

Part III - Administrative, Procedural, and Miscellaneous

Nonbusiness Energy Property

Notice 2009-53

SECTION 1. PURPOSE

This notice updates interim guidance, pending the issuance of regulations, relating to the credit for nonbusiness energy property under § 25C of the Internal Revenue Code. Specifically, this notice provides procedures that manufacturers may follow to certify property as either eligible building envelope components or qualified energy property, as well as guidance regarding the conditions under which taxpayers seeking to claim the § 25C credit may rely on a manufacturer's certification.

Additionally, this notice provides guidance about changes made to the § 25C credit by the Energy Improvement and Extension Act of 2008 (EIEA), Division B of Pub. L. No. 110-343, 122 Stat. 3765 (2008), and the American Recovery and Reinvestment Tax Act of 2009 (ARRTA), Division B of Pub. L. No. 111-5, 123 Stat. 115 (2009). This notice also provides transition rules for certain nonbusiness energy property acquired before June 1, 2009, and for certain nonbusiness energy property placed in service after December 31, 2008. The Internal Revenue Service (Service) and the Treasury Department expect that the regulations will incorporate the rules set forth in this notice.

SECTION 2. BACKGROUND

.01 *Energy Policy Act of 2005*. Section 1333 of the Energy Policy Act of 2005 (EPACT), Pub. L. No. 109-58, 119 Stat. 594 (2005), added § 25C to the Internal Revenue Code. Section 25C, as added by EPACT, provided a credit for amounts paid or incurred for qualified energy efficiency improvements installed during a taxable year and for residential energy property expenditures paid or incurred by a taxpayer during the taxable year. Section 25C, as added by EPACT and as modified by EIEA and ARRTA, defines qualified energy efficiency improvements as building envelope components that satisfy specified efficiency standards (eligible building envelope components) and the requirements listed in section 2.05(1) of this notice and defines residential energy property expenditures as expenditures for energy property that satisfies specified energy standards (qualified energy property) and the requirements listed in section 2.05(1) of this notice. The credit was available for property placed in service after December 31, 2005, and before January 1, 2008. Notice 2006-26, 2006-1 C.B. 622, as clarified by Notice 2006-53, 2006-1 C.B. 622, provides guidance on the credit under § 25C for property placed in service after December 31, 2005, and before January 1, 2008.

.02 *EIEA*. Section 302 of EIEA reinstated and modified the § 25C credit for property placed in service during 2009. Neither EPACT nor EIEA provided any credit under § 25C for property placed in service during 2008.

Section 25C, as amended by EIEA, provided a credit against tax for the taxable year in an amount equal to the sum of--

(1) Ten percent of the expenditures paid or incurred by the taxpayer for qualified energy efficiency improvements installed during the taxable year, and

(2) The amount of expenditures for residential energy property.

The maximum amount of credit allowed was \$50 for any advanced main air circulating fan; \$150 for any qualified natural gas, propane, or oil furnace or hot water boiler; and \$300 for any item of energy-efficient building property. The maximum amount of the credit allowable to a taxpayer under § 25C for all taxable years was \$500 (\$200 in the case of amounts paid or incurred for exterior windows (including storm windows and skylights)).

.03 *EIEA Energy Efficiency Standards*. Section 25C, as amended by EIEA, and Notice 2006-26, as clarified by Notice 2006-53, allowed a credit with respect to the following property:

(1) *Eligible Building Envelope Components*.

(a) An insulation material or system (including any vapor retarder or seal to limit infiltration) that--

(i) Is specifically and primarily designed (within the meaning of section 4.03 of this notice) to reduce heat loss or gain of a dwelling unit when installed in or on the dwelling unit; and

(ii) May be taken into account in determining whether the building thermal envelope requirements established by the International Energy Conservation Code (IECC) are satisfied.

(b) An exterior window, skylight, or door (other than a storm window or storm

door) that meets or exceeds the prescriptive criteria established by the IECC for the climate zone in which the window, skylight, or door is installed.

