

## Part III - Administrative, Procedural, and Miscellaneous

### Request for Comments on Definitions of Section 48 Property

Notice 2015-70

#### SECTION 1. PURPOSE

The Department of the Treasury (“Treasury Department”) and the Internal Revenue Service (“IRS”) anticipate issuing regulations under § 48 of the Internal Revenue Code to define certain types of property qualifying for the energy credit under § 48. This notice requests comments on how to define these types of property; specifically, this notice requests comments on the definition of certain equipment using solar energy, certain equipment used to produce, distribute, or use energy derived from a geothermal deposit, qualified fuel cell property, qualified microturbine property, combined heat and power system property, qualified small wind energy property, and equipment using the ground or ground water as a thermal energy source.

#### SECTION 2. BACKGROUND

For purposes of computing the investment credit under § 46, § 48(a)(1) provides, in part, that the energy credit for any taxable year is the energy percentage of the basis of each energy property placed in service during such taxable year.

Section 48(a)(3)(A) sets forth the types of property qualifying as energy property for the energy credit. The types of property listed in § 48(a)(3)(A) include certain solar energy property, certain equipment used to produce, distribute, or use energy derived from a geothermal deposit, qualified fuel cell property, qualified microturbine property, combined heat and power system property, qualified small wind energy property, and equipment using the ground or ground water as a thermal energy source. Section 48(c) further defines some of these terms for purposes of the energy credit.

Section 48(a)(3)(B) provides that, in order to be eligible for the energy credit, the construction, reconstruction, or erection of the property must be completed by the taxpayer, or, if the taxpayer acquires the property, the original use of the property must commence with the taxpayer. Section 48(a)(3)(C) provides that depreciation or amortization of the property must be allowable. Section 48(a)(3)(D) provides that the property must meet the performance and quality standards which have been prescribed by the Secretary of the Treasury (after consultation with the Secretary of Energy) and are in effect at the time the property is acquired by the taxpayer.

Section 1.48-9 of the Income Tax Regulations provides additional clarifications to the definitions of qualified energy property under § 48. Those regulations have not been updated since 1987, before the types of property listed in this notice were added to § 48(a)(3)(A). The Treasury Department and the IRS anticipate issuing regulations to define these types of property for purposes of the energy credit under § 48.

### SECTION 3. TYPES OF PROPERTY ELIGIBLE FOR THE ENERGY CREDIT

.01 Equipment which uses solar energy to generate electricity. Section 48(a)(3)(A)(i) provides that energy property includes equipment which uses solar energy to generate electricity to heat or cool (or provide hot water for use in) a structure or to

provide solar process heat, excepting property used to generate energy for the purpose of heating a swimming pool. Section 48(a)(2)(A)(i)(II) provides that the energy percentage for such property is 30 percent for periods before January 1, 2017. After that the energy percentage is 10 percent.

.02 Equipment which uses solar energy to illuminate. Section 48(a)(3)(A)(ii) provides that energy property includes equipment which uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight but only with respect to periods ending before January 1, 2017. Section 48(a)(2)(A)(i)(III) provides that the energy percentage for such property is 30 percent.

.03 Equipment using energy from geothermal sources. Section 48(a)(3)(A)(iii) provides that energy property includes equipment used to produce, distribute, or use energy derived from a geothermal deposit (within the meaning of § 613(e)(2)) but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage. Section 48(a)(2)(A)(ii) provides that the energy percentage for such property is 10 percent.

.04 Qualified fuel cell property. Section 48(a)(3)(A)(iv) provides that energy property includes qualified fuel cell property. Section 48(a)(2)(A)(i)(I) provides that the energy percentage for qualified fuel cell property is 30 percent. Section 48(c)(1)(A) defines qualified fuel cell property, in general, as a fuel cell power plant which has a nameplate capacity of at least 0.5 kilowatt of electricity using an electrochemical process and has an electricity-only generation efficiency greater than 30 percent. The term “fuel cell power plant” is defined in § 48(c)(1)(C) as an integrated system comprised of a fuel cell stack assembly and associated balance of plant components

which converts a fuel into electricity using electrochemical means. Section 48(c)(1)(B) limits the energy credit amount for qualified fuel cell property each year to \$1,500 per 0.5 kilowatt of capacity of such property. Section 48(c)(1)(D) provides that the qualified fuel cell property must be placed in service before January 1, 2017.

