

## PHASE-OUT CALCULATION

Because the 2009 reference price for electricity produced from wind does not exceed 8 cents multiplied by the inflation adjustment factor, the phaseout of the credit provided in § 45(b)(1) does not apply to such electricity sold during calendar year 2009. Because the 2009 reference price of fuel used as feedstock for refined coal does not exceed the \$31.90 reference price of such fuel in 2002 multiplied by the inflation adjustment factor and 1.7, the phaseout of credit provided in § 45(e)(8)(B) does not apply to refined coal sold during calendar year 2009. Further, for electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic energy, the phaseout of credit provided in § 45(b)(1) does not apply to such electricity sold during calendar year 2009.

## CREDIT AMOUNT BY QUALIFIED ENERGY RESOURCE AND FACILITY, REFINED COAL, AND INDIAN COAL

As required by § 45(b)(2), the 1.5 cent amount in § 45(a)(1), the 8 cent amount in § 45(b)(1), the \$4.375 amount in § 45(e)(8)(A) and the \$2.00 amount in § 45(e)(8)(D) are each adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, such amount is rounded to the nearest multiple of 0.1 cent. In the case of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash combustion facilities, qualified hydropower facilities, marine and hydrokinetic renewable energy, § 45(b)(4)(A) requires the amount in effect under § 45(a)(1) (before rounding to the nearest 0.1 cent) to be reduced by one-half. Under the calculation required by § 45(b)(2), the credit for renewable electricity production for calendar year 2009 under § 45(a) is 2.1 cents per kilowatt hour on the sale of electricity produced from the qualified energy resources of wind, closed-loop biomass, geothermal energy, and solar energy, and 1.1 cent per kilowatt hour on the sale of electricity

produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash combustion facilities, qualified hydropower facilities, marine and hydrokinetic energy facilities. Under the calculation required by § 45(b)(2), the credit for refined coal production for calendar year 2009 under § 45(e)(8)(A) is \$6.20 per ton on the sale of qualified refined coal. The credit for steel industry fuel is \$2.00 per barrel-of-oil equivalent of steel industry fuel sold. The credit for Indian coal production for calendar year 2009 under § 45(e)(10)(B) is \$1.625 per ton on the sale of Indian coal.

## DRAFTING AND CONTACT INFORMATION

The principal author of this notice is Philip Tiegerman of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Tiegerman at (202) 622-3110 (not a toll-free call).

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## Credit for Residential Energy Efficient Property

### Notice 2009-41

#### SECTION 1. PURPOSE

This notice sets forth interim guidance, pending the issuance of regulations, relating to the credit for residential energy efficient property under § 25D of the Internal Revenue Code for taxable years beginning after December 31, 2008. Specifically, this notice provides procedures that manufacturers may follow to certify that property satisfies certain conditions of § 25D, as well as guidance regarding the conditions under which taxpayers seeking to claim the § 25D credit may rely on a manufacturer's certification. The Internal Revenue Service (Service) and the Treasury Department expect that the regulations will incorporate the rules set forth in this notice.

#### SECTION 2. BACKGROUND

.01 Section 25D provides a tax credit to individuals for residential energy efficient property. Section 1122 of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, amended

section 25D for taxable years beginning after December 31, 2008. The amount of a taxpayer's section 25D credit for a taxable year beginning after December 31, 2008, is equal to the sum of the following:

(1) 30 percent of the qualified solar electric property expenditures made by the taxpayer during the taxable year;

(2) 30 percent of the qualified solar water heating property expenditures made by the taxpayer during the taxable year;

(3) The lesser of—

(i) 30 percent of the qualified fuel cell property expenditures made by the taxpayer during the taxable year; or

(ii) \$500 for each half kilowatt of capacity of the qualified fuel cell property to which the expenditures relate;

(4) 30 percent of the qualified small wind energy property expenditures made by the taxpayer during the taxable year; and

(5) 30 percent of the qualified geothermal heat pump property expenditures made by the taxpayer during the taxable year.

.02 Section 25D(g) provides that the credit applies to residential energy efficient property placed in service before January 1, 2017.

#### SECTION 3. RESIDENTIAL ENERGY EFFICIENT PROPERTY

##### .01 *Meaning of Terms.*

(1) *Qualified Expenditures.* The expenditures for which the credit for residential energy efficient property is allowed (qualified expenditures) are defined as follows:

(a) Qualified solar electric property expenditures are expenditures for property which uses solar energy to generate electricity for use in a qualifying dwelling unit.

(b) Qualified solar water heating property expenditures are expenditures for property which heats water for use in a qualifying dwelling unit if at least half of the energy used by the property for such purpose is derived from the sun, and which is certified for performance by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed.

