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Notice 2008-96

### Qualifying Advanced Coal Project Program

*Notice 2008-96; 2008-2 C.B. 1077; 2008 IRB LEXIS 774; 2008-44 I.R.B. 1077*

October 10, 2008

[\*1]

#### TEXT:

#### SECTION 1. PURPOSE

This notice updates and amplifies the procedures for the allocation of credits under the qualifying advanced coal project program of *§ 48A of the Internal Revenue Code*. Except as specifically provided in this notice, the allocation round for 2008-09 will be conducted in the same manner and under the same procedures as provided under *Notice 2007-52* (including Appendices A, B, and C), *2007-26 I.R.B. 1456*. To be considered in the allocation round for 2008-09, applications must be submitted to the Department of Energy (DOE) on or before October 31, 2008, and to the Internal Revenue Service (Service) on or before March 2, 2009. See section 3 of this notice for additional rules regarding applications for *§ 48A* and the DOE certification.

This notice does not reflect amendments made by the Energy Improvement and Extension Act of 2008, which expanded and modified the advanced coal project credit. The Service intends to issue guidance on these amendments in the near future.

#### SECTION 2. BACKGROUND AND CHANGES

.01 *Section 46* provides that the amount of the investment credit for any taxable year is the sum of the credits listed in *§ 46*. That list includes the qualifying advanced coal [\*2] project credit.

.02 The qualifying advanced coal project credit is provided under *§ 48A*. *Section 48A (a)* provides that the qualifying advanced coal project credit for a taxable year is an amount equal to (1) 20 percent of the qualified investment (as defined in *§ 48A (b)*) for that taxable year in certified qualifying advanced coal projects (as defined in *§ 48A (c) (1)* and *(e)*) using an integrated gasification combined cycle (IGCC) (as defined in *§ 48A (c) (7)*), and (2) 15 percent of the qualified investment for that taxable year in other certified qualifying advanced coal projects.

.03 *Section 48A (d) (3) (A)* provides that the aggregate credits allowed under *§ 48A (a)* may not exceed \$1.3 billion. *Section 48A (d) (3) (B)* provides that (i) \$800 million of credits are to be allocated to IGCC projects, and (ii) \$500 million of credits are to be allocated to projects that use other advanced coal-based generation technologies (as defined in *§ 48A (c) (2)* and *(f)*).

.04 *Section 48A (e) (3) (A)* provides that the credits for IGCC projects must be allocated in accordance with the procedures set forth in *§ 48A (d)*, and in relatively equal amounts to (i) projects using bituminous coal as a primary [\*3] feedstock, (ii) projects using subbituminous coal as a primary feedstock, and (iii) projects using lignite as a primary feedstock. Further, *§ 48A (e) (3) (B)* provides that IGCC projects that include (i) greenhouse gas capture capability (as defined in *§ 48A (c) (5)*), (ii) increased by-product utilization, and (iii) other benefits must be given high priority in the allocation of credits for IGCC projects.

.05 *Section 48A (d) (1)* provides that the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying advanced coal project program for the deployment of advanced coal-based generation technologies. The

Treasury Department and the Service established this program in *Notice 2006-24, 2006-11 I.R.B. 595*, as modified and updated by *Notice 2007-52*.

.06 *Notice 2007-52* provides that the Service will consider a project under the qualifying advanced coal project program only if the DOE provides a certification ("DOE certification") and ranking (if any) for the project. Accordingly, a taxpayer must submit, for each qualifying advanced coal project: (1) an application for certification by the DOE ("application for DOE certification"), and (2) an application for certification [\*4] under § 48A (d) (2) by the Service ("application for § 48A certification"). Both applications may be submitted only during the 3-year period beginning on March 13, 2006. Certifications will be issued and credits will be allocated to projects in annual allocation rounds. An initial allocation round was conducted in 2006. A second allocation round was conducted in 2007-08, and a special allocation round was conducted in 2008.

