

## IRM PROCEDURAL UPDATE

**DATE: 03/29/2013**

**NUMBER: WI-21-0313-0649**

**SUBJECT: American Taxpayer Relief Act of 2012, P.L. 112-240, 50-percent Additional Special Depreciation Allowance and Form 8835, Renewable Electricity and Refined Coal Prod Credit, Routing of Form 5471**

**AFFECTED IRM(s)/SUBSECTION(s): 21.7.4.4**

**CHANGE(s):**

**IRM 21.7.4.4.8.3.8** Re-wrote the subsection on Form 8835, Renewable Electricity and Refined Coal Production Credit, and added new information.

1. Section 1914 of the Energy Policy Act of 1992, P.L. 102-486, revised Code section 38 and added new section 45 to the Internal Revenue Code to allow an income tax credit on the sale of electricity produced in the United States and U.S. possessions from qualified energy resources.
2. Section 710 of the American Jobs Creation Act of 2004, P.L. 108-357, expanded the credit to include refined coal from a qualified refined coal production facility placed in service **after** 10/22/2004. Section 1301 of the Energy Policy Act of 2005, P.L. 109-58, extended and modified the Renewable Electricity Production Credit to include hydropower and Indian coal production facilities. Section 102 of the Emergency Economic Stabilization Act of 2008, P.L. 110-343 extended and modified the Renewable Electricity Production Credit to include marine and hydrokinetic renewable energy facilities.
3. The credit has been modified by various legislation. Below is a listing of some of the legislation that has impacted the credit. See paragraph (8) below for the placed in service dates for various categories, and the Instructions for Form 8835 for more specific information:
  - Section 1301 of the Energy Policy Act of 2005, P.L. 109-58
  - Section 201 of the Tax Relief and Health Care Act of 2006, P.L. 109-432
  - Section 101 of the Emergency Economic Stabilization Act of 2008, P.L. 110-343
  - Section 1101 of the American Recovery and Reinvestment Act of 2009, P.L. 111-5
  - Section 702 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312
  - Sections 406 and 407 of the American Taxpayer Relief Act of 2012, P.L. 112-240
4. Form 8835 is filed to claim the renewable electricity, refined coal, and Indian coal production credit. The credit is allowed only for the sale of electricity, refined

coal, or Indian coal produced in the United States or U.S. possessions from qualified energy resources at a qualified facility.

5. Generally, the credit is 1.5 cents per kilowatt-hour (kWh) for the sale of electricity produced by the taxpayer from qualified energy resources at a qualified facility during the credit period. The credit is reduced for grants, tax-exempt bonds, subsidized energy financing and is adjusted annually based on inflation. The credit for electricity produced at qualified facilities using: wind, closed-loop biomass, geothermal, and solar are listed in the second column. The credit for electricity produced at qualified facilities using: open-loop biomass, small irrigation, landfill gas, trash, hydropower, marine and hydrokinetic renewables is reduced by one-half in any calendar year after 2003 and are listed in the third column:

| <b>Tax year</b> | <b>Amount per kWh</b> | <b>Amount per kWh</b> |
|-----------------|-----------------------|-----------------------|
| 2007            | .020                  | .010                  |
| 2008            | .021                  | .010                  |
| 2009            | .021                  | .011                  |
| 2010 thru 2012  | .021                  | .011                  |

