

# INTERNAL REVENUE BULLETIN



## HIGHLIGHTS OF THIS ISSUE

**Bulletin No. 2017-22**  
**May 30, 2017**

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

## EMPLOYEE PLANS

### **Notice 2017-31, page 1253.**

This notice sets forth updates on the corporate bond monthly yield curve, the corresponding spot segment rates for May 2017 used under § 417(e)(3)(D), the 24-month average segment rates applicable for May 2017, and the 30-year Treasury rates. These rates reflect the application of § 430(h)(2)(C)(iv), which was added by the Moving Ahead for Progress in the 21st Century Act, Public Law 112-141 (MAP-21) and amended by section 2003 of the Highway and Transportation Funding Act of 2014 (HATFA).

## INCOME TAX

### **Notice 2017-32, page 1255.**

Credit for Carbon Dioxide Sequestration; 2017 Section 45Q Inflation Adjustment Factor. This notice publishes the inflation adjustment factor for the carbon dioxide (CO<sub>2</sub>) sequestration credit under § 45Q for calendar year 2017. Generally, § 45Q allows a credit for the amount of qualified CO<sub>2</sub> that a taxpayer captures at a qualified facility and disposes of in secure geological storage within the United States.

### **Notice 2017-33, page 1256.**

Credit for Renewable Electricity Production and Refined Coal Production, and Publication of Inflation Adjustment Factor and Reference Prices for Calendar Year 2017: The notice reports for 2017 the inflation adjustment factor and reference prices used to determine the availability of the section 45 credit for electricity produced from qualified energy resources and refined coal and includes the credit amounts for renewable electricity production and refined coal production.

## ADMINISTRATIVE

### **Rev. Proc. 2017-38, page 1258.**

This revenue procedure modifies Rev. Proc. 2017-3 I.R.B. 130, to remove the no-rule position concerning whether sections 355 or 361 apply to a distributing corporation's distribution of stock or securities of a controlled corporation in exchange for, and in retirement of, any putative debt of the distributing corporation if such debt is issued in anticipation of the distribution.

# The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

## Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

### **Part II.—Treaties and Tax Legislation.**

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

### **Part III.—Administrative, Procedural, and Miscellaneous.**

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

### **Part IV.—Items of General Interest.**

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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# Part III. Administrative, Procedural, and Miscellaneous

## Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

### Notice 2017-31

This notice provides guidance on the corporate bond monthly yield curve, the corresponding spot segment rates used under § 417(e)(3), and the 24-month average segment rates under § 430(h)(2) of the Internal Revenue Code. In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008 and the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I).

#### YIELD CURVE AND SEGMENT RATES

Generally, except for certain plans under sections 104 and 105 of the Pension Protection Act of 2006 and CSEC plans under § 414(y), § 430 of the Code speci-

fies the minimum funding requirements that apply to single-employer plans pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates ("segment rates"), each of which applies to cash flows during specified periods. To the extent provided under § 430(h)(2)(C)(iv), these segment rates are adjusted by the applicable percentage of the 25-year average segment rates for the period ending September 30 of the year preceding the calendar year in which the plan year begins.<sup>1</sup> However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates.

Notice 2007-81, 2007-44 I.R.B. 899, provides guidelines for determining the monthly corporate bond yield curve, and the 24-month average corporate bond segment rates used to compute the target normal cost and the funding target. Consistent with the methodology specified in Notice 2007-81, the monthly corporate bond yield curve derived from April 2017

data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of April 2017 are, respectively, 1.96, 3.78, and 4.66.

The 24-month average segment rates determined under § 430(h)(2)(C)(i) through (iii) must be adjusted pursuant to § 430(h)(2)(C)(iv) to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates. For plan years beginning before 2021, the applicable minimum percentage is 90% and the applicable maximum percentage is 110%. The 25-year average segment rates for plan years beginning in 2015, 2016, and 2017 were published in Notice 2014-50, 2014-40 I.R.B. 590, Notice 2015-61, 2015-39 I.R.B. 408, and Notice 2016-54, 2016-40 I.R.B. 429, respectively.

