

FEDERAL TAX WEEKLY

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Final Regs Define "Energy Property" for Energy Investment Credit

T.D. 10015

Final regulations defining “energy property” for purposes of the energy investment credit generally apply with respect to property placed in service during a tax year beginning after they are published in the Federal Register, which is scheduled for December 12.

The final regs generally adopt proposed regs issued on November 22, 2023 (INBORN REG-132569-17) with some minor modifications.

Hydrogen Energy Storage Property

The Proposed Regulations required that hydrogen energy storage property store hydrogen solely used for the production of energy and not for other purposes such as for the production of end products like fertilizer. However, the IRS recognizes that the statute does not include that requirement. Accordingly, the final regulations do not adopt the requirement that hydrogen energy storage property store hydrogen that is solely used for the production of energy and not for other purposes.

The final regulations also provide that property that is an integral part of hydrogen energy storage property includes, but is not limited to, hydrogen liquefaction equipment and gathering and distribution lines within a hydrogen energy storage property. However, the IRS declined to adopt comments requesting that the final regulations provide that chemical storage, that is, equipment used to store hydrogen carriers (such as ammonia and methanol), is hydrogen energy storage property.

Thermal Energy Storage Property

To clarify the proposed definition of “thermal energy storage property,” the final regs provide that such property does not include property that transforms other forms of energy into heat in the first instance. The final regulations also clarify the requirements for property that removes heat from, or adds heat to, a storage medium for subsequent use. Under a safe harbor, thermal energy storage property satisfies this requirement if it can store energy that is sufficient to provide heating or cooling of the interior of a residential or commercial building for at least one hour. The final regs also include additional storage methods and clarify rules for property that includes a heat pump system.

Biogas Property

The final regulations modify several elements of the rules governing biogas property. Gas upgrading equipment is included in cleaning and conditioning property. The final regs

clarify that property that is an integral part of qualified biogas property includes but is not limited to a waste feedstock collection system, landfill gas collection system, and mixing and pumping equipment. While a qualified biogas property generally may not capture biogas for disposal via combustion, combustion in the form of flaring will not disqualify a biogas property if the primary purpose of the property is sale or productive use of biogas and any flaring complies with all relevant laws and regulations. The methane content requirement is measured at the point at which the biogas exits the qualified biogas property.

Unit of Energy Property

To clarify how the definition of a unit of energy property is applied to solar energy property, the final regs update an example to illustrate that the unit of energy property is all the solar panels that are connected to a common inverter, which would be considered an integral part of the energy property, or connected to a common electrical

load, if a common inverter does not exist. Accordingly, a large, ground-mounted solar energy property may comprise one or more units of energy property depending upon the number of inverters. For rooftop solar energy property, all components of property that are installed on a single rooftop are considered a single unit of energy property.

Energy Projects

The final regs modify the definition of an energy project to provide more flexibility. However, the IRS declined to adopt a simple facts-and-circumstances analysis so an energy project must still satisfy particular and specific factors.

IRS Requests Applications for 2025 ETAAC Membership

The IRS is accepting applications for the Electronic Tax Administration Advisory Committee (ETAAC) through January 31, 2025. The IRS is looking for qualified individuals who will serve three-year terms beginning in September 2025. Applicants should have experience in such areas as state tax administration, cybersecurity and information security, tax software development, tax preparation, payroll and tax financial product processing, systems management and improvement, and implementation of customer service initiative. Applicants should complete the ETAAC application and include a statement of interest and a resume. Applicants should describe and document their qualifications, past and current affiliations, and dealings with cybersecurity and electronic tax administration. Questions about the ETAAC and the application process can be emailed to publicliaison@irs.gov.

IR-2024-305

Proposed Regulations Address PTEP and Related Basis Adjustments

Proposed Regulations, NPRM REG-105479-18

The Treasury and IRS have issued proposed regulations that address previously taxed earnings and profits (PTEP) of foreign corporations and related basis adjustments.

The current regulations that address PTEP and basis adjustments were issued in 1965 and do not reflect certain statutory changes, including the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97). TCJA had a significant impact on PTEP and how it operates in the U.S. tax system. Additionally, the current regulations do not discuss the

PTEP rules and basis adjustments with respect to domestic partnerships or their partners or with respect to a consolidated group or its members.

