

State E. E disburses a portion of the funds to Financial Institution F. Both the Bank and State E make these disbursements under a program the principal purpose of which is to provide subsidized financing for projects designed to conserve or produce energy. F uses the funds to reduce a portion of the principal obligation on loans it issues to finance energy conservation or solar energy expenditures. Taxpayer G borrows \$3,000 from F in order to purchase a solar water heating system. F uses \$500 of the funds it received from the Bank to reduce the principal obligation of the loan to G to \$2,500. The amount of subsidized energy financing to G is \$3,000.

Example 6. State H allows a tax credit to Financial Institution J under a program the principal purpose of which is to provide loans at below market interest rates directly to qualified applicants for the purchase of renewable energy source property. J receives a credit each year in the amount of the excess of the interest that would have been paid at private market rates over the actual interest paid on such loans. The State H tax credit arrangement is an interest subsidy. Thus, any low-interest loans made pursuant to this credit arrangement are subsidized energy financing.

[T.D. 7717, 45 FR 57716, Aug. 29, 1980. Redesignated and amended by T.D. 8146, 52 FR 26670, July 16, 1987]

§ 1.23-3 Special rules.

(a) *When expenditures are treated as made—(1) Timeliness of an expenditure for the energy credit.* In general, for the purpose of determining whether an expenditure qualifies as being timely for the residential energy credit under section 23 or former section 44C (*i.e.*, is made after April 19, 1977, and before January 1, 1986), the expenditure is treated as made when original installation of the item is completed. Thus, solely for that purpose, the time of payment or accrual is irrelevant.

(2) *Special rule for renewable energy source expenditures in the case of construction or reconstruction of a dwelling.* In the case of renewable energy source expenditures in connection with the construction or reconstruction of a dwelling that becomes the taxpayer's new principal residence, the expenditures are to be treated as made (for the purpose of determining the timeliness of an expenditure for the residential energy credit) when the taxpayer commences use of the dwelling as his or her principal residence following its construction or reconstruction. The term

“reconstruction” means the replacement of most of a dwelling's major structural components such as floors, walls, and ceiling. When a taxpayer re-occupies a reconstructed dwelling that was the taxpayer's principal residence prior to reconstruction, a renewable energy source expenditure is considered made when the original installation of the renewable energy source property is completed.

(3) *Taxable year in which credit is allowable.* For the purpose of determining the taxable year in which the credit for an expenditure is allowable (once it has qualified as timely under subparagraph (1) or (2)), an expenditure is treated as made on the later of (i) the date on which it qualifies as timely; or (ii) the date on which it is paid or incurred by the taxpayer.

(b) *Expenditures in 1977.* No credit under section 23 or former section 44C shall be allowed for any taxable year beginning before 1978. However, the amount of any credit under section 23 or former section 44C for the taxpayer's first taxable year beginning after December 31, 1977, shall take into account qualified energy conservation expenditures and qualified renewable energy source expenditures made during the period beginning April 20, 1977, and ending on the last day of such first taxable year.

(c) *Cross reference.* For rules relating to expenditures financed with Federal, State, or local government grants or subsidized financing see paragraph (d)(3) of § 1.23-1 and paragraph (i) of § 1.23-2.

(d) *Expenditures qualifying both as energy conservation expenditures and renewable source expenditures.* In the case of an expenditure which meets both the definition of an energy conservation expenditure (as defined in § 1.23-2(a)) and a renewable energy source expenditure (as defined in § 1.23-2(b)), the taxpayer may claim either a credit under § 1.23-1(b) (relating to qualified energy conservation expenditures) or § 1.23-1(c) (relating to qualified renewable energy source expenditures) but may not claim both credits with respect to the same expenditure.

(e) *Principal residence.* For purposes of section 23 or former section 44C the determination of whether a dwelling int

is the taxpayer's principal residence shall be made under principles similar to those applicable to section 1034 and the regulations thereunder (relating to sale or exchange of a principal residence) except that ownership of the dwelling unit is not required. In making this determination, the period for which a dwelling is treated as a taxpayer's principal residence includes the 30-day period ending on the first day on which the dwelling unit would (but for this sentence) be treated as being used as the taxpayer's principal residence under principles similar to those applicable to section 1034. Thus, installation that are completed within that 30-day period may be eligible for the credit although, in the absence of the 30-day rule, the date of habitation of the dwelling unit by the taxpayer would mark the beginning of the taxpayer's use of the unit as a principal residence.

