9-9-2005

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Energy Policy Act Tax Incentives

by Neil E. Harl

The tax title to the Energy Policy Act of 2005, Title XIII, contains a lengthy list of provisions, many of which affect rural America. The following touch upon the highlights of the provisions of greatest significance to farmers, ranchers and other rural residents.

Extension of credit for biodiesel

The biodiesel fuels credit, authorized in the American Jobs Creation Act of 2004, was set to expire for sales and uses after December 31, 2006. However, the Energy Policy Act of 2005 has extended the credit two more years such that the credit is now set to expire for sales and uses after December 31, 2008.

Small agri-biodiesel producer credit

An additional credit (in addition to the biodiesel mixture credit and the biodiesel credit) has been authorized, effective on the date of enactment of the Energy Policy Act, which was August 8, 2005. The new credit, the “Small Agri-Biodiesel Producer Credit,” is limited to producers where production capacity does not exceed 60,000,000 gallons per year. The credit is 10 cents per gallon of qualified agribiodiesel for a producer, with a limit of 15,000,000 gallons per year. For pass-through entities such as a partnership, trust or S corporation, the limits are applied at the entity level and also at the partner or similar level.

Section 45 credit and agricultural cooperatives

The Energy Policy Act provides that, in the case of an eligible cooperative organization, any portion of the credit authorized by I.R.C. § 45 (the credit for electricity produced from renewable resources), the credit, at the election of the cooperative, can be apportioned among patrons of the organization on the basis of the amount of business done by the patrons during the year. The amount of the credit apportioned to patrons is reduced from the cooperative’s credit and is included in the patron’s income tax calculations for the year of the patron ending on or after the last day of the payment period for the taxable year of the cooperative.

To be eligible for such pass-through treatment, the cooperative must be owned more than 50 percent by agricultural producers.

Energy-efficient commercial building deduction

The Energy Policy Act of 2005 adds a new deduction to the Internal Revenue Code, I.R.C. § 179D, which authorizes a deduction of $1.80 per square foot of the building over the deductions claimed for the building in all prior taxable years. The term “energy efficient commercial building property” means depreciable property which is located in the United States, is installed as part of the interior lighting systems, the heating, cooling, ventilation and hot water systems or the building envelope; and is within the scope of Standard 90.1-

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of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America.\textsuperscript{16} The new law requires that the total annual energy and power costs be reduced by 50 percent or more.\textsuperscript{17} If that requirement is not met, the deduction is reduced from $1.80 to 0.60 per square foot provided the project meets the energy-saving targets established by the Secretary of the Department of Energy.\textsuperscript{18} For public buildings, the deduction is to be available to the “person primarily responsible for designing the property.”\textsuperscript{19}

For all property, the income tax basis is to be reduced by the amount of the deduction allowed.\textsuperscript{20}

The deduction is available for property placed in service after December 31, 2005.\textsuperscript{21} The credit is set to terminate for property placed in service after December 31, 2007.\textsuperscript{22}

**New energy efficient homes**

The 2005 law adds another new credit, the New Energy Efficient Home Credit.\textsuperscript{23} The credit is a maximum of $2,000 for homes with annual heating and cooling energy consumption at least 50 percent below the standards of the International Energy Conservation Code\textsuperscript{24} or is a manufactured home conforming to the requirements of the Federal Manufactured Home Construction and Safety Standards.\textsuperscript{25} The credit is $1,000 for manufactured homes where the annual reduction is 30 percent, rather than 50 percent.\textsuperscript{26}

The credit is available to “eligible contractors”\textsuperscript{27} with that term defined as “the person who constructed the qualified new energy efficient home” or a manufactured home producer.\textsuperscript{28} It would appear that an owner-built home would be considered an “eligible contractor” but that will likely not be known for sure until further guidance is published in regulations or otherwise.

The credit is part of the general business credit,\textsuperscript{29} requires a reduction in basis of the property,\textsuperscript{30} and is effective for homes acquired after December 31, 2005, and before January 1, 2008.\textsuperscript{31}

**Appliance credit**

The Energy Policy Act of 2005 has added another new credit, the Energy Efficient Appliance Credit.\textsuperscript{32} The credit is available to producers of appliances and is available for dishwashers, clothes washers and refrigerators.\textsuperscript{33}

**Other provisions**

The Energy Policy Act of 2005 also contains a new alternative motor vehicle credit,\textsuperscript{34} a residential energy efficient property credit\textsuperscript{35} and a non-business energy property credit.\textsuperscript{36} Also, the legislation allows natural gas gathering lines to be treated as seven-year property for depreciation purposes.\textsuperscript{37} The enactment confirms decisions by the Sixth\textsuperscript{38} and the Eighth\textsuperscript{39} Circuit Courts of Appeal which allowed depreciation over seven years rather than the 15-years as determined by the Internal Revenue Service.

