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# 2016

Department of the Treasury
**Internal Revenue Service**

# Instructions for Form 8835

## Renewable Electricity, Refined Coal, and Indian Coal Production Credit

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Section references are to the Internal Revenue Code unless otherwise noted.

## Future Developments

For the latest information about developments related to Form 8835 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/form8835*.

## What's New

Since the credit period for facilities placed in service before October 23, 2004, has expired, the form is revised to reflect the expiration.

The Protecting Americans from Tax Hikes Act of 2015 has made the following changes:

- Phase-out of credit for wind facilities. The credit for wind facilities is reduced by 20% for facilities the construction of which begins during 2017. For more information, see *Line 17a*, later.
- Beginning in 2016, the placed-in-service date limitation on a qualified Indian coal facility is repealed and the credit can be used to offset the alternative minimum tax (AMT).

# General Instructions

## Purpose of Form

Use Form 8835 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 (see *Definitions*, later).

Partnerships and S corporations must file this form to claim the credit. All others are generally not required to complete or file this form if their only source for this credit is a partnership, S corporation, estate, trust, or cooperative. Instead, they can report this credit directly on Form 3800, General Business Credit. The following exceptions apply.

- You are an estate or trust and the source credit can be allocated to beneficiaries. For more details, see the instructions for Form 1041, Schedule K-1, box 13, code J.
- You are a cooperative and the source credit can or must be allocated to patrons. For more details, see the instructions for Form 1120-C, Schedule J, line 5c.

### Election To Treat a Qualified Facility as Energy Property

Section 48(a)(5) provides an irrevocable election to treat qualified property (described in section 48(a)(5)(D)) that is part of a qualified investment credit facility (described in section 48(a)(5)(C)) as energy property eligible for the investment credit (reported on Form 3468, Investment Credit) in lieu of a production credit reportable on this form. This election applies to a facility that:

- Is a qualified facility under section 45(d)(1), (2), (3), (4), (6), (7), (9), or (11) that is placed in service after 2008 and the construction of which begins before January 1, 2017 (before January 1, 2020, for a qualified facility under section 45(d)(1)). See *Construction of a Qualified Facility*, later;
- No credit has been allowed under section 45 for that facility; and
- An irrevocable election was made to treat the facility as energy property.

See Notice 2009-52 and Form 3468, for information on making the election. Notice 2009-52 is available at *www.irs.gov/irb/2009-25_IRB/ar09.html*.

### Coordination With Department of Treasury Grants

If a grant is paid under the American Recovery and Reinvestment Act of 2009 (the Act), section 1603, for placing into service specified energy property (described in Act section 1603(d)), no production credit under section 45, or investment credit under section 48, is allowed for the property for the tax year in which the grant is made or any subsequent tax year. See section 48(d) for more information.

You may not partition the basis of property for which a section 1603 award was received and claim a production credit under section 45 or investment credit under section 48 for any part of the basis of that property. However, you must reduce the basis of the specified energy property by 50% of the amount of the actual section 1603 payment.

You may have to refigure the investment credit and recapture all or a portion of it if a grant under section 1603 of the Act was made for section 48 property for which a credit was allowed for progress expenditures before the grant was made. Recapture is applicable to those amounts previously included in the qualified basis for an energy credit, including progress expenditures, that are also the basis for the 1603 grant.

### How To Figure the Credit

Generally, the credit for electricity, refined coal, and Indian coal produced from qualified energy resources at a qualified facility during the credit period (see *Definitions*, later) is:

- 1.5 cents per kilowatt-hour (kWh) for the sale of electricity produced by you;
- 1/2 of 1.5 cents for open-loop biomass, small irrigation, landfill gas, trash, hydropower, and marine and hydrokinetic renewable facilities;
- $4.375 per ton for the sale of refined coal produced; or
- $2 per ton for the sale of Indian coal produced.

The credit for electricity produced is proportionately phased out over a 3-cent range when the reference price exceeds the 8-cent threshold price. The refined coal credit is proportionately phased out over an $8.75 range when the reference price of fuel used as feedstock exceeds 1.7 times the 2002 reference price. The 1.5-cent credit rate, the 8-cent threshold price, the $4.375 refined coal rate, the reference price of fuel used as a feedstock, and the $2 Indian coal rate are adjusted for inflation. The reference price and the inflation adjustment factor (IAF) for each calendar year are published during the year in the Federal Register. If the reference price is less than the threshold price (adjusted by the IAF), there is no reduction. For electricity produced, if the reference price is more than 3 cents over the adjusted threshold price, there is no credit; if the reference price is more than the threshold price, but not more than 3 cents over the adjusted threshold price, there is a phaseout adjustment on line 4. For refined coal produced, if the reference price is more than $8.75 over the adjusted threshold price, there is no credit; if the reference price is more than the threshold price, but not more than $8.75 over the adjusted threshold price, there is a phaseout adjustment on line 7.

