

# §45L Energy Efficient Tax Credit

## Overview

The credit under IRS Code Sec. 45L was established by the Energy Policy Act of 2005 and was subsequently extended under the American Taxpayer Relief Act of 2012. Qualifying property must be substantially completed between August 1, 2005 and December 31, 2013. The property must also be sold or leased between January 1, 2006 and December 31, 2013.

## Qualifying Property

Property eligible for the credit must be a dwelling unit, have independent living facilities for one or more persons (including permanent provisions for living, sleeping, cooking and sanitation) and the building cannot be more than three stories in height.

The property can be new construction or properties that have undergone substantial renovation or rehabilitation. There is no requirement that the dwelling is the person's primary residence; thus vacation or second homes may qualify. Dwellings must be located in the United States.

The property must meet energy savings requirements. Homes substantially completed after 12/31/11 must meet the 2006 International Energy Conservation Code. Homes completed before this time must meet the 2003 Code. To determine if a dwelling qualifies, an inspection must be performed by an eligible certifier, accredited or authorized by RESNET or an equivalent rating network. In addition, the certifier must use an IRS eligible software program. If a builder constructs at least 85 homes a year, the IRS allows a sampling method to determine eligibility for the credit.

The builder or contractor must obtain a statement from the certifier stating the property meets the energy savings requirements. This statement does not have to be submitted to the IRS but must be kept with the taxpayer's records.

## Tax Credit

The 45L credit is available to eligible contractors. An eligible contractor must have been the person who constructed the home and has basis in the home during its construction to qualify. For example, if a third party contractor is hired to construct a home for a homeowner and the homeowner owns and has basis in the home, the homeowner is the eligible contractor, not the third party contractor. The contractor may be an individual, trust, partnership, association, company or corporation.

To claim the credit, the eligible contractor must complete Form 8908. These credits then flow to Form 3800. The credit is claimed in the year the property is sold or leased. The credit is \$2,000 per dwelling unit for each certified new home that meets the 50% energy standard. A manufactured home that meets the 30% standard qualifies for a \$1,000 per unit credit.

Taxpayers can amend their returns to claim the credit. The credit can be carried back one year (except for credits arising in 2010, discussed in the next section) or forward 20 years. The carryback period expires three years after the time the return is due for the year the credit arose, not the year the credit is carried back to. Any 45L credit taken must reduce the basis of the property for depreciation or gain and loss purposes.

Credits arising in 2010 may be carried back five years for an Eligible Small Business (“ESB”). An ESB is essentially a business that has \$50 million or less in gross receipts for the three years prior to the credit. However, since the first year the credit was available was 2006, the carryback period for 2010 is essentially four years.

ESB credits incurred in 2010 are also not subject to the alternative minimum tax (“AMT”). Most credits claimed on Form 3800 are not allowed as credits for AMT purposes. Credits arising in 2010 may be offset against AMT for ESB’s.

## About Scarpello Consulting

Launched in 2001, Scarpello Consulting provides Cost Segregation consulting services to help clients maximize their depreciation allowances while minimizing audit risk. The firm has four locations including Los Angeles, CA, Omaha, NE, Overland Park, KS and New York City, NY. Additional information is available at [www.ScarpelloConsulting.com](http://www.ScarpelloConsulting.com).