The proposed regulations address core aspects of the PTEP system, including the rules under Code Sec. 959 (PTEP rules) and Code Sec. 961 (basis adjustments). The proposed regulations account for new provisions and amendments under TCJA and implement Notice 88-71, 1988-2 CB 364, which provides guidance with respect to foreign currency gain or loss with respect to PTEP and Notice 2019-01,

IRB 2019-02, 275, which describes rules for maintaining PTEP accounts and other aspects relating to the operation of Code Sec. 959.

Background

Under the subpart F rules, a U.S. shareholder of a controlled foreign corporation (CFC) is generally currently taxed on certain income earned by the CFC under Code Sec. 951(a)(1)(A), as well as on certain earnings invested in U.S. property

REFERENCE KEY

USTC references are to **U.S. Tax Cases**
Dec references are to **Tax Court Reports**

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under Code Sec. 951(a)(1)(B) and Code Sec. 956. To prevent double taxation, earnings and profits of the foreign corporation that are attributable to the inclusion are excluded from gross income when actually distributed. The Code Sec. 951(a)(1)(A) inclusion amount for this purpose includes amounts included in income as dividends under Code Sec. 1248(a), (e) and (f).

Additional income inclusions that result from changes in the TCJA are found in:

- Code Sec. 245A(e)(2) (rules for the participation dividends-received deduction);
- Code Sec. 951A(f)(1) (rules for global intangible low-taxed income (GILTI));
- Code Sec. 964(e)(4) (rules coordinating the sale of CFC stock and dividends received deduction); and
- Code Sec. 965(a), (b)(4)(A) (rules for the transition tax).

Code Sec. 959 prevents double taxation by excluding PTEP from gross income of U.S. persons and CFCs.

Code Sec. 961 provides for basis increases to reflect amounts included in gross income under the subpart F rules and basis reductions and gain recognition to reflect distributions of PTEP.

Foreign currency gain or loss under Code Sec. 986(c) may be required upon the distribution of PTEP if there is movement in the exchange rate between the date of the income inclusion and the distribution.

Proposed PTEP Rules

The proposed regulations under Code Sec. 959 provide rules for PTEP accounting, both at the shareholder-level and the foreign-corporation level, exclusions from gross income and related determinations and adjustments.

Annual PTEP accounts track a foreign corporation's PTEP with respect to a covered shareholder and represent PTEP distributed exclusively to the shareholder on any stock of the foreign corporation.

A covered shareholder is a U.S. person, other than a domestic partnership. A covered shareholder does not include a domestic partnership because a domestic partnership is treated as an aggregate of its partners in determining stock ownership.

PTEP is tracked on an annual basis and by Code Sec. 904 category. PTEP within an annual PTEP account is maintained in the foreign corporation's functional currency and is assigned among ten PTEP groups and two subgroups.

Dollar basis pools track the basis in U.S. dollars of a foreign corporation's PTEP with respect to a covered shareholder and the basis is used to determine foreign currency gain or loss.

Foreign corporation-level accounts track a foreign corporation's PTEP and associated foreign income taxes. A corporate PTEP account and corporate PTEP tax pool each relate to a single covered shareholder, and PTEP or foreign income taxes within such an account are assigned to Code Sec. 904 categories and PTEP groups.

The proposed regulations address adjustments to a covered shareholder's annual PTEP accounts, dollar basis pools, and PTEP tax pools with respect to the foreign corporation. The adjustments reflect income inclusions and transactions for the tax year of the foreign corporation. The adjustments preserve the character of the foreign corporation's PTEP with respect to the covered shareholder.

Rules are also provided regarding exclusions from gross income for PTEP that is distributed to a covered shareholder or CFC. A distribution must be a covered distribution of PTEP. A covered distribution is generally any distribution made by a foreign corporation with respect to its stock to the extent it is a dividend, as defined in Code Sec. 316.