(c) A storm window that, in combination with the exterior window over which it is installed, meets or exceeds the prescriptive criteria established by the IECC for the climate zone in which such storm window is installed.

(d) A storm door that, in combination with a wood door that is assigned a default U factor by the IECC, does not exceed the default U factor requirement assigned to such combination by the IECC.

(e) Any metal roof that--

(i) has appropriate pigmented coatings that are specifically and primarily designed to reduce the heat gain of a dwelling unit when installed on the dwelling unit, and

(ii) meets or exceeds either of the applicable Energy Star program requirements. The applicable Energy Star program requirements for this purpose are those in effect at the time the expenditures for the roof are actually paid or incurred and those in effect at the time the expenditures are treated as made under § 25D(e)(8). (See § 25C(e)(1), which requires the application of rules similar to those of § 25D(e)(8) (relating to the time at which expenditures are deemed made for purposes of the credit under § 25D)).

(f) Any asphalt roof that--

(i) has appropriate cooling granules that are specifically and primarily designed to reduce the heat gain of a dwelling unit when installed on the dwelling unit, and

(ii) meets or exceeds either of the applicable Energy Star program requirements

(within the meaning of section 2.03(1)(e)(ii) of this notice).

(2) *Qualified Energy Property.*

(a) An electric heat pump water heater that yields an energy factor of at least 2.0 in the standard Department of Energy (DOE) test procedure.

(b) An electric heat pump that has a heating seasonal performance factor (HSPF) of at least 9, a seasonal energy efficiency ratio (SEER) of at least 15, and an energy efficiency ratio (EER) of at least 13.

(c) A central air conditioner that achieves the highest efficiency tier that has been established by the Consortium for Energy Efficiency, and is in effect on January 1, 2006.

(d) A natural gas, propane, or oil water heater that has an energy factor of at least 0.80 or a thermal efficiency of at least 90 percent.

(e) A stove that uses the burning of biomass fuel to heat a dwelling unit or to heat water for use in such a dwelling unit, and that has a thermal efficiency rating of at least 75 percent as measured using a lower heating value.

(f) A natural gas, propane, or oil furnace or hot water boiler that achieves an annual fuel utilization efficiency rate of not less than 95.

(g) A fan that is used in a natural gas, propane, or oil furnace and has an annual electricity use of no more than two percent of the total annual site energy use of the furnace (as determined in the standard DOE test procedure).

.04 *ARRTA*. Section 1121 of *ARRTA* modified the credit under § 25C for amounts paid or incurred in taxable years beginning after December 31, 2008, and

extended the credit to apply to property that is placed in service in 2009 and 2010.

Section 25C, as amended by ARRTA--

(1) Provides, with respect to property placed in service in 2009 and 2010, a credit against the tax imposed for the taxable year in an amount equal to 30 percent of the sum of--

(a) The amount paid or incurred by the taxpayer during the taxable year for qualified energy efficiency improvements, and

(b) The amount paid or incurred by the taxpayer during the taxable year for residential energy property expenditures;

(2) Limits the cumulative total of credits allowed for taxable years beginning in 2009 and 2010 to \$1,500 per taxpayer (credits allowed in, and unused credit limitations from, prior years are disregarded in applying this limitation); and

(3) Applies new energy efficiency standards for certain types of property (see sections 4.01 and 5.01 of this notice).

.05 *General Provisions.* Under all three of the acts, EPACT, EIEA, and ARRTA, the following provisions apply:

(1) *Requirements to Claim the Credit.* A taxpayer may claim a credit under § 25C with respect to amounts paid or incurred for an item of property only if each of the following requirements is satisfied:

(a) The item is installed in or on a dwelling unit located in the United States and, at the time of installation, the dwelling unit is owned and used by the taxpayer as the taxpayer's principal residence (within the meaning of § 121). Thus, the credit is only

available for existing homes. See § 45L for the credit applicable to new homes.

(b) The original use of the item commences with the taxpayer.