6. In addition, the amount of the credit is phased out as the market price of electricity (or refined coal in the case of refined coal production credit) exceeds certain threshold levels. Per Notice 2005-37 , the phaseout of the credit does not apply to electricity produced from wind, refined coal, closed-loop biomass, geothermal energy, solar energy, small irrigation power, or municipal solid waste sold during calendar year 2005. There is also no phaseout of the credit for calendar year 2006. See the General Instructions for Form 8835 on how to figure the credit. See the chart below for the factor to use to figure the amount of the credit:
7. The phaseout also does not apply to:
  - o Electricity sold in 2007 - 2012 that was produced from wind.
  - o Refined coal sold during calendar years 2007- 2012.
  - o Electricity sold in calendar years 2007 - 2012, that was produced from closed-loop biomass, geothermal energy, solar energy, small irrigation power, and municipal solid waste.
  - o Electricity sold in calendar years 2005 - 2012 that was produced from open-loop biomass.
  - o Electricity sold in calendar years 2006 - 2012 that was produced from qualified hydropower.
  - o Electricity sold in calendar years 2009 - 2012 that was produced from marine and hydrokinetic energy.
8. Notice 2007-40 publishes the inflation adjustment factor and reference prices for calendar year 2007 for the renewable electricity production credit and the refined coal production credit under section 45 of the Internal Revenue Code. The 2007 inflation adjustment factor and reference prices are used in determining the availability of the credits. The 2007 inflation adjustment factor and reference prices apply to calendar year 2007 sales of kilowatt-hours of electricity produced

in the United States or a possession thereof from qualified energy resources and to calendar year 2007 sales of refined coal produced in the United States or a possession thereof. See the following notices for the yearly inflation factor:

| <b>Tax Year</b> | <b>Notice Number</b> |
|-----------------|----------------------|
| <b>2007</b>     | <b>2007-40</b>       |
| <b>2008</b>     | <b>2008-48</b>       |
| <b>2009</b>     | <b>2009-40</b>       |
| <b>2010</b>     | <b>2010-37</b>       |
| <b>2011</b>     | <b>2011-40</b>       |
| <b>2012</b>     | <b>2012-35</b>       |

9. Generally, section 45(e)(8)(A) provides that the credit is \$4.375 per ton for the sale of refined coal produced, and section 45(e)(10)(B)(i) provides that the credit is \$1.50 per ton for calendar years 2006 through 2009 and \$2.00 per ton for calendar years beginning after 2009. See the chart below for the factor to use to figure the amount of the credit:

| <b>Tax Year</b> | <b>Factor for refined coal produced and sold per ton</b> | <b>Factor for Indian coal produced and sold per ton</b> |
|-----------------|--|---|
| 2007            | \$5.877  | \$1.54  |
| 2008            | \$6.061  | \$1.589   |
| 2009            | \$6.20   | \$1.625   |
| 2010            | \$6.27   | \$2.20  |
| 2011            | \$6.33   | \$2.20  |
| 2012            | \$6.475  | \$2.267   |

10. The credit is available in Part 1, Electricity Produced at Qualified Facilities Placed in Service Before October 23, 2004, for the following:
- o Poultry waste facility placed in service after 12/31/1999 and before 1/1/2005.
  - o Wind facility placed in service after 12/31/1993 and before 10/23/2004.
  - o Closed-loop biomass facility placed in service after 12/31/1992 and before 10/23/2004.
11. The credit is available in Part II, Electricity and Refined Coal Produced at Qualified Facilities Placed in Service After October 22, 2004 (After October 2, 2008, for Electricity Produced From Marine and Hydrokinetic Renewables), and Indian Coal Produced at Facilities Placed in Service After August 8, 2005, for the following
- o Wind facility placed in service after 10/22/2004 and the construction of which begins before 1/1/2014. This does not include any facility for which any qualified small wind energy property expenditure (as defined in section 25D(d)(4)) is used in determining the residential energy efficient property credit.
  - o Closed-loop biomass facility placed in service after 10/22/2004 and the constructions of which begins before 1/1/2014.