.07 Section 6.02 of *Notice 2007-52* requires that within 2 years from the date that the Service accepts the taxpayer's application for § 48A certification, the taxpayer must submit to the Service documentation establishing that the requirements of § 48A (e) (2) are satisfied. See also sections 7.01 and 7.02 of *Notice 2007-52* for other requirements that must be satisfied. The taxpayer should mark the package "SECTION 48A CERTIFICATION REQUIREMENTS" and send it to the appropriate address listed in section 5.04 of *Notice 2007-52* or listed in later guidance published in the Internal Revenue Bulletin.

.08 This notice modifies the qualifying advanced coal project program under *Notice 2007-52* in the following respects:

- (1) The three-year period described in § 48A (d) (2) (A) [\*5] (relating to the period during which applications may be submitted) is modified by treating March 13, 2006 (the date *Notice 2006-24* was published in the Internal Revenue Bulletin) as the date on which the qualifying advanced coal project program was established and the first day of the three-year period. Section 2.06 of this notice reflects this change.
- (2) A taxpayer must submit to the Service both an electronic and a paper copy of the documentation establishing that the requirements of § 48A (e) (2) are satisfied. Section 3.11 of this notice reflects this change.

### SECTION 3. 2008-09 ALLOCATION ROUND

.01 Except as otherwise specifically provided in this notice, this allocation round will be conducted in the same manner and under the same procedures as provided under *Notice 2007-52* including Appendices B and C. This notice restates or references provisions in *Notice 2007-52* as a convenience to taxpayers. The restatement or referencing of these provisions does not diminish the effect of provisions that are not restated or referenced.

.02 The qualifying advanced coal project credits of \$1.3 billion and the applications for certification are separated into the following four pools:

- (1) Projects [\*6] using an advanced coal-based generation technology other than IGCC. The aggregate amount of qualifying advanced coal project credit for this pool is \$500 million. The maximum amount of credits that will be allocated to a project is \$125 million. In prior allocation rounds, \$375 million of credits was allocated from this pool. Therefore, \$125 million of credits is available for allocation from this pool in 2008-09.
- (2) IGCC projects using bituminous coal as a primary feedstock. The aggregate amount of qualifying advanced coal project credit for this pool is \$267 million. The maximum amount of credits that will be allocated to a project is \$133.5 million. In prior allocation rounds, \$267 million of credits was allocated from this pool. Accordingly, no allocation round for this pool will be conducted in 2008-09.

- (3) IGCC projects using subbituminous coal as a primary feedstock. The aggregate amount of qualifying advanced coal project credit for this pool is \$267 million. The maximum amount of credits that will be allocated to a project is \$133.5 million. In prior allocation rounds, \$133.5 million of credits were allocated from this pool. Therefore, \$133.5 million of credits is available for [\*7] allocation from this pool in 2008-09.
- (4) IGCC projects using lignite as a primary feedstock. The aggregate amount of qualifying advanced coal project credit for this pool is \$266 million. The maximum amount of credits that will be allocated to a project is \$133 million. In prior allocation rounds, \$133 million of credits was allocated from this pool. Accordingly, \$133 million of credits is available for allocation from this pool in 2008-09.

.03 For the allocation round conducted in 2008-09, the application period begins on March 4, 2008 and ends on March 2, 2009, and any completed application for § 48A certification the Service after March 3, 2008, and before March 3, 2009, will be deemed to be submitted by the taxpayer on March 2, 2009. During the application period, an application for § 48A certification and a separate application for DOE certification must be submitted for each qualifying advanced coal project. See section 3.07 for the date by which the application for DOE certification must be submitted to the DOE. For purposes of this notice, an application that is submitted by U.S. mail will be treated as received by the Service on the date of the postmark and an application submitted [\*8] by a private delivery service will be treated as received by the Service on the date recorded or the date marked in accordance with § 7502 (f) (2) (C).

.04 For this allocation round, the Service will consider a project only if the application for § 48A certification for the project is submitted during the application period for this round and the DOE provides the DOE certification and the DOE ranking (if any) for the project before March 2, 2009.

