

statement must be signed by the person or persons making the application.

(c) *Effect of certification under paragraph (a).* Certifications granted under paragraph (a)(1), (2), or (3) will be applied retroactively to April 20, 1977. However, certifications granted under paragraph (a) (4) or (5) will be applied retroactively only to the date the applicable energy-conserving component or renewable energy source was added by Treasury decision to the list of qualifying components or sources. Certification of an item under this section means that the applicable definitional requirement of § 1.23-2 is considered satisfied in the case of any person claiming a residential energy credit with respect to such item. However, it does not relieve manufacturers of the need to establish that their items conform to performance and quality standards (if any) provided under § 1.23-4 and that their items can reasonably be expected to remain in operation at least 3 years, in the case of insulation and other energy-conserving components, or at least 5 years, in the case of renewable energy source property.

[T.D. 7717, 45 FR 57721, Aug. 29, 1980. Redesignated and amended by T.D. 8146, 52 FR 26672, July 16, 1987]

§ 1.23-6 Procedure and criteria for additions to the approved list of energy-conserving components or renewable energy sources.

(a) *Procedures for additions to the list of energy-conserving components or renewable energy sources—(1) In general.* A manufacturer of an item (or a group of manufacturers) desiring to apply for addition to the approved list of energy-conserving components or renewable energy sources pursuant to paragraph (d)(4)(viii) or (e)(2) of § 1.23-2 shall submit an application to the Internal Revenue Service, Attention: Associate Chief Counsel (Technical), CC:C:E, 1111 Constitution Avenue, NW., Washington, DC 20224. The term “manufacturer” includes a person who assembles an item or a system from components manufactured by other persons. The application shall provide the information required under paragraph (b) of this section. An application may request that more than one item be added to the approved list. It will be

the responsibility of the Office of the Associate Chief Counsel (Technical) upon receipt of the application to determine whether all the information required under paragraph (b) of this section has been furnished with the application. If an application lacks essential information, the applicant will be advised of the additional information required. If the information (or a reasonable explanation of the reason why the information cannot be made available) is not forthcoming within 30 days of the date of that advice, the application will be closed and the applicant will be so informed. Any resubmission of information beyond the 30-day period will be treated as a new application. If the Office of the Associate Chief Counsel (Technical) already is considering an application with respect to the same or a similar item, it may consolidate applications. The Office of the Associate Chief Counsel will make a report and recommendation to the ad hoc advisory board as to whether each item that is the subject to an application should be added in accordance with the manufacturer’s request to the approved list of energy-conserving components or renewable energy sources in light of the applicable criteria provided in paragraph (c) and the standards for Secretarial determination provided in paragraph (d) of this section. In making this recommendation, the Office of the Associate Chief Counsel shall consult with the Secretary of Energy and the Secretary of Housing and Urban Development (or their delegates) and any other appropriate Federal officers to obtain their views concerning the item in question. In addition, the Office of the Associate Chief Counsel may request from the manufacturer clarification of information submitted with the application. The Office of the Associate Chief Counsel shall report its recommendation and forward the application to the ad hoc advisory board for further consideration.

(2) *Ad hoc advisory board.* The Commissioner of Internal Revenue and the Assistant Secretary (Tax Policy) shall establish an ad hoc advisory board to consider applications and recommendations forwarded by the Office of the Associate Chief Counsel (Technical). If a

finding in favor of addition of any item is made, the board shall report its recommendation and forward the application to the Commissioner for further consideration. If the item is approved by the Commissioner, the application will be forwarded to the Secretary (or his delegate) for further consideration. The application will be closed with respect to an item if the board, the Commissioner, or the Secretary (or his delegate) determines that, under the applicable criteria or the standards for Secretarial determination, the item should not be added to the list of energy-conserving components or renewable energy sources.

