

Part III – Administrative, Procedural, and Miscellaneous

Credit for Alternative Fuel Vehicle Refueling Property

Notice 2007- 43

SECTION 1. PURPOSE

This notice sets forth interim guidance, pending the issuance of regulations, relating to the new qualified alternative fuel vehicle (QAFV) refueling property credit (“Refueling Property Credit”) under § 30C of the Internal Revenue Code. The Internal Revenue Service and the Treasury Department expect that the regulations will incorporate the rules set forth in this notice.

SECTION 2. BACKGROUND

Section 30C provides a credit for QAFV refueling property. Section 30C(c)(1) provides that QAFV refueling property has the same meaning as under § 179A(d) (relating to the deduction allowed for qualified clean-fuel vehicle refueling property placed in service before January 1, 2006) but only with respect to the alternative fuels listed in § 30C(c)(1). The credit is available for property that the taxpayer places in service as QAFV refueling property after December 31, 2005, and on or before December 31, 2009 (December 31, 2014, in the case of property relating to hydrogen).

SECTION 3. SCOPE

This notice provides guidance relating to the computation of the Refueling Property Credit and the treatment for purposes of the credit of converted and

dual-use refueling property. This notice does not address: (1) the rule under § 30C(d)(2) preventing the credit from being used to reduce alternative minimum tax liability; or (2) the rule under § 30C(e)(5) requiring recapture of the credit under certain circumstances. The Internal Revenue Service and Treasury Department expect to issue separate guidance relating to these, and other, issues under § 30C.

SECTION 4. DEFINITIONS AND CROSS REFERENCES TO APPLICABLE REGULATIONS

.01 *Definitions.* The following definitions apply for purposes of this notice:

(1) *QAFV refueling property.* QAFV refueling property is any property (other than a building or its structural components) that meets the following requirements:

(i) The property is not used predominantly outside the United States (or, in the case of property described in § 168(g)(4)(G), is property used predominantly in a U.S. possession).

(ii) The property is of a character subject to the allowance for depreciation or is installed on property that is used as the taxpayer's principal residence (within the meaning of § 121)).

(iii) The original use of the property begins with the taxpayer.

(iv) The property is used for--

(a) Storing alternative fuel at the point where the fuel is delivered into the fuel tank of a motor vehicle that is propelled by such fuel; or

(b) Dispensing alternative fuel at such point into the fuel tank of a motor vehicle that is propelled by such fuel.

(2) *Dual-use property.* Dual-use property is refueling property that is used--

(a) To store and/or dispense both alternative fuel and conventional fuel; or

(b) Both to store alternative fuel that is dispensed into the fuel tanks of motor vehicles at the location of the storage facility and to store alternative fuel that is transported to other locations.

(3) *Alternative fuel.* A fuel is an alternative fuel if--

(i) At least 85 percent of its volume consists of one or more of the following: ethanol, natural gas, compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen; or

(ii) It is a qualifying biodiesel mixture.

(4) *Qualifying biodiesel mixture.* A fuel is a qualifying biodiesel mixture if it is a mixture of biodiesel (as defined in § 40A(d)(1)) and diesel fuel (as defined in § 4083(a)(3)) and the mixture contains at least 20 percent biodiesel. For this purpose, any kerosene in a mixture--

(i) Is disregarded in determining whether the mixture is a mixture of biodiesel and diesel fuel; and

(ii) Is taken into account in determining whether the mixture contains at least 20 percent biodiesel.

(5) *Conventional fuel.* Conventional fuel is any fuel that is not an

alternative fuel. Conventional fuel includes diesel fuel that is not in a qualifying biodiesel mixture and gasoline.

(6) *Conventional refueling property.* Conventional refueling property is property that is used to dispense or store only conventional fuel.

(7) *Fuel tank.* The fuel tank of a motor vehicle that is propelled by alternative fuel includes only the tank that supplies fuel to the propulsion engine of the vehicle.

.02 *Cross References to Applicable Regulations.* The following provisions of the Income Tax Regulations (26 CFR Part 1) apply for purposes of this notice:

(1) *Building and structural components.* Whether property is a building or a structural component of a building is determined under the principles of § 1.48-1(e).