(c) Qualified fuel cell property expenditures are expenditures for a fuel cell power plant which has a nameplate capacity of at least 0.5 kilowatt of electricity using an

electrochemical process, has an electricity-only generation efficiency greater than 30 percent, and is installed on or in connection with a qualifying dwelling unit.

(d) Qualified small wind energy property expenditures are expenditures for property which uses a wind turbine to generate electricity for use in connection with a qualifying dwelling unit.

(e) Qualified geothermal heat pump property expenditures are expenditures for equipment which uses the ground or ground water as a thermal energy source to heat the dwelling unit or as a thermal energy sink to cool the dwelling unit, meets the requirements of the Energy Star program which are in effect at the time that the expenditure for such equipment is actually made (even if under § 25D(e)(8) the expenditure is deemed made at a later time for purposes of determining the taxable year for which a taxpayer may claim the credit), and is installed on or in connection with a qualifying dwelling unit.

#### (2) *Qualifying Dwelling Unit.*

(a) Except as provided in section 3.01(2)(b) of this notice, a qualifying dwelling unit is a dwelling unit that is located in the United States and is used as a residence by the taxpayer.

(b) For purposes of section 3.01(1)(c) of this notice (relating to qualified fuel cell property expenditures), a qualifying dwelling unit is a dwelling unit that is located in the United States and is used as a principal residence (within the meaning of section 121) by the taxpayer.

#### .02 *Manufacturer's Certification*

(1) *In General.* The manufacturer of property may certify to a taxpayer that the property meets certain requirements that must be satisfied to claim the credit under § 25D by providing the taxpayer with a certification statement that satisfies the requirements of section 3.02(3), (4) and (5) of this notice. The manufacturer may provide the certification statement by including a written copy of the statement with the packaging of the property, in printable form on the manufacturer's website, or in any other manner that will permit the taxpayer to retain the certification statement for tax recordkeeping purposes.

(2) *Taxpayer Reliance.* Except as provided in section 3.02(7) of this notice, a taxpayer may rely on a manufacturer's certification in determining whether property is eligible for the credit under § 25D.

A taxpayer is not required to attach the certification statement to the return on which the credit is claimed. However, § 1.6001-1(a) of the Income Tax Regulations requires that taxpayers maintain such books and records as are sufficient to establish the entitlement to, and amount of, any credit claimed by the taxpayer. Accordingly, a taxpayer claiming a credit for residential energy efficient property should retain the certification statement as part of the taxpayer's records for purposes of § 1.6001-1(a).

(3) *Content of Manufacturer's Certification; Required Information.* A manufacturer's certification statement must contain the following:

(a) The name and address of the manufacturer.

(b) Identification of the property as a solar electric property, solar water heating property, fuel cell property, small wind energy property, or geothermal heat pump property.

(c) The make, model number, and any other appropriate identifiers of the property.

(4) *Content of Manufacturer's Certification; Optional Information.* A manufacturer's certification statement may contain any of the following statements that are applicable:

(a) A statement that the property is made by the manufacturer.

(b) In the case of a solar water heating property, a statement describing the circumstances in which at least half the energy used by the property to heat water for use in a dwelling unit is derived from the sun.

(c) In the case of a solar water heating property, a statement that the property is certified for performance by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed.

(d) In the case of a fuel cell property, a statement that the property is a fuel cell power plant that has a nameplate capacity of at least 0.5 kilowatt of electricity using an electrochemical process.

(e) In the case of a fuel cell property, a statement that the property is a fuel cell power plant that has an electricity-only generation efficiency greater than 30 percent.

(f) In the case of a fuel cell property, a statement specifying the capacity of the property in half kilowatts.

(g) In the case of a small wind energy property, a statement specifying the capacity of the wind turbine in half kilowatts.

(h) In the case of a geothermal heat pump property, a statement that the property meets the requirements of the Energy Star program that are in effect at the time that the expenditure for such equipment is actually made.

(5) *Content of Manufacturer's Certification; Required Declaration.* A manufacturer's certification statement must contain a declaration, signed by a person currently authorized to bind the manufacturer in these matters, in the following form:

"Under penalties of perjury, I declare that I have examined this certification statement, and to the best of my knowledge and belief, the facts presented are true, correct, and complete."

(6) *Manufacturer's Records.* A manufacturer that certifies to a taxpayer that a property meets a requirement that must be satisfied to claim the credit under § 25D must retain in its records documentation establishing that the property meets the requirement. The manufacturer must, upon request, make such documentation available for inspection by the Service.