.05 Qualified microturbine property. Section 48(a)(3)(A)(iv) provides that energy property includes qualified microturbine property. Section 48(a)(2)(A)(ii) provides that the energy percentage for qualified microturbine property is 10 percent. Section 48(c)(2)(D) provides that the qualified microturbine property must be placed in service before January 1, 2017. Section 48(c)(2)(A) defines qualified microturbine property as a stationary microturbine power plant which has a nameplate capacity of less than 2,000 kilowatts and has an electricity-only generation efficiency of not less than 26 percent at International Standard Organization conditions. Section 48(c)(2)(C) clarifies that the term “stationary microturbine power plant” means an integrated system comprised of a gas turbine engine, a combustor, a recuperator or regenerator, a generator or alternator, and associated balance of plant components which converts a fuel into electricity and thermal energy. That term also includes all secondary components located between the existing infrastructure for fuel delivery and the existing infrastructure for power distribution, including equipment and controls for meeting relevant power standards, such as voltage, frequency, and power factors. Section 48(c)(2)(B) limits the amount of the § 48 credit for qualified microturbine property to an amount equal to \$200 per each kilowatt of capacity of such property.

.06 Combined heat and power system property. Section 48(a)(3)(A)(v) provides that energy property includes combined heat and power system property. Section

48(a)(2)(A)(ii) provides that the energy percentage for combined heat and power system property is 10 percent. Section 48(c)(3)(A)(iv) provides that the combined heat and power system property must be placed in service before January 1, 2017. Section 48(c)(3)(A) defines combined heat and power system property as property comprising a system which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications). The system must produce at least 20 percent of its total useful energy in the form of thermal energy which is not used to produce electrical or mechanical power (or combination thereof) and at least 20 percent of its total useful energy in the form of electrical or mechanical power (or combination thereof), and the energy efficiency percentage of the system must exceed 60 percent. Section 48(c)(3)(B) contains limitations on the combined heat and power system property for which the energy credit may be claimed.

.07 Qualified small wind energy property. Section 48(a)(3)(A)(vi) provides that energy property includes qualified small wind energy property. Section 48(a)(2)(A)(i)(IV) provides that the energy percentage for qualified small wind energy property is 30 percent. Section 48(c)(4)(C) provides that the qualified small wind energy property must be placed in service before January 1, 2017. Section 48(c)(4)(A) defines qualified small wind energy property as property using a wind turbine which has a nameplate capacity of not more than 100 kilowatts to generate electricity.

.08 Equipment using the ground or ground water as a thermal energy source. Section 48(a)(3)(A)(vii) provides that energy property includes equipment which uses

the ground or ground water as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure, but only with respect to periods ending before January 1, 2017. Section 48(a)(2)(A)(ii) provides that the energy percentage for such property using the ground or ground water as a thermal energy source is 10 percent.

#### SECTION 4. REQUEST FOR COMMENTS

.01 The Treasury Department and the IRS request comments on issues that should be addressed in proposed regulations on the definition of certain types of property under § 48. Specifically, the Treasury Department and the IRS request comments that address the following:

(1) Whether only property that actually produces electricity may be considered energy property or whether property such as storage devices and power conditioning equipment may also be considered energy property.

(2) Whether dual-use property should qualify for the credit and, if so, under what circumstances it should qualify. If it should qualify, what portion of the basis of dual use property should be taken into account in computing the energy percentage.

(3) Comprehensive definitions of the property described in Section 3 of this notice.

(4) Definitions of terms such as storage devices, power conditioning equipment, transfer equipment, and other property commonly used in conjunction with property described in Section 3 of this notice, as well as definitions of parts related to the functioning of these items.

(5) The need for other energy-related definitions.

.02 Any comments must be received by February 16, 2016.

## SECTION 5. ADDRESS TO SEND COMMENTS

.01 Comments on the definition of qualified property for purposes of the energy credit under § 48 should be sent to:

Internal Revenue Service  
CC:PA:LPD:PR (Notice 2015-70)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Please include "Notice 2015-70" on the cover page.

.02 Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Internal Revenue Service  
Courier's Desk  
1111 Constitution Ave., N.W.  
Washington, DC 20224  
Attn: CC:PA:LPD:PR  
(Notice 2015-70)

.03 Submissions may also be sent electronically to the following e-mail address:

[Notice.Comments@irsounsel.treas.gov](mailto:Notice.Comments@irsounsel.treas.gov)

Please include "Notice 2015-70" in the subject line.

All comments will be available for public inspection and copying.

## SECTION 6. DRAFTING INFORMATION

The principal author of this notice is Patrick S. Kirwan of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Mr. Kirwan at (202) 317-6853 (not a toll-free call).