The proposed regulations also provide rules:

- that apply a pro rata approach for determining the dollar basis and associated foreign income taxes of PTEP distributed in a covered shareholder's share of a covered distribution;
- for the exclusion of PTEP that would otherwise be included under Code Sec. 951(a)(1)(B);
- for the application of Reg. §1.861-20 to allocate and apportion current year taxes to PTEP; and
- for successor transactions.

Proposed Basis Adjustment Rules

The proposed regulations adjust the basis of the stock in the foreign corporation owned by a covered shareholder, and the basis in any items of property through which the covered shareholder owns stock of the foreign corporation. The adjustment reflects the foreign corporation's PTEP with respect to the covered shareholder. For example, the adjustments reflect income inclusions giving rise to PTEP or distributions of PTEP. The adjustments are specific to a share of stock or other item of property.

The timing of the basis adjustments generally matches the timing of related adjustments to annual PTEP accounts.

The proposed rules provide rules for different types of basis, including the tax consequences of the basis.

The adjustments also apply at the partner level to covered shareholders that own foreign corporation stock through one or more domestic or foreign partnerships.

Additional Proposed Rules

Additional proposed regulations:

- describe the circumstances under which a covered shareholder recognizes foreign currency gain or loss under Code Sec. 986(c) with respect to PTEP and provides rules for determining the amount recognized;
- modify the deemed paid foreign tax credit regulations under Code Sec. 960 such that the modified rules will describe how deemed paid taxes are computed and will coordinate the deemed paid taxes rules with the proposed regulations on PTEP and basis adjustments;
- treat members of a consolidated group as a single shareholder for purposes of the PTEP rules; and
- provide a number of miscellaneous provisions.

Applicability Dates

The proposed regulations are generally proposed to apply to tax years of foreign corporations beginning on or after the

date the proposed regulations are finalized in a Treasury Decision, and to tax years of persons for which such tax years of foreign corporations are relevant.

Notwithstanding the general applicability date, portions of the proposed regulations under Code Sec. 959 relating to Notice 2019-01, IRB 2019-02, 275, would apply before the general applicability date to tax years of U.S. shareholders

(and successors in interest) ending after December 18, 2018, and tax years of foreign corporations ending with or within those tax years, as described in Notice 2019-01. Details on applying Notice 2019-01 are provided.

Taxpayers may choose to apply the proposed regulations in their entirety before the general applicability date if certain requirements are met.

Transition Rules

The proposed regulations also include transition rules under Code Sec. 959 for establishing and conforming accounts and rules under Code Sec. 961 for establishing derived basis and Code Sec. 961(c) basis. Transition rules also cover issues relating to domestic partnerships and S corporations.

Proposed Regulations Would Add Unmarked Emergency Vehicles to List of Qualified Nonpersonal Use Vehicles Exempt from Substantiation

Proposed Regulations, NPRM REG-106595-22

The IRS has released proposed regulations that would amend the list of “qualified nonpersonal vehicles” exempt from the IRC §274(d) substantiation requirements to include unmarked vehicles used by firefighters, members of rescue squads, or ambulance crews. The purpose of these amendments is to ensure that specially equipped unmarked vehicles are subject to the same tax treatment as other emergency vehicles used by first responders.

Qualified Nonpersonal Use Vehicles

IRC §274(d) requires that taxpayers satisfy additional substantiation requirements when claiming certain business deductions including the business use of an automobile or other means of transportation. A “qualified nonpersonal use vehicle” is any vehicle that, by reason of its nature, is not likely to be used more than a de minimis amount for personal purposes. A list of such vehicles is provided in Reg. §1.274-5(k)(2)(ii). Under the current regulations such vehicles include, in part: ambulances; clearly marked police, fire, public safety officer vehicles; and unmarked police vehicles.

Unmarked Emergency Vehicles

When Reg. §1.274-5(k) was adopted firefighters and rescue squad and ambulance

crew members used vehicles that had markings to indicate their status as emergency response vehicles. Though recently, as a response to an increase in incidents of vandalism and harassment, some municipalities have been providing unmarked vehicles to these first responders. These unmarked vehicles are typically equipped with special equipment such as lights and sirens, medical emergency equipment, communication radios, and personal protective equipment. Most fire and emergency response departments retain the title to these unmarked vehicles and have policies that limit the use of the vehicles for personal purposes.