(7) *Effect of Erroneous Certification or Failure to Satisfy Documentation Requirements.* The Service may, upon examination (and after any appropriate consultation with the Department of Energy or the Environmental Protection Agency), determine that a manufacturer's certification that property meets a requirement that must be satisfied to claim the credit under § 25D is erroneous. In that event, or if the property's manufacturer fails to satisfy the requirements relating to documentation in section 3.02(6) of this notice, the manufacturer's right to provide a certification on which future purchasers of the property can rely will be withdrawn, and taxpayers purchasing the property after the date on which the Service publishes an announcement of the withdrawal may not rely on the manufacturer's certification. Taxpayers may continue to rely on the certification for properties purchased on or before the date on which the announcement of the withdrawal is published (including in cases in which the property is not installed or the credit is not claimed before

the announcement of the withdrawal is published). Manufacturers are reminded that an erroneous certification may result in the imposition of penalties—

(a) Under § 7206 for fraud and making false statements; and

(b) Under § 6701 for aiding and abetting an understatement of tax liability (in the amount of \$1,000 per return on which a credit is claimed in reliance on the certification).

(8) *Availability of Certification Information.* The Service encourages manufacturers to provide a listing of applicable certification information with respect to their products on their websites to assist taxpayers in determining whether their purchases qualify for the credit for residential energy efficient property.

.03 *Additional Requirements.* A taxpayer claiming a credit with respect to an expenditure is responsible for determining whether the expenditure appropriately relates to a qualifying dwelling unit (within the meaning of section 3.01(2) of this notice) and cannot rely on a manufacturer's certification for that purpose.

.04 *Labor Costs.* Section 25D allows the credit for expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of residential energy efficient property described in section 3.01 of this notice and for piping or wiring to interconnect such property to the dwelling unit.

#### SECTION 4. SPECIAL RULES FOR JOINT OCCUPANCY

.01 If a dwelling unit is jointly occupied and used during any calendar year as a residence by two or more individuals, then the maximum amount of qualified fuel cell expenditures which may be taken into account for purposes of § 25D(a) by all individuals with respect to the dwelling unit during the calendar year is \$1,667 for each half kilowatt of capacity of the fuel cell power plant to which such expenditures relate.

.02 The amount of expenditures taken into account under section 4.01 of this notice by any individual for a taxable year is equal to the lesser of—

(1) The amount of expenditures made by the individual with respect to the dwelling during the calendar year, or

(2) The maximum amount of expenditures that may be taken into account by all individuals under section 4.01 of this notice multiplied by a fraction—

(a) The numerator of which is the amount of expenditures made by the individual with respect to the dwelling during the calendar year, and

(b) The denominator of which is the total expenditures made by all individuals with respect to the dwelling during the calendar year.

#### SECTION 5. PAPERWORK REDUCTION ACT

The collection of information contained in this notice 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 1545–2134.

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 notice is in section 3. This information is required to be collected and retained in order to ensure that property meets the requirements for the residential energy efficient property credit under § 25D. This information will be used to determine whether the property for which manufacturers provide certifications is property that qualifies for the credit. The collection of information is required to obtain a benefit from manufacturers' certification statements that property meets certain requirements that must be satisfied to qualify for the credit. The likely respondents are corporations, partnerships, and individuals.

The estimated total annual reporting burden is 350 hours.

The estimated annual burden per respondent varies from 2 hours to 3 hours, depending on individual circumstances, with an estimated average burden of 2.5 hours to complete the requests for certification required under this notice. The estimated number of respondents is 140.

The estimated annual frequency of responses is on occasion.

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.

#### SECTION 6. DRAFTING INFORMATION

The principal author of this notice is Martha S. McRee of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Martha S. McRee at (202) 622–3110 (not a toll-free call).

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*26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.*  
(Also Part I, §§ 172, 6411.)

### Rev. Proc. 2009–26

#### SECTION 1. PURPOSE

.01 In February 2009, the American Recovery and Reinvestment Tax Act of 2009, Div. B of Pub. L. No. 111–5, 123 Stat. 115 (the Act) was signed into law. Section 1211 of the Act allows an eligible small business (ESB) to elect to carry back a 2008 net operating loss (NOL) for a period of 3, 4, or 5 years to offset taxable income in those preceding taxable years. Prior to the Act, taxpayers generally could carry back an NOL only two taxable years. On March 16, 2009, the Internal Revenue Service and Treasury Department issued Rev. Proc. 2009–19, 2009–14 I.R.B. 747, advising taxpayers how to elect the 3-, 4-, or 5-year carryback.

.02 The Service has received many claims from taxpayers that seek a 3-, 4-, or 5-year carryback but that inadvertently have not made a valid election in accordance with Rev. Proc. 2009–19. These inadvertent failures may be due to the fact that the enactment of § 1211 and issuance of Rev. Proc. 2009–19 occurred midway through the current tax return filing season.

.03 To provide certainty to taxpayers and to implement the intent of Congress in providing an extended carryback period, this revenue procedure modifies Rev. Proc. 2009–19 to provide that an ESB may elect a 3-, 4-, or 5-year carryback period simply by filing a Form 1045, Form 1139, or amended return that carries back