(c) In the case of a building envelope component described in section 2.03(1) or 4.01 of this notice, the component reasonably can be expected to remain in use for at least five years. For this purpose, a component will be treated as reasonably expected to remain in use for at least five years if the manufacturer offers, at no extra charge, at least a two-year warranty providing for repair or replacement of the component in the event of a defect in materials or workmanship. If the manufacturer does not offer such a warranty, all relevant facts and circumstances are taken into account in determining whether the component reasonably can be expected to remain in use for at least five years.

(2) *Time of Expenditure.* The credit is allowed for amounts paid or incurred by the taxpayer during the taxable year. Section 25C(e)(1) incorporates § 25D(e)(8), relating to the time expenditures are treated as made. Accordingly, except as provided in section 2.03(1)(e) and (f) of this notice, expenditures will be treated as made for purposes of § 25C when the original installation of the property is complete or, in the case of reconstruction, when the original use of the reconstructed property begins.

SECTION 3. REFERENCES TO THE INTERNATIONAL ENERGY CONSERVATION CODE

Manufacturers and taxpayers may treat any reference in this notice to the International Energy Conservation Code (IECC) as a reference to (1) the 2001 Supplement of the 2000 International Energy Conservation Code, (2) the 2004

Supplement of the 2003 International Energy Conservation Code, or (3) the 2009 International Energy Conservation Code (2009 IECC). However, a reference to the 2009 IECC is a reference only to the 2009 International Energy Conservation Code.

SECTION 4. ELIGIBLE BUILDING ENVELOPE COMPONENTS

.01 Under ARRTA, an eligible building envelope component for a taxable year beginning after December 31, 2008, is a component that is placed in service on or before February 17, 2009, and is described in section 2.03(1) of this notice or a component that is placed in service after February 17, 2009, and is described below:

(1) *Insulation Material or System.* An insulation material or system (including any vapor retarder or seal to limit infiltration) that--

(a) Is specifically and primarily designed (within the meaning of section 4.03 of this notice) to reduce heat loss or gain of a dwelling unit when installed in or on the dwelling unit; and

(b) Meets the prescriptive criteria for such material or system established by the 2009 IECC, as such Code (including supplements) was in effect on February 17, 2009.

(2) *Exterior Window, Skylight, or Door.* An exterior window, skylight, or door (other than a storm window or storm door) that--

(a) Has a U factor and Solar Heat Gain Coefficient (SHGC) of 0.30 or below; and

(b) Meets the prescriptive criteria for such component established by the IECC.

(3) *Storm Window.* A storm window that, in combination with the exterior window over which it is installed--

(a) Has a U factor and SHGC of 0.30 or below; and

(b) Meets the prescriptive criteria for such component established by the IECC.

(4) *Storm Door*. A storm door that, in combination with the exterior door over which it is installed--

(a) Has a U factor and SHGC of 0.30 or below; and

(b) Meets the prescriptive criteria for such component established by the IECC.

(5) *Metal Roof*. Any metal roof described in section 2.03(1)(e) of this notice (ARRTA did not change the efficiency standard for a metal roof).

(6) *Asphalt Roof*. Any asphalt roof described in section 2.03(1)(f) of this notice (ARRTA did not change the efficiency standard for an asphalt roof).

.02 *Installation Costs*. With respect to eligible building envelope components, the credit is allowed only for amounts paid or incurred to purchase the components. The credit is not allowed for amounts paid or incurred for the onsite preparation, assembly, or original installation of the components.

.03 *Specifically and Primarily Designed*. A component is not specifically and primarily designed to reduce heat loss or gain of a dwelling unit if it provides structural support or a finished surface, as in the case of drywall or siding. In addition, a component is not specifically and primarily designed to reduce heat loss or gain of a dwelling unit if its principal purpose is to serve any function unrelated to the reduction of heat loss or gain. For purposes of the preceding sentence, the principal purpose of a component is to serve functions unrelated to the reduction of heat loss or gain if--

(1) Production costs attributable to features other than those that reduce heat loss or gain exceed production costs attributable to features that reduce heat loss or

gain; or

(2) The facts and circumstances otherwise establish that the component's principal purpose is to serve a function other than the reduction of heat loss or gain.