Under the current regulations, fire and emergency response departments must substantiate all the time the first responders spend using these unmarked vehicles for work related purposes. Any personal use of these vehicles, no matter how minute, must be included in that employee’s income. However, the intent and use of these unmarked vehicles meets the definition of qualified nonpersonal vehicles provided in IRC §274(i).

Proposed Amendments

In addition to adding unmarked vehicles used by firefighters, members of rescue squads, or ambulance crews to the list of qualified nonpersonal use vehicles provided in Reg. §1.274-5(k)(2)(ii), the proposed regulations add Reg §1.274-5(k)(7) which defines the terms “unmarked firefighter, rescue squad or ambulance crew vehicles”,

“firefighter,” and “member of a rescue squad or ambulance crew.” The proposed regulations also provide conforming amendments to Reg. §§1.132-1(g) and 1.132-5(h)(1).

Applicability Date

These proposed regulations apply to tax years beginning on or after the date on which the final regulations are published in the Federal Register. However, taxpayers may rely on the guidance provided in the proposed regulations until that date.

Comments Requested

The IRS has requested comments on the proposed definitions of unmarked firefighter, rescue squad or ambulance crew vehicles, firefighter, and member of a rescue squad or ambulance crew. Specifically, the IRS is inquiring about the sufficiency of the definitions and whether they might lead to potential abuse.

Taxpayers may submit public comments electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (indicate IRS and REG-106595-22). Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section. Alternatively, comments may be mailed to CC:PA:01:PR (REG-106595-22), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

Applicable Dollar Amount for Health Insurance Plan Fees Announced

Notice 2024-83

The IRS has announced that the applicable dollar amount used to calculate the fees imposed by Code Secs. 4375 and 4376 for policy and plan years that end on or after October 1, 2024, and before October 1, 2025, is \$3.47. This figure is based on the percentage increase in the projected per capita amount of the National Health Expenditures published by HHS on June 10, 2024.

The fees, used to fund the Patient-Centered Outcomes Research Trust Fund

(PCORTF), are generally calculated by multiplying the average number of lives covered under the health insurance policy or self-insured health plan by the adjusted applicable dollar amount. The adjusted applicable dollar amount is the sum of:

- the applicable dollar amount for the policy year or plan year ending in the previous federal fiscal year; plus
- the amount equal to the product of the applicable dollar amount for the policy year or plan year ending in the previous federal fiscal year; and the

percentage increase in the projected per capita amount of the National Health Expenditures most recently released by the Department of Health and Human Services (HHS) before the beginning of the federal fiscal year (see Reg. §46.4375-1(c)(4) and Reg. §46.4376-1(c)(3)).

The applicable dollar amount for the previous year was \$3.22.

IRS Announces 2025 Grants for Tax Counseling for Elderly and Volunteer Income Tax Assistance Program

IR-2024-301

The IRS announced \$53 million in grants for the Tax Counseling for the Elderly (TCE) and Volunteer Income Tax Assistance (VITA) programs that provide free federal tax return preparation. The IRS provided tax law training, certification, and oversight to these organizations, assisting their efforts to prepare accurate returns.

Further, the TCE program, established in 1978, provides free tax counseling and federal return preparation for individuals aged 60 or older, with trained volunteers assisting at community locations nationwide. The VITA program, established in 1969, aids underserved communities with free tax return preparation and electronic filing. It expands services to low- and

moderate-income individuals and limited English-proficient taxpayers.

Additionally, the IRS awarded grants to 41 TCE and 315 VITA applicants and received 445 applications requesting over \$82.9 million in funding. For information on applying for the TCE or VITA programs, visit the TCE webpage or the VITA webpage. To volunteer with the IRS, visit the IRS Tax Volunteers.

IRS and Security Summit Recommend Joining IP PIN Program and Address Other Issues

IR-2024-300; IR-2024-302; IR-2024-303;
IR-2024-304; IR-2024-306; IR-2024-308

The IRS and the Security Summit partners encouraged taxpayers to join the Identity Protection Personal Identification Number (IP PIN) program at the start of the 2025 tax season. IP PINs are available to taxpayers with a Social Security number (SSN) or an Individual Taxpayer Identification Number (ITIN). To get one, taxpayers must create an IRS Online Account, which allows them to securely

access their tax and return information from previous years.