(3) *Action on application.* (i) A final decision to grant or deny any application filed under paragraph (a)(1) shall be made within 1 year after the application and all information required to be filed with such request under paragraph (b) have been received by the Office of the Associate Chief Counsel (Technical). The applicant manufacturer shall be notified in writing of the final decision. In the event of a favorable determination, a regulation will be issued in accordance with the procedures contained in § 601.601 to include the item as an energy-conserving component or as a renewable energy source. A final decision to grant approval of an application is made when a Treasury decision adding the item (that is subject of the application) as an energy-conserving component or as a renewable energy source is published in the FEDERAL REGISTER.

(ii) The applicant manufacturer shall be entitled to a conference and be so notified anytime an adverse action is contemplated by the Office of the Associate Chief Counsel, the ad hoc advisory board, the Commissioner of Internal Revenue, or the Secretary (or his delegate) and no conference was previously conducted. Upon being advised in writing that an adverse recommendation or decision as to any item that is the subject of an application is contemplated, a manufacturer may request a conference. The conference must be held within 21 calendar days from the mailing of that advice. Procedures for requesting an extension of the 21-day period and notifying the manufacturer of the recommendation

or decision with respect to that request are the same as those applicable to conferences on ruling requests by taxpayers. The applicant is entitled to only one conference. There is no right to another conference when a favorable recommendation or decision is reversed at a higher level.

(iii) A report of any application which has been denied during the preceding month and the reasons for the denial shall be published each month.

(b) *Contents of application.* The application by the manufacturer shall include the following information:

(1) A description of the item and the generic class to which it belongs, including any features relating to safe installation and use of the item. This description shall include appropriate design drawings and technical specifications (or representative drawings and specifications when application by a group of manufacturers).

(2) An explanation of the purpose, function, and each recommended use of the item.

(3) An estimate (and explanation of the estimation methods employed and the assumptions made) of the total number of units that would be sold for each recommended use during the first 4 years following the addition of the item to the approved list and of the total number that would be sold for each recommended use during that period in the absence of addition. If the item is sold in more than one size, the estimate shall indicate the projected sales for each size. This estimate shall reflect total industry sales of the item. Past industry sales information for each recommended use for the previous two years shall also be provided.

(4) Whether sufficient capacity is available to increase production to meet any increase in demand for the item, or for associated fuels and materials, caused by such addition. This determination shall be based on industry-wide data and not just the manufacturing capability of the applicant. If the applicant has the exclusive right to manufacture the item, this information shall also be provided in the application.

(5) An estimate (including estimation methods and assumptions) of the energy in Btu's of oil and natural gas

used directly or indirectly per unit by the applicant in the manufacture of the item and other items necessary for its use, the type of energy source (*e.g.*, oil, natural gas, coal, electricity), and the extent of its use in the manufacturing process of the item. The applicant must also provide a list of the major components of the item and their composition and weight.

(6) Test data and experience data (where experience data is available) to substantiate for each recommended use the energy savings in Btu's that are claimed will be achieved by one unit during a period of one year. The data shall be obtained by controlled tests in which, if possible, the addition of the item is the only variable. If the item may be sold in various configurations, data shall be provided with respect to energy savings from each configuration with significantly different energy use characteristics. Test methods are to conform to recognized industry or government standards. This determination shall take into account the seasonal use of the item. If the energy savings of the item varies with climatic conditions, data shall be provided with respect to each climate zone. The applicant may use the Department of Energy's climatic zones for heating and cooling (see § 450.35 of 10 CFR part 450 (1980)).

(7) The impact of increased demand on the price of the item and the energy source used by the item.

(8) The energy source which will be replaced or conserved by the item, and, in the case of a request for addition to the approved list of renewable energy sources, data establishing that the energy source is inexhaustible.

(9) Data to show the total estimated savings of energy in Btu's attributable to reduced consumption of oil or natural gas whether directly or indirectly from use of the item, including assumptions underlying this estimate. If the consumption of both oil and natural gas will be reduced, data to show the energy savings in Btu's attributable to each shall be provided. The estimate is to be based on energy savings in Btu's per unit determined under paragraph (b)(6) of this section for the first four years of the useful life of the item and is to take into account only

the additional units of the item estimated to be placed in service as a result of the addition using data obtained under paragraph (b)(3) of this section. If the item will result in reduction of oil or natural gas consumption by replacing an item which uses such an energy source, the application shall indicate the item replaced and the extent to which this reduction will occur.