(2) *Original use.* Whether the original use of property begins with the taxpayer is determined under the principles of § 1.48-2.

(3) *Placed in service.* The year in which property is placed in service and whether the property is placed in service as QAFV refueling property are determined under the principles of § 1.46-3(d).

(4) *Subject to allowance for depreciation.* Whether property is of a character subject to the allowance for depreciation is determined under the principles of § 1.48-1(b).

(5) *Use outside the United States.* Whether property is used predominantly outside the United States is determined under the principles of § 1.48-1(g).

SECTION 5. COMPUTATION OF CREDIT

.01 *In General.* The Refueling Property Credit is equal to 30 percent of the cost of any property that the taxpayer places in service as QAFV refueling property during the taxable year. The credit is limited to \$30,000 per property for property of a character subject to the allowance for depreciation and \$1,000 per property for other property. (A proposed technical correction would retroactively change this rule so that a single limitation of \$30,000 or \$1,000 (depending on whether the property is of a character subject to the allowance for depreciation) applies to all QAFV refueling property placed in service at a location during a taxable year.)

.02 *Cost of QAFV Refueling Property.* The cost of QAFV refueling property is determined under the principles of § 1.46-3(a) and (c) and the following rules:

(1) The cost of QAFV refueling property includes all costs that are required under federal tax principles to be capitalized as a cost of the QAFV refueling property. These costs include the cost of acquiring or constructing the QAFV refueling property or of converting conventional refueling property into QAFV refueling property.

(2) The cost of QAFV refueling property does not include costs that are properly allocable to land or to a building and its structural components. Costs properly allocable to land include, but are not limited to, costs related to the acquisition of land on which the QAFV refueling property is located and expenses for permits, legal fees, project management, or engineering to the extent such

expenses are related to the land.

(3) The cost of QAFV refueling property does not include any amount that is taken into account under § 179 (relating to the election to expense certain depreciable business assets).

SECTION 6. CONVERTED AND DUAL-USE PROPERTY

.01 *Converted Refueling Property.*

(1) *In general.* The rules in this section 6.01 apply solely with respect to converted QAFV refueling property. For this purpose, converted QAFV refueling property is QAFV refueling property that was converted from property (including conventional refueling property) that is not QAFV refueling property (non-QAFV property).

(2) *Reconditioned or rebuilt property.* If converted QAFV refueling property is treated under the principles of § 1.48-2 as reconditioned or rebuilt property, the cost of the QAFV refueling property includes the cost of reconditioning or rebuilding the non-QAFV property, but does not include the basis of the non-QAFV property.

(3) *Use as QAFV refueling property treated as original use.* If converted QAFV refueling property, including any parts that were non-QAFV property before the conversion, is treated under the principles of § 1.48-2 as being put to original use when first used as QAFV refueling property, the cost of the QAFV refueling property includes both the adjusted basis of the non-QAFV property immediately before the conversion and the cost of the conversion.

.02 *Dual-Use Property.*

(1) *In general.* In the case of dual-use property that is used to store and/or dispense both alternative fuel and conventional fuel, the cost of the dual-use property is taken into account in computing the Refueling Property Credit only to the extent such cost exceeds the cost of equivalent conventional refueling property. For this purpose, equivalent conventional refueling property is conventional refueling property that is not used to store and/or dispense alternative fuel, but is otherwise comparable to the dual-use property and can store and/or dispense the same amount of conventional fuel as the dual-use property.

(2) *Storage facilities.* In the case of dual-use property that is used both to store alternative fuel that is dispensed into the fuel tanks of motor vehicles at the location of the storage facility and to store fuel that is transported to other locations, the cost of the dual-use property is taken into account in computing the Refueling Property Credit only to the extent such cost exceeds the cost of a storage facility that is equivalent to the dual-use property except that it is used for the sole purpose of storing alternative fuel that is transported to other locations and can store the same amount of alternative fuel as the dual-use property stores for transport to other locations.