(f) *Construction substantially completed.* Construction of a dwelling unit is substantially completed when construction has progressed to the point where the unit could be put to use as a personal residence, even though comparatively minor items remain to be finished or performed in order to conform to the plans or specifications of the completed building. For this purpose, construction includes reconstruction as defined in paragraph (a)(2). This rule may be illustrated by the following example:

Example. On January 1, 1979, A purchases a dwelling that is to become A's principal residence. The dwelling unit was originally constructed in 1950. A spends \$50,000 to reconstruct the dwelling by replacing most of the dwelling's major structural components such as floors, walls, and ceilings. Included in the cost is \$3,000 attributable to energy-conserving components. Reconstruction is substantially completed on April 1, 1979, and A moves into the reconstructed residence on May 1, 1979. Since construction includes reconstruction, A's reconstructed residence is not considered substantially completed before April 20, 1977. Thus, amounts spent with respect to A's reconstructed residence for energy-conserving components do not qualify as energy conservation expenditures.

(g) *Residential use of property.* To be eligible for the residential energy credit, expenditures must be made for personal residential purposes. If at least 80 percent of the use of a component or

item of property is for personal residential purposes, the entire amount of the energy conservation expenditure or the renewable energy source expenditure is taken into account in computing the credit under this section. If less than 80 percent of the use of a component or item of property is for personal residential purposes, the amount of an expenditure taken into account is the amount that bears the same ratio to the amount of the expenditure as the amount of personal residential use of the component or item bears to its total use. For purposes of this paragraph, use of a component or an item of property with respect to a swimming pool is not a use for a personal residential purpose. The rules with respect to residential use of property are illustrated by the following examples:

Example 1. In 1978 A makes an expenditure of \$3,000 for the installation of storm windows of which 50 percent is on the portion of A's dwelling used as the principal family residence and 50 percent is on the portion of the dwelling used as an office. A has made no other energy conservation expenditures for the residence. The allowable energy conservation expenditure is \$1,500 (50 percent of \$3,000), the portion attributable to residential use. Therefore, the residential energy credit is \$225 (the qualified conservation expenditure of 15 percent of \$1,500).

Example 2. During 1979, B makes \$10,000 of renewable energy source expenditures on solar energy property for B's principal residence. Approximately 60 percent of the use of the solar energy property will be for heating B's swimming pool; the other 40 percent will be for heating the dwelling unit. B had not previously made renewable energy source expenditures with respect to the residence. Since use for a swimming pool is not considered a residential use, less than 80 percent of the use of B's solar energy property is considered used for personal residential purposes. Therefore, only \$4,000 (40 percent of \$10,000), the proportionate part of B's expenditures representing personal residential use, is treated as a renewable energy source expenditure. B is allowed a \$1,000 residential energy credit (30 percent of \$2,000 plus 20 percent of \$2,000) for 1979.

(h) *Joint occupancy—(1) In general.* If two or more individuals jointly occupied and used a dwelling unit as their principal residence during any portion of a calendar year—

(i) The amount of the credit allowable under section 23 or former section

44C by reason of energy conservation expenditures or by reason of renewable energy source expenditures shall be determined by treating all of the joint occupants as one taxpayer whose taxable year is such calendar year; and

(ii) The credit under section 23 or former section 44C allowable to each joint occupant for the taxable year with which or in which such calendar year ends shall be an amount which bears the same ratio to the amount determined under paragraph (h)(1)(i) of this section as the amount of energy conservation expenditures or renewable energy source expenditures made by that occupant bears to the total amount of each type of such expenditures made by all joint occupants during such calendar year.

The provisions of this subparagraph may be illustrated by the following example:

Example. A, a calendar year taxpayer, and B, a June 1 fiscal year taxpayer, make energy conservation expenditures of \$2,000 (A making expenditures of \$500 and B making expenditures of \$1,500) on their principal and jointly occupied residence in 1978. A and B have not previously make energy conservation expenditures with respect to this residence. Of the \$300 credit (15 percent of \$2,000), \$75 will be allocated to A ($\$500/\$2,000 \times \$300$) and \$225 to B ($\$1,500/\$2,000 \times \$300$). A will claim the allocable share of the credit on A's 1978 tax return and B will claim the allocable share of the credit on B's tax return for the fiscal year ending May 31, 1979.

(2) *Minimum credit.* The fact that one joint occupant may be unable to claim all or part of the credit under section 23 of former section 44C because of insufficient tax liability or because that occupant's allowable credit does not exceed the \$10 minimum credit (as set forth in paragraph (d)(1) of § 1.23-1) shall have no effect upon the computation of the amount of the allowable credits for the other joint occupants.