- Closed-loop biomass facility modified before 1/1/2014 to co-fire with coal or other biomass (or both), and placed in service before 1/1/2014. The facility will be treated as modified before 1/1/2014, if the construction of the modification begins before 1/1/2014. See section 45(d)(2).
- Closed-loop biomass facility that is a new unit placed in service after October 3, 2008, in connection with a facility described in section 45(d)(2)(A)(i), but only to the extent of the increased amount of electricity produced at the facility by reason of the new unit.
- Open-loop biomass facility using cellulosic waste and the construction of which begins before 1/1/2014.
- Open-loop biomass facility using agricultural livestock waste in service after 10/22/2004 and the construction of which begins before 1/1/2014 and the nameplate capacity rating is not less than 150 kilowatts.
- Open-loop biomass facility that is a new unit placed in service after October 3, 2008, in connection with a facility described in section 45(d)(3)(A), but only to the extent of the increased amount of electricity produced at the facility by reason of the new unit.
- Geothermal energy facility placed in service after 10/22/2004, and the construction of which begins before January 1, 2014. The facility does not include any property described in Code section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under Code section 48.
- Solar energy facility placed in service after 10/22/2004 and before 1/1/2006. The facility does not include any property described in Code section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under Code section 48.
- Small irrigation power facility placed in service after 10/22/2004 and before 10/3/2008.
- Landfill gas or trash combustion facility using municipal solid waste placed in service after 10/22/2004 and the construction of which begins before 1/1/2014.
- A refined coal production facility originally placed in service after 10/22/2004 and before 1/1/2012. Also, a facility producing steel industry fuel (or any modification to such a fuel that is produced through a facility) placed in service before January 1, 2010. See Notice 2010-54 for more information on refined coal facilities.
- Hydropower facility producing incremental hydroelectric production attributable to efficiency improvements or additions to capacity described in section 45(c)(8)(B) placed in service after 8/8/2005. The facility will be treated as placed in service before 1/1/2014, if the construction of the improvement or addition begins before 1/1/2014, and any other facility producing qualified hydroelectric production described in section 45(c)(8) placed in service after 8/8/2005, and the construction of which begins before 1/1/2014.
- Indian coal production facility placed in service before 1/1/2009.

- Marine and hydrokinetic renewable energy facility placed in service after 10/2/ 2008, and the construction of which begins before 1/1/2014.

**NOTE:** A qualified facility does not include a refined coal production facility or landfill gas facility using municipal solid waste to produce electricity, if the production from that facility is allowed as a credit under section 45K.

12. For TY 2006 and subsequent the credit can only be claimed as a general business credit and must be carried to Form 3800, *General Business Credit*. The allowable credit will then be figured on Form 3800.
13. For TY 2005 and prior, Form 8835, *Renewable Electricity and Refined Coal Production Credit*, must be submitted. The credit may need to be carried to Form 3800, *General Business Credit*, if two or more general business credits are claimed.
14. Any unused portion of this credit remaining, after the tax is reduced to zero, can be carried back one year to reduce taxes for that year. It can then be carried forward 20 years. See IRM 21.7.4.4.8.1.4 for tax years beginning prior to 1998.
15. Action required:
  - a. Math verify Form 8835
  - b. Input TC 291 to increase the credit or TC 290 to reduce the credit

**IRM 21.7.4.4.18.6.4** Added new subsection titled American Taxpayer Relief Act of 2012, P.L. 112-240, 50-percent Additional Special Depreciation Allowance.

1. Section 331(a), Extension and Modification of Bonus Depreciation, of the American Taxpayer Relief Act of 2012, P.L. 112-240, extended the 50-percent additional first-year depreciation deduction for qualified property for one year as described in IRM subsection 21.7.4.4.18.6. The date acquired by the taxpayer, the placed in service date and in the case of taxpayer manufacturing, constructing or producing property for the taxpayers own use is extended per paragraphs (2), (3) and (4) directly below.
2. The original use of the qualified property must commence with the taxpayer after December 31, 2007 and which is acquired by the taxpayer:
  - After December 31, 2007, and before January 1, 2014, but only if no written binding contract for the acquisition is in effect before January 1, 2008, **or**
  - Pursuant to a written binding contract which was entered into after December 31, 2007, and before January 1, 2014
3. The qualified property must be placed in service by the taxpayer before January 1, 2014. An extension of the placed-in-service date of one year (i.e., to before January 1, 2015) is provided for certain property having longer production periods as described in Code section 168(k)(2)(B) and also for certain aircraft as described in Code section 168(k)(2)(C).

