

Part IV - Items of General Interest

Withdrawal of a manufacturer's right to provide certifications under the qualifying nonbusiness energy property credit of § 25C

Announcement 2011-73

This announcement withdraws the right of a manufacturer, Weld Rite, Inc., to certify that its hydronic outdoor wood-burning furnaces qualify for the nonbusiness energy property credit under § 25C of the Internal Revenue Code.

SECTION 1. BACKGROUND

Section 25C provides a tax credit to individuals for nonbusiness energy property. Section 25C(a) allows a credit for the taxable year in an amount equal to: (1) 10 percent of the amount paid or incurred for qualified energy efficiency improvements installed during such taxable year; and (2) the amount of the residential energy property expenditures paid or incurred during such taxable year.

Under § 25C(d)(1), the residential energy property expenditures are expenditures made by the taxpayer for qualified energy property which the taxpayer installs on or in connection with a dwelling unit located in the United States that the taxpayer owns and uses as the taxpayer's principal residence (within the meaning of § 121), and that the taxpayer originally placed in service.

Section 25C(d)(2)(A)(i) provides that qualified energy property includes energy-efficient building property.

Under § 25C(d)(3)(E), energy-efficient building property includes, among others, a stove which uses the burning of biomass fuel to heat a dwelling unit located in the United States and used as a residence by the taxpayer, or to heat water for use in such a dwelling unit, and which has a thermal efficiency rating of at least 75 percent. For property placed in service after December 31, 2008, and prior to January 1, 2011, the law also required that the thermal efficiency rating of at least 75 percent be measured using a lower heating value.

On June 22, 2009, the Internal Revenue Service (“Service”) issued Notice 2009-53, 2009-25 I.R.B. 1095, to provide procedures that manufacturers may follow to certify property as qualified energy property, as well as guidance regarding the conditions under which taxpayers seeking a credit may rely on a manufacturer’s certification.

Section 6.01 of the notice allows a manufacturer to provide the certification by including a written copy of the statement with the packaging of the 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.

Section 6.02 of the notice provides that a taxpayer may rely on a manufacturer’s certification that energy property is qualified energy property except as provided in sections 6.03 and 6.08 of the notice.

Section 6.03 of the notice does not apply to qualified energy property. Pursuant to section 6.08 of the notice, the Service may, upon examination (and after any appropriate consultation with the Department of Energy or Environmental Protection Agency), determine that property that has been certified under section 6 of the notice is

not qualified energy property. In that event, or if the manufacturer of the property fails to satisfy the requirements relating to documentation in section 6.07 of the notice, the manufacturer's right to provide a certification on which future purchasers of the property can rely will be withdrawn, and taxpayers purchasing the property after the date on which the Service publishes an announcement of the withdrawal may not rely on the manufacturer's certification.

SECTION 2. WITHDRAWAL OF THE MANUFACTURER'S RIGHT

Weld Rite, Inc. ("Weld") manufactures certain hydronic outdoor wood-burning furnaces, sold under the name of "Shaver Wood Burning Furnace" ("Furnace"). Pursuant to Notice 2009-53, Weld provided certification to its consumers that the Furnace uses the burning of biomass fuel to heat a dwelling unit or to heat hot water for use in such a dwelling unit and has efficiency ratings of at least 75% as measured using a lower heating value. The manufacturer certified that the Furnace constitutes qualified energy property under § 25C.

The Service, upon examination, determined that the Furnace is not qualified energy property. Specifically, the Service found that the Furnace failed to meet the efficiency ratings of at least 75% as measured using a lower heating value. Accordingly, as of August 17, 2011, the Service withdraws the manufacturer's right to provide a certification on which future purchasers of the Furnace can rely. This withdrawal applies to the following Furnace models: Shaver Pro Series 165, 250, 290 and 340. Taxpayers purchasing the Furnace after the date of the publication of this announcement of the withdrawal may not rely on Weld's certification.

The Service may impose penalties under § 7206 or § 6701 on Weld if Weld continues to provide the erroneous certification to purchasers of the Furnace after August 17, 2011.

SECTION 3. DRAFTING INFORMATION

The principal author of this announcement is Martha McRee of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this announcement, contact Ms. McRee on (202) 622-3110 (not a toll-free call).