

Effective date.—The provision applies to periods after December 31, 2008, under rules similar to the rules of section 48(m) of the Code (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990).

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

4. Grants for specified energy property in lieu of tax credits (secs. 1604 and 1721 of the House bill, secs. 1104 and 1603 of the conference agreement, and secs. 45 and 48 of the Code)

Present Law

Renewable electricity production credit

An income tax credit is allowed for the production of electricity from qualified energy resources at qualified facilities (the “renewable electricity production credit”).¹⁷⁸ Qualified energy resources comprise wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy. Qualified facilities are, generally, facilities that generate electricity using qualified energy resources. To be eligible for the credit, electricity produced from qualified energy resources at qualified facilities must be sold by the taxpayer to an unrelated person. The credit amounts, credit periods, definitions of qualified facilities, and other rules governing this credit are described more fully in section D.1 of this document.

Energy credit

An income tax credit is also allowed for certain energy property placed in service. Qualifying property includes certain fuel cell property, solar property, geothermal power production property, small wind energy property, combined heat and power system property, and geothermal heat pump property.¹⁷⁹ The amounts of credit, definitions of qualifying property, and other rules governing this credit are described more fully in section D.3 of this document.

House Bill

The provision authorizes the Secretary of Energy to provide a grant to each person who places in service during 2009 or 2010 energy property that is either (1) an electricity production

¹⁷⁸ Sec. 45. In addition to the renewable electricity production credit, section 45 also provides income tax credits for the production of Indian coal and refined coal at qualified facilities.

¹⁷⁹ Sec. 48.

facility otherwise eligible for the renewable electricity production credit or (2) qualifying property otherwise eligible for the energy credit. In general, the grant amount is 30 percent of the basis of the property that would (1) be eligible for credit under section 48 or (2) comprise a section 45 credit-eligible facility. For qualified microturbine, combined heat and power system, and geothermal heat pump property, the amount is 10 percent of the basis of the property.

It is intended that the grant provision mimic the operation of the credit under section 48. For example, the amount of the grant is not includable in gross income. However, the basis of the property is reduced by fifty percent of the amount of the grant. In addition, some or all of each grant is subject to recapture if the grant eligible property is disposed of by the grant recipient within five years of being placed in service.¹⁸⁰

Nonbusiness property and property that would not otherwise be eligible for credit under section 48 or part of a facility that would be eligible for credit under section 45 is not eligible for a grant under the provision. The grant may be paid to whichever party would have been entitled to a credit under section 48 or section 45, as the case may be.

Under the provision, if a grant is paid, no renewable electricity credit or energy credit may be claimed with respect to the grant eligible property. In addition, no grant may be awarded to any Federal, State, or local government (or any political subdivision, agency, or instrumentality thereof) or any section 501(c) tax-exempt entity.

The provision appropriates to the Secretary of Energy the funds necessary to make the grants. No grant may be made unless the application for the grant has been received before October 1, 2011.

Effective date.—The provision is effective on date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement generally follows the House bill with the following modifications. The conference agreement clarifies that qualifying property must be depreciable or amortizable to be eligible for a grant. The conference agreement also permits taxpayers to claim the credit with respect to otherwise eligible property that is not placed in service in 2009 and 2010 so long as construction begins in either of those years and is completed prior to 2013 (in the case of wind facility property), 2014 (in the case of other renewable power facility property eligible for credit under section 45), or 2017 (in the case of any specified energy property described in section 48). The conference agreement also provides that the grant program be administered by the Secretary of the Treasury.

¹⁸⁰ Section 1604 of the House bill.