

Part III - Administrative, Procedural, and Miscellaneous

Nonconventional Source Fuel Credit, Section 45K Inflation Adjustment Factor, and Section 45K Reference Price

Notice 2010-31

SECTION 1. PURPOSE

This notice publishes the nonconventional source fuel credit, inflation adjustment factor, and reference price under § 45K of the Internal Revenue Code for coke or coke gas (other than from petroleum based products) for calendar year 2009. The inflation adjustment factor and the reference price are used to determine the credit allowable under § 45K for coke or coke gas. The calendar year 2009 inflation-adjusted credit applies to the sales of barrel-of-oil equivalent of coke or coke gas sold by a taxpayer to an unrelated person during the 2009 calendar year, the domestic production of which is attributable to the taxpayer.

SECTION 2. BACKGROUND

Section 45K(a) provides for a credit for producing fuel from a nonconventional source, measured in barrel-of-oil equivalent of qualified fuel, the production of which is attributable to the taxpayer and is sold by the taxpayer to an unrelated person during

the taxable year. For calendar year 2009, the credit is available only for coke or coke gas. The credit amount for coke or coke gas is equal to the product of \$3.00 and the appropriate inflation adjustment factor.

Section 45K(d)(1) provides that the credit applies only to sales of qualified fuels the production of which is within the United States (within the meaning of § 638(1)) or a possession of the United States (within the meaning of § 638(2)).

Section 45K(d)(2)(A) requires that the Secretary, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor and the reference price for the preceding calendar year.

Section 45K(d)(2)(B) defines "inflation adjustment factor" for a calendar year as a fraction the numerator of which is the GNP implicit price deflator for the calendar year and the denominator of which is the GNP implicit price deflator for calendar year 1979. The term "GNP implicit price deflator" means the first revision of the implicit price deflator for the gross national product as computed and published by the Department of Commerce.

Section 45K(d)(2)(C) defines "reference price" to mean with respect to a calendar year the Secretary's estimate of the annual average wellhead price per barrel for all domestic crude oil the price of which is not subject to regulation by the United States.

Section 45K(d)(5) provides that the term "barrel-of-oil equivalent" with respect to any fuel generally means that amount of the fuel that has a Btu content of 5.8 million.

Section 45K(g)(1) provides that in the case of a facility for producing coke or coke gas (other than from petroleum based products), which was placed in service before January 1, 1993, or after June 30, 1998, and before January 1, 2010, § 45K(g) shall

apply with respect to coke or coke gas produced in such facility and sold during the period beginning on the later of January 1, 2006, or the date that such facility is placed in service, and ending on the date which is 4 years after the date such period began.

Section 45K(g)(2)(A) provides that the amount of coke or coke gas sold during any taxable year that may be taken into account to compute the credit under § 45K with respect to any facility shall not exceed an average barrel-of-oil equivalent of 4,000 barrels per day.

Section 45K(g)(2)(B) provides that in determining the amount of credit allowable to coke or coke gas sold after 2005, the credit shall be computed by substituting “2004” for “1979.” Accordingly, for purposes of § 45K(g), the inflation adjustment factor for a calendar year is a fraction the numerator of which is the GNP implicit price deflator for the calendar year and the denominator of which is the GNP implicit price deflator for calendar year 2004.

Section 45K(g)(2)(D) provides that the phase-out of the credit under § 45K(b)(1) does not apply in the case of facilities producing coke or coke gas.

SECTION 3. REFERENCE PRICE

The reference price for calendar year 2009 is \$56.39.

SECTION 4. INFLATION ADJUSTMENT AND CREDIT AMOUNT

The inflation adjustment factor for calendar year 2009 is 1.1343. The nonconventional source fuel credit is \$3.40 per barrel-of-oil equivalent ($\$3.00 \times 1.1343$).

SECTION 5. DRAFTING INFORMATION CONTACT

The principal author of this notice is Jennifer C. Bernardini of the Office of

Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Ms. Bernardini on (202) 622-3110 (not a toll-free call).