

Additional Support for Green Energy

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The American Recovery and Reinvestment Tax Act of 2009 contains a number of provisions that extend or modify existing renewable energy incentives and includes several new incentives as well.

Production tax credits and investment tax credits

Under the Act, the production tax credit under section 45 is extended for three years for most qualifying resources. For wind projects, facilities must be placed in service by December 31, 2012. For other qualifying projects, such as biomass, geothermal electricity, landfill gas, trash, hydropower, marine and hydrokinetic, facilities must be placed in service by December 31, 2013.

By providing for a three year extension for these projects, the Act provides some longer-term stability for investment and planning purposes. The extension provides developers with a period of certainty in which to site, plan, obtain financing and acquire turbines.

Additionally, the Act provides taxpayers with facilities that would otherwise be eligible for the production tax credit under section 45, such as wind or biomass facilities, the ability to elect the 30 percent investment tax credit under section 48 in lieu of the production tax credit. The election is available with respect to any facility which has not previously been allowed a credit under section 45. The election is irrevocable and property to which the election applies must be tangible personal property or other tangible property used as an integral part of the facility.

This election provides substantial advantages for projects formerly eligible only for the production tax credit. For wind facilities in particular, this measure provides a much higher degree of certainty of cash return, as the investment tax credit is based on initial cost instead of highly variable electricity production over a 10-year period. The relative allure of the net present value advantage of receiving the cash refund upon investment and the ability to value the credit cash stream with more certainty will likely draw increasing numbers of these tax equity investors. The provision particularly will benefit those tax equity investors that have tax appetite in the current year yet might be concerned about their future ability to absorb income tax benefits.

In addition, the Act removes the current investment tax credit reduction under section 48 for subsidized energy financing provided under Federal, State or local programs. Under the previous structure of the investment tax credit, the basis on which the credit was calculated was reduced for the value of subsidized energy financing received by the taxpayer to support constructing the credit-qualifying facility. By removing the basis reduction provision for property placed in service after December 31, 2008, eligible basis for investment tax credits is increased and the net cost of project construction is reduced. The limitation on the investment tax credit amount for small wind property of \$4,000 is also removed.

The Act authorizes the Department of Energy to provide grants in lieu of tax credits for property placed in service in 2009 or 2010 (or placed in service after 2010 and before the credit would otherwise terminate, if construction began in 2009 or 2010) that is otherwise eligible for the production tax credit under section 45 or the investment tax credit under section 48. No credits will be determined under section 45 or section 48 with respect to any property which receives a grant.

The grant amount is 30% of the cost of wind facilities, closed-loop biomass facilities, open-loop biomass facilities, geothermal electricity production facilities, landfill gas facilities, trash facilities, hydropower facilities, marine/hydrokinetic facilities, fuel cell property, solar property and small wind property. The grant amount is 10% for geothermal energy property, qualified microturbine property and combined heat and power property.

Grants are provided within 60 days of application or 60 days of the facility being placed in service, whichever is later. The application must be received by October 1, 2011. Any limitations on grant maximums under sections 45 or 48 apply. The rules of section 50 for recapture upon disposition or cessation and basis reduction also apply. Federal, State or local governments, exempt organizations under section 501(c) and entities subject to section 54(j)(4), such as a clean renewable energy bond lender, are not eligible to receive the grant.

This grant provision has the potential to be very important for alternative energy investments. By operation, the grants, in effect, are a refundable income tax credit. Regardless of its current year taxable income position, the grantee, even if in a loss position, receives the benefits related to investment in qualified facilities. As the provision states explicitly the grant accrues to the entitled recipient of what is otherwise a production tax credit or investment tax credit, tax equity investors in a loss position will benefit from this provision. By providing the ability to monetize tax benefits that were previously inaccessible to taxpayers that have current year and

historical losses, these grants will enable many developers to reduce total net project cost and will, therefore, likely spur additional investment in renewable energy.

