

tax, disclosure, filing or payment obligations under § 4965, § 6033(a)(2), § 6011, and § 6071. Some taxable entities may be subject to disclosure obligations under § 6011(g), that apply to “prohibited tax shelter transactions” as defined by § 4965(e) (including listed transactions).

The Service and Treasury recognize that some taxpayers may have filed tax returns taking the position that they were entitled to the purported tax benefits of the type of transaction described in this notice. These taxpayers should take appropriate corrective action and ensure that their transactions are disclosed properly.

DRAFTING INFORMATION

The principal author of this notice is Eric Ingala of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Ingala at (202) 622-3070 (not a toll-free call).

Amplification of Notice 2006-27 Certification of Energy Efficient Home Credit Notice 2008-35

SECTION 1. PURPOSE

This notice clarifies and supersedes Notice 2006-27, 2006-1 C.B. 626, as updated by Announcement 2006-88, 2006-2 C.B. 910. Notice 2006-27, as updated, provided guidance regarding the calculation of heating and cooling energy consumption for purposes of determining the eligibility of a dwelling unit (other than a manufactured home) for the New Energy Efficient Home Credit under Internal Revenue Code § 45L. Notice 2006-27 also provided guidance relating to the public list of software programs that may be used to calculate energy consumption. Guidance relating to manufactured homes is provided in Notice 2008-36.

This notice supersedes Notice 2006-27 by substantially republishing the guidance contained in that publication. This notice clarifies the meaning of the terms equivalent rating network and eligible contractor, and permits calculation procedures other than those identified in Notice 2006-27 to be used to calculate energy consumption.

Finally, this notice clarifies the process for removing software from the list of approved software and reflects the extension of the tax credit through December 31, 2008.

SECTION 2. BACKGROUND

.01 *In General.* Section 45L provides a credit to an eligible contractor who constructs a qualified energy efficient home. For qualified energy efficient homes (other than manufactured homes), the amount of the credit is \$2,000. A dwelling unit qualifies for the credit if—

- (1) It is located in the United States;
- (2) Its construction is substantially completed after August 8, 2005;
- (3) It meets the energy saving requirements of § 45L(c)(1); and
- (4) It is acquired from the eligible contractor after December 31, 2005, and before January 1, 2009, for use as a residence.

.02 *Energy Saving Requirements.* To meet the energy saving requirements of § 45L(c)(1), a dwelling unit must be certified to provide a level of heating and cooling energy consumption that is at least 50 percent below that of a reference dwelling unit constructed in accordance with the standards of § 404 of the 2004 Supplement to the 2003 International Energy Conservation Code (2004 IECC Supplement), and to have building envelope component improvements that provide for a level of heating and cooling energy consumption that is at least 10 percent below that of a reference dwelling unit.

.03 *Calculation Procedures.* For purposes of section 2.02 of this notice, heating and cooling energy consumption must be calculated in accordance with the procedures prescribed in Residential Energy Services Network (RESNET) Publication No. 05-001 (Nov. 17, 2005) or No. 06-001 (June 1, 2006) or in accordance with an equivalent calculation procedure.

.04 *Acquired from Eligible Contractor.* A qualified energy efficient home is acquired from an eligible contractor for use as a residence if the person that constructed the home sells or leases the home to another person for use as a residence. A qualified energy efficient home is not acquired from an eligible contractor if the person that constructed the home retains the home for use as a residence. For example, a

qualified energy efficient home is acquired from an eligible contractor in the following situations:

(1) A person constructs a qualified energy efficient home and then sells the home to the homeowner.

(2) A person constructs a qualified energy efficient home and then leases the home to the lessee or tenant.

(3) A person hires a third party contractor to construct a qualified energy efficient home and then sells the home to the homeowner. (See section 4.01(5) of this notice for guidance regarding the person treated as the eligible contractor in this case.)

SECTION 3. CERTIFICATION

An eligible contractor must obtain the certification required under § 45L(c)(1) with respect to a dwelling unit (other than a manufactured home) from an eligible certifier before claiming the energy efficient home credit with respect to the dwelling unit. An eligible contractor is not required to file the certification with 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, an eligible contractor claiming a \$2,000 credit under § 45L should retain the certification as part of the eligible contractor's records to satisfy this requirement. The certification will be treated as satisfying the requirements of § 45L(c)(1) if all construction has been performed in a manner consistent with the design specifications provided to the eligible certifier and the certification contains all of the following:

.01 The name, address, and telephone number of the eligible certifier.

.02 The address of the dwelling unit.