(10) Geographical information if required under paragraph (b)(6) of this section to show the climatic zones of the country where the item is expected to be used, including an estimate of the total number of additional units to be placed in service during the first 4 years following the addition of the item in the area as a result of the addition of the item to the list of qualifying items.

(11) The retail cost of the item (or items if the item is sold in more than one size) including all installation costs necessary for safe and effective use.

(12) Whether the item is designed for residential use.

(13) The estimated useful life of the item and associated equipment necessary for its use.

(14) The type and amount of waste and emissions in weight per unit of energy saved resulting from use of the item.

(15) If the item might reasonably be suspected of presenting any health or safety hazard, test data to show that the item does not present such hazard. With respect to applications for addition to the approved list of renewable energy sources, the term "item" as used in this paragraph refers to the property which uses the energy source and not the energy source itself. The application should clearly indicate whether the request is for addition to the approved list of energy-conserving components or renewable energy sources, identify the provisions for which data is being submitted, and present the data in the order requested. The tests required under this paragraph may be conducted by independent laboratories but the underlying data must be submitted along with the test results. There shall accompany the request a declaration in the following form: "Under penalties of

perjury, I declare that I have examined this application, including accompanying documents, and, to the best of my knowledge and belief, the facts presented in support of the application are true, correct and complete." The statement must be signed by the person or persons making the application. The declaration shall not be made by the taxpayer's representative.

(c) *Criteria for additions*—(1) *Additions to the approved list of energy-conserving components*. For an item to be considered for addition to the approved list of energy-conserving components, the manufacturer must show that the item increases the energy efficiency of a dwelling. For an item to be considered as increasing the energy efficiency of a dwelling, all of the following criteria must be met:

(i) The use of the item must improve the energy efficiency of the dwelling structure, structural components of the dwelling, hot water heating, or heating or cooling systems.

(ii) The use of the item must result, directly or indirectly, in a significant reduction in the consumption of oil or natural gas.

(iii) The increase in energy efficiency must be established by test data and in accordance with accepted testing standards.

(iv) The item must not present a safety, fire, environmental, or health hazard when properly installed.

(2) *Additions to the approved list of renewable energy sources*. For an energy source to be considered for addition to the approved list of renewable energy sources, the manufacturer must show that the following criteria are met:

(i) As in the case of solar, wind, and geothermal energy, the energy source must be an inexhaustible energy supply. Accordingly, wood and agricultural products and by-products are not considered renewable energy sources. Similarly, no exhaustible or depletable energy source (such as sources that are depletable under 611) will be considered.

(ii) The energy source must be capable of being used for heating or cooling a residential dwelling or providing hot water or electricity for use in such a dwelling.

(iii) A practical working device, machine, or mechanism, etc., must exist and be commercially available to use such renewable energy source.

(iv) The use of the renewable energy source must not present a significant safety, fire, environmental, or health hazard.

(d) *Standards for Secretarial determination*—(1) *In general*. The Secretary will not make any addition to the approved list of energy-conserving components or renewable energy sources unless the Secretary determines that—

(i) There will be a reduction in the total consumption of oil or natural gas as a result of the addition, and that reduction is sufficient to justify any resulting decrease in Federal revenues.

(ii) The addition will not result in an increased use of any item which is known to be, or reasonably suspected to be, environmentally hazardous or a threat to public health or safety, and

(iii) Available Federal subsidies do not make the addition unnecessary or inappropriate (in the light of the most advantageous allocation of economic resources).

(2) *Factors taken into account*. In making any determination under paragraph (d)(1)(i) of this section, the Secretary will—

(i) Make an estimate of the amount by which the addition will reduce oil and natural gas consumption, and

(ii) Determine whether the addition compares favorably, on the basis of the reduction in oil and natural gas consumption per dollar of cost to the Federal Government (including revenue loss), with other Federal programs in existence or being proposed.