**Credit rates.** For calendar year 2016, the effective credit rate for electricity, refined coal, and Indian coal produced and sold is, respectively, 2.3 cents per kWh, $6.810 per ton, and $2.387; there is no phaseout adjustment.

***Example.*** If the reference price of electricity is 10.0¢ and the adjusted threshold price is 9.0¢, reduce the credit by 1/3 ((10.0¢ – 9.0¢) ÷ 3¢ = .3333). Enter the line 3 credit in the first entry space on line 4, .3333 in the second entry space, and multiply to figure the reduction.

## Definitions

### Construction of a Qualified Facility

Two methods can be used to establish that construction of a qualified facility has begun.

1. **Physical Work Method** starts when physical work of a significant nature begins. See section 4 of Notice 2013-29 and section 3 of Notice 2014-46, as clarified by section 5 of Notice 2016-31, for details; or

2. **Safe Harbor Method** meets the requirements provided in section 5 of Notice 2013-29 and section 5 of Notice 2014-46, as modified by Notice 2016-31.

Although both methods can be used, only one method is needed to establish that construction of a qualified facility has begun.

For more information, see Notice 2013-29, 2013-20 I.R.B. 1085, including its successors up to Notice 2016-31, 2016-23 I.R.B. 1. Notice 2013-29 is available at *www.irs.gov/irb/2013-20_IRB/ar09.html* and Notice 2016-31 is available at *www.irs.gov/irb/2016–23_IRB/ar07.html*.

***Resources*** means wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, hydropower production, marine and hydrokinetic renewables, refined coal, and Indian coal.

***Closed-loop biomass*** is any organic material from a plant that is planted exclusively for use at a qualified facility to produce electricity.

***Open-loop biomass*** is solid, nonhazardous, cellulosic waste material; lignin material; or agricultural livestock waste nutrients as defined in section 45(c)(3). See Notice 2008-60, 2008-30 I.R.B. 178, for rules related to open-loop biomass, including an expanded definition of a qualified facility and rules related to sales.

***Geothermal energy*** is energy derived from a geothermal deposit as defined by section 613(e)(2).

***Small irrigation power*** is power generated without any dam or impoundment of water. See section 45(c)(5).

***Municipal solid waste*** is solid waste as defined under paragraph 27 of 42 U.S.C. 6903. Municipal solid waste doesn't include paper which is commonly recycled and which has been segregated from other solid waste (as so defined).

***Refined coal*** is a liquid, gaseous, or solid fuel produced from coal or high carbon fly ash meeting the requirements of section 45(c)(7). See Notice 2010-54 for additional information on refined coal facilities. Notice 2010-54 is available at *www.irs.gov/irb/2010-40_IRB/ar07.html*.

***Hydropower production*** means the incremental hydropower production for the tax year from any hydroelectric dam placed in service on or before August 8, 2005, and the hydropower production from any nonhydroelectric dam described in section 45(c)(8)(C).

***Marine and hydrokinetic renewable energy*** means energy derived from waves, tides, and currents in oceans, estuaries, and tidal areas; free flowing water in rivers, lakes, and streams; free flowing water in an irrigation system, canal, or other man-made channel, including projects that utilize nonmechanical structures to accelerate the flow of water for electric power production purposes; or differentials in ocean temperature (ocean thermal energy conversion). See section 45(c)(10)(B) for exceptions.

***Indian coal*** means coal which is produced from coal reserves which on June 14, 2005, were owned by an Indian tribe or held in trust by the United States for the benefit of an Indian tribe or its members.

## Qualified Facilities

A qualified facility is any of the following facilities owned by you and used to produce electricity or, in the case of coal production facilities, refined and Indian coal.

