

Marginal well credit available for 2016

Situation presented

On September 12, 2017, the IRS issued Notice 2017-51 (the Notice) confirming availability of the marginal well credit (MWC) for taxable years beginning in calendar year 2016. The Notice provides that the credit amount is \$0.14 per 1,000 cubic feet (mcf). Due to the relatively high commodity price of natural gas since enactment of the legislation, this is the first time that the MWC, which has a special 5-year carryback provision, has been available to taxpayers.

The MWC in section 45I is available for the first time since its enactment in 2004. Notice 2017-51 now provides that the credit amount for taxable years beginning in calendar year 2016 is \$0.14 per mcf. The amount of the credit for 2016 was determined based on the average wellhead price of domestic natural gas for 2015, the reference price. Because the Energy Information Administration (EIA) stopped publishing the wellhead price of domestic natural gas in 2012, the IRS and Treasury did not have data available to estimate a reference price, which resulted in a long delay in issuing the guidance. Treasury's economists ultimately developed a methodology that considered the Producer Price Index commodity index for natural gas from the Bureau of Labor and Statistics as compared to prior natural gas prices published by the EIA in arriving at a 2015 reference price of \$2.38 per mcf.

The IRS and Treasury acknowledged that some taxpayers may have already filed a 2016 return either failing to claim the MWC or claiming the MWC at a different amount. Taxpayers in this situation may file an amended return using the applicable credit amount for returns filed on or before October 2, 2017.

The IRS and Treasury are also requesting comments from the public on Notice 2017-51 "including the methodology for determining the reference price" to be submitted before November 16, 2017. This request for comments implies an acknowledgment by the IRS and Treasury that there may be other effective methodologies to calculate the reference price and a potential willingness to consider other methodologies.

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