SECTION 5. QUALIFIED ENERGY PROPERTY

.01 Under ARRTA, qualified energy property for a taxable year beginning after December 31, 2008, is property that is placed in service on or before February 17, 2009, and is described in section 2.03(2) of this notice or property that is placed in service after February 17, 2009, and is described below:

(1) *Electric Heat Pump Water Heater.* An electric heat pump water heater described in section 2.03(2)(a) of this notice (ARRTA did not change the efficiency standard for an electric heat pump water heater).

(2) *Electric Heat Pump.* An electric heat pump that achieves the highest efficiency tier established by the Consortium for Energy Efficiency, as in effect on January 1, 2009.

(3) *Central Air Conditioner.* A central air conditioner that achieves the highest efficiency tier established by the Consortium for Energy Efficiency, as in effect on January 1, 2009.

(4) *Natural Gas, Propane, or Oil Water Heater.* A natural gas, propane, or oil water heater that has an energy factor of at least 0.82 or a thermal efficiency of at least 90 percent.

(5) *Biomass-Burning Stove.* A biomass-burning stove described in section 2.03(2)(e) of this notice (the retroactive clarifying change ARRTA made to the efficiency

standard for a stove that burns biomass is reflected in section 2.03(2)(e)).

(6) *Natural Gas Furnace.* A natural gas furnace described in section 2.03(2)(f) of this notice (ARRTA did not change the efficiency standard for a natural gas furnace).

(7) *Natural Gas Hot Water Boiler.* A natural gas hot water boiler that achieves an annual fuel utilization efficiency rate of not less than 90.

(8) *Propane Furnace.* A propane furnace described in section 2.03(2)(f) of this notice (ARRTA did not change the efficiency standard for a propane furnace).

(9) *Propane Hot Water Boiler.* A propane hot water boiler that achieves an annual fuel utilization efficiency rate of not less than 90.

(10) *Oil Furnace.* An oil furnace that achieves an annual fuel utilization efficiency rate of not less than 90.

(11) *Oil Hot Water Boiler.* An oil hot water boiler that achieves an annual fuel utilization efficiency rate of not less than 90.

(12) *Advanced Main Air Circulating Fan.* A fan described in section 2.03(2)(g) of this notice (ARRTA did not change the efficiency standard for a fan).

.02 *Installation Costs.* For qualified energy property, the credit is allowed only for amounts paid or incurred to purchase qualified energy property and for expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property.

.03 *Natural Gas, Propane, or Oil Furnace with an Advanced Main Air Circulating Fan.* If a natural gas, propane, or oil furnace is qualified energy property, the entire amount paid or incurred to purchase and install the furnace, including any costs

attributable to the furnace's main air circulating fan, are taken into account in determining the amount of the credit under § 25C. If the furnace is not qualified energy property, but the furnace's main air circulating fan is qualified energy property, only the amount paid or incurred to purchase and install the fan are taken into account in determining the amount of the credit under § 25C. In such a case--

(1) The amount paid or incurred to purchase and install the main air circulating fan may be determined by any method that reasonably allocates costs between the fan and other components of the furnace;

(2) The manufacturer of the furnace may determine, using any reasonable method, the percentage of the cost of the furnace that is allocable to the fan and inform taxpayers of the percentage in the certification it provides under section 6 of this notice; and

(3) A taxpayer may treat this percentage of the total amount paid or incurred to purchase and install the furnace as the amount paid or incurred to purchase and install the advanced main air circulating fan.

.04 Geothermal Heat Pump Property. The credit under § 25D for geothermal heat pump property expenditures in taxable years beginning after December 31, 2007, is described in Notice 2009-41, 2009-19 I.R.B. 933.

SECTION 6. MANUFACTURER'S CERTIFICATION

.01 Requirements Applicable to Manufacturer. The manufacturer of a building envelope component or energy property may certify to a taxpayer that the component is an eligible building envelope component or that the energy property is qualified energy

property by providing the taxpayer with a certification statement that satisfies the requirements of sections 6.04, 6.05 and 6.06 of this notice. The certification statement may be provided by including a written copy of the statement with the packaging of the component or property, in printable form on the manufacturer's website, or in any other manner that will permit the taxpayer to retain the certification statement for tax recordkeeping purposes.

