

Part III - Administrative, Procedural, and Miscellaneous

Election of Investment Tax Credit in Lieu of Production Tax Credit; Coordination with Department of Treasury Grants for Specified Energy Property in Lieu of Tax Credits

Notice 2009-52

This notice describes the procedures that taxpayers will be required to follow to make the irrevocable election to take the investment tax credit determined under § 48 of the Internal Revenue Code in lieu of the production tax credit under § 45 with respect to certain renewable energy facilities. This election was created by the American Recovery and Reinvestment Tax Act of 2009, Division B of Pub. L. 111-5, 123 Stat 115 (the Act), which was enacted on February 17, 2009. This notice includes information about election procedures and the documentation required to complete the election. The notice also describes the coordination of the tax credits under §§ 45 and 48 with Treasury Department grants for specified energy property under § 1603 of the Act (Section 1603 Grants).

SECTION 1. Background

.01 In General. Section 48(a)(5) allows taxpayers to irrevocably elect to take the investment tax credit determined under § 48 in lieu of the production tax credit under § 45 with respect to certain renewable energy facilities. Section 46 provides for the investment tax credit and includes in that credit the energy credit determined under

§ 48. Except as otherwise provided in § 48(c)(1)(B), (2)(B), and (3)(B), the energy credit for any taxable year is the energy percentage of the basis of each energy property placed in service during the taxable year. Section 48(a)(1). Section 48(a)(5)(A) provides that qualified property that is part of a qualified investment credit facility shall be treated as energy property for purposes of § 48, and that the energy percentage with respect to such property shall be 30 percent. Section 48(a)(5)(C) provides that taxpayers may elect to treat certain qualified facilities (within the meaning of § 45) as qualified investment credit facilities. Section 48(a)(5)(B) provides that no credit shall be allowed under § 45 for any taxable year with respect to any qualified investment credit facility.

.02 Qualified Investment Credit Facility. Section 48(a)(5)(C) provides that the term “qualified investment credit facility” means a qualified facility (within the meaning of § 45)--

(1) that is described in § 48(a)(5)(C)(i) or (ii);

(2) for which the taxpayer makes an irrevocable election to have § 48(a)(5) apply;

and

(3) with respect to which no credit has been allowed under § 45.

SECTION 2. Election Procedures

.01 In General. An election to treat a qualified facility as a qualified investment credit facility and take the investment tax credit determined under § 48 in lieu of the production tax credit under § 45 will be effective if it is made in the form and manner set forth in this notice. To make the election with respect to a qualified facility, a taxpayer must claim

the energy credit with respect to qualified property that is an integral part of the facility on a completed Form 3468 and file such form with the taxpayer's income tax return for the year in which the property is placed in service. The taxpayer must make a separate election for each qualified facility that is to be treated as a qualified investment credit facility. The taxpayer must also attach a statement to the Form 3468 that includes the following information:

(1) The name, address, taxpayer identification number, and telephone number of the taxpayer.

(2) For each qualified investment credit facility:

(i) A detailed technical description of the facility, including generating capacity.

(ii) A detailed technical description of the energy property placed in service during the taxable year as an integral part of the facility, including a statement that the property is an integral part of such facility.

(iii) The date that the energy property was placed in service.

(iv) An accounting of the taxpayer's basis in the energy property.

(v) A depreciation schedule reflecting the taxpayer's remaining basis in the energy property after the energy credit is claimed.

(3) A statement that the taxpayer has not and will not claim a Section 1603 Grant for property for which the taxpayer is claiming the energy credit.

(4) A declaration, applicable to the statement and any accompanying documents, signed by the taxpayer, or signed by a person currently authorized to bind the taxpayer in such matters, in the following form:

“Under penalties of perjury, I declare that I have examined this statement, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this statement are true, correct, and complete.”

.02 Effective Date. The election to take the investment tax credit determined under § 48 in lieu of the production tax credit under § 45 is available for facilities placed in service after December 31, 2008.

.03 Deadline for Making Election. The election to take the investment tax credit determined under § 48 in lieu of the production tax credit under § 45 must be made on a timely filed return (including extensions) for the taxable year in which facility that is to be treated a qualified investment credit facility is placed in service.

.04 Revocation. Section 48(a)(5)(C) makes the election to treat a facility as a qualified investment credit facility irrevocable.

SECTION 3. Documentation Required

In order to satisfy the recordkeeping requirements of § 6001 and the regulations thereunder, a taxpayer that elects to claim the investment tax credit determined under § 48 in lieu of the production tax credit under § 45 must retain adequate books and records. This requirement specifically includes the statement described in section 2 of this Notice, the Form 3468, and all supporting documentation relevant to the election and the taxpayer’s credit claim under § 48, so that, for any taxable year, the IRS may verify that the property with respect to which the taxpayer claimed the credit satisfies the applicable requirements of § 48 and this notice.

SECTION 4. Coordination with Department Of Treasury Grants

Section 48(d) governs the interaction between the investment tax credit determined under § 48 and Section 1603 Grants. Generally, § 1603 of the Act requires the Treasury Department to make grants to persons who place in service specified energy property (including certain energy property eligible for the investment tax credit determined under § 48 or the production tax credit under § 45). Section 48(d)(1) provides, in the case of property with respect to which the Treasury makes a Section 1603 Grant, that no credit may be determined under § 48 or § 45 with respect to such property for the taxable year in which such grant is made or any subsequent taxable year.

SECTION 5. 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 1545-2145.

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 is in section 2 of this notice. This information is required to be collected and retained in order to ensure that energy property meets the requirements for the investment tax credit determined under § 48. This information will be used to determine whether the property for which the energy credit is claimed is energy property that qualifies for the credit.

The collection of information is required to obtain a benefit.

The respondents are taxpayers providing a statement and filing a Form 3468 in order make the election to claim the investment tax credit determined under § 48 in lieu of the production tax credit under § 45. The estimated total annual reporting burden is 100 hours. The estimated annual burden per respondent varies from 50 to 70 minutes, depending on individual circumstances, with an estimated average burden of 60 minutes to complete the statement required to claim the credit. The estimated number of respondents is 100. The estimated frequency of responses is once.

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 6. Drafting Information

The principal author of this notice is Jennifer C. Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Jennifer C. Bernardini on (202) 622-3110 (not a toll-free call).