.03 A statement by the eligible certifier that—

(1) The dwelling unit has a projected level of annual heating and cooling energy consumption that is at least 50 percent below the annual level of heating and cooling energy consumption of a reference dwelling unit in the same climate zone;

(2) Building envelope component improvements alone account for a level of annual heating and cooling energy consumption that is at least 10 percent below the

annual level of heating and cooling energy consumption of a reference dwelling unit in the same climate zone; and

(3) Heating and cooling energy consumption have been calculated in the manner prescribed in section 2.03 of this notice.

.04 A statement by the eligible certifier that field inspections of the dwelling unit (or of other dwelling units under the sampling protocol described below) performed by the eligible certifier during and after the completion of construction have confirmed that all features of the home affecting such heating and cooling energy consumption comply with the design specifications provided to the eligible certifier. With respect to builders who build at least 85 homes during a twelve-month period or build subdivisions with the same floor plan using the same subcontractors, the eligible certifier may use the sampling protocol found in the current ENERGY STAR[®] for Homes Sampling Protocol Guidelines instead of inspecting all of the homes. The sampling protocols can be found at the following web address: http://www.energystar.gov/index.cfm?c=bldrs_lenders_raters.nh_sampling.

.05 A list identifying—

(1) The dwelling unit's energy efficient building envelope components and their respective energy performance ratings as required by § 401.3 of the 2004 IECC Supplement; and

(2) The energy efficient heating and cooling equipment installed in the dwelling unit and the energy efficiency performance of such equipment as rated under applicable Department of Energy Appliance Standards test procedures.

.06 Identification of the listed software program used to calculate energy consumption (see section 5 of this notice).

.07 A declaration, applicable to the certification and any accompanying documents, signed by a person currently authorized to bind the eligible certifier in these matters, in the following form:

“Under penalties of perjury, I declare that I have examined this certification, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this certification are true, correct, and complete.”

SECTION 4. DEFINITIONS

.01 The following definitions apply for purposes of this notice:

(1) Building envelope components are basement walls, exterior walls, floor, roof, and any other building element that encloses conditioned space, including any boundary between conditioned space and unconditioned space.

(2) A climate zone is a geographical area within which all locations have similar long-term climate conditions as defined in Chapter 3 of the 2004 IECC Supplement.

(3) A dwelling unit is a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, within a building that is not more than three stories above grade in height.

(4) An eligible certifier is a person that is not related (within the meaning of § 45(e)(4)) to the eligible contractor and has been accredited or otherwise authorized by RESNET (or an equivalent rating network) to use energy performance measurement methods approved by RESNET (or the equivalent rating network). An employee or other representative of a utility or local building regulatory authority qualifies as an eligible certifier if the employee or representative has been accredited or otherwise authorized by RESNET (or an equivalent rating network) to use the approved energy performance measurement methods.

(5) An eligible contractor is the person that constructed a qualified energy efficient home. A person must own and have a basis in the qualified energy efficient home during its construction to qualify as an eligible contractor with respect to the home. For example, in the situation described in section 2.04(3) of this notice, if the person that hires the third party contractor to construct the home owns and has the basis in the home during its construction, the person that hires the third party contractor is the eligible contractor and the third party contractor is not an eligible contractor.

(6) An equivalent calculation procedure is a procedure that produces results comparable to the results obtained under the procedures prescribed in Residential Energy Services Network (RESNET) Publi-

cation No. 05–001 (Nov. 17, 2005) or No. 06–001 (June 1, 2006).

(7) An equivalent rating network includes, in a state that has established energy efficiency standards under which a dwelling unit is required to achieve a specified aggregate level of heating and cooling energy consumption for any purpose (including compliance with building codes or eligibility for a state grant or tax credit), the state agency administering those standards. Thus, if the agency has accredited or otherwise authorized a person to use energy performance measurement methods approved by the agency for use in determining whether the state's energy efficiency standards are satisfied, the person so accredited or authorized qualifies as an eligible certifier.

(8) A manufactured home is a dwelling unit constructed in accordance with the Federal Manufactured Home Construction and Safety Standards (24 C.F.R. 3280).

(9) A qualified energy efficient home is a dwelling unit that qualifies for the credit under § 45L. See section 2.01 of this notice for the requirements that a dwelling unit must satisfy to qualify for the credit.

(10) A reference dwelling unit is a dwelling unit that is similar in technical specifications and design to the dwelling unit constructed by the eligible contractor except that—

(a) The reference dwelling unit is constructed in accordance with the minimum standards of Chapter 4 of the 2004 IECC Supplement;

(b) The reference dwelling unit's air conditioners have a Seasonal Energy Efficiency Ratio (SEER) of 13, measured in accordance with 10 C.F.R. 430.23(m); and

(c) The reference dwelling unit's heat pumps have a SEER of 13 and a Heating Seasonal Performance Factor (HSPF) of 7.7, measured in accordance with 10 C.F.R. 430.23(m).