(3) *Prior expenditures.* Because joint occupants are treated as one taxpayer for purposes of determining the residential energy credit, the maximum amount of energy conservation expenditures or renewable energy source expenditures must be reduced by the total amount of such expenditures made in connection with the dwelling unit during prior calendar years in which any one of the residents of the

unit during the current calendar year was a resident (whether made by the current resident or by an individual previously occupying the dwelling with the current resident). However, the preceding sentence shall not apply to prior expenditures no part of which was taken into account in computing the credits under section 23 of former section 44C for such years. Prior years' expenditures are not to be allocated among joint occupants to take into account the specific expenditures of each of the occupants in prior years.

(4) The rules of this paragraph may be illustrated by the following examples:

Example 1. Assume A and B have together made prior years' energy conservation expenditures of \$1,600 (A having made \$1,200 of expenditures and B having made \$400) on their principal and jointly occupied residence. In the current year, each makes energy conservation expenditures of \$300 with respect to the same residence. The maximum qualified expenditure with respect to the residence is reduced by the \$1,600 of prior expenditures made by A and B. Therefore, only \$400 of the \$600 current expenditures are eligible as energy conservation expenditures. The resulting residential energy credit is \$60 (15 percent of \$400) of which \$30 apiece will be allocated to A and B ($\$300/\$600 \times \$60$). The fact that A had previously computed the credit in prior years with respect to \$1,200 of the total \$1,600 of expenditures is irrelevant to the apportionment of the credit in the current year.

Example 2. In 1978, spouses C and D make \$10,000 of renewable energy source expenditures with respect to their principal residence, half of which is paid by each spouse. No prior renewable energy source expenditures have been taken into account with respect to that residence by either C or D. C and D file separate returns for the calendar year. Under the joint occupancy rule, the maximum allowable renewable energy source credit with respect to C and D's principal residence is \$2,200 (30 percent of the first \$2,000, and 20 percent of the next \$8,000 of expenditures). Half of this amount or \$1,100, will be allowed to each spouse. If either spouse makes renewable energy source expenditures with respect to the same principal residence in future years, none of those expenditures would be qualified renewable energy source expenditures for which a credit can be claimed. That is, not more than \$2,200 may be taken in the aggregate by C and D as a renewable energy source credit with respect to their principal residence.

Example 3. In 1978, E and F make energy conservation expenditures of \$1,500 on their

principal and jointly occupied residence. In 1979, E moves away and G becomes the other joint occupant of the residence. F and G make energy conservation expenditures of \$1,000 in 1979. In 1980 F moves away and H moves in with G. G and H make energy conservation expenditures of \$500. The maximum qualified expenditure made by F and G with respect to the residence is reduced by the \$1,500 of prior expenditures made in 1978 by E and F. The maximum qualified expenditures made by G and H with respect to the residence is reduced only by the expenditures in prior years in connection with the residence during which either G or H was a joint occupant. Accordingly, the maximum qualified expenditures made by G and H with respect to the residence is reduced only by the \$1,000 of prior expenditures made in 1979 by F and G.

(i) *Condominiums and cooperative housing corporations.* An individual who is a tenant stockholder in a cooperative housing corporation (as defined in section 216) or who is a member of a condominium management association with respect to a condominium which he or she owns shall be treated as having made a proportionate share of the energy conservation expenditures or renewable energy source expenditures of such corporation or association. The cooperative stockholder's allocable share of the expenditures is to be the same as his or her proportionate share of the cooperative's total outstanding stock (including any stock held by the corporation). However, in the case where only certain cooperative stockholders are assessed for the expenditures made by the cooperative housing corporation, only those cooperative stockholders that are assessed shall be treated as having made a share of the expenditures of such corporation. In such case, the cooperative stockholder's share of the expenditures is the amount that the stockholder is assessed. The allocable share of a condominium management association member's energy conservation or renewable energy source expenditures is the amount that the member is assessed (or would be assessed in the case where expenditures are from general funds) by the association as a result of such expenditures. The residential energy credit for a qualified expenditure is allowable for the year in which the association or corporation has completed original installation of the item (or has

paid or incurred the expenditure, if later). For purposes of this paragraph, the term "condominium management association" means an organization meeting the requirements of section 528(c)(1) of the Code (other than subparagraph (E) of that section), with respect to a condominium project substantially all the units of which are used as residences.

