

48C Qualifying Advanced Energy Project Credit Questions

Q1: Where and how should applicants submit their preliminary and final applications?

A: The preliminary application form found at:
http://www.energy.gov/recovery/documents/48C_Preliminary_Application.doc
should be submitted via email at email address:48capplications@hq.doe.gov

The final application should be formatted in Compact Disc (CD) and 2 copies mailed to:
Department of Energy – Golden Field Office
48C Applications
1617 Cole Boulevard
Golden CO 80401

In addition, you may also email your final application to email address:
48capplications@hq.doe.gov

Q2: Is the Tax return form SF3468 the application?

A: No, SF3468 is not a form for section 48C application for IRS certification. The form is used to claim the tax credit and to be filed as an attachment to the federal tax return.

Q3: Is there a cap on the number of projects for which an individual investor can apply for the credit or will it be one application per investor for a total 30% on ALL projects?

A: There is no cap.

Q4: Where a consortium is formed to invest in many projects for various reasons, should the consortium entity apply for the credit or should each individual partner apply?

A: Generally, the consortium as an entity should apply for the credit since the entity is the owner of the project. However, if the consortium is, for example, a state law partnership that elects out of subchapter K, the individual partners should apply for the credit since the partners are co-owners of the project.

Q5: The guidance on the DOE website indicates that developers have four years to complete their plants but the actual statute reads that developers have just three years from issuance, which is correct?

A: Both are correct. Under § 48C(d)(2)(B) and section 7.01 of the notice, an applicant has 1 year from the date of acceptance by the Service during which to provide evidence that the requirements of the certification have been met. Section 48C(d)(2)(C) and section 7.01 of the notice further provide that an applicant has 3 years from the date of issuance of the certification to place the project in service. Thus, an applicant that uses the full year to provide the evidence for certification has at least 4 years from the date of acceptance of the application by the Service to place the project in service.

Q6: Could an applicant get 48C credit if it has also been the recipient of a grant/loan under other ARRA manufacturing –related funding opportunities (ATVM or batteries solicitation)?

A: Under section 5.04 of the notice, 48C credit will not be allocated to a project with respect to any qualified investment for which a credit is allowed under §48, 48A or 48B, or for which a payment is received under § 1603 of the American Recovery and Reinvestment Tax Act of 2009. Regarding any Federal grant/loan, there is nothing in 48C to disallow such recipient to apply for 48C. However, the applicant should look to the rules under the Federal grant/loan program.

Q7: What is the earliest date a manufacturing project could be placed in service and qualify for the section 48C credit?

A: February 18, 2009

Q8: The announcement states “eligible investment credits cover future expenditures and do not award past investment”. When is an investment deemed to qualify? Is it an investment after the date of the ARRA law, after the application is made, after the contract is awarded or some other date?

A: Investments must be made after February 17, 2009, for eligible property that is placed in service after February 17, 2009. See section 48(m) as in effect before the date of enactment of the Revenue Reconciliation Act of 1990.

Q9: Currently, an applicant is structured as a partnership but it is considering restructuring into a C corporation in the future. If the partnership's application for section 48C certification is accepted and at a later point it restructures to become a C corporation, would this restructuring have any effect on its credit allocation?

A: Only the taxpayer that entered into an agreement with IRS is allowed the 48C credit. Any successor in interest must execute a new agreement with IRS per section 5.02(9) of the notice. Furthermore, if the applicant's business restructuring is a significant change under section 8.03 of the notice, then any allocation or certification may be void.

Q10: What costs qualify as investments? Is it anything that goes into developing a property for these uses? What about "soft costs" such as design or development costs?

A: Under § 48C(b)(1), qualified investment is the basis of eligible property placed in service during the taxable year. Eligible property is property (a) that is necessary for the production of specified energy property, (b) that is tangible personal property, or other tangible property, if such property is used as an integral part of the facility, and (c) with respect to which depreciation (or amortization) is allowable. The eligible property does not include a building or its structural components. The basis of eligible property would include the purchase cost of the property and any other costs that are allowed to be included in the basis under IRC § 263 or 263A.

Q11: Is the tax credit under the 48C Program transferable? If not, could the credit be used in subsequent tax years when the applicant has a tax liability?

A: Tax credit is not transferable. The credit is available only to the taxpayers that entered into an agreement with the IRS, provided all other requirements have been met. However, any unused credit may be carried back one year and carried forward 20 years under IRC § 39.