“This PIN isn’t just another number for taxpayers to memorize. In a sense, it’s a secret number between the taxpayer and the IRS that freezes out fraudsters and identity thieves looking to file bogus returns,” said IRS Commissioner Danny Werfel. “The PIN provides an extra layer of protection for people’s tax returns and a speedy refund,” he added.

The IP PIN program was the focus of the third day of National Tax Security

Awareness Week 2024, an annual event now in its ninth year. To avoid processing delays, taxpayers should enter their IP PIN on any electronic or paper return, including amended returns and returns for prior years. Finally, taxpayers were urged to always remain vigilant against fraud and identity theft. More information can be found <https://www.irs.gov/newsroom/national-tax-security-awareness-week-2024>.

The IRS and the Security Summit partners also addressed holiday scams, bad tax

advice on social media, fraudulent contribution tax schemes, updating digital security, and security plans.

IRS Warns Taxpayers of Holiday Scams

The IRS and its Security Summit partners warned taxpayers to remain vigilant during the holiday season, emphasizing cybersecurity as part of the 9th annual National Tax Security Awareness Week. Taxpayers should follow these tips:

- Shop only on secure websites with “https:” and a padlock icon in the browser window.
- Avoid shopping on unsecured public Wi-Fi networks.
- Keep security software updated on all devices.
- Assist family members, including young children and older adults, in securing their devices.
- Use anti-virus software with malware protection and enable firewalls.
- Create strong, unique passwords for online accounts.
- Opt for multi-factor authentication wherever possible.

IRS and Security Summit Partners Warn Against Bad Tax Advice on Social Media

The IRS and Security Summit partners issued a consumer alert regarding the increasing risk of misleading tax advice on social media, which caused people to file inaccurate tax returns. To avoid mistakes, taxpayers are advised to follow these guidelines:

- Avoid claiming false deductions promoted by certain advisors, such as “necessary expenses for the production of income” or “compensation for personal services actually rendered.”
- Carefully review your tax return and ensure you only claim credits you're legitimately entitled to.
- Taxpayers who have been misled should verify their eligibility for any claimed deductions.
- Before following tax advice from social media, consult a tax professional.

AFRs Issued For December 2024

Rev. Rul. 2024-26

The IRS has released the short-term, mid-term, and long-term applicable interest rates for December 2024.

Applicable Federal Rates (AFR) for December 2024

Short-Term	Annual	Semiannual	Quarterly	Monthly
AFR	4.30%	4.25%	4.23%	4.21%
110% AFR	4.73%	4.68%	4.65%	4.64%
120% AFR	5.17%	5.10%	5.07%	5.05%
130% AFR	5.61%	5.53%	5.49%	5.47%
Mid-Term				
AFR	4.18%	4.14%	4.12%	4.10%
110% AFR	4.60%	4.55%	4.52%	4.51%
120% AFR	5.03%	4.97%	4.94%	4.92%
130% AFR	5.45%	5.38%	5.34%	5.32%
150% AFR	6.31%	6.21%	6.16%	6.13%
175% AFR	7.38%	7.25%	7.19%	7.14%
Long-Term				
AFR	4.53%	4.48%	4.46%	4.44%
110% AFR	4.99%	4.93%	4.90%	4.88%
120% AFR	5.45%	5.38%	5.34%	5.32%
130% AFR	5.90%	5.82%	5.78%	5.75%

Adjusted AFRs for December 2024

	Annual	Semiannual	Quarterly	Monthly
Short-term adjusted AFR	3.26%	3.23%	3.22%	3.21%
Mid-term adjusted AFR	3.16%	3.14%	3.13%	3.12%
Long-term adjusted AFR	3.43%	3.40%	3.39%	3.38%

The Code Sec. 382 adjusted federal long-term rate is 3.43%; the long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months) is 3.43%; the Code Sec. 42(b)(1) appropriate percentages for the 70% and 30% present value low-income housing credit are 8.01% and 3.43%, respectively, however, under Code Sec. 42(b)(2), the appropriate percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%; and the Code Sec. 7520 AFR for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest is 5.0%.