(j) *Joint ownership of energy conservation property or renewable energy source property—(1) In general.* Energy conservation property renewable energy source property include property which is jointly owned by the taxpayer and another person (or persons) and installed in connection with two or more dwelling units. For example, the fact that a windmill, solar collector, or geothermal well and distribution system is owned by two or more individuals does not preclude its qualification as renewable energy source property. The amount of the credit allowable under section 23 shall be computed separately with respect to the amount of the expenditures made by each individual, subject to the limitations of \$2,000 imposed by section 23(b)(1) and \$10,000 imposed by section 23(b)(2), per dwelling units of jointly owned property. For example, in 1982, A, B, and C purchased as joint owners renewable energy source property that serviced two houses. One of the houses is jointly owned and occupied by A and B and the other is owned and occupied by C alone. The renewable energy source property cost \$30,000 of which A paid \$9,000, B paid \$6,000, and C paid \$15,000. A and B must share the \$4,000 credit (40% of \$10,000 maximum) with respect to the expenditures for the jointly owned house. Therefore, A is allowed a \$2,400 credit (\$4,000 times \$9,000 divided by \$9,000 plus \$6,000) and B is allowed a \$1,600 credit (\$4,000 times \$6,000 divided by \$9,000 plus \$6,000) with respect to the expenditures attributable to the jointly owned house. C is entitled to a credit of \$4,000 with respect to the expenditures attributable to the other house.

(2) *Example.* The application of this subparagraph may be illustrated by the following example:

Example. A, B, and C each has a separate principal residence. They agree to finance jointly the construction of a solar collector,

each providing one-third of the costs and taking one-third of the output of the collector. Each will separately pay for the costs of connecting the solar collector with his or her principal residence. Provided the solar collector and connection equipment otherwise qualify as renewable energy source property, A, B, and C will each be considered to have made renewable energy source expenditures equal to one-third of the cost of the collector plus his or her separate connection costs. Such expenditures will be subject to the limitations and other rules separately applicable to A, B, and C with respect to each principal residence, such as those with respect to the \$10 minimum (§1.23-1(d)(1)), prior expenditures (§1.23-1(d)(2)), residential use (paragraph (g) of this section), and joint occupancy (paragraph (h) of this section).

(k) *Basic adjustments.* If a credit is allowed under section 23 or former section 44C for any expenditure with respect to any property, the increase in the basis of that property which would (but for this paragraph) result from such expenditure shall be reduced by the amount of the credit allowed.

(l) *Recordkeeping—(1) In general.* No residential energy credit is allowable unless the taxpayer maintains the records described in paragraph (1)(2) of this section. The records shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

(2) *Records.* The taxpayer must maintain records that clearly identify the energy-conserving components and renewable energy source property with respect to which a residential energy credit is claimed, and substantiate their cost to the taxpayer, any labor costs properly allocable to them paid for by the taxpayer, and the method used for allocating such labor costs.

[T.D. 7717, 45 FR 57719, Aug. 29, 1980. Redesignated and amended by T.D. 8146, 52 FR 26672, July 16, 1987]

§ 1.23-4 Performance and quality standards. [Reserved]

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

§ 1.23-5 Certification procedures.

(a) *Certification that an item meets the definition of an energy-conserving component or renewable energy source property.* Upon the request of a manufacturer of an item pursuant to paragraph (b) of

this section which is supported by proof that the item is entitled to be certified, the Assistant Commissioner (Technical) shall certify (or shall notify the manufacturer that the request is denied) that:

(1) The item meets the definition of insulation (see §1.23-2(c)(1)).

(2) The item meets the definition of an other energy-conserving component specified in section 23(c)(4) or former section 44C(c)(4) see (§1.23-2(d)(4)).

(3) The item meets the definition of solar energy property (see §1.23-2(f)), wind energy property (see §1.23-2(g)), or geothermal energy property (see §1.23-2(h)).

(4) The item meets the definition of a category of energy-conserving component that has been added to the list of approved items pursuant to paragraph (d)(4)(viii) of §1.23-2.

(5) The item meets the definition of renewable energy source property that transmits or uses a renewable energy source that has been added to the list of approved renewable energy sources pursuant to paragraph (e)(2) of §1.23-2.

(b) *Procedure—(1) In general.* A manufacturer of an item desiring to apply under paragraph (a) shall submit the application to the Commissioner of Internal Revenue, Attention: Associate Chief Counsel (Technical), CC:C:E, 1111 Constitution Avenue NW., Washington, DC 20224. Upon being advised by the National Office, orally or in writing, that an adverse decision is contemplated a manufacturer may request a conference. The conference must be held within 21 calendar days from the date of that advice. Procedures for requesting an extension of the 21-day period and notifying the manufacturer of the Service's decision on that request are the same as those applicable to conferences on ruling requests by taxpayers (see section 9.05 of Rev. Proc. 80-20).

(2) *Contents of application.* The application shall include a description of the item (including appropriate design drawings and specifications) and an explanation of the purpose and function of the item. There shall accompany the application a declaration in the following form: "Under penalties of perjury, I declare that I have examined