#### 24-MONTH AVERAGE CORPORATE BOND SEGMENT RATES

The three 24-month average corporate bond segment rates applicable for May 2017 without adjustment for the 25-year average segment rate limits are as follows:

Applicable Month	First Segment	Second Segment	Third Segment
May 2017	1.68	3.83	4.77

Based on § 430(h)(2)(C)(iv), the 24-month averages applicable for May 2017

adjusted to be within the applicable minimum and maximum percentages of the

corresponding 25-year average segment rates, are as follows:

For Plan Years Beginning In	Applicable Month	Adjusted 24-Month Average Segment Rates		
		First Segment	Second Segment	Third Segment
2016	May 2017	4.43	5.91	6.65
2017	May 2017	4.16	5.72	6.48

#### 30-YEAR TREASURY SECURITIES INTEREST RATES

Generally for plan years beginning after 2007, § 431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to § 412. Sec-

tion 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in § 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5

percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88-73, 1988-2 C.B. 383, provides guidelines for determining

<sup>1</sup>Pursuant to § 433(h)(3)(A), the 3<sup>rd</sup> segment rate determined under § 430(h)(2)(C) is used to determine the current liability of a CSEC plan (which is used to calculate the minimum amount of the full funding limitation under § 433(c)(7)(C)).

the weighted average interest rate. The rate of interest on 30-year Treasury securities for April 2017 is 2.94 percent. The Service determined this rate as the aver-

age of the daily determinations of yield on the 30-year Treasury bond maturing in February 2047. For plan years beginning in the month shown below, the weighted

average of the rates of interest on 30-year Treasury securities and the permissible range of rates used to calculate current liability are as follows:

For Plan Years Beginning in		30-Year Treasury Weighted Average	Permissible Range		
<i>Month</i>	<i>Year</i>		90%	to	105%
May	2017	2.91	2.62		3.05

**MINIMUM PRESENT VALUE SEGMENT RATES**

In general, the applicable interest rates under § 417(e)(3)(D) are segment rates

computed without regard to a 24-month average. Notice 2007–81 provides guidelines for determining the minimum present value segment rates. Pursuant to that notice, the minimum present value seg-

ment rates determined for April 2017 are as follows:

First Segment	Second Segment	Third Segment
1.96	3.78	4.66

**DRAFTING INFORMATION**

The principal author of this notice is Tom Morgan of the Office of the Associ-

ate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS participated in the development of this guidance. For further

information regarding this notice, contact Mr. Morgan at 202-317-6700 or Tony Montanaro at 202-317-8698 (not toll-free numbers).

<i>Maturity</i>	<i>Yield</i>								
0.5	1.28	20.5	4.39	40.5	4.69	60.5	4.79	80.5	4.85
1.0	1.47	21.0	4.40	41.0	4.69	61.0	4.80	81.0	4.85
1.5	1.65	21.5	4.42	41.5	4.70	61.5	4.80	81.5	4.85
2.0	1.80	22.0	4.43	42.0	4.70	62.0	4.80	82.0	4.85
2.5	1.94	22.5	4.44	42.5	4.70	62.5	4.80	82.5	4.85
3.0	2.06	23.0	4.45	43.0	4.71	63.0	4.80	83.0	4.85
3.5	2.17	23.5	4.46	43.5	4.71	63.5	4.81	83.5	4.85
4.0	2.28	24.0	4.47	44.0	4.71	64.0	4.81	84.0	4.85
4.5	2.40	24.5	4.48	44.5	4.72	64.5	4.81	84.5	4.86
5.0	2.51	25.0	4.49	45.0	4.72	65.0	4.81	85.0	4.86
5.5	2.63	25.5	4.50	45.5	4.72	65.5	4.81	85.5	4.86
6.0	2.74	26.0	4.51	46.0	4.73	66.0	4.81	86.0	4.86
6.5	2.86	26.5	4.52	46.5	4.73	66.5	4.81	86.5	4.86
7.0	2.98	27.0	4.53	47.0	4.73	67.0	4.82	87.0	4.86
7.5	3.09	27.5	4.54	47.5	4.74	67.5	4.82	87.5	4.86
8.0	3.20	28.0	4.55	48.0	4.74	68.0	4.82	88.0	4.86
8.5	3.30	28.5	4.56	48.5	4.74	68.5	4.82	88.5	4.86
9.0	3.40	29.0	4.56	49.0	4.74	69.0	4.82	89.0	4.86
9.5	3.50	29.5	4.57	49.5	4.75	69.5	4.82	89.5	4.86
10.0	3.58	30.0	4.58	50.0	4.75	70.0	4.82	90.0	4.87
10.5	3.66	30.5	4.58	50.5	4.75	70.5	4.83	90.5	4.87