- For accurate instructions on completing forms, refer to the forms repository on IRS.gov.

IRS Warns Taxpayers to Avoid Promoters of Fraudulent Charitable Contribution Tax Schemes

The IRS warned taxpayers to avoid promoters of fraudulent tax schemes involving donations

of ownership interests in closely held businesses, sometimes marketed as “Charitable LLCs.” Participating in an abusive scheme to reduce tax liability can result in assessment of the correct tax owed, penalties, interest and potentially fines and imprisonment. Charities also need to be careful they do not knowingly enable these schemes. These schemes typically encourage higher-income taxpayers to create limited liability companies (LLCs), put cash or other assets into the LLCs, then donate a

majority percentage of nonvoting, nonmanaging, membership units to a charity while the taxpayer maintains control of the voting units and reclaims the cash or asset(s) directly or indirectly for personal use.

Security Summit Urges Updating Digital Security to Prevent Identity Theft

The IRS, along with Security Summit partners, urged businesses and individual taxpayers to update their security measures and practices to protect against identity theft targeting financial data. The following steps are recommended to safeguard sensitive information:

- Set security software to update automatically.
- Back up important files.
- Use strong passwords and multi-factor authentication.
- Encrypt all devices.
- Never click, call, or reply without first independently verifying the source.

IRS and Security Summit Urges Tax Professionals to Update Security Plans

The IRS and its Security Summit partners urged tax professionals to reassess their plans for safeguarding sensitive information amid rising identity theft attempts

targeting tax data. Following are key recommendations for tax professionals:

- Implement Multi-Factor Authentication (MFA) to enhance security for client data.
- Use secure tools like the Tax Pro Account, a mobile-friendly application, to manage taxpayer data.
- Develop a breach action plan and maintain a Written Information Security Plan for handling data theft incidents.

2024 Required Amendments List Issued

Notice 2024-82

The IRS has issued its 2024 Required Amendments List (2024 RA List) for individually designed employee retirement plans. RA Lists apply to both Code Secs. 401(a) and 403(b) individually designed plans.

Required Amendments for 2024

The entries listing changes in qualification requirements on the 2024 RA List are:

- Rural electric cooperative plans no longer apply compensation-based limits

for non-highly compensated employees under Code Sec. 415(b)(12).

- Ownership attribution rules are updated to exclude automatic attribution between spouses with separate businesses in community property states and revise parent-child ownership rules.
- Optional waivers for 2020 Required Minimum Distributions (RMDs) must comply with guidance in Notices 2020-51, 2023-54, and 2024-35.
- Plans can permit qualified birth or adoption distributions as per SECURE Act Section 113 and Notice 2020-68.
- Ownership attribution rules are updated to exclude automatic attribution between

spouses and revise parent-child ownership rules.

- The Miners Act reduces the minimum age for allowable in-service distributions, requiring plan updates if adopted.
- The SECURE Act increases the automatic enrolment cap for safe harbor Code Sec. 401(k) plans, with guidance in Notice 2020-86.
- Repayment for birth or adoption distributions is now limited to three years under SECURE 2.0 Act Section 311.
- Employer matching or nonelective contributions can now be designated as Roth contributions under SECURE 2.0 Act Section 604.

TAX BRIEFS

Like-Kind Exchanges

The distribution of undivided tenancy-in-common interests by a trust to a limited liability company (LLC) would be considered as a distribution of the tenancy-in-common interests to the taxpayer. The LLC owned by the taxpayer, would be disregarded as an entity separate from the taxpayer. A Termination Plan was anticipated to be approved by a Probate Court and

implemented. The implementation would occur regardless to whether the exchange of taxpayer's tenancy-in-common interests for eligible like-kind replacement property was executed. Therefore, trust's distribution of taxpayer's tenancy-in-common interests pursuant to the Termination Plan, would be independent of taxpayer's Proposed Exchange.

IRS Letter Ruling 202449007

U.S. Real Property

A previous letter ruling "LTR 200923001" was revoked by the Service. The ruling was reconsidered and no longer the view of the IRS.

IRS Letter Ruling 202449011