- Wind facility placed in service after October 22, 2004, and the construction of which begins before January 1, 2020. This doesn't 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.
- Closed-loop biomass facility placed in service after October 22, 2004, and the construction of which begins before January 1, 2017.
- Closed-loop biomass facility modified to co-fire with coal or other biomass (or both), placed in service before January 1, 2017. The facility will be treated as modified

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before January 1, 2017, if the construction of the modification begins before January 1, 2017. 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, the construction of which begins before January 1, 2017.
- Open-loop biomass facility using agricultural livestock waste placed in service after October 22, 2004, and the construction of which begins before January 1, 2017, and the nameplate capacity rating isn't 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 October 22, 2004, and the construction of which begins before January 1, 2017. The facility doesn't include any property described in Code section 48(a)(3) the basis of which is taken into account by you for purposes of determining the energy credit under Code section 48.
- Solar energy facility placed in service after October 22, 2004, and before January 1, 2006. The facility doesn't include any property described in Code section 48(a)(3) the basis of which is taken into account by you for purposes of determining the energy credit under Code section 48.
- Small irrigation power facility placed in service after October 22, 2004, and before October 3, 2008.
- Landfill gas or trash facility using municipal solid waste placed in service after October 22, 2004, and the construction of which begins before January 1, 2017.
- A refined coal production facility originally placed in service after October 22, 2004, and before January 1, 2012. 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 August 8, 2005, and will be treated as placed in service before January 1, 2017, if the construction of the improvement or addition begins before January 1, 2017, and any other facility producing qualified hydroelectric production described in section 45(c)(8) placed in service after August 8, 2005, and the construction of which begins before January 1, 2017.
- Indian coal production facility.
- Marine and hydrokinetic renewable energy facility placed in service after October 2, 2008, and the construction of which begins before January 1, 2017.

A qualified facility doesn't 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.

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### Credit Period

| Eligible electricity production activity: | Credit period for facilities placed in service after August 8, 2005 (years from placed-in-service date): |
|---|---|
| Wind | 10 |
| Closed-loop biomass | 10 |
| Open-loop biomass (including agricultural livestock waste nutrient facilities) | 10 |
| Geothermal | 10 |
| Solar (pre-2006 facilities only) | 10 |
| Small irrigation power | 10 |
| Municipal solid waste (including landfill gas facilities and trash combustion facilities) | 10 |
| Qualified hydropower | 10 |
| Marine and hydrokinetic | 10 |
| Indian coal | 11[1] |
| Refined coal | 10 |

[1] The 11-year credit period for Indian coal begins January 1, 2006.

**United States and U.S. possessions** include the seabed and subsoil of those submarine areas that are adjacent to the territorial waters over which the United States has exclusive rights according to international law.

### Who Can Take the Credit

Generally, the owner of the facility is allowed the credit. In the case of closed-loop biomass facilities modified to co-fire with coal, other biomass, or both, open-loop biomass facilities, and refined coal facilities, if the owner isn't the producer of the electricity, the lessee or the operator of the facility is eligible for the credit.

## Specific Instructions

Figure any renewable electricity, refined coal, and Indian coal production credit from your trade or business on lines 1 through 16. Skip lines 1 through 16 if you are only claiming a credit that was allocated to you from an S corporation, partnership, cooperative, estate, or trust.

**Fiscal year taxpayers.** If you have sales in 2016 and 2017 and the credit rate on line 1, 2, 6, or 10 (or the phaseout adjustment on line 4 or 7) is different for 2017, make separate computations for each line. Use the respective sales, credit rate, and phaseout adjustment for each calendar year. Enter the total of the two computations on the credit rate line(s) (line 1, 2, 6, or 10) or the phaseout adjustment line(s) (line 4 or 7). Attach the computations to Form 8835 and write “FY” in the margin.

### Line 1

Enter the kilowatt-hours of electricity produced at the applicable qualified facilities and multiply by $.023. Fiscal year filers with 2017 sales may have to refigure line 1 as explained under *Fiscal year taxpayers* above.

### Line 2

Enter the kilowatt-hours of electricity produced and sold at the applicable qualified facilities and multiply by $.012. Fiscal year filers with 2017 sales must figure line 2 as explained under *Fiscal year taxpayers* above.

### Line 4

Calendar year filers enter zero on line 4. Fiscal year filers with sales in 2017 also enter zero if the published 2017 reference price is equal to or less than the 2017 adjusted threshold price. See *How To Figure the Credit*, earlier, to figure the adjustment.

### Line 6

Enter the tons of refined coal produced and sold during 2016 from a qualified refined coal production facility and multiply by $6.810. Fiscal year filers with 2017 sales must figure line 6 as explained under *Fiscal year taxpayers* above.