**Table I**  
 Monthly Yield Curve for April 2017  
 Derived from April 2017 Data

<i>Maturity</i>	<i>Yield</i>								
11.0	3.74	31.0	4.59	51.0	4.76	71.0	4.83	91.0	4.87
11.5	3.81	31.5	4.60	51.5	4.76	71.5	4.83	91.5	4.87
12.0	3.87	32.0	4.60	52.0	4.76	72.0	4.83	92.0	4.87
12.5	3.93	32.5	4.61	52.5	4.76	72.5	4.83	92.5	4.87
13.0	3.98	33.0	4.62	53.0	4.76	73.0	4.83	93.0	4.87
13.5	4.03	33.5	4.62	53.5	4.77	73.5	4.83	93.5	4.87
14.0	4.07	34.0	4.63	54.0	4.77	74.0	4.83	94.0	4.87
14.5	4.11	34.5	4.63	54.5	4.77	74.5	4.84	94.5	4.87
15.0	4.15	35.0	4.64	55.0	4.77	75.0	4.84	95.0	4.87
15.5	4.18	35.5	4.64	55.5	4.78	75.5	4.84	95.5	4.87
16.0	4.21	36.0	4.65	56.0	4.78	76.0	4.84	96.0	4.87
16.5	4.24	36.5	4.65	56.5	4.78	76.5	4.84	96.5	4.87
17.0	4.26	37.0	4.66	57.0	4.78	77.0	4.84	97.0	4.88
17.5	4.28	37.5	4.66	57.5	4.78	77.5	4.84	97.5	4.88
18.0	4.30	38.0	4.67	58.0	4.79	78.0	4.84	98.0	4.88
18.5	4.32	38.5	4.67	58.5	4.79	78.5	4.84	98.5	4.88
19.0	4.34	39.0	4.68	59.0	4.79	79.0	4.85	99.0	4.88
19.5	4.36	39.5	4.68	59.5	4.79	79.5	4.85	99.5	4.88
20.0	4.37	40.0	4.69	60.0	4.79	80.0	4.85	100.0	4.88

## Credit for Carbon Dioxide Sequestration 2017 Section 45Q Inflation Adjustment Factor

### Notice 2017-32

#### SECTION 1. PURPOSE

This notice publishes the inflation adjustment factor for the credit for carbon dioxide (CO<sub>2</sub>) sequestration under § 45Q of the Internal Revenue Code (§ 45Q credit) for calendar year 2017. The inflation adjustment factor is used to determine the amount of the credit allowable under § 45Q. This notice also publishes the aggregate amount of qualified CO<sub>2</sub> taken into account for purposes of § 45Q.

#### SECTION 2. BACKGROUND

Section 45Q(a)(1) allows a credit of \$20 per metric ton of qualified CO<sub>2</sub> that is captured by the taxpayer at a qualified facility, disposed of by the taxpayer in

secure geological storage, and not used by the taxpayer as a tertiary injectant. Section 45Q(a)(2) allows a credit of \$10 per metric ton of qualified CO<sub>2</sub> that is captured by the taxpayer at a qualified facility, used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project, and disposed of by the taxpayer in secure geological storage.

