructions)	×	\$1.544	9	\$1.589
10	Credit before reduction. Add lines 5, 8, and 9			10	
Reduction for government grants, subsidized financing, and other credits:					
11	Total of government grants, proceeds of tax-exempt government obligations, subsidized energy financing, and any federal tax credits allowed for the project for this and all prior tax years (see instructions)			11	
12	Total of additions to the capital account for the project for this and all prior tax years			12	
13	Divide line 11 by line 12. Show as a decimal carried to at least 4 places			13	.
14	Multiply line 10 by the lesser of 1/2 or line 13			14	
15	Subtract line 14 from line 10			15	
16	Section B renewable electricity, refined coal, and Indian coal production credit from partnerships, S corporations, cooperatives, estates, and trusts			16	
17	Add lines 15 and 16. Partnerships and S corporations, report this amount on Schedule K; all others continue to line 18			17	
18	Renewable electricity, refined coal, and Indian coal production credit included on line 17 from passive activities (see instructions)			18	
19	Subtract line 18 from line 17			19	

Part I Continued

20	Renewable electricity, refined coal, and Indian coal production credit allowed for 2007 from a passive activity (see instructions)	20	
21	Carryforward of renewable electricity, refined coal, and Indian coal production credit to 2007.	21	
22	Carryback of renewable electricity, refined coal, and Indian coal production credit from 2008 (see instructions)	22	
23	Add lines 19 through 22. Cooperatives, estates, and trusts, go to line 24; all others, go to Part II	23	
24	Amount allocated to patrons of the cooperative or beneficiaries of the estate or trust (see instructions)	24	
25	Cooperatives, estates, and trusts. Subtract line 24 from line 23. Use this amount to complete Part II	25	

Part II Allowable Credit

26	Regular tax before credits (see instructions)	26	
27	Alternative minimum tax (see instructions)	27	
28	Add lines 26 and 27	28	
29a	Credits from Form 1040, lines 47 through 50 and 52 through 54 (or Form 1040NR, lines 44, 45, and 47 through 49)	29a	
b	Foreign tax credit	29b	
c	Credits from Forms 5735 and 8834	29c	
d	Non-business alternative motor vehicle credit (Form 8910, line 18)	29d	
e	Non-business alternative fuel vehicle refueling property credit (Form 8911, line 19)	29e	
f	Add lines 29a through 29e	29f	
30	Net income tax. Subtract line 29f from line 28. If zero, skip lines 31 through 34 and enter -0- on line 35	30	
31	Net regular tax. Subtract line 29f from line 26. If zero or less, enter -0-	31	
32	Enter 25% (.25) of the excess, if any, of line 31 over \$25,000 (see instructions)	32	
33	Subtract line 32 from line 30. If zero or less, enter -0-	33	
34a	General business credit (Form 3800, line 19)	34a	
b	Empowerment zone and renewal community employment credit (Form 8844, line 26)	34b	
c	Work opportunity credit (Form 5884, line 22)	34c	
d	Alcohol fuels credit (Form 6478, line 24)	34d	
e	Add lines 34a through 34d	34e	
35	Subtract line 34e from line 33. If zero or less, enter -0-	35	
36	Credit allowed for the current year. Cooperatives, estates, and trusts. Enter the smaller of line 25 or line 35. Report this amount on Form 1041, Schedule G, line 2c; or Form 1120-C, Schedule J, line 5c. If line 35 is smaller than line 25, see instructions. All others. Enter the smaller of line 23 or line 35. Report this amount on Form 1040, line 55; Form 1040NR, line 50; Form 1120, Schedule J, line 5c; or the applicable line of your return. If line 35 is smaller than line 23, see instructions	36	

Personal credits from Form 1040 or Form 1040NR (see instructions)

R/R/S

23

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General Instructions

Section references are to the Internal Revenue Code.

What's New

The Tax Technical Corrections Act of 2007 removed the additional credit limitation for a closed-loop biomass facility modified to co-fire with coal, other biomass, or both based on the ratio of the thermal content of the closed-loop biomass to the thermal content of all fuels used at the facility. Thus, the lines used to figure the additional limitation are eliminated from the form.