.05 If an application for DOE certification does not include all of the information required by section 5.02 of *Notice 2007-52* and meet the requirements in sections 7.01 and 7.02 of *Notice 2007-52*, the DOE may decline to accept the application. If an application for § 48A certification does not include all of the information listed in section 5.03 of *Notice 2007-52* and meet the requirements in sections 7.01 and 7.02 of *Notice 2007-52*, the application will not be accepted by the Service.

.06 An application for § 48A certification must be submitted in the manner provided in section 5.04 of *Notice 2007-52*.

.07 For this allocation round, the DOE will consider an application for DOE certification only if the application is postmarked on or before October [\*9] 31, 2008. See section 5.02 of *Notice 2007-52* and Appendix B to *Notice 2007-52* for the information to be submitted to the DOE in an application for DOE certification. Appendix B to *Notice 2007-52* also provides the instructions and address for filing the application for DOE certification. The DOE will determine the feasibility of the project and, if the project is determined to be feasible, will provide a DOE certification for the project to the Service. If the DOE certifies two or more projects in a pool described in section 3.02 of this notice, the DOE also will rank each of the projects it certifies (for example, first, second, third, etc.) relative to other certified projects in the same pool. The DOE will provide the DOE certification for projects determined to be feasible and the DOE ranking (if any) to the Service by March 1, 2009.

.08 By April 30, 2009, the Service will accept or reject the taxpayer's application for § 48A certification and will notify the taxpayer, by letter, of its decision.

.09 If the taxpayer's application for § 48A [\*10] certification is accepted, the acceptance letter will state the amount of the credit allocated to the project. If a credit is allocated to a taxpayer's project, the taxpayer will be required to execute a closing agreement in the form set forth in Appendix A to *Notice 2007-52*. By June 30, 2009, the taxpayer must execute and return the closing agreement to the Service at the appropriate address listed in section 5.04 of *Notice 2007-52* or listed in later guidance published in the Internal Revenue Bulletin. The Service will execute and return the closing agreement to the taxpayer by August 31, 2009. The executed closing agreement applies only to the accepted taxpayer.

.10 *Section 48A (d) (2) (D)* provides that a taxpayer shall have 2 years from the date of acceptance of the § 48A application during which to provide evidence that the criteria set forth in § 48A (e) (2) have been met. To satisfy this requirement, the taxpayer must submit to the Service before the end of the 2-year period both a paper copy and an elec-

tronic version on a floppy disc or a CD of the documentation establishing that the requirements of § 48A (e) (2) are satisfied. The electronic version of the documentation must [\*11] be formatted in one of the following software applications: Microsoft Word[™] 2002 or later edition; Microsoft Excel[™] 2002 or later edition; or Adobe Acrobat[™] PDF 6.0 or later edition. See *section 6 of Notice 2007-52* for further information about the issuance of certification.

#### SECTION 4. EFFECT ON OTHER DOCUMENTS

*Notice 2007-52* is updated and amplified.

#### SECTION 5. EFFECTIVE DATE

This notice is effective October 10, 2008.

#### 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 1545-2003.

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 section 3 of this notice. This information is required to obtain an allocation of qualifying advanced coal project credits. This information will be used by the Service to verify that the taxpayer is eligible for the qualifying advanced coal project credits. The collection of information is [\*12] required to obtain a benefit. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting burden is 4,950 hours.

The estimated annual burden per respondent varies from 70 to 150 hours, depending on individual circumstances, with an estimated average of 110 hours. 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. DRAFTING INFORMATION

The principal author of this notice is Jaime Park of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Ms. Park at (202) 622-3110 (not a toll-free call). For further information regarding the application for § 48A certification, the documentation to be submitted to the Service establishing that the requirements of § 48A (e) (2) are satisfied, and the issuance of the certification that the requirements of [\*13] § 48A (e) (2) are satisfied, contact Kimberly Edwards, Executive Assistant, Office of the Industry Director, Natural Resources and Construction, at (713) 209-3615 (not a toll-free number).