Lexis Explanation IRC Sec. 48C(d)

LexisNexis Explanation

IRC § 48C(d)
Qualifying Advanced Energy Project Credit
Qualifying Advanced Energy Project Program

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Lexis Explanation IRC Sec. **48C(d)**

The *Energy Policy Tax Incentives Act of 2005*[1] added IRC Section 48C, which provides a credit to taxpayers who invest in qualified property that is used in a qualifying advanced energy project.

IRC Section 48C(a) provides that for purposes of IRC Section 46 (pertaining to the amount of the investment credit) the qualified investment credit for any taxable year is an amount equal to 30 percent of the qualified investment for such taxable year with respect to any qualifying advanced energy project of the taxpayer.

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Reallocation of credits is provided for in IRC Section **48C(d)**(4), which provides that if the Secretary determines that credits under Section 48C are available for reallocation pursuant to the requirements set forth in Section 48C(2), the Secretary is authorized to conduct an additional program for applications for certification.[12]

IRC Section **48C(d)**(5) provides for disclosure of allocations. Section **48C(d)**(5) provides that the Secretary shall, upon making a certification under IRC Section **48C(d)**, publicly disclose the identity of the applicant and the amount of the credit with respect to such applicant.[1]

On August 13, 2009, the IRS issued Notice 2009-72 establishing the qualifying advanced energy project program pursuant to IRC Section **48C(d)**.[14] The notice also announces an initial allocation round of the qualifying advanced energy project credit under the program. The notice states that the purpose of the program "is to encourage taxpayers to re-equip, expand or establish manufacturing facilities for the production of certain energy related property."

Section 3 of Notice 2009-72 provides that the Secretary of the Treasury (or a delegate), in consultation with the Secretary of Energy shall establish the program "to consider and issue certifications for qualified investments eligible for the credit to qualifying advanced energy project sponsors."

Section 4 of Notice 2009-72 provides definitions for purposes of IRC Section 48C and the notice.

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Sections 5 through 12 of the notice set forth rules under which the Treasury Department and the IRS establish the qualifying advanced energy project program.

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Section 5.02 of Notice 2009-72 outlines the program specifications. Section 5.02(1) provides that the amount of the qualifying advanced energy project credit allocated to a qualifying advanced energy project is determined by the Service at the time the Service accepts the application for that project in accordance with the Section 5.02(8) of the notice.[28] Section 5.02(2) provides that the DOE recommendations will include a ranking of projects in descending order (*i.e.*, first, second, third, etc.); that the highest-ranking project (the first project) will be allocated the full amount of credit requested before any credit is allocated to a lower-ranked project; and that the amount of credit allocated to a project will reduce the amount of credit available to lower-ranked projects. Section 5.02(2) further provides that the same process will apply to the second and lower-ranked projects until the amount available for allocation is exhausted and that projects will be ranked by the DOE only to the extent necessary to exhaust the amount that is available for allocation.