You may have to file an amended return if you claimed a credit for a closed-loop biomass facility modified to co-fire with coal, other biomass, or both after October 21, 2004. See the instructions for line 1.

Purpose of Form

Use Form 8835 to claim the renewable electricity, refined coal, and Indian coal production credit. The credit is allowed only for the sale of electricity, refined coal, or Indian coal produced in the United States or U.S. possessions from qualified energy resources at a qualified facility (see Definitions on page 3).

Generally, if you are a taxpayer that is not a partnership or S corporation, and your only source of this credit is from a partnership, S corporation, estate, trust, or cooperative, you are not required to complete Section A of this form. Instead, you can report this credit directly on line 1f of Form 3800. The following exceptions apply.

- You are an estate or trust and the source credit can be allocated to beneficiaries. For more details, see the Instructions for Form 1041, Schedule K-1, box 13.
- You are a cooperative and the source credit can or must be allocated to patrons. For more details, see the Instructions for Form 1120-C, Schedule J, line 5c.

How To Figure the Credit

Generally, the credit is 1.5 cents per kilowatt-hour (kWh) for the sale of electricity produced by the taxpayer from qualified energy resources at a qualified facility during the credit period (see Definitions on page 3). The 1.5 cents credit amount is reduced by 1/2 for open-loop biomass, small irrigation, landfill gas, trash combustion, and hydropower facilities. The credit is \$4.375 per ton for the sale of refined coal produced at a qualified facility during the credit period; see section 45(e)(8)(A). The credit is \$1.50 per ton for the sale of Indian coal produced at a qualified facility during the credit period.

The credit for electricity produced is proportionately phased out over a 3-cent range when the reference price exceeds the 8-cent threshold price. The refined coal credit is proportionately phased out over an \$8.75 range when the reference price of fuel used as feedstock exceeds 1.7 times the 2002 reference price. The 1.5-cent credit rate, the 8-cent threshold price, the \$4.375 refined coal rate, and the reference price of fuel used as a feedstock are adjusted for inflation. The reference price and the inflation adjustment factor (IAF) for each calendar year are published during the year in the Federal Register. If the reference price is less than the threshold price (adjusted by the IAF), there is no reduction. For electricity produced, if the reference price is more than 3 cents over the adjusted threshold price, there is no credit; if the reference price is more than the threshold price, but not more than 3 cents over the adjusted threshold price, there is a phaseout adjustment on line 2 of Section A and line 4 of Section B. For refined coal produced, if the reference price is more than \$8.75 over the adjusted threshold price, there is no credit; if the reference price is more than the threshold price, but not more than the \$8.75 over the adjusted threshold price, there is a phaseout adjustment on line 7 of Section B.

2.1

2008

\$6.061 / \$1.589

Note. For calendar year 2007, the effective credit rate for electricity, refined coal, and Indian coal produced and sold is, respectively, 2.9 cents per kWh, \$5.877 per ton and \$1.544 per ton; there is no phaseout adjustment.

Section A example. If the reference price of electricity is 10.0¢ and the adjusted threshold price is 9.0¢, reduce the credit by 1/3 ((10.0¢ - 9.0¢) ÷ 3¢ = .3333). Enter the line 1 credit in the first entry space on line 2, .3333 in the second entry space, and multiply to figure the reduction.

Definitions

Resources means wind, closed-loop biomass, poultry waste, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, hydropower production, refined coal, and Indian coal.

Closed-loop biomass is any organic material from a plant that is planted exclusively for use at a qualified facility to produce electricity.

Poultry waste is poultry manure and litter, including wood shavings, straw, rice hulls, and other bedding material for the disposition of manure.

Open-loop biomass is solid, nonhazardous, cellulosic waste material; lignin material; or agricultural livestock waste nutrients as defined in section 45(c)(3). See Notice 2006-88, 2006-42 I.R.B. 686, for rules related to open-loop biomass, including an expanded definition of a qualified facility and rules related to sales.