SECTION 5. SOFTWARE PROGRAMS

.01 *In General.* The Internal Revenue Service will create and maintain a public list of software programs that may be used to calculate energy consumption for purposes of providing a certification under section 3 of this notice. This list of approved software may be found

at: <http://www.irs.gov/businesses/small/industries/article/0,,id=155445,00.html>.

.02 *Requirements for Software Programs To Be Included on the Internal Revenue Service List.* A software program will be included on the list created by the Internal Revenue Service if the software developer submits the following information to the Service and RESNET:

(1) The name, address, and telephone number of the software developer,

(2) The name or other identifier of the program as it will appear on the list,

(3) The test results, test runs, and the software program with which the test was conducted, and

(4) A declaration by the developer of the software program, made under penalties of perjury, that the software program—

(i) Has satisfied all tests required to conform to the software accreditation process prescribed in Residential Energy Services Network (RESNET) Publication No. 05-001 (Nov. 17, 2005) or No. 06-001 (June 1, 2006); or

(ii) Has satisfied all tests necessary to permit a determination that the software program is sufficiently accurate to justify its use in calculating energy consumption for purposes of providing a certification under section 3 of this notice.

.03 *Addresses.* Submissions under this section must be addressed as follows:

Submissions to the Service submitted by U.S. mail:

Internal Revenue Service
Attn: Program Administrator
CC:PSI:6, Room 5114
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Submissions to the Service submitted by a private delivery service:

Internal Revenue Service
Attn: Program Administrator
CC:PSI:6, Room 5114
1111 Constitution Ave., N.W.
Washington, DC 20224

Submissions to RESNET:

Residential Energy Services Network
P.O. Box 4561
Oceanside, CA 92052-4561

.04 *Original and Updated Lists.* A software program was included on the original list if the software developer's submission was received before March 1, 2006. The list will be updated as necessary to reflect additions resulting from submissions received after February 28, 2006, and deletions resulting from removal of software from the list under section 5.05 of this notice.

.05 *Removal from Published List.* The Service may, upon examination (and after appropriate consultation with the Department of Energy), determine that a software program is not sufficiently accurate to justify its use in calculating energy consumption for purposes of providing a certification under section 3 of this notice and remove the software program from the published list. The Service may undertake an examination on its own initiative or in response to a public request supported by appropriate analysis of the software program's deficiencies.

.06 *Effect of Removal from Published List.* A software program may not be used to calculate energy consumption for purposes of providing a certification that satisfies the requirements of § 45L after the effective date of removal of the software from the published list. The removal will not affect the validity of any certification provided with respect to a dwelling unit on or before the effective date of removal from the published list. Generally, notice that software is being removed from the published list will be provided at the site specified in section 5.01 of this notice at least sixty (60) days before the effective date of the removal.

.07 *Public Availability of Information.* RESNET may make available for public review any information provided to it under section 5.02 of this notice.

SECTION 6. PAPERWORK REDUCTION ACT

The collections of information contained in this notice have 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 1545-1995.

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 collections of information in this notice are in sections 3 and 5. This information is required to be collected and retained in order to ensure that a dwelling unit (other than a manufactured home) meets the requirements for the energy efficient home credit under § 45L. This information will be used to determine whether property for which certifications are provided is property that qualifies for the credit. The collection of information is required to obtain a benefit. The likely respondents are corporations, partnerships, and individuals.

The estimated total annual reporting burden is 180 hours.

The estimated annual burden per respondent varies from 2.5 hours to 4 hours, depending on individual circumstances, with an estimated average burden of 3 hours to complete the certification required under this notice. The estimated number of respondents is 45.

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 7. EFFECT ON OTHER DOCUMENTS

Notice 2006-27, as updated by Announcement 2006-88, is clarified and superseded. Announcement 2006-88 is also clarified and superseded.

SECTION 8. EFFECTIVE DATE

This notice applies with respect to certifications provided after February 29, 2008. Taxpayers may apply the provisions of this notice with respect to certifications provided on or before February 29, 2008.

SECTION 9. DRAFTING INFORMATION

The principal author of this notice is Jennifer Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact

Amplification of Notice 2006-28 Energy Efficient Home Credit; Manufactured Homes

Notice 2008-36

SECTION 1. PURPOSE

This notice clarifies and supersedes Notice 2006-28, 2006-1 C.B. 628, as updated by Announcement 2006-88, 2006-2 C.B. 910. Notice 2006-28, as updated, provided guidance regarding the calculation of heating and cooling energy consumption for purposes of determining the eligibility of a manufactured home for the New Energy Efficient Home Credit under Internal Revenue Code § 45L. Notice 2006-28 also provided guidance relating to the public list of software programs that may be used to calculate energy consumption. Guidance relating to dwelling units other than manufactured homes is provided in Notice 2008-35.