**FOOTNOTES**

2. See Harl, “Handling the New Biodiesel Fuels Credit,” 16 Agric. L. Dig. 65 (2005).
4. I.R.C. § 40A(e).
17. I.R.C. § 179D(c)(1)(D).
22. I.R.C. § 179D(h).
25. I.R.C. § 45L(c)(2).
27. I.R.C. § 45L(a)(1).
33. I.R.C. § 45M(b)(1).
34. I.R.C. § 30B.
35. I.R.C. § 25D.
36. I.R.C. § 25C.
38. Saginaw Bay Pipeline Co. v. United States, 338 F.3d 600 (6th Cir. 2003).
By Neil E. Harl

Alternative motor vehicle credit
Effective for vehicles placed in service after December 31, 2005, an alternative motor vehicle credit is allowed which is the sum of (1) qualified fuel cell motor vehicle credit, (2) advanced lean burn technology motor vehicle credit, (3) qualified hybrid motor vehicle credit, and (4) qualified alternative fuel motor vehicle credit. I.R.C. § 30B(a).

The credits allowed cannot exceed the regular tax reduced by other credits over the tentative minimum tax for the year. I.R.C. § 30B(g)(2). Moreover, the credits are treated as a general business credit if the vehicle is subject to an allowance for depreciation. I.R.C. § 30B(g)(1).

Qualified fuel cell motor vehicle credit
The credit is—
(1) $8,000 if GVW (gross vehicle weight) is not more than 8,500 pounds ($4,000 for vehicles placed in service after 2009).
(2) $10,000 if GVW is more than 8,500 pounds but not more than 14,000 pounds.
(3) $20,000 if GVW is more than 14,000 pounds but not more than 26,000 pounds.
(4) $40,000 if GVW is more than 26,000 pounds. I.R.C. § 30B(b)(1).

The amount of the credit for passenger automobiles and light trucks is increased by—
(1) $1,000 if the vehicle achieves at least 150 percent but less than 175 percent of the 2002 model year city fuel economy (MYCFE). The MYCFE is based on vehicle inertia weight and miles per gallon and is different for passenger automobiles and light trucks. I.R.C. § 30B(b)(2)(B).
(2) $1,500 if the vehicle achieves at least 175 percent but less than 200 percent of the 2002 MYCFE.
(3) $2,000 if the vehicle achieves at least 200 percent but less than 225 percent of the 2002 MYCFE.
(4) $2,500 if the vehicle achieves at least 225 percent but less than 250 percent of the 2002 MYCFE.
(5) $3,000 if the vehicle achieves at least 250 percent but less than 275 percent of the 2002 MYCFE.
(6) $3,500 if the vehicle achieves at least 275 percent but less than 300 percent of the 2002 MYCFE.
(7) $4,000 if the vehicle achieves at least 300 percent of the 2002 MYCFE.

A “new qualified fuel cell motor vehicle” is defined as a motor vehicle “propelled by power derived from one or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle....” I.R.C. § 30B(b)(3)(A). The definition limits the credit to vehicles the original use of which commence with the taxpayer, the vehicle is acquired for use or lease by the taxpayer and not for resale and the vehicle is made by a manufacturer. I.R.C. § 30B(b)(3)(C), (D), (E).

New advanced lean burn technology motor vehicle credit
The credit amount is $400 to $2,400 based on a percentage of the 2002 MYCFE. The credit may be increased by the “conservation credit amount” which is based on lifetime fuel savings and ranges from $250 to $1,000. I.R.C. § 30B(c)(2)(B).

A “new advanced lean burn technology motor vehicle” is defined as a passenger automobile or light truck with an internal combustion engine “designed to operate primarily using more air than is necessary for complete combustion of the fuel” and incorporates direct injection. I.R.C. § 30B(c)(3)(A).

New qualified hybrid motor vehicle credit
The credit amount (for a passenger automobile or light truck) with a GVW of not more than 8,500 pounds is based upon the fuel economy and the conservation credit for an advanced lean burn technology motor vehicle or the applicable percentage of the qualified incremental hybrid cost of the vehicle, ranging from 20 percent to 40 percent. I.R.C. § 30B(d)(2).

The term “new qualified hybrid motor vehicle” is defined as a motor vehicle which “draws propulsion energy from on board sources of stored energy which are both . . . an internal combustion or heat engine using consumable fuels . . . and a rechargeable energy storage system.” I.R.C. § 30B(d)(3)(A).

New qualified alternative fuel motor vehicle credit
The credit is based on a percentage of the incremental cost of a new qualified alternative fuel motor vehicle placed in service during the year, of 50 percent (plus 30 percent if certificated under the Clean Air Act). I.R.C. § 30B(d)(2). The incremental cost is specified in the statute, based on GVW, and ranges from $5,000 to $40,000. I.R.C. § 30B(d)(3). The term “alternative fuel” means compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen or any liquid at least 85 percent of the volume of which consists of methanol.

CASES, REGULATIONS AND STATUTES
by Robert P. Achenbach, Jr

ANIMALS
CATTLE. The defendant’s calf was struck on a highway by the plaintiff’s car. The plaintiff sued for personal injuries and damage to the car, alleging that the defendant was negligent in allowing the calf to be on the highway. The trial jury was given a comparative fault instruction that stated that the plaintiff could be at fault for failing to keep a careful lookout. The jury found the plaintiff to be 80 percent at fault and the defendant to be 20 percent at fault. The plaintiff objected to the instruction because there was no evidence that the plaintiff had time and distance to see the calf. The court upheld the jury verdict, holding that there was sufficient evidence of the road conditions, amount of light, the type of collision and actions by the plaintiff in the car to support use of the jury instruction. Heidrick v. Smith, 2005 Mo. App. LEXIS (Mo. Ct. App. 2005).