.02 Taxpayer Reliance. Except as provided in sections 6.03 and 6.08 of this notice, a taxpayer may rely on a manufacturer's certification that a building envelope component is an eligible building envelope component or that energy property is qualified energy property. A taxpayer is not required to attach the certification statement to the return on which the credit is claimed. However, § 1.6001-1(a) of the Income Tax Regulations requires that a taxpayer maintain such books and records as are sufficient to establish the entitlement to, and amount of, any credit claimed by the taxpayer. Accordingly, a taxpayer claiming a credit for an eligible building envelope component or qualified energy property should retain the certification statement as part of the taxpayer's records for purposes of § 1.6001-1(a).

.03 Reliance Permitted Only for Installation Consistent with Certification. A taxpayer may rely on a manufacturer's certification in the case of a building envelope component only if the building envelope component is installed in a manner that is consistent with the manufacturer's certification. For example, in the case of a storm window (or door), a taxpayer may rely on the manufacturer's certification only if the component is installed over an exterior window (or door) of a class identified in the

certification statement as one which in combination with the storm window (or door) has a U factor and SHGC of 0.30 or below.

.04 Content of Manufacturer's Certification; Required Information. A

manufacturer's certification must contain the following information:

(1) The name and address of the manufacturer.

(2) Identification of the class of eligible building envelope component as listed in section 4.01 of this notice or the class of qualified energy property as listed in section 5.01 of this notice in which the component or property is included.

(3) The make, model number, and any other appropriate identifiers of the component or property.

(4) A statement that the component is an eligible building envelope component as defined in section 4.01 of this notice or the property is qualified energy property as defined in section 5.01 of this notice. In the case of a certification provided after June 1, 2009, this statement may be provided only for components that are eligible building envelope components and property that is qualified energy property under the rules applicable to components and property placed in service after February 17, 2009.

.05 Content of Manufacturer's Certification; Specific Information. A

manufacturer's certification statement must contain any of the following statements that are applicable:

(1) In the case of an exterior window, skylight, or door (other than a storm window or storm door), a statement that the exterior window, skylight, or door has a U factor and SHGC of 0.30 or below.

(2) In the case of a storm window, the classes of exterior window (e.g., single pane; double pane, clear glass; double pane, Low-E coating) over which the storm window may be installed and that, in combination with the storm window, will have a U factor and SHGC of 0.30 or below.

(3) In the case of a storm door, the classes of exterior door (e.g., 1-3/4" insulated steel, 50 percent or less glazing, double pane, clear glass) over which the storm door may be installed and that, in combination with the storm door, will have a U factor and SHGC of 0.30 or below.

.06 Content of Manufacturer's Certification; Required Declaration.

A manufacturer's certification statement must contain a declaration, signed by a person currently authorized to bind the manufacturer in these matters, in the following form:

"Under penalties of perjury, I declare that I have examined this certification statement, and to the best of my knowledge and belief, the facts are true, correct, and complete."

.07 Manufacturer's Records. A manufacturer that certifies to a taxpayer that a component is an eligible building envelope component or that property is qualified energy property must retain in its records documentation establishing that the component or property satisfies the applicable conditions of section 4.01 or 5.01 of this notice. In the case of an exterior window, the manufacturer must retain a record of its National Fenestration Rating Council rating. If a manufacturer certifies the percentage of the cost of the furnace allocable to an advanced main air circulating fan, the

manufacturer must maintain in its records the basis for such allocation. The manufacturer must, upon request, make such documentation available for inspection by the Service.