Section 45Q(b)(1) defines the term “qualified carbon dioxide” as CO<sub>2</sub> captured from an industrial source that would otherwise be released into the atmosphere as industrial emission of greenhouse gas, and that is measured at the source of capture and verified at the point of disposal or injection. Qualified CO<sub>2</sub> includes the initial deposit of captured CO<sub>2</sub> used as a tertiary injectant but does not include CO<sub>2</sub> that is re-captured, recycled, or otherwise re-injected as part of the enhanced oil and natural gas recovery process.

Section 45Q(c) defines the term “qualified facility” as an industrial facility that is owned by the taxpayer, where carbon capture equipment is placed in

service, and where at least 500,000 metric tons of CO<sub>2</sub> is captured during the taxable year.

Section 45Q(d)(2) provides that the Secretary, in consultation with the Administrator of the Environmental Protection Agency (EPA), the Secretary of Energy, and the Secretary of the Interior, shall establish regulations for determining adequate security measures for the geological storage of CO<sub>2</sub> under § 45Q(a)(1)(B) or (a)(2)(C) such that the CO<sub>2</sub> does not escape into the atmosphere. See section 5 of Notice 2009-83, 2009-2 C.B. 588, for procedures regarding secure geological storage.

Section 45Q(d)(5) allows the § 45Q credit to the person that captures and physically or contractually ensures the disposal of or the use as a tertiary injectant of the qualified CO<sub>2</sub>.

Under § 45Q(d)(7), for taxable years beginning in a calendar year after 2009, the dollar amount contained in § 45Q(a) must be adjusted for inflation by multiplying such dollar amount by the inflation adjustment factor for such calendar year

determined under § 43(b)(3)(B), determined by substituting “2008” for “1990.”

Section 43(b)(3)(B) defines the term “inflation adjustment factor” as, with respect to any calendar year, a fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990. For purposes of § 45Q(d)(7), with respect to 2017 calendar year, the inflation adjustment factor is a fraction the numerator of which is the GNP implicit price deflator for 2016 (111.528) and the denominator of which is the GNP implicit price deflator for 2008 (99.239).

Section 45Q(e) provides that the § 45Q credit will apply with respect to qualified CO<sub>2</sub> before the end of the calendar year in which the Secretary, in consultation with the EPA, certifies that 75,000,000 metric tons of qualified CO<sub>2</sub> have been taken into account in accordance with § 45Q(a).

### **SECTION 3. INFLATION ADJUSTMENT FACTOR**

The inflation adjustment factor for calendar year 2017 is 1.1238. The § 45Q credit for calendar year 2017 is \$22.48 per metric ton of qualified CO<sub>2</sub> under § 45Q(a)(1) and \$11.24 per metric ton of qualified CO<sub>2</sub> under § 45Q(a)(2).

### **SECTION 4. TAX CREDIT UTILIZATION**

Section 6 of Notice 2009–83 requires taxpayers to file annual reports that provide (among other information) the amounts (in metric tons) of qualified CO<sub>2</sub> for the taxable year that has been taken into account for purposes of claiming the § 45Q credit. The annual reports must be filed with the Service not later than the last day of the second calendar month following the month during which the tax return on which the § 45Q credit is claimed was due (including extensions).

Based on the annual reports filed with the Service as of May 10, 2017, the aggregate amount of qualified CO<sub>2</sub> taken into account for purposes of § 45Q is 52,831,877 metric tons.

### **SECTION 5. 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) 622-3120 (not a toll-free number).

## **Credit for Renewable Electricity Production and Refined Coal Production, and Publication of Inflation Adjustment Factor and Reference Prices for Calendar Year 2017**

