

§ 1.43-1

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§ 1.43-7 Effective date of regulations.

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§ 1.43-1 The enhanced oil recovery credit—general rules.

(a) *Claiming the credit*—(1) *In general.* The enhanced oil recovery credit (the “credit”) is a component of the section 38 general business credit. A taxpayer that owns an operating mineral interest (as defined in § 1.614-2(b)) in a property may claim the credit for qualified enhanced oil recovery costs (as described in § 1.43-4) paid or incurred by the taxpayer in connection with a qualified enhanced oil recovery project (as described in § 1.43-2) undertaken with respect to the property. A taxpayer that does not own an operating mineral interest in a property may not claim the credit. To the extent a credit included in the current year business credit under section 38(b) is unused under section 38, the credit is carried back or forward under the section 39 business credit carryback and carryforward rules.

(2) *Examples.* The following examples illustrate the principles of this paragraph (a).

Example 1. Credit for operating mineral interest owner. In 1992, A, the owner of an operating mineral interest in a property, begins a qualified enhanced oil recovery project using cyclic steam. B, who owns no interest in the property, purchases and places in service a steam generator. B sells A steam, which A uses as a tertiary injectant described in section 193. Because A owns an operating mineral interest in the property with respect to which the project is undertaken, A may claim a credit for the cost of the steam. Although B owns the steam generator used to produce steam for the project, B may not claim a credit for B’s costs because B does not own an operating mineral interest in the property.

Example 2. Credit for operating mineral interest owner. C and D are partners in CD, a partnership that owns an operating mineral interest in a property. In 1992, CD begins a qualified enhanced oil recovery project using cyclic steam. D purchases a steam generator and sells steam to CD. Because CD owns an operating mineral interest in the property with respect to which the project is undertaken, CD may claim a credit for the cost of the steam. Although D owns the steam generator used to produce steam for the project, D may not claim a credit for the costs of the steam generator because D paid these costs

in a capacity other than that of an operating mineral interest owner.

(b) *Amount of the credit.* A taxpayer’s credit is an amount equal to 15 percent of the taxpayer’s qualified enhanced oil recovery costs for the taxable year, reduced by the phase-out amount, if any, determined under paragraph (c) of this section.

(c) *Phase-out of the credit as crude oil prices increase*—(1) *In general.* The amount of the credit (determined without regard to this paragraph (c)) for any taxable year is reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to this paragraph (c)) as—

(i) The amount by which the reference price determined under section 29(d)(2)(C) for the calendar year immediately preceding the calendar year in which the taxable year begins exceeds \$28 (as adjusted under paragraph (c)(2) of this section); bears to

(ii) \$6.

(2) *Inflation adjustment*—(i) *In general.* For any taxable year beginning in a calendar year after 1991, an amount equal to \$28 multiplied by the inflation adjustment factor is substituted for the \$28 amount under paragraph (c)(1)(i) of this section.

(ii) *Inflation adjustment factor.* For purposes of this paragraph (c), the inflation adjustment factor for any calendar year is a fraction, the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990. The “GNP implicit price deflator” is the first revision of the implicit price deflator for the gross national product as computed and published by the Secretary of Commerce. As early as practicable, the inflation adjustment factor for each calendar year will be published by the Internal Revenue Service in the Internal Revenue Bulletin.

(3) *Examples.* The following examples illustrate the principles of this paragraph (c).

Example 1. Reference price exceeds \$28. In 1992, E, the owner of an operating mineral interest in a property, incurs \$100 of qualified enhanced oil recovery costs. The reference price for 1991 determined under section

29(d)(2)(C) is \$30 and the inflation adjustment factor for 1992 is 1. E's credit for 1992 determined without regard to the phase-out for crude oil price increases is \$15 ($\$100 \times 15\%$). In determining E's credit, the credit is reduced by \$5 ($\$15 \times (\$30 - (\$28 \times 1))/6$). Accordingly, E's credit for 1992 is \$10 ($\$15 - \5).