(3) *Factors taken into account in making estimates*. In making any estimate under subparagraph (2)(i), the Secretary will take into account (among other factors)—

(i) The extent to which the use of any item will be increased as a result of the addition,

(ii) Whether sufficient capacity is available to increase production to meet any increase in demand for the item or associated fuels and materials caused by the addition,

(iii) The amount of oil and natural gas used directly or indirectly in the

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manufacture of the item and other items necessary for its use.

(iv) The estimated useful life of the item, and

(v) The extent additional use of the item leads, directly or indirectly, to the reduced use of oil or natural gas. Indirect uses of oil or natural gas include use of electricity derived from oil or natural gas.

(e) *Effective date of addition to approved lists.* In the case of additions to the approved list of energy-conserving components or renewable energy sources, the credit allowable by § 1.23-1 shall apply with respect to expenditures which are made on or after the date a Treasury decision amending the regulations pursuant to the application is published in the FEDERAL REGISTER. However, the Secretary may prescribe by regulations that expenditures for additions made on or after the date referred to in the preceding sentence and before the close of the taxable year in which such date occurs shall be taken into account in the following taxable year. Additions to the list will be subject to the performance and quality standards (if any) provided under § 1.23-4 which are in effect at the time of the addition. Furthermore, any addition made to the approved list will be subject to reevaluation by the Secretary for the purpose of determining whether the item still meets the requisite criteria and standards for addition to the list. If it is determined by the Secretary that an item no longer meets the requisite criteria, the Secretary will amend the regulations to delete the item from the approved list. Removal of an item from the list will be prospective from the date a Treasury decision amending the regulations is published in the FEDERAL REGISTER.

(Secs. 44C and 7805 of the Internal Revenue Code of 1954 (92 Stat. 3175, 26 U.S.C. 44C; 68A Stat. 917, 26 U.S.C. 7805). The amendments to the Statement of Procedural Rules are issued under the authority contained in 5 U.S.C. 301 and 552)

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26 CFR Ch. I (4-1-02 Edition)

§ 1.25-1T Credit for interest paid on certain home mortgages (Temporary).

(a) *In general.* Section 25 permits States and political subdivisions to elect to issue mortgage credit certificates in lieu of qualified mortgage bonds. An individual who holds a qualified mortgage credit certificate (as defined in § 1.25-3T) is entitled to a credit against his Federal income taxes. The amount of the credit depends upon (1) the amount of mortgage interest paid or accrued during the year and (2) the applicable certificate credit rate. See § 1.25-2T. The amount of the deduction under section 163 for interest paid or accrued during any taxable year is reduced by the amount of the credit allowable under section 25 for such year. See § 1.163-6T. The holder of a qualified mortgage credit certificate may be entitled to additional withholding allowances. See section 3402 (m) and the regulations thereunder.

(b) *Definitions.* For purposes of §§ 1.25-2T through 1.25-8T and this section, the following definitions apply:

(1) *Mortgage.* The term “mortgage” includes deeds of trust, conditional sales contracts, pledges, agreements to hold title in escrow, and any other form of owner financing.

(2) *State.* (i) The term “State” includes a possession of the United States and the District of Columbia.

(ii) Mortgage credit certificates issued by or on behalf of any State or political subdivision (“governmental unit”) by constituted authorities empowered to issue such certificates are the certificates of such governmental unit.

(3) *Qualified home improvement loan.* The term “qualified home improvement loan” has the meaning given that term under section 103A (1)(6) and the regulations thereunder.

(4) *Qualified rehabilitation loan.* The term “qualified rehabilitation loan” has the meaning given that term under section 103A (1)(7)(A) and the regulations thereunder.

(5) *Single-family and owner-occupied residences.* The terms “single-family” and “owner-occupied” have the meaning given those terms under section