Geothermal energy is energy derived from a geothermal deposit as defined by section 613(e)(2).

Small irrigation power is power generated without any dam or impoundment of water. See section 45(c)(5).

Municipal solid waste is solid waste as defined under paragraph 27 of 42 U.S.C. 6903.

Refined coal is a liquid, gaseous, or solid fuel produced from coal or high carbon fly ash meeting the requirements of section 45(c)(7).

Hydropower production means the incremental hydropower production for the tax year from any hydroelectric dam placed in service on or before 8/8/2005 and the hydropower production from any nonhydroelectric dam described in section 45(c)(8)(C).

Indian coal means coal which is produced from coal reserves which on 6/14/05 were owned by an Indian tribe or held in trust by the United States for the benefit of an Indian tribe or its members.

Qualified facility is any of the following facilities owned by the taxpayer and used to produce electricity or, in the case of coal production facilities, refined and Indian coal. The facilities are broken down by form section.

Section A

- Poultry waste facility placed in service after 12/31/99 and before 1/1/05.
• Wind facility placed in service after 12/31/93 and before 10/23/04.
• Closed-loop biomass facility placed in service after 12/31/92 and before 10/23/04.

Section B

- Wind facility placed in service after 10/22/04 and before 1/1/09.
• Closed-loop biomass facility placed in service after 10/22/04 and before 1/1/09.
• Closed-loop biomass facility modified to co-fire with coal or other biomass (or both), placed in service before 1/1/09. See section 45(d)(2).

- Open-loop biomass facility using cellulosic waste placed in service before 1/1/09.
• Open-loop biomass facility using agricultural livestock waste placed in service after 10/22/04 and before 1/1/09 and the nameplate capacity rating is not less than 150 kilowatts.
• Geothermal energy facility placed in service after 10/22/04 and before 1/1/09.
• Solar energy facility placed in service after 10/22/04 and before 1/1/06.
• Small irrigation power facility placed in service after 10/22/04 and before 1/1/09.
• Landfill gas or trash combustion facility using municipal solid waste placed in service after 10/22/04 and before 1/1/09.
• A refined coal production facility originally placed in service after 10/22/04 and before 1/1/09.
• Hydropower facility producing incremental hydroelectric production attributable to efficiency improvements or additions to capacity described in section 45(c)(8)(B) placed in service after 8/8/05 and before 1/1/09 and any other facility producing qualified hydroelectric production described in section 45(c)(8) placed in service after 8/8/05 and before 1/1/09.

Indian coal production facility placed in service before 1/1/09. A qualified facility does not include a refined coal production facility or landfill gas facility using municipal solid waste to produce electricity, if the production from that facility is allowed as a credit under section 45K.

Credit period is:

- 10 years for a wind, poultry waste, closed-loop biomass (not modified for co-fire purposes), or refined coal production facility, beginning on the date the facility was placed in service.
• 10 years for a closed-loop biomass facility modified to co-fire with coal, other biomass (or both), beginning on the date the facility was placed in service, but not earlier than 10/22/04.
• 10 years for a hydropower facility, beginning on the date the efficiency improvements or additions to capacity are placed in service.
• 7 years for an Indian coal production facility, beginning on the date the facility was placed in service, but not before 1/1/2006.
• 5 years for an open-loop biomass facility using agricultural livestock waste, geothermal, solar energy, small irrigation power, landfill gas, or trash combustion facility, beginning on the date the facility was placed in service, if placed in service during the period after 10/22/04 and before 8/9/05. The credit period is 10 years if placed in service after 8/8/05.
• 5 years for an open-loop biomass facility using cellulosic waste, beginning on the date the facility was placed in service, but not earlier than 1/1/05.

United States and U.S. possessions include the seabed and subsoil of those submarine areas that are adjacent to the territorial waters over which the United States has exclusive rights according to international law.

Who Can Take the Credit

Generally, the owner of the facility is allowed the credit. In the case of closed-loop biomass facilities modified to co-fire with coal, other biomass, or both and open-loop biomass facilities, if the owner is not the producer of the electricity, the lessee or the operator of the facility is eligible for the credit.

