

Renewable Electricity Production Credit and Refined Coal Production Credit, Publication of Inflation Adjustment Factor and Reference Prices for Calendar Year 2005

Notice 2005-37

This notice publishes the inflation adjustment factor and reference prices for calendar year 2005 for the renewable electricity production credit and the refined coal production credit under § 45 of the Internal Revenue Code. The 2005 inflation adjustment factor and reference prices are used in determining the availability of the credits. The 2005 inflation adjustment factor and reference prices apply to calendar year 2005 sales of kilowatt-hours of electricity produced in the United States or a possession thereof from qualified energy resources and to calendar year 2005 sales of refined coal produced in the United States or a possession thereof.

BACKGROUND

Section 45(a) provides that the renewable electricity production credit for any tax year is an amount equal to the product of 1.5 cents multiplied by the kilowatt hours of specified electricity produced by the taxpayer and sold to an unrelated person during the tax year. This electricity must be produced from qualified energy resources and at a qualified facility during the 10-year period beginning on the date the facility was originally placed in service.

Section 45(b)(1) provides that the amount of the credit determined under § 45(a) is reduced by an amount that bears the same ratio to the amount of the credit as (A) the amount by which the reference price for the calendar year in which the sale occurs exceeds 8 cents, bears to (B) 3 cents. Under § 45(b)(2), the 1.5 cents in § 45(a) and the 8 cents in § 45(b)(1) are each adjusted by multiplying the amount by the inflation adjustment factor for the calendar year in which the sale occurs.

Section 45(c)(1) defines qualified energy resources as wind, closed-loop

biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, and municipal solid waste.

Section 45(d)(1) defines a qualified facility using wind to produce electricity as any facility owned by the taxpayer that is originally placed in service after December 31, 1993, and before January 1, 2006. (See § 45(e)(7) for rules relating to the inapplicability of the credit to electricity sold to utilities under certain contracts.)

Section 45(d)(2)(A) defines a qualified facility using closed-loop biomass to produce electricity as (i) any facility owned by the taxpayer that is originally placed in service after December 31, 1992, and before January 1, 2006, or (ii) any facility owned by the taxpayer which before January 1, 2006, is originally placed in service and modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation as described in 65 Fed. Reg. 63052. Section 45(d)(2)(B) provides that in the case of a qualified facility described in § 45(d)(2)(A)(ii), (i) the 10-year period referred to in § 45(a) is treated as beginning no earlier than the date of enactment of § 45(d)(2)(B); (ii) the amount of the credit determined under § 45(a) with respect to the facility is an amount equal to an amount determined without regard to § 45(d)(2)(B) multiplied by the ratio of the thermal content of the closed-loop biomass used in such facility to the thermal content of all fuels used in such facility; and (iii) if the owner of such facility is not the producer of electricity, the person eligible for the credit allowable under § 45(a) will be the lessee or the operator of the facility.

Section 45(d)(3) defines a qualified facility using open-loop biomass to produce electricity as any facility owned by the taxpayer which (i) in the case of a facility using agricultural livestock waste nutrients, (I) is originally placed in service after the date of enactment of § 45(d)(3)(A)(i)(I) and before January 1, 2006, and (II) the nameplate capacity rating of which is not less than 150 kilowatts; and (ii) in the case of any other facility, is originally placed in service before January 1, 2006. In the case

of any facility described in § 45(d)(3)(A), if the owner of the facility is not the producer of the electricity, § 45(d)(3)(B) provides that the person eligible for the credit allowable under § 45(a) will be the lessee or the operator of the facility.

Section 45(d)(4) defines a qualified facility using geothermal or solar energy to produce electricity as any facility owned by the taxpayer that is originally placed in service after the date of enactment of § 45(d)(4) and before January 1, 2006. A qualified facility using geothermal or solar energy must not include any property described in § 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under § 48.

Section 45(d)(5) defines a qualified facility using small irrigation power to produce electricity as any facility owned by the taxpayer that is originally placed in service after the date of enactment of § 45(d)(5) and before January 1, 2006.

Section 45(d)(6) defines a qualified facility using gas derived from the biodegradation of municipal solid waste to produce electricity as any facility owned by the taxpayer that is originally placed in service after the date of enactment of § 45(d)(6) and before January 1, 2006.

Section 45(d)(7) defines a qualified facility that burns municipal solid waste to produce electricity as any facility owned by the taxpayer that is originally placed in service after the date of enactment of § 45(d)(7) and before January 1, 2006.