### **Notice 2017–33**

This notice publishes the inflation adjustment factor and reference prices for calendar year 2017 for the renewable electricity production credit and the refined coal production credit under section 45 of the Internal Revenue Code. For calendar year 2017, the credit period for Indian coal production has expired. The 2017 inflation adjustment factor and reference prices are used in determining the availability of the credits. The 2017 inflation adjustment factor and reference prices apply to calendar year 2017 sales of kilowatt hours of electricity produced in the United States or a possession thereof from qualified energy resources and to calendar year 2017 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 section 45(a) is reduced by an amount which 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 section 45(b)(2), the 1.5 cent amount in section 45(a), the 8 cent amount in section 45(b)(1), the \$4.375 amount in section 45(e)(8)(A), and, in section 45(e)(8)(B)(i), the reference price of fuel used as feedstock (within the meaning of section 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. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, the amount is rounded to the nearest multiple of 0.1 cent. In the case of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash facilities, qualified hydro-power facilities, and marine and hydrokinetic renewable energy facilities, section 45(b)(4)(A) requires the amount in effect under section 45(a)(1) (before rounding to the nearest 0.1 cent) to be reduced by one-half.

Section 45(b)(5) provides that in the case of any facility using wind to produce electricity, the amount of the credit determined under section 45(a) (determined after the application of section 45(b)(1), (2), and (3) and without regard to section 45(b)(5)) shall be reduced by (A) in the case of any facility the construction of which begins after December 31, 2016, and before January 1, 2018, 20 percent, (B) in the case of any facility the construction of which begins after December 31, 2017, and before January 1, 2019, 40 percent, and (C) in the case of any facility the construction of which begins after December 31, 2018, and before January 1, 2020, 60 percent.

Section 45(c)(1) defines qualified energy resources as wind, closed-loop biomass, open-loop biomass, geothermal energy, small irrigation power, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy.

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 the construction of which begins before January 1, 2020. See section 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 any facility (i) owned by the taxpayer that is originally placed in service after December 31, 1992, and the construction of which begins before January 1, 2017, or (ii) owned by the taxpayer which before January 1, 2017, 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. For purposes of section 45(d)(2)(A)(ii), a facility shall be treated as modified before January 1, 2017, if the construction of such modification begins before such date. Section 45(d)(2)(C) provides that in the case of a qualified facility described in section 45(d)(2)(A)(ii), (i) the 10-year period referred to in section 45(a) is treated as beginning no earlier than the date of enactment of section 45(d)(2)(C)(i) (October 22, 2004), and (ii) if the owner of the facility is not the producer of the electricity, the person eligible for the credit allowable under section 45(a) is the lessee or the operator of the facility.

Section 45(d)(3)(A) 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 section 45(d)(3)(A)(i)(I) (October 22, 2004) and the construction of which begins before January 1, 2017, and (II) the nameplate capacity rating of which is not less than 150 kilowatts, and (ii) in the case of any other facility, the construction of which begins before January 1, 2017. In the case of any facility described in section 45(d)(3)(A), if the owner of the facility is not the producer of the electricity, section 45(d)(3)(C) provides that the person eligible for the credit allowable under section

45(a) is the lessee or the operator of the facility.

Section 45(d)(4) defines a qualified facility using geothermal energy to produce electricity as any facility owned by the taxpayer which is originally placed in service after the date of enactment of section 45(d)(4) (October 22, 2004) and the construction of which begins before January 1, 2017. A qualified facility using geothermal energy does not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48.

Section 45(d)(5) defines a qualified facility using small irrigation power to produce electricity as any facility owned by the taxpayer which is originally placed in service after the date of enactment of section 45(d)(5) (October 22, 2004) and before October 3, 2008.

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 which is originally placed in service after the date of enactment of section 45(d)(6) (October 22, 2004) and the construction of which begins before January 1, 2017.

Section 45(d)(7) defines a qualified facility (other than a facility described in section 45(d)(6)) that burns municipal solid waste to produce electricity as any facility owned by the taxpayer which is originally placed in service after the date of enactment of section 45(d)(7) (October 22, 2004) and the construction of which begins before January 1, 2017. A qualified facility burning municipal solid waste includes a new unit placed in service in connection with a facility placed in service on or before the date of enactment of section 45(d)(7), but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

Section 45(d)(8) provides, in the case of a facility that produces refined coal (other than a facility producing steel industry fuel), the term “refined coal production facility” means any facility producing refined coal placed in service after the date of the enactment of the American Jobs Creation Act of 2004 (October 22, 2004) and before January 1, 2012.