This notice supersedes Notice 2006-28 by substantially republishing the guidance contained in that publication. This notice clarifies the meaning of the terms equivalent rating network and eligible contractor, and permits calculation procedures other than those identified in Notice 2006-28 to be used to calculate energy consumption. Finally, this notice clarifies the process for removing software from the list of approved software and reflects the extension of the tax credit through December 31, 2008.

SECTION 2. BACKGROUND

.01 *In General.* Section 45L provides a credit to an eligible contractor who constructs a qualified energy efficient home. For qualified energy efficient homes that are manufactured homes, the amount of the credit is \$1,000 or \$2,000, depending on the energy savings that are achieved. A manufactured home qualifies for the credit if:

- (1) It is located in the United States;
- (2) Its construction is substantially completed after August 8, 2005;

(3) It meets the energy saving requirements of § 45L(c)(2) or (3); and

(4) It is acquired, directly or indirectly, from the eligible contractor after December 31, 2005, and before January 1, 2009, for use as a residence.

.02 *Energy Saving Requirements.* To meet the energy saving requirements of § 45L(c)(2) or (3), a manufactured home must meet one of the following standards:

(1) To meet the energy saving requirements of § 45L(c)(2) and qualify for the \$2,000 credit, a manufactured home must be certified to provide a level of heating and cooling energy consumption that is at least 50 percent below that of a reference dwelling unit constructed in accordance with the standards of § 404 of the 2004 Supplement to the 2003 International Energy Conservation Code (2004 IECC Supplement), and to have building envelope component improvements that provide for a level of heating and cooling energy consumption that is at least 10 percent below that of a reference dwelling unit (see section 3 of this notice).

(2) To meet the energy saving requirements of § 45L(c)(3) and qualify for the \$1,000 credit, a manufactured home must either—

(a) be certified to provide a level of heating and cooling energy consumption that is at least 30 percent below that of a reference dwelling unit constructed in accordance with the standards of § 404 of the 2004 IECC Supplement, and to have building envelope component improvements that provide for a level of heating and cooling energy consumption that is at least 10 percent below that of a reference dwelling unit; or

(b) meet the current requirements established by the Administrator of the Environmental Protection Agency under the ENERGY STAR[®] Labeled Homes Program in effect on the date construction is substantially completed (see section 4 of this notice).

.03 *Calculation Procedures.* For purposes of section 2.02 of this notice, heating and cooling energy consumption must be calculated in accordance with the procedures prescribed in Residential Energy Services Network (RESNET) Publication No. 05-001 (Nov. 17, 2005) or No. 06-001 (June 1, 2006) or in accordance with an equivalent calculation procedure.

.04 *Acquired from Eligible Contractor.* A qualified energy efficient manufactured home is acquired directly from an eligible contractor for use as a residence if the person that produced the manufactured home sells or leases the manufactured home to another person for use as a residence. A qualified energy efficient manufactured home is acquired indirectly from an eligible contractor for use as a residence if the person that produced the manufactured home sells the manufactured home to an intermediary and the intermediary (or the last of multiple intermediaries) sells or leases the manufactured home to another person for use as a residence. A qualified energy efficient manufactured home is not acquired from an eligible contractor if the person that produced the manufactured home retains the manufactured home for use as a residence. For example, a qualified energy efficient manufactured home is acquired from an eligible contractor in the following situations:

(1) A person produces a qualified energy efficient manufactured home and then sells the manufactured home to the homeowner.

(2) A person produces a qualified energy efficient manufactured home and then leases the manufactured home to the lessee or tenant.

(3) A person hires a third party contractor to produce a qualified energy efficient manufactured home and then sells the manufactured home to the homeowner. (See section 5.01(5) of this notice for guidance regarding the person treated as the eligible contractor in this case.)

(4) A person that produces a manufactured home sells the home to a dealer of manufactured homes and the dealer sells the manufactured home to another person for use as a residence. (See section 7.01 of this notice for a rule permitting an eligible contractor to rely on a dealer's statement concerning a sale by the dealer.)

SECTION 3. REQUIREMENTS TO CLAIM THE \$2,000 CREDIT

An eligible contractor must obtain the certification required under § 45L(c)(2) with respect to a manufactured home from an eligible certifier before claiming the \$2,000 energy efficient home credit with respect to the manufactured home. An eligible contractor is not required to file the