4. In the case of a taxpayer manufacturing, constructing, or producing property for the taxpayer's own use, the taxpayer must begin the manufacture, construction, or production of the property after December 31, 2007, and before January 1, 2014, to meet the acquisition requirements in (2) above. Property that is manufactured, constructed, or produced for the taxpayer by another person under a contract that is entered into prior to the manufacture, construction, or production of the property is considered manufactured, constructed, or produced by the taxpayer.
5. Rev. Proc. 2013-21, provides the depreciation deduction limitations for owners of passenger automobiles (including separate tables for trucks and vans) first placed in service during calendar year 2013 and the amounts that must be included in income by lessees of passenger automobiles first leased by the taxpayer during calendar year 2013, including a separate table of inclusion amounts for lessees of trucks and vans.

**IRM 21.7.4.4.18.10.3** Added new subsection titled American Taxpayer Relief Act of 2012, P.L. 112-240, Extension of Election to Accelerate the Alternative Minimum Tax Credit in Lieu of Bonus Depreciation.

1. Section 331(c)(1), Extension of Election to Accelerate the AMT Credit in Lieu of Bonus Depreciation, of the American Taxpayer Relief Act of 2012, P.L. 112-240, extended the election to accelerate the alternative minimum tax AMT credit in lieu of bonus depreciation. In general, the provision provides for corporations to elect not to claim the 50-percent additional first-year depreciation for eligible qualified property (defined in IRM 21.7.4.4.18.6) acquired after March 31, 2008, and placed in service after December 31, 2012, and before January 1, 2014 and instead, to increase their AMT credit limitation. The provision refers this eligible qualified property as "round 3 extension property".
2. If a taxpayer made the election under code section 168(k)(4)(A) to increase the research credit or minimum tax credit limitations for its first taxable year ending after March 31, 2008, made the election to increase the research credit or minimum tax credit limitations under Code section 168(k)(4)(H)(ii) for its first taxable year ending after December 31, 2008 (extension property election), or made the election to increase the minimum tax credit limitation under Code section 168(k)(4)(I)(iii) for its first taxable year after December 31, 2010 (round 2 extension property) :
  - o Under new Code section 168(k)(4)(J)(ii)(I), the taxpayer can elect not to have Code section 168(k)(4) apply to round 3 extension property, but
  - o If the taxpayer does not make the election under new Code section 168(k)(4)(J)(ii)(I), in applying Code section 168(k)(4) to the taxpayer the bonus depreciation amount, maximum amounts, and maximum increase amounts, shall be computed and applied to eligible qualified property which is round 3 extension property. The amounts described in new subparagraph (J)(ii)(I) of Code section 168(k)(4) shall be computed

separately from any amounts computed with respect to eligible qualified property which is not round 3 extension property.

3. Taxpayers that have not previously made the election to apply Code section 168(k)(4). Under new Code section 168(k)(4)(J)(iii), in the case of a taxpayer who neither made the election under Code section 168(k)(4)(A) for its first taxable year ending after March 31, 2008, nor made the election under Code section 168(k)(4)(H)(ii) for its first taxable year ending after December 31, 2008 (extension Property election), nor made the election under Code section 168(k)(4)(I)(iii) for any taxable year ending after December 31, 2010 (round 2 extension property election):
  - o The taxpayer may elect to have Code section 168(k)(4) apply to round 3 extension property for its first taxable year ending after December 31, 2012, and each subsequent taxable year, **and**
  - o If the taxpayer makes the election under new Code section 168(k)(4)(J)(iii)(I), Code section 168(k)(4) shall only apply to eligible qualified property which is round 3 extension property.
4. Under Code section 168(k)(4)(J)(iv), round 3 extension property is defined as property that is eligible qualified property solely by reason of the extension of Code section 168(k)(2) by the American Taxpayer Relief Act of 2012.
5. Section 331(c)(2) of the American Taxpayer Relief Act of 2012 added new Code section 168(k)(4)(J) to provide special rules for round 3 extension property. In general, new Code section 168(k)(4)(J)(i) provides that in the case of round 3 extension property, this paragraph shall be applied without regard to:
  - o The limitation described in Code section 168(k)(4)(B)(i) thereof, **and**
  - o The business credit increase amount under Code section 168(k)(4)(E)(iii).