Example 2. Inflation adjustment. In 1993, F, the owner of an operating mineral interest in a property, incurs \$100 of qualified enhanced oil recovery costs. The 1992 reference price is \$34, and the 1993 inflation adjustment factor is 1.10. F's credit for 1993 determined without regard to the phase-out for crude oil price increases is \$15 ($\$100 \times 15\%$). In determining F's credit, \$30.80 ($1.10 \times \28) is substituted for \$28, and the credit is reduced by \$8 ($\$15 \times (\$34 - \$30.80)/6$). Accordingly, F's credit for 1993 is \$7 ($\$15 - \8).

(d) *Reduction of associated deductions—(1) In general.* Any deduction allowable under chapter 1 for an expenditure taken into account in computing the amount of the credit determined under paragraph (b) of this section is reduced by the amount of the credit attributable to the expenditure.

(2) *Certain deductions by an integrated oil company.* For purposes of determining the intangible drilling and development costs that an integrated oil company must capitalize under section 291(b), the amount allowable as a deduction under section 263(c) is the deduction allowable after paragraph (d)(1) of this section is applied. See § 1.43-4(b)(2) (extent to which integrated oil company intangible drilling and development costs are qualified enhanced oil recovery costs).

(e) *Basis adjustment.* For purposes of subtitle A, the increase in the basis of property which would (but for this paragraph (e)) result from an expenditure with respect to the property is reduced by the amount of the credit determined under paragraph (b) of this section attributable to the expenditure.

(f) *Passthrough entity basis adjustment—(1) Partners' interests in a partnership.* To the extent a partnership expenditure is not deductible under paragraph (d)(1) of this section or does not increase the basis of property under paragraph (e) of this section, the expenditure is treated as an expenditure described in section 705(a)(2)(B) (concerning decreases to basis of partnership interests). Thus, the adjusted bases of the partners' interests in the

partnership are decreased (but not below zero).

(2) *Shareholders' stock in an S corporation.* To the extent an S corporation expenditure is not deductible under paragraph (d)(1) of this section or does not increase the basis of property under paragraph (e) of this section, the expenditure is treated as an expenditure described in section 1367(a)(2)(D) (concerning decreases to basis of S corporation stock). Thus, the bases of the shareholders' S corporation stock are decreased (but not below zero).

(g) *Examples.* The following examples illustrate the principles of paragraphs (d) through (f) of this section.

Example 1. Deductions reduced for credit amount. In 1992, G, the owner of an operating mineral interest in a property, incurs \$100 of intangible drilling and development costs in connection with a qualified enhanced oil recovery project undertaken with respect to the property. G elects under section 263(c) to deduct these intangible drilling and development costs. The amount of the credit determined under paragraph (b) of this section attributable to the \$100 of intangible drilling and development costs is \$15 ($\$100 \times 15\%$). Therefore, G's otherwise allowable deduction of \$100 for the intangible drilling and development costs is reduced by \$15. Accordingly, in 1992, G may deduct under section 263(c) only \$85 ($\$100 - \15) for these costs.

Example 2. Integrated oil company deduction reduced. The facts are the same as in *Example 1*, except that G is an integrated oil company. As in *Example 1*, the amount of the credit determined under paragraph (b) of this section attributable to the \$100 of intangible drilling and development costs is \$15, and G's allowable deduction under section 263(c) is \$85. Because G is an integrated oil company, G must capitalize 25.50 ($\$85 \times 30\%$) under section 291(b). Therefore, in 1992, G may deduct under section 263(c) only \$59.50 ($\$85 - \25.50) for these intangible drilling and development costs.

Example 3. Basis of property reduced. In 1992, H, the owner of an operating mineral interest in a property, pays \$100 to purchase tangible property that is an integral part of a qualified enhanced oil recovery project undertaken with respect to the property. The amount of the credit determined under paragraph (b) of this section attributable to the \$100 is \$15 ($\$100 \times 15\%$). Therefore, for purposes of subtitle A, H's basis in the tangible property is \$85 ($\$100 - \15).

