

CB-NOTICE, 2008FED ¶46,551 **Energy credit: Fuel cell and microturbine properties: Interim guidance.** —, **Notice 2008-68** I.R.B. 2008-34, 418 (August 25, 2008)
Notice 2008-68 , I.R.B. 2008-34, 418, August 25, 2008.

[[Code Sec. 48](#)]

Energy credit: Fuel cell and microturbine properties: Interim guidance. — The IRS has released interim guidance on the [Code Sec. 48](#) energy credit for fuel cells and microturbines, pending the issuance of regulations. The guidance includes information on the computation and availability of the fuel cell and microturbine credits, and the recordkeeping requirements. Back references: [¶4671.035](#) and [¶4671.11](#).

SECTION 1. PURPOSE

This notice sets forth interim guidance pending the issuance of regulations relating to the energy credit under [§ 48](#) of the Internal Revenue Code (Code) for fuel cells (fuel cell credit) and microturbines (microturbine credit).

SECTION 2. BACKGROUND

[Section 46](#) of the Code provides that the amount of the investment credit for any taxable year includes the energy credit. [Section 48\(a\)\(1\)](#) of the Code provides that the energy credit for a taxable year is the energy percentage of the basis of each energy property placed in service during the taxable year.

Section 1336 of the Energy Policy Act of 2005, Pub. L. No. 109-58, amended [§ 48](#) to add qualified fuel cell property and qualified microturbine property to the list of property that can qualify for the energy credit. The amendment also provides that the energy percentage is 30 percent for qualified fuel cell property and 10 percent for qualified microturbine property.

SECTION 3. DEFINITIONS, ETC.

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

(1) *Qualified fuel cell property.* Qualified fuel cell property is a fuel cell power plant that satisfies the following conditions:

- (a) The plant has a nameplate capacity of at least 0.5 kilowatt of electricity using an electrochemical process.
- (b) The plant has an electricity-only generation efficiency greater than 30 percent.
- (c) The plant is within the credit period as determined under section 3.03 of this notice.

(2) *Qualified fuel cell energy property.* Qualified fuel cell energy property is qualified fuel cell property that satisfies the requirements of section 3.02 of this notice.

(3) *Qualified microturbine property.* Qualified microturbine property is a stationary microturbine power plant that satisfies the following conditions:

- (a) The plant has a nameplate capacity of less than 2,000 kilowatts.
- (b) The plant has an electricity-only generation efficiency of not less than 26 percent at International Standard Organization (ISO) conditions.
- (c) The plant is within the credit period as determined under section 3.03 of this notice.

(4) *Qualified microturbine energy property.* Qualified microturbine energy property is qualified microturbine property that satisfies the requirements of section 3.02 of this notice.

(5) *Fuel cell power plant.* A fuel cell power plant is 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.

(6) *Stationary microturbine power plant.* A stationary microturbine power plant is 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 that converts a fuel into electricity and thermal energy. A stationary microturbine power plant 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.

(7) *Nameplate capacity.* Nameplate capacity is the maximum electrical output of a generator as rated by the manufacturer. In the case of a fuel cell power plant, nameplate capacity is determined at the normal operating conditions designated by the manufacturer. In the case of a stationary microturbine power plant, nameplate capacity is determined at ISO conditions.

.02 *Qualification as Energy Property.* Qualified fuel cell property and qualified microturbine property are energy property for which an energy credit is allowable only if the following conditions are satisfied:

- (1) Depreciation (or amortization in lieu of depreciation) is allowable to the taxpayer with respect to the property.
- (2) The construction, reconstruction, or erection of the property is completed by the taxpayer or the property is acquired by and its original use begins with the taxpayer.
- (3) The property meets all applicable quality and performance standards in regulations prescribed under [§ 48](#) after consultation with the Secretary of Energy. Any such standard will not apply to property acquired before the date on which the standard is published in the Federal Register.
- (4) Except as otherwise provided in this section 3.02(4), the property is not public utility property (as defined in [§ 46\(f\)\(5\)](#) as in effect on November 4, 1990). This condition does not apply to qualified fuel cell property or qualified microturbine property that is used predominantly in the trade or business of the furnishing or sale of telephone service or telegraph service (other than international telegraph service) and such property may qualify for the energy credit even if it is public utility property,

.03 *Credit period.* The credit period for purposes of sections 3.01(1) and 3.01(3) of this notice is the period after December 31, 2005, and before January 1, 2009. The extent to which a fuel cell power plant or a stationary microturbine power plant is within the credit period is determined under the rules of [§ 48\(m\)](#) as in effect on November 4, 1990.