Specific Instructions for Section A and Section B

Note. Where line references between Section A and B differ, the Section B line references are in parentheses.

Figure any renewable electricity, refined coal, and Indian coal production credit from your trade or business on lines 1 through 8 (lines 1 through 15 of Section B). Skip lines 1 through 8 (lines 1 through 15 of Section B) if you are only claiming a credit that was allocated to you from an S corporation, partnership, cooperative, estate, or trust.

Fiscal year taxpayers. If you have sales in 2007 and 2008 and the credit rate on line 1 (lines 1, 2, 6 or 9) or the phaseout adjustment on line 2 (lines 4 or 7) is different for 2007, make separate computations for each line. Use the respective sales, credit rate, and phaseout adjustment for each calendar year. Enter the total of the two computations on the credit rate line(s)—line 1 (lines 1, 2, 6 or 9)—or the phaseout adjustment line(s)—line 2 (lines 4 or 7). Attach the computations to Form 8835 and write "FY" in the margin.

Part I—Current Year Credit

Line 1

Enter the kilowatt-hours of electricity produced at qualified facilities and multiply by \$.02. Fiscal year filers with 2008 sales may have to refigure line 1 as explained under Fiscal year taxpayers above.

If you claimed the credit for a closed-loop biomass facility modified to co-fire with coal, other biomass, or both after October 21, 2004, you should file an amended return to refigure your credit. Use Form 8835, Section B, line 1, for the applicable tax year, to refigure your credit. The additional limitation, based on the thermal content of closed-loop biomass used in the facility and the thermal content of all fuels used in the facility, that applied to these facilities no longer applies. As a result, the credit related to these facilities is figured on line 1 of Section B.

Line 2, Section B only

Enter the kilowatt-hours of electricity produced and sold at qualified facilities and multiply by \$.01. Fiscal filers with 2008 sales must figure line 2 as explained under Fiscal year taxpayers above.

Line 2, Section A (Line 4, Section B)

Calendar year filers enter zero on lines 2 and 4. Fiscal year filers with sales in 2008 also enter zero if the published 2008 reference price is equal to or less than the 2008 adjusted threshold price. See How To Figure the Credit on page 2 to figure the adjustment.

Line 6, Section B only

Enter the tons of refined coal produced and sold during 2007 from a qualified refined coal production facility and multiply by \$5.877. Fiscal filers with 2008 sales must figure line 6 as explained under Fiscal year taxpayers above.

Line 7, Section B only

Calendar year filers enter zero on line 7. Fiscal year filers with sales in 2008 also enter zero if the published 2008 reference price is equal to or less than 1.7 times the 2002 reference price. See How To Figure the Credit on page 2 to figure the adjustment.

2009

2008

.021

2009

2008

\$6.061

2009

Line 9, Section B only

Enter the tons of Indian coal produced and sold from a qualified Indian coal facility and multiply by \$1,544.

\$1,589

Line 4, Section A (Line 11, Section B)

Enter the sum, for this and all prior tax years, of:

- Grants provided by the United States, a state, or political subdivision of a state for the project;
- Proceeds of a tax-exempt issue of state or local government obligations used to provide financing for the project;
- Total of subsidized energy financing provided directly or indirectly under a federal, state, or local program provided for the project; and
- The amount of any federal tax credit allowable for any property that is part of the project.

Line 10, Section A (Line 17, Section B)

Partnerships that own and produce electricity from qualified wind facilities should see Rev. Proc. 2007-65, 2007-45 I.R.B. 967, for information on how to allocate the credit. Rev. Proc. 2007-65 is available at www.irs.gov/irb/2007-45_IRB/ar18.html.

Line 18, Section B

Enter the amount included on line 17 that is from a passive activity. Generally, a passive activity is a trade or business in which you did not materially participate. Rental activities are generally considered passive activities, whether or not you materially participate. For details, see Form 8582-CR, Passive Activity Credit Limitations (for individuals, trusts, and estates), or 8810, Corporate Passive Activity Loss and Credit Limitations (for corporations).

