

## **Property Qualifying for the Energy Credit under Section 48**

### **Notice 2015-4**

#### **SECTION 1: PURPOSE**

This notice provides guidance on the energy credit under section 48 of the Internal Revenue Code (Code). Specifically, this notice provides performance and quality standards that small wind energy property must meet to qualify for the energy credit under section 48.

#### **SECTION 2: BACKGROUND**

For purposes of computing the investment credit under section 46 of the Code, section 48(a)(1) provides, in part, that the energy credit for any taxable year is the energy percentage of the basis of each energy property placed in service during such taxable year. Section 48(a)(3)(A)(vi) provides that energy property includes qualified small wind energy property. Section 48(a)(2)(A)(i)(IV) provides that the energy percentage in the case of qualified small wind energy property is 30 percent for periods ending before January 1, 2017.

Under section 48(a)(3), energy property includes qualified small wind energy property that is constructed, reconstructed, or erected by the taxpayer (or acquired by

the taxpayer if the original use of the property commences with the taxpayer), subject to depreciation (or amortization in lieu of depreciation), and meets the performance and quality standards (if any) that have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy) and are in effect at the time of the acquisition of the property.

Section 48(c)(4) defines qualified small wind energy property as property that uses a “qualifying small wind turbine” to generate electricity. A qualifying small wind turbine is a wind turbine that has a nameplate capacity of not more than 100 kilowatts (kW). Qualified small wind energy property shall not include any property for any period after December 31, 2016.

### **SECTION 3: SMALL WIND ENERGY PROPERTY STANDARDS**

*.01 Performance and Quality Standards.* To qualify as small wind energy property under section 48, the property must use a wind turbine that has a nameplate capacity of not more than 100 kW and meets the performance and quality standards as set forth in either of the following:

(1) American Wind Energy Association Small Wind Turbine Performance and Safety Standard 9.1-2009 (AWEA); or

(2) International Electrotechnical Commission 61400-1, 61400-12, and 61400-11 (IEC).

*.02 Time of Acquisition.* For these purposes, a small wind turbine must meet the performance and quality standards of the AWEA or the IEC that are in effect at the time

of acquisition of the small wind turbine. In the case of a small wind turbine constructed, reconstructed, or erected by the taxpayer, the time of acquisition for purposes of this section 3.02 of this Notice shall be the time the small wind turbine is placed in service.

#### **SECTION 4: CERTIFICATION**

.01 *In General.* The manufacturer of the small wind turbine may certify to a taxpayer that the small wind turbine meets the performance and quality standards of AWEA or IEC by providing the taxpayer with a certification that satisfies the requirements of this section 4. The manufacturer may provide the certification by including a written copy of the certification in printable form on the manufacturer's website, or in any other manner that will permit the taxpayer to retain the certification for tax recordkeeping purposes.

.02 *Content of the Certification.* The certification must be issued by an eligible certifier and must contain the following:

- (a) The name and address of the manufacturer;
- (b) The property name and model number;
- (c) The name and address of the eligible certifier;
- (d) The nameplate capacity of the wind turbine; and
- (e) A signed and dated statement by the eligible certifier that the property complies with the performance and quality standards of AWEA or IEC.

*.03 Eligible Certifier.* An eligible certifier is a third party that is accredited by the American Association for Laboratory Accreditation or other similar accreditation body.

*.04 Manufacturer's Records.* A manufacturer that certifies to a taxpayer that a small wind turbine meets the performance and quality standards of AWEA or IEC must retain in its records documentation establishing that the turbine meets the requirements of this section 4. The manufacturer must, upon request, make such documentation, including any test reports conforming to AWEA or IEC, available for inspection by the Internal Revenue Service (Service).

*.05 Taxpayer Reliance.* Except as provided in section 4.06 of this notice, a taxpayer may rely on a manufacturer's certification that a small wind turbine meets the performance and quality standards of AWEA or IEC. A taxpayer is not required to attach a certification or any other documentation 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 a small wind turbine should retain the certification statement as part of the taxpayer's records for purposes of § 1.6001-1(a).

*.06 Effect of Erroneous Certification or Failure to Satisfy Documentation Requirements.* The Service may, upon examination, determine that a small wind turbine that has been certified under this section 4 does not meet the performance and quality standards of AWEA or IEC. In that event, or if the manufacturer fails to satisfy

the requirements relating to documentation in section 4.04 of this notice, the manufacturer's right to provide a certification on which future purchasers of small wind turbines may rely will be withdrawn, and taxpayers purchasing turbines 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 small wind turbines purchased on or before the date on which the announcement of the withdrawal is published (even if the property is not installed or the credit is not claimed before the announcement of the withdrawal is published). This notice reminds manufacturers that an erroneous certification may result in the imposition of penalties –

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

(b) Under section 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).

.07 *Examples.* The following examples illustrate appropriate reliance on a certification:

Example 1. On August 1, 2015, Taxpayer acquires wind turbines with a nameplate capacity of not more than 100 kW manufactured by Manufacturer, and in December 2015, Taxpayer places in service qualified small wind energy property that includes the turbines. At the time of the acquisition of the wind turbines, Manufacturer provides to Taxpayer a certification issued by an eligible certifier that includes all of the information required by section 4.02 of this notice and is valid for a period that includes

August 1, 2015. Taxpayer may rely on this certification as documentation that Taxpayer's small wind energy property meets the performance and quality standards required in this notice. Taxpayer should keep this certification in Taxpayer's records as required by §1.6001-1(a).

Example 2. The facts are the same as those in Example 1, except that on August 1, 2015, the time of the acquisition of the wind turbines, Taxpayer does not receive a certification from Manufacturer for the wind turbines. On March 1, 2016, however, an eligible certifier issues a certification meeting the requirements of section 4.02 of this notice and applying the same quality and performance standards that were in effect on August 1, 2015, for the same model of wind turbine as the wind turbines purchased by Taxpayer. The Manufacturer posts the certification in printable form on its website, and the certification is valid for a period beginning on March 1, 2016. Because the certification uses the quality and performance standards that were in effect on August 1, 2015, the Taxpayer may rely on the certification statement as documentation that the Taxpayer's small wind energy property met the performance and quality standards required in this notice as of the date of acquisition. Taxpayer should keep this certification in Taxpayer's records as required by §1.6001-1(a).

## **SECTION 5: EFFECTIVE DATE**

This notice is effective for small wind energy property acquired or placed in service (in the case of property constructed, reconstructed, or erected by the taxpayer) after January 26, 2015.

## **SECTION 6: 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 1545-2259.

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 4. This information is required to be collected and retained in order to ensure that property meets the requirements for the energy property credit under section 48. This information will be used to determine whether the small wind energy property qualifies for the energy credit. The collection of information is required to ensure 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 400 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 160.

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 section 6103.

**SECTION 7: DRAFTING INFORMATION**

The principal author of this notice is Martha M. Garcia of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Ms. Garcia on 202-317-6853 (not a toll-free call).