Section 45(d)(9) defines a qualified facility producing qualified hydroelectric production described in section 45(c)(8) as (i) any facility producing incremental hydropower production, but only to the extent of its incremental hydropower production attributable to efficiency improvements or additions to capacity described in section 45(c)(8)(B) placed in service after the date of enactment of section 45(d)(9)(A)(i) (August 8, 2005) and before January 1, 2017, and (ii) any other facility placed in service after the date of enactment of section 45(d)(9)(A)(ii) (August 8, 2005) and the construction of which begins before January 1, 2017. Section 45(d)(9)(B) provides that, in the case of a qualified facility described in section 45(d)(9)(A), the 10-year period referred to in section 45(a) is treated as beginning on the date the efficiency improvements or additions to capacity are placed in service. Section 45(d)(9)(C) provides that for purposes of section 45(d)(9)(A)(i), an efficiency improvement or addition to capacity is treated as placed in service before January 1, 2017, if the construction of such improvement or addition begins before such date.

Section 45(d)(11) provides in the case of a facility producing electricity from marine and hydrokinetic renewable energy, the term “qualified facility” means any facility owned by the taxpayer which (A) has a nameplate capacity rating of at least 150 kilowatts, and (B) which is originally placed in service on or after the date of the enactment of section 45(d)(11)(B) (October 3, 2008) and the construction of which begins before January 1, 2017.

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 (I) to an unrelated person and (II) during the 10-year period and the tax year. Section 45(e)(8)(B) provides that the amount of credit determined under section 45(e)(8)(A) is reduced by an amount which bears the same ratio to the amount of the increase as (i) the amount by which the reference price of fuel used as feedstock (within the meaning of section

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.

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 price for the calendar year. The inflation adjustment factor and the reference prices for the 2017 calendar year were published in the Federal Register on April 12, 2017.

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

#### **INFLATION ADJUSTMENT FACTOR AND REFERENCE PRICES**

The inflation adjustment factor for calendar year 2017 for qualified energy resources and refined coal is 1.5792.

The reference price for calendar year 2017 for facilities producing electricity from wind (based upon information provided by the Department of Energy) is 4.55 cents per kilowatt hour. The reference prices for fuel used as feedstock within the meaning of section 45(c)(7)(A), relating to refined coal production (based upon information provided by the Department of Energy) are \$31.90 per ton for

calendar year 2002 and \$51.09 per ton for calendar year 2017. The reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, small irrigation power, municipal solid waste, qualified hydropower production, and marine and hydrokinetic energy have not been determined for calendar year 2017.

#### **PHASEOUT CALCULATION**

Because the 2017 reference price for electricity produced from wind (4.55 cents per kilowatt hour) does not exceed 8 cents multiplied by the inflation adjustment factor (1.5792), the phaseout of the credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2017. However, refer to section 45(b)(5) for an additional phaseout of the credit for wind facilities the construction of which begins after December 31, 2016. Because the 2017 reference price of fuel used as feedstock for refined coal (\$51.09) does not exceed \$85.64 (which is the \$31.90 reference price of such fuel in 2002 multiplied by the inflation adjustment factor (1.5792) and 1.7), the phaseout of the credit provided in section 45(e)(8)(B) does not apply to refined coal sold during calendar year 2017. Further, for electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, small irrigation power, municipal solid waste, qualified hydropower production, and marine and hydrokinetic energy, the phaseout of the credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2017.