Q12: Could someone apply to receive the 48C tax credit if they already received a grant/loan under other ARRA manufacturing-related funding opportunities (ATVM or batteries solicitation)? Or would restrictions pertaining to "double dipping" apply?

A: Under section 5.04 of the notice, 48C credit will not be allocated to a project with respect to any qualified investment for which a credit is allowed under § 48, 48A, or 48B, or for which a payment is received under §1603 of the American Recovery and Reinvestment Tax Act of 2009.

Q13: Does taxpayer reduce its tax basis in the facility by 100% of the credit or 50% of the credit?

A: 100%. See IRC § 50(c).

Q14: Can eligible property be used equipment?

A: Yes, but the property must be placed in service as defined under section 4.04 of the notice.

Q 15. Can a biorefinery or biofuel be eligible to receive the tax credit?

A. No. The definition of “eligible property” excludes buildings and structural components, and specifies that property must be tangible personal property or other tangible property, not real estate.

As a result of being excluded for the definition of “eligible property” a biorefinery cannot be a “qualifying advanced energy project.”

A “qualifying advanced energy project” is limited, in part, to property used in the refining or blending of renewable transportation fuel, as opposed to the fuel itself. Therefore, biofuel is not eligible for the tax credit.

Q 16.

Which application submittals, i.e. preliminary, final, and certification, need to have an applicants signature and in what form?

A. A signature is not required for submitting the Preliminary Application, however an applicant signature (electronic or hardcopy) is required for submitting the Final Application.

The Guidance in the Notice i.e. Sections 7 and 8 should be followed (including signature and penalty of perjury sections) after IRS selection for submitting a certification application to the IRS.

Q. 17: Which submissions does an applicant have to comply with the “signature” requirement in section 8.01 of Notice 2009-72?

A. 17: The applicant needs to comply with the signature requirement for information submitted to the IRS under section 6.03 (application for § 48C certification) and section 7 (documentation establishing that the requirements of certification have been met) of the Notice. An electronic signature is required for the Final Application submission also.

Q. 18: Could an S-Corp apply for the advanced energy project tax credit?

A. 18: Yes.

Q. 19: Could you define eligible U.S. taxpayer? Does this only include companies that currently have tax liabilities?

A. 19: The credit may be available to any taxpayer whose qualifying project is located in the U.S. The taxpayer need not have a tax liability at the time it submits application for § 48C certification. If the taxpayer does not have a tax liability for the year in which the credit is available, he may carry forward the credit for 20 years under § 49 of the Internal Revenue Code.

Q. 20: Can the subject property be leased (under a 20 year lease) with an option to buy?

A. 20: This question is factual as it involves an analysis relating to a lease vs. a financing transaction. For further information, see, for example, § 50(d)(5) of the Internal Revenue Code.

Q. 21: How should an applicant estimate the basis of qualified investment?

A. 21: The qualified investment is the basis of eligible property (as defined in § 48C(c)(2) and section 3.03 of the Notice) placed in service by the taxpayer during such taxable year which is part of a qualifying advanced energy project. In general, the basis of the property includes the purchase cost of the property and any other costs that are allowed to be included in basis pursuant to §§ 263 and 263A of the Internal Revenue Code.

Q. 22: When is the application for § 48C certification due to the IRS?

A. 22: December 16, 2009. See section 5.02(5) of the Notice.

Q. 23: What does "SAEP" on page 61 of the Notice mean?

A. 23: SAEP stands for Specified Advanced Energy Property. See section E of Appendix B of the Notice.

Q. 24: Does a transfer of stock in a disregarded entity owned by a foreign corporation to a U.S. subsidiary owned by the same foreign corporation trigger the successor in interest provisions of the Notice?

A. 24: Yes.

Q. 25: Is anyone at DOE available to answer questions by telephone?

A 25: No, please submit your questions via email.

Q. 26: Are foreign firms eligible for the tax credit (as long as the manufacturing facility is based in the US)?

A. 26: Yes.

Q. 27: Is this a refundable credit?

A. 27: No.

Q .28: Will recipients have any reporting requirements after receiving the tax credit?

A. 28: Yes. See, sections 6 and 7 of the Notice for the requirements of § 48C Certification by the Internal Revenue Service.