

house gas, and (2) is measured at the source of capture and verified at the point or points of injection. Qualified carbon dioxide includes the initial deposit of captured carbon dioxide used as a tertiary injectant but does not include carbon dioxide that is recaptured, recycled, and re-injected as part of an enhanced oil or natural gas recovery project process. A qualified enhanced oil or natural gas recovery project is a project that would otherwise meet the definition of an EOR project under section 43, if natural gas projects were included within that definition.

Under the provision, a qualified facility means any industrial facility (1) which is owned by the taxpayer, (2) at which carbon capture equipment is placed in service, and (3) which captures not less than 500,000 metric tons of carbon dioxide during the taxable year. The credit applies only with respect to qualified carbon dioxide captured and sequestered or injected in the United States⁴¹⁵ or one of its possessions.⁴¹⁶

Except as provided in regulations, any credit under the provision is attributable to the person that captures and physically or contractually ensures the disposal, or use as a tertiary injectant, of the qualified carbon dioxide. Any credit allowable under the provision will be recaptured, as provided by regulation, with respect to any qualified carbon dioxide which ceases to be recaptured, disposed of, or used as a tertiary injectant in a manner consistent with the rules of the provision.

The credit is part of the general business credit. The credit sunsets at the end of the calendar year in which the Secretary, in consultation with the Administrator of the Environmental Protection Agency, certifies that 75 million metric tons of qualified carbon dioxide have been captured and disposed of or used as a tertiary injectant.

Effective Date

The provision is effective for carbon dioxide captured after the date of enactment (October 3, 2008).

6. Certain income and gains relating to industrial source carbon dioxide and to alcohol fuels and mixtures, bio-diesel fuels and mixtures, and alternative fuels and mixtures treated as qualifying income for purposes of the exception from treatment of publicly traded partnerships as corporations (secs. 116 and 208 of the Act and sec. 7704 of the Code)

Present Law

Partnerships in general

A partnership generally is not treated as a taxable entity (except for certain publicly traded partnerships), but rather, is treated as a pass-through entity. Income earned by a partnership, whether distributed or not, is taxed to the partners.⁴¹⁷ The character of

⁴¹⁵ Sec. 638(1).

⁴¹⁶ Sec. 638(2).

⁴¹⁷ Sec. 701.

partnership items passes through to the partners, as if the items were realized directly by the partners.⁴¹⁸ For example, a partner's share of the partnership's dividend income is generally treated as dividend income in the hands of the partner.

Publicly traded partnerships

Under present law, a publicly traded partnership generally is treated as a corporation for Federal tax purposes (sec. 7704(a)). For this purpose, a publicly traded partnership means any partnership if interests in the partnership are traded on an established securities market, or interests in the partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

An exception from corporate treatment is provided for certain publicly traded partnerships, 90 percent or more of whose gross income is qualifying income.⁴¹⁹ However, this exception does not apply to any partnership that would be described in section 851(a) if it were a domestic corporation, which includes a corporation registered under the Investment Company Act of 1940 as a management company or unit investment trust.

Qualifying income includes interest, dividends, and gains from the disposition of a capital asset (or of property described in section 1231(b)) that is held for the production of income that is qualifying income. Qualifying income also includes rents from real property, gains from the sale or other disposition of real property, and income and gains from the exploration, development, mining or production, processing, refining, transportation (including pipelines transporting gas, oil, or products thereof), or the marketing of any mineral or natural resource (including fertilizer, geothermal energy, and timber). It also includes income and gains from commodities (not described in section 1221(a)(1)) or futures, options, or forward contracts with respect to such commodities (including foreign currency transactions of a commodity pool) in the case of partnership, a principal activity of which is the buying and selling of such commodities, futures, options or forward contracts.

Explanation of Provision

The Act provides that qualifying income of a publicly traded partnership includes income or gains from specified activities with respect to industrial source carbon dioxide, including transportation or marketing of industrial source carbon dioxide.

The Act provides that qualifying income of a publicly traded partnership includes income or gains from the transportation or storage of specified fuels. Specifically, the fuels are: (1) Any fuel described in subsection (b), (c), (d) or (e) of section 6426, namely, alcohol fuel mixtures, biodiesel mixtures, alternative fuels (which include liquefied petroleum gas, P Series Fuels, compressed or liquefied natural gas, liquefied hydrogen, liquid fuel derived from coal through the Fischer-Tropsch process, and liquid fuel derived from biomass), and alternative fuel mixtures; (2) neat alcohol other than alcohol derived from petroleum, natural gas, or coal, or having a

⁴¹⁸ Sec. 702.

⁴¹⁹ Sec. 7704(c)(2).

proof of less than 190 (as defined in section 6426(b)(4)(A)), and (3) neat biodiesel (as defined in section 40A(d)(1)).

Effective Date

The provisions apply to taxable years ending after the date of enactment (October 3, 2008).

7. Carbon audit of provisions of the Internal Revenue Code of 1986 (sec. 117 of the Act)

Present Law

Present law does not require a review of the Code for provisions that affect carbon emissions and climate. The National Research Council is part of the National Academies. The National Academy of Sciences serves to investigate, examine, experiment, and report upon any subject of science whenever called upon to do so by any department of the government. The National Research Council was organized by the National Academy of Sciences in 1916 and is its principal operating agency for conducting science policy and technical work.

Reasons for Change⁴²⁰

The Congress believes it is important to identify provisions in the Code which affect carbon dioxide and other greenhouse emissions. This study will provide scientifically-based information to aid decision makers in the formulation of tax policies aimed at reducing emissions and mitigating climate change.

Explanation of Provision

The provision directs the Secretary to request that the National Academy of Sciences undertake a comprehensive review of the Code to identify the types of and specific tax provisions that have the largest effects on carbon dioxide and other greenhouse gas emissions and to generally estimate the magnitude of those effects.⁴²¹ The report should identify the provisions of the Code that are most likely to have significant effects on carbon dioxide emissions and discuss the importance of controlling carbon dioxide and greenhouse gas emissions as part of a comprehensive national strategy for reducing U.S. contributions to global climate change.⁴²² The report will describe the processes by which the tax provisions affect emissions (both directly and indirectly), assess the relative influence of the identified provisions, and evaluate the potential for changes in the Code to reduce carbon dioxide emissions. The report also will identify other provisions of the Code that may have significant influence on other factors affecting climate change.

The Secretary is to submit to Congress a report containing the results of the National Academy of Sciences review within two

⁴²⁰ See H.R. 6049, the "Renewable Energy and Job Creation Act of 2008," which was reported by the House Committee on Ways and Means on May 20, 2008 (H. Rept. No. 110-658).

⁴²¹ A detailed quantitative analysis is not required. It is envisioned that the review will catalogue and provide a general analysis of the effect of each identified provision.

⁴²² "Greenhouse gas emissions" include, but are not limited to, methane, nitrous oxide, ozone, and fluorinated hydrocarbons.