#### **CREDIT AMOUNT BY QUALIFIED ENERGY RESOURCE AND FACILITY AND REFINED COAL**

As required by section 45(b)(2), the 1.5 cent amount in section 45(a)(1), and the \$4.375 amount in section 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 cent, such amount is rounded to the nearest multiple of 0.1 cent. In the case of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash facilities, qual-

ified hydropower facilities, and marine and hydrokinetic renewable energy facilities, section 45(b)(4)(A) requires the amount in effect under section 45(a)(1) (before rounding to the nearest 0.1 cent) to be reduced by one-half. Under the calculation required by section 45(b)(2), the credit for renewable electricity production for calendar year 2017 under section 45(a) is 2.4 cents per kilowatt hour on the sale of electricity produced from the qualified energy resources of wind, closed-loop biomass, and geothermal energy, and 1.2 cents per kilowatt hour on the sale of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash facilities, qualified hydropower facilities, and marine and hydrokinetic energy facilities. Under the calculation required by section 45(b)(2), the credit for refined coal production for calendar year 2017 under section 45(e)(8)(A) is \$6.909 per ton on the sale of qualified refined coal.

#### **DRAFTING AND CONTACT INFORMATION**

The principal author of this notice is Jennifer A. Records of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Ms. Records at (202) 317-6853 (not a toll-free number).

*26 CFR 601.201: Rulings and Determination Letters (Also: Part I, §§ 355 and 361.)*

## **Rev. Proc. 2017-38**

### **SECTION 1. PURPOSE**

This revenue procedure modifies Rev. Proc. 2017-3, 2017-1 I.R.B. 130, which sets forth areas of the Internal Revenue Code (Code) on which the Internal Revenue Service (Service) will not issue letter rulings or determination letters (no-rule areas).

### **SECTION 2. BACKGROUND**

In the interest of sound tax administration, the Service answers written inquiries from individuals and organizations regarding the tax effects of their acts or transactions by issuing letter rulings or determination letters. See sections 2.01

and 2.03 of Rev. Proc. 2017-1, 2017-1 I.R.B. 1. There are, however, areas in which the Service will not issue letter rulings or determination letters because the issues are inherently factual or for other reasons. The Service publishes guidance setting forth these no-rule areas throughout the year and incorporates them annually into the third revenue procedure of the year, currently Rev. Proc. 2017-3.

Section 5 of Rev. Proc. 2017-3 sets forth those areas in which the Service is temporarily not issuing rulings or determination letters because those matters are under study. Section 2.01 of Rev. Proc. 2017-3.

### **SECTION 3. PROCEDURE**

Rev. Proc. 2017-3, 2017-1 I.R.B. 130, is modified by deleting section 5.01(4) (providing that whether § 355 or § 361

applies to a distributing corporation's distribution of stock or securities of a controlled corporation in exchange for, and in retirement of, any putative debt of the distributing corporation if such distributing corporation debt is issued in anticipation of the distribution, is an area under study in which a ruling letter will not be issued) and section 5.01(6) (cross-referencing section 5.01(4)).

The Service continues to study matters concerning issues in this area. However, it has been determined that issuing private letter rulings or determination letters in this area would be in the interest of sound tax administration.

### **SECTION 4. EFFECTIVE DATE**

This revenue procedure is effective May 9, 2017.

### **SECTION 5. EFFECT ON OTHER DOCUMENTS**

Rev. Proc. 2017-3 is modified.

### **SECTION 6. DRAFTING INFORMATION**

The principal author of this revenue procedure is Jean R. Broderick of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue procedure contact John P. Stemwedel on (202) 317-5363 (not a toll-free number).

# Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as “rulings”) that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the sub-

stance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

# Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.  
E.O.—Executive Order.  
ER—Employer.

ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign corporation.  
G.C.M.—Chief Counsel’s Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.  
PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.  
PRS—Partnership.

PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statement of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

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<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2016–27 through 2016–52 is in Internal Revenue Bulletin 2016–52, dated December 26, 2016.

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<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2016–27 through 2016–52 is in Internal Revenue Bulletin 2016–52, dated December 26, 2016.

# Internal Revenue Service

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## INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at [www.irs.gov/irb/](http://www.irs.gov/irb/).

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If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page ([www.irs.gov](http://www.irs.gov)) or write to the Internal Revenue Service, Publishing Division, IRB Publishing Program Desk, 1111 Constitution Ave. NW, IR-6230 Washington, DC 20224.