.08 Effect of Erroneous Certification or Failure to Satisfy Documentation

Requirements. The Service may, upon examination (and after any appropriate consultation with the DOE or Environmental Protection Agency (EPA)), determine that a component that has been certified under this section is not an eligible building envelope component or that property that has been certified under this section is not qualified energy property. In that event, or if the manufacturer of the component or property fails to satisfy the requirements relating to documentation in section 6.07 of this notice, the manufacturer's right to provide a certification on which future purchasers of the component or property can rely will be withdrawn, and taxpayers purchasing the component or property after the date on which the Service publishes an announcement of the withdrawal may not rely on the manufacturer's certification. Taxpayers may continue to rely on the certification for a component or property purchased on or before the date on which the announcement of the withdrawal is published (including in cases in which the component or property is not installed and the credit is not claimed until after the announcement of the withdrawal is published). Manufacturers are reminded that an erroneous certification statement may result in the imposition of penalties--

(1) Under § 7206 for fraud and making false statements; and

(2) Under § 6701 for aiding and abetting an understatement of tax liability (in the amount of \$1,000 per return on which a credit is claimed in reliance on the certification).

.09 Availability of Certification Information. Manufacturers are encouraged to provide a listing of eligible building envelope components and qualified energy property and applicable certification information on their websites to facilitate taxpayer identification of qualified components and energy property.

.10 Special Rule for Energy Star. The Energy Star label designates that the product has met energy efficiency guidelines set by the EPA and the DOE. Not all Energy Star labeled building envelope components qualify for the tax credit under § 25C. The component must meet the definition of an eligible building envelope component in § 25C. Taxpayers can no longer rely on an Energy Star label in claiming the § 25C credit for exterior windows and skylights placed in service after the enactment of the ARRTA. Similarly, an Energy Star label does not establish that a product is qualified energy property. The product must meet the definition of qualified energy property in § 25C.

SECTION 7. EFFECTIVE DATES AND TRANSITION RULES.

.01 For amounts that are paid or incurred in taxable years beginning after December 31, 2008, with respect to property placed in service in calendar years 2009 and 2010, including amounts paid or incurred for property placed in service before February 18, 2009, the credit is computed in accordance with sections 2.04(1) and (2) of this notice.

.02 The efficiency standards listed for EIEA in section 2.03 of this notice apply to property placed in service before February 18, 2009, and the efficiency standards listed for ARRTA in sections 4.01 and 5.01 of this notice apply to property placed in service

after February 17, 2009.

.03 In the case of amounts paid or incurred before June 1, 2009, for property placed in service after February 17, 2009, taxpayers may rely on:

(1) An Energy Star label for exterior windows and skylights, rather than on a manufacturer's certification statement, in claiming the § 25C credit, if the window or skylight is installed in the region identified on the label;

(2) A manufacturer's certification issued before February 18, 2009, that is made in accordance with Notice 2006-26, as clarified by Notice 2006-53; or

(3) A manufacturer's certification made in accordance with the procedures of Notice 2006-26, as clarified by Notice 2006-53, for certifications issued after February 17, 2009, provided that the manufacturer's certification statement clearly indicates that the item complies with the efficiency standards contained in ARRTA.

.04 For amounts that are paid or incurred in taxable years beginning before December 31, 2008, with respect to property placed in service in calendar year 2009, the credit is computed in accordance with section 2.02 of this notice.

SECTION 8. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1989.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this notice are in section 6. This information is required to be collected and retained in order to ensure that property meets the requirements for the nonbusiness energy credit under § 25C. This information will be used to determine whether the property for which manufacturers provide certifications is property that qualifies for the credit. The collection of information is required to obtain a benefit from manufacturers' certification statements that property qualifies for the credit. The likely respondents are corporations, partnerships, and individuals.

The estimated total annual reporting burden is 350 hours.

The estimated annual burden per respondent varies from 2 hours to 3 hours, depending on individual circumstances, with an estimated average burden of 2.5 hours to complete the requests for certification required under this notice. The estimated number of respondents is 140.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 9. EFFECT ON OTHER DOCUMENTS

This notice supersedes Notice 2006-26, as clarified by Notice 2006-53, which was modified by Notice 2006-71, 2006-2 C.B. 316.

SECTION 10. DRAFTING INFORMATION

The principal author of this notice is Martha S. McRee of the Office of Associate

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