SECTION 7. EXAMPLES

.01 *Example 1.* (i) *X*, a fuel wholesaler, acquires an additional storage tank to store alternative fuel at its principal place of business and a fuel tanker truck to transport the alternative fuel from its principal place of business to the retail service stations of *X*'s customers. The fuel tanker truck dispenses alternative fuel into storage tanks at the retail service stations but is not used to dispense the alternative fuel into the fuel tanks of motor vehicles that are propelled by the alternative fuel.

(ii) Neither the storage tank nor the fuel tanker truck is QAFV refueling property within the meaning of section 4.01(1) of this notice. The storage tank is used to store alternative fuel, but it does not store the fuel at the point where the fuel is delivered into the fuel tank of a motor vehicle that is propelled by alternative fuel within the meaning of section 4.01(7) of this notice. Similarly, the fuel tanker truck is used to dispense alternative fuel, but it does not dispense the fuel into the fuel tank of a motor vehicle that is propelled by alternative fuel.

.02 *Example 2.* (i) The facts are the same as in Example 1, except that *X* also acquires a pump that is used to dispense alternative fuel from the storage tank into the fuel tanks of *X*'s fuel tanker trucks. The storage tank has the same capacity as the tank that would have been used for the sole purpose of storing the alternative fuel that is supplied to *X*'s customers.

(ii) The pump is QAFV refueling property within the meaning of section 4.01(1) of this notice because it is used to dispense alternative fuel into the fuel tanks of X's fuel tanker trucks. Accordingly, the cost of the pump is taken into account in determining X's Refueling Property Credit.

(iii) The storage tank is also QAFV refueling property because it is used to store alternative fuel at the point where the fuel is delivered into the fuel tanks of the fuel tanker trucks. In addition, however, the storage tank is dual-use property described in section 6.02(2). Under section 6.02, the cost of the storage tank is taken into account in computing the Refueling Property Credit only to the extent that cost exceeds the cost of the storage tank that would have been used for the sole purpose of storing the alternative fuel that is supplied to X's customers. Because no increase in the capacity of the storage tank is needed, none of the storage tank's cost is taken into account in computing the amount of the Refueling Property Credit.

.03 *Example 3.* (i) Y is a retail seller of gasoline. In Year 1, Y acquires and places in service conventional refueling property consisting of a gasoline storage tank. Y claims the allowable depreciation deduction with respect to the gasoline storage tank on its Federal income tax return for Year 1. In Year 2, Y incurs costs of \$10,000 to convert the gasoline storage tank into an alternative fuel storage tank and begins using the converted property as QAFV refueling property.

(ii) If, under the principles of § 1.48-2, the storage tank is treated as reconditioned or rebuilt property, only the \$10,000 incurred to convert the

gasoline tank into QAFV refueling property is taken into account for purposes of determining Y's Refueling Property Credit for Year 2. If, on the other hand, the converted storage tank is treated, under the principles of § 1.48-2, as being put to original use when first used as QAFV refueling property, the adjusted basis of the storage tank immediately before its conversion into QAFV refueling property also is taken into account for purposes of determining the credit.

SECTION 8. RECORDKEEPING

Section 6001 provides that every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. The books and records required by § 6001 must be kept at all times available for inspection by authorized internal revenue officers or employees, and must be retained so long as the contents thereof may become material in the administration of any internal revenue law. Section 1.6001-1(e) of the Procedure and Administration Regulations. In order to satisfy the recordkeeping requirements of § 6001 and the regulations thereunder, a taxpayer that claims the Refueling Property Credit must retain adequate books and records so that, for any taxable year, it can be verified from those books and records that the fuel that is dispensed and/or stored meets the definition of alternative fuel contained in § 30C(c)(1)(A) or (B) and section 4.01(2) of this notice, and that the refueling property otherwise meets the requirements of § 30C and this notice.

SECTION 9. EFFECTIVE DATE

This notice is effective for QAFV refueling property placed in service after December 31, 2005, and on or before December 31, 2009 (December 31, 2014, in the case of property relating to hydrogen).

SECTION 10. DRAFTING INFORMATION

The principal author of this notice is Nicole R. Cimino of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Ms. Cimino at (202) 622-3120 (not a toll-free call).