.04 *Cross References to Applicable Regulations.* The following provisions of the Income Tax Regulations (26 CFR

Part 1) apply for purposes of this notice:

- (1) *Original use.* Whether the original use of property begins with the taxpayer is determined under the principles of [§ 1.48-2](#).
- (2) *Depreciation.* Whether depreciation (or amortization in lieu of depreciation) is allowable to the taxpayer with respect to property is determined under the principles of [§ 1.48-1\(b\)](#).
- (3) *Placed in service.* The year in which property is placed in service is determined under the principles of [§ 1.46-3\(d\)](#).
- (4) *Basis of property.* The basis of property is determined under the principles of [§ 1.46-3\(a\)](#) and (c).

SECTION 4. COMPUTATION OF CREDIT

.01 *In General.* The fuel cell credit for a taxable year is 30 percent of the basis of the qualified fuel cell energy property placed in service during the tax year. The microturbine credit for a taxable year is 10 percent of the basis of the qualified microturbine energy property placed in service during the tax year.

.02 *Limitation of the Credit.* The fuel cell credit for a taxable year cannot exceed \$500 for each 0.5 kilowatt of capacity of qualified fuel cell energy property placed in service during the tax year. The microturbine credit for a taxable year cannot exceed an amount equal to \$200 for each kilowatt of capacity of qualified microturbine energy property placed in service during the tax year.

.03 *Coordination with Other Credits.* The fuel cell credit and the microturbine credit are not allowed for that portion of the basis of a fuel cell power plant or stationary microturbine power plant which also qualifies for the rehabilitation credit under [§ 47\(a\)](#). In addition, the credits are not allowed with respect to a fuel cell power plant or a stationary microturbine power plant for a taxable year if a credit under [section 45](#) is allowed for the taxable year or any prior year for the electricity produced by such power plant.

.04 *Reduction for Subsidized Energy Financing and Private Activity Bonds.* The fuel cell credit and microturbine credit are reduced if the property qualifying for the credit is financed by subsidized energy financing or private activity bonds. [Section 48\(a\)\(4\)](#) provides rules for determining the amount of such reduction. For purposes of [§ 48\(a\)\(4\)](#), subsidized energy financing does not include a grant includible in gross income under [§ 61](#), a nontaxable government grant, or a credit against state or local taxes.

SECTION 5. RULES RELATING TO THE AVAILABILITY OF THE FUEL CELL CREDIT

.01 *Leased Facility.* The fuel cell credit is allowed to the lessor of qualified fuel cell energy property if depreciation (or amortization in lieu of depreciation) is allowable to the lessor with respect to the property. The lessee of qualified fuel cell property generally may not claim the fuel cell credit for such property.

.02 *Mobile Plant.* The fuel cell credit is allowed with respect to a taxpayer's mobile fuel cell power plant if the plant satisfies the conditions of sections 3.01(1) and section 3.02 of this notice.

.03 *Generation Efficiency.* The electricity-only generation efficiency of a fuel cell power plant may be determined in accordance with the standards of ANSI/ASME PTC 50-2002 Fuel Cell Power Systems Performance or equivalent testing procedures under normal operating conditions using the lower heating value of the primary fuel.

SECTION 6. RULES RELATING TO THE AVAILABILITY OF THE MICROTURBINE CREDIT

.01 *Leased Facility.* The microturbine credit is allowed to the lessor of qualified microturbine energy property if depreciation (or amortization in lieu of depreciation) is allowable to the lessor with respect to the property. The lessee of qualified fuel cell property generally may not claim the microturbine credit for such property.

.02 *Installation Costs.* Installation costs included in the basis of qualified microturbine energy property under the principles of [§ 1.46-3\(a\)](#) and (c) are eligible for the microturbine credit.

.03 *Generation Efficiency.* The electricity-only generation efficiency of a stationary microturbine power plant may be determined in accordance with the standards of ASME PTC 22-2005 Gas Turbines or equivalent testing procedures under ISO conditions using the lower heating value of the primary fuel.

.04 *ISO Conditions.* ISO conditions for purposes of determining the generation efficiency and nameplate capacity of a stationary microturbine power plant are 59 degrees Fahrenheit, 60 percent relative humidity, and 14.696 psia.

SECTION 7. 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. In order to satisfy the recordkeeping requirements of [§ 6001](#) and the regulations thereunder, a taxpayer that claims the fuel cell credit or the microturbine credit must retain adequate books and records so that, for any taxable year, it can be verified from those books and records that the property with respect to which the credit is claimed satisfies the applicable requirements of [§ 48](#) and this notice.

SECTION 8. EFFECTIVE DATE

This notice is effective for property placed in service after August 25, 2008. Taxpayers may apply the provisions of this notice with respect to property placed in service after December 31, 2005, and on or before January 1, 2009.

SECTION 9. DRAFTING AND CONTACT INFORMATION

The principal author of this notice is Philip Tiegerman of the Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury participated in its development. For further information regarding this notice, contact Mr. Tiegerman at (202) 622-3110.