Example 4. Basis of interest in passthrough entity reduced. In 1992, I is a 50% partner in IJ, a partnership that owns an operating mineral interest in a property. IJ pays \$200

to purchase tangible property that is an integral part of a qualified enhanced oil recovery project undertaken with respect to the property. The amount of the credit determined under paragraph (b) of this section attributable to the \$200 is \$30 ($\$200 \times 15\%$). Therefore, for purposes of subtitle A, IJ's basis in the tangible property is \$170 ($\$200 - \30). Under paragraph (f) of this section, the amount of the purchase price that does not increase the basis of the property (\$30) is treated as an expenditure described in section 705(a)(2)(B). Therefore, I's basis in the partnership interest is reduced by \$15 (I's allocable share of the section 705(a)(2)(B) expenditure ($\$30 \times 50\%$)).

[T.D. 8448, 57 FR 54923, Nov. 23, 1992; 58 FR 7987, Feb. 11, 1993]

§ 1.43-2 Qualified enhanced oil recovery project.

(a) *Qualified enhanced oil recovery project.* A "qualified enhanced oil recovery project" is any project that meets all of the following requirements—

(1) The project involves the application (in accordance with sound engineering principles) of one or more qualified tertiary recovery methods (as described in paragraph (e) of this section) that is reasonably expected to result in more than an insignificant increase in the amount of crude oil that ultimately will be recovered;

(2) The project is located within the United States (within the meaning of section 638(1));

(3) The first injection of liquids, gases, or other matter for the project (as described in paragraph (c) of this section) occurs after December 31, 1990; and

(4) The project is certified under § 1.43-3.

(b) *More than insignificant increase.* For purposes of paragraph (a)(1) of this section, all the facts and circumstances determine whether the application of a tertiary recovery method can reasonably be expected to result in more than an insignificant increase in the amount of crude oil that ultimately will be recovered. Certain information submitted as part of a project certification is relevant to this determination. See § 1.43-3(a)(3)(i)(D). In no event is the application of a recovery method that merely accelerates the recovery of crude oil considered an application of one or more qualified tertiary recovery

methods that can reasonably be expected to result in more than an insignificant increase in the amount of crude oil that ultimately will be recovered.

(c) *First injection of liquids, gases, or other matter—*(1) *In general.* The "first injection of liquids, gases, or other matter" generally occurs on the date a tertiary injectant is first injected into the reservoir. The "first injection of liquids, gases, or other matter" does not include—

(i) The injection into the reservoir of any liquids, gases, or other matter for the purpose of pretreating or preflushing the reservoir to enhance the efficiency of the tertiary recovery method; or

(ii) Test or experimental injections.

(2) *Example.* The following example illustrates the principles of this paragraph (c).

Example. Injections to pretreat the reservoir. In 1989, A, the owner of an operating mineral interest in a property, began injecting water into the reservoir for the purpose of elevating reservoir pressure to obtain miscibility pressure to prepare for the injection of miscible gas in connection with an enhanced oil recovery project. In 1992, A obtains miscibility pressure in the reservoir and begins injecting miscible gas into the reservoir. The injection of miscible gas, rather than the injection of water, is the first injection of liquids, gases, or other matter into the reservoir for purposes of determining whether the first injection of liquids, gases, or other matter occurs after December 31, 1990.

(d) *Significant expansion exception—*(1) *In general.* If a project for which the first injection of liquids, gases, or other matter (within the meaning of paragraph (c)(1) of this section) occurred before January 1, 1991, is significantly expanded after December 31, 1990, the expansion is treated as a separate project for which the first injection of liquids, gases, or other matter occurs after December 31, 1990.

(2) *Substantially unaffected reservoir volume.* A project is considered significantly expanded if the injection of liquids, gases, or other matter after December 31, 1990, is reasonably expected to result in more than an insignificant increase in the amount of crude oil that ultimately will be recovered from