Section 45(e)(8)(A) provides that the refined coal production credit is an amount equal to \$4.375 per ton of qualified refined coal (i) produced by the taxpayer at a refined coal production facility during the 10-year period beginning on the date the facility was originally placed in service, and (ii) sold by the taxpayer to an unrelated person during such 10-year period and such taxable year. Section 45(e)(8)(B) provides that the amount of credit determined under § 45(e)(8)(A) is reduced by an amount which bears the same ratio to the amount of credit determined under § 45(e)(8)(A) (determined without regard to § 45(e)(8)(B)) as (i) the amount by which the reference price of fuel used as feedstock (within the meaning

of § 45(c)(7)(A)) for the calendar year in which the sale occurs exceeds an amount equal to 1.7 multiplied by the reference price for such fuel in 2002, bears to (ii) \$8.75.

Under § 45(b)(2), the \$4.375 amount in § 45(e)(8)(A), and in § 45(e)(8)(B)(i) the reference price of fuel used as feedstock (within the meaning of § 45(c)(7)(A)) in 2002 are each adjusted by multiplying the amount by the inflation adjustment factor for the calendar year in which the sale occurs.

Section 45(d)(8) defines a refined coal production facility as a facility that is placed in service after the date of enactment of 45(d)(8) and before January 1, 2009.

Section 45(e)(2)(A) requires the Secretary to determine and publish in the Federal Register each calendar year the inflation adjustment factor and the reference prices for the calendar year. The inflation adjustment factor and the reference prices for the 2005 calendar year were published in the Federal Register on April 8, 2005, (70 Fed. Reg. 18071).

Section 45(e)(2)(B) defines the inflation adjustment factor for a calendar year as the fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 1992. The term "GDP implicit price deflator" means the most recent revision of the implicit price deflator for the gross domestic product as computed and published by the Department of Commerce before March 15 of the calendar year.

Section 45(e)(2)(C) provides that the reference price is the Secretary's determination of the annual average contract price per kilowatt hour of electricity generated from the same qualified energy resource and sold in the previous year in the United States. Only contracts entered into after December 31, 1989, are taken into account.

Under § 45(e)(8)(C), the determination of the reference price for fuel used as feedstock within the meaning of § 45(c)(7)(A) is made according to rules similar to the rules under § 45(e)(2)(C).

INFLATION ADJUSTMENT FACTOR AND REFERENCE PRICES

The inflation adjustment factor for calendar year 2005 is 1.2528. The reference price for calendar year 2005 for facilities producing electricity from wind is 4.85¢ per kilowatt hour. The reference prices for fuel used as feedstock within the meaning of § 45(c)(7)(A) (relating to refined coal production) are \$31.90 per ton for calendar year 2002 and \$36.36 per ton for calendar year 2005. The reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, and municipal solid waste have not been determined for calendar year 2005. The IRS is exploring methods of determining those reference prices for calendar year 2006.

PHASE-OUT CALCULATION

Because the 2005 reference price for electricity produced from wind does not exceed 8¢ multiplied by the inflation adjustment factor, the phaseout of the credit provided in § 45(b)(1) does not apply to such electricity sold during calendar year 2005. Because the 2005 reference price of fuel used as feedstock for refined coal does not exceed the \$31.90 reference price of such fuel in 2002 multiplied by the inflation adjustment factor and 1.7, the phaseout of credit provided in § 45(e)(8)(B) does not apply to refined coal sold during calendar year 2005. Further, for electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, and municipal solid waste, the phaseout of credit provided in § 45(b)(1) does not apply to such electricity sold during calendar year 2005.

CREDIT AMOUNT BY QUALIFIED ENERGY RESOURCE AND FACILITY, AND REFINED COAL

As required by § 45(b)(2), the 1.5¢ amount in § 45(a)(1), the 8¢ amount in § 45(b)(1), and the \$4.375 amount in § 45(e)(8)(A) are each adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1¢, such amount is rounded to the nearest multiple of 0.1¢. In the case of

electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, and trash combustion facilities, § 45(b)(4)(A) requires the amount in effect under § 45(a)(1) (before rounding to the nearest 0.1¢) to be reduced by one-half. Under the calculation required by § 45(b)(2), the credit for renewable electricity production for calendar year 2005 under § 45(a) is 1.9¢ per kilowatt hour on the sale of electricity produced from the qualified energy resources of wind, closed-loop biomass, geothermal energy, and solar energy, and 0.9¢ per kilowatt hour on the sale of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, and trash combustion facilities. Under the calculation required by § 45(b)(2), the credit for refined coal production for calendar year 2005 under section 45(e)(8)(A) is \$5.481 per ton on the sale of qualified refined coal.

DRAFTING AND CONTACT INFORMATION

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