### Line 7

Calendar year filers enter zero on line 7. Fiscal year filers with sales in 2017 also enter zero if the published 2017 reference price is equal to or less than 1.7 times the 2002 reference price. See *How To Figure the Credit*, earlier, to figure the adjustment.

### Line 9

This line is reserved for future use.

### Line 10

Enter the tons of Indian coal produced and sold from a qualified Indian coal facility and multiply by $2.387.

### Line 12

Enter the sum, for this and all prior tax years, of:

- Grants provided by the United States, a state, or political subdivision of a state for the project;
- Proceeds of a tax-exempt issue of state or local government obligations used to provide financing for the project;
- Total of subsidized energy financing provided directly or indirectly under a federal, state, or local program provided for the project; and
- The amount of any federal tax credit allowable for any property that is part of the project.

### Line 17a

Only enter on line 17a the amount included on line 16 applicable to wind facilities the construction of which began during 2017.

### Line 19

Enter total renewable electricity, refined coal, and Indian coal production credits from:

- Schedule K-1 (Form 1065), Partner's Share of Income, Deductions, Credits, etc., box 15 (code P);
- Schedule K-1 (Form 1120S), Shareholder's Share of Income, Deductions, Credits, etc., box 13 (code P);
- Schedule K-1 (Form 1041), Beneficiary's Share of Income, Deductions, Credits, etc., box 13 (code J); and
- Form 1099-PATR, Taxable Distributions Received From Cooperatives, box 10.

Partnerships and S corporations must always report on line 19 the above credits related to renewable electricity, refined coal, and Indian coal production. Also, estates and trusts that can allocate the source credit to beneficiaries and cooperatives that can allocate the credit to patrons must always report on line 19 the above credits related to renewable electricity, refined coal, and Indian coal production. All other filers figuring a separate credit on earlier lines must also report the above credits on line 19. All others not using earlier lines to figure a separate credit can report the above credits directly on the applicable line of Form 3800, Part III, line 1f or line 4e.

### Line 20

Partnerships that own and produce electricity from qualified wind facilities should see Rev. Proc. 2007-65, 2007-45 I.R.B. 967, as modified by Announcement 2009-69, 2009-40 I.R.B. 475, for information on how to allocate the credit. Rev. Proc. 2007-65 is available at *www.irs.gov/irb/2007-45_IRB/ar18.html* and Announcement 2009-69 is available at *www.irs.gov/irb/2009-40_IRB/ar16.html*.

### Line 21

**Cooperative election to allocate credit to patrons.** A cooperative described in section 1381(a) that is more than 50% owned by agricultural producers or by entities owned by agricultural producers can elect to allocate any part of the renewable electricity, refined coal, and Indian coal production credit among the patrons of the cooperative. The credit is allocated among the patrons eligible to share in patronage dividends on the basis of the quantity or value of business done with or for such patrons for the tax year.

If the cooperative is subject to the passive activity rules, include on line 19 any renewable electricity, refined coal, and Indian coal production credit from passive activities disallowed for prior years and carried forward to this year. Complete Form 8810, Corporate Passive Activity Loss and Credit Limitations, to determine the allowed credits that can be allocated to patrons. For details, see the Instructions for Form 8810.

The cooperative is deemed to have made the election by completing line 21, as applicable. However, the election isn't effective unless (a) made on a timely filed return (including extensions) and (b) the organization designates the apportionment in a written notice mailed to its patrons during the payment period described in section 1382(d) or on Form 1099-PATR.

If you timely file your return without making an election, you can still make the election by filing an amended return within 6 months of the due date of the return (excluding extensions). Enter “Filed pursuant to section 301.9100-2” on the amended return.

Once made, the election can't be revoked.

**Estates and trusts.** Allocate the credit on line 20 between the estate or trust and the beneficiaries in the same proportion as income was allocated and enter the beneficiaries’ share on line 21.

If the estate or trust is subject to the passive activity rules, include on line 19 any renewable electricity, refined

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coal, and Indian coal production credit from passive activities disallowed for prior years and carried forward to this year. Complete Form 8582-CR, Passive Activity Credit Limitations, to determine the allowed credit that must be allocated between the estate or trust and the beneficiaries. For details, see the Instructions for Form 8582-CR.

**Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is shown below.

| | |
|---|---|
| **Recordkeeping** | 16 hr., 44 min. |
| **Learning about the law or the form** | 2 hr., 47 min. |
| **Preparing and sending the form to the IRS** | 3 hr., 10 min. |

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.

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