Line 20, Section B

Enter the passive activity credit allowed for the 2007 renewable electricity, refined coal, and Indian coal production credit from Form 8582-CR or Form 8810.

Line 22, Section B

Use only if you amend your 2007 return to carry back an unused renewable electricity, refined coal, and Indian coal production credit from 2008.

2008

2009

Line 11, Section A (Line 24, Section B)

Cooperative election to allocate credit to patrons. A cooperative described in section 1381(a) can elect to allocate any part of the renewable electricity, refined coal, and Indian coal production credit among the patrons of the cooperative. The credit is allocated among the patrons eligible to share in patronage dividends on the basis of the quantity or value of business done with or for such patrons for the tax year.

The cooperative is deemed to have made the election by completing line 11 or line 24, as applicable. However, the election is not effective unless (a) made on a timely filed return (including extensions) and (b) the organization designates the apportionment in a written notice mailed to its patrons during the payment period described in section 1382(d).

If you timely file your return without making an election, you can still make the election by filing an amended return within 6 months of the due date of the return (excluding extensions). Enter "Filed pursuant to section 301.9100-2" on the amended return.

Once made, the election cannot be revoked.

Estates and trusts. Allocate the credit on line 10 (line 23 of Section B) between the estate or trust and the beneficiaries in the same proportion as income was allocated and enter the beneficiaries' share on line 11 (line 24 of Section B).

Part II—Allowable Credit

The credit allowed for the current year may be limited based on your tax liability. If you are completing Section B, you must complete Part II to figure the allowable credit. If you are completing Section A, you must file Form 3800, General Business Credit, to figure the allowable credit.

Line 26, Section B

Enter the regular tax before credits from the following line of the appropriate form or schedule.

- Individuals. Enter the amount from Form 1040, line 44 (or Form 1040NR, line 41).
- Corporations. Enter the amount from Form 1120, Schedule J, line 2, or the applicable line of your return.
- Estates and trusts. Enter the sum of the amounts from Form 1041, Schedule G, lines 1a and 1b, or the amount from the applicable line of your return.

Line 27, Section B

Enter the alternative minimum tax (AMT) from the following line of the appropriate form or schedule.

- Individuals. Enter the amount from Form 6251, line 35.
- Corporations. Enter the amount from Form 4626, line 14.
- Estates and trusts. Enter the amount from Form 1041, Schedule I, line 56.

Schedule I (Form 1041)

insert A

Line 29c, Section B

Enter any ~~American Samoa economic development credit and any~~ qualified electric vehicle credit allowed for the current year.

Handwritten initials

Line 32, Section B

See section 38(c)(5) for special rules that apply to married couples filing separate returns, controlled groups, regulated investment companies, real estate investment trusts, and estates and trusts.

Line 36, Section B

If you cannot use all of the credit because of the tax liability limit, carry any unused current year credit back 1 year and then forward up to 20 years.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is shown below.

Recordkeeping	18 hr., 10 min.
Learning about the law or the form	1 hr.
Preparing and sending the form to the IRS	1 hr., 19 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.

Composition: insert A is below. It can be copied from Form 8834 on the draft website. Please ensure the table border lines are shown.

Line 3a

29a, Section B

insert A

~~Enter the personal credits from your tax forms that reduce your regular tax before the table below for example 1040NR. See your current year tax form to see if these credits are still available.~~

Enter the total amount claimed on the following lines of Forms 1040 or 1040NR.

Personal Credits

Line:

Credits that reduce tax before the qualified electric vehicle credit:	2008 Form 1040, line:	2008 Form 1040NR, line:
Credit for child and dependent care expenses	47	44
Credit for the elderly or the disabled	48	N/A
Education credits	49	N/A
Child tax credit	51	46
Retirement savings contributions credit	52	47
Mortgage interest credit	53	48
Residential energy efficient property credit	53	48
Credit for qualified adoption expenses	53	48
Credit from Form 8859, District of Columbia first-time homebuyer credit	54	49