Advanced energy investment credit

The Act includes a provision for a new credit under section 48C. The qualifying advanced energy project credit is 30% of qualified investment in any qualifying advanced energy project. The qualified investment amount is the basis of eligible property placed in service which is part of a qualifying advanced energy project.

Qualifying energy projects are projects which re-equip, expand or establish a manufacturing facility that produces:

- Property designed to produce energy from the sun, wind, or geothermal deposits
- Fuel cells, microturbines, or an energy storage system for use with electric or hybrid-electric motor vehicles
- Electric grids to support the transmission and storage of intermittent sources of renewable energy
- Property designed to capture and sequester carbon dioxide
- Property designed to refine or blend renewable fuels or to produce energy conservation technologies (such as lighting and smart grid technologies)
- New qualified plug-in electric drive motor vehicles (under section 30D), qualified plug-in electric vehicles (under section 30(d)) or components of such vehicles
- Other property designed to reduce greenhouse gas emissions

The credit is available for projects that are certified by the Secretary of Treasury, in consultation with the Secretary of Energy. The program for certification will be established within 180 days of enactment of the Act. Taxpayers are required to apply for certification within two years of the establishment of the program and are required to provide evidence of compliance with the credit requirements within one year of acceptance to the program. The project for which the credit is made available must be placed in service within three years of certification. After approximately four years, the credit allocation will be reviewed and redistribution may occur if necessary. The total credit allocation pool is limited to \$2.3 billion.

Projects must demonstrate commercial viability. Criteria also used in the certification process include analysis of the amount of domestic job creation, the net impact in air pollutant reduction, the potential for innovation and deployment, the levelized cost structure and the project development and construction period. No credit is allowed for any investment that is allowed a credit under the investment credits in section 48, section 48A or section 48B.

The provision serves to further extend the value of tax credits to a wider section of the supply chain of renewable energy technology, including manufacturing, investment and operational activities. The manufacturer is now able to claim a credit for the manufacture of the property for which the developer or investor is able to claim a credit for placing in service.

Carbon capture and sequestration

The Act provides for a limitation of the \$10 per ton credit available for captured carbon dioxide used as a tertiary injectant to only that carbon dioxide which is disposed of in secure geologic storage.

The limitation of secure geologic storage was previously only applied to that carbon dioxide that was not utilized as a tertiary injectant. The definition of secure geologic storage, as it applies to both types of carbon dioxide, is now expanded to include oil and gas reservoirs.

While applicable to only a small segment of the industry, this provision may be quite costly to those taxpayers utilizing captured carbon dioxide in enhanced oil or natural gas recovery projects. While operationally quite effective and less expensive as other hydrocarbon injectants, the prospects of either storing carbon dioxide securely or foregoing the \$10 per ton incentive may prove to increase total operational costs dramatically.

Clean renewable energy bonds and energy conservation bonds

The Act includes a provision to expand the amount of New Clean Renewable Energy Bonds available for qualified facilities such as wind or biomass owned by public power providers, governmental bodies or cooperative electric companies. The Act provides for a supplementary issuance of \$1.6 billion to the existing \$800 million amount under section 54C.

The Act also includes a similar provision to expand Qualified Energy Conservation Bonds under section 54D, available for a variety of capital expenditures or conservation expenditures related to reduction of energy consumption, implementation of green community programs, conducting research on energy efficiency and promulgating public education campaigns on energy efficiency. The Act provides for a supplementary issuance of \$2.4 billion to the existing \$800 million amount and additional applicability of the bonds to loans and grants made for green community programs.

Non-Business energy property and residential energy efficient property

The Act includes a provision increasing the credit for qualified energy efficiency improvements and residential energy property expenditures for items such as windows, insulation or doors, to 30 percent from 10 percent

under section 25C. Previously fixed maximum amounts for fans, boilers, heat pumps are removed and a 30 percent credit is available for such property as well, with an increase to the aggregate maximum to \$1500 from \$500 for such credit. However, the Act does increase efficiency standards for property eligible for the credit, including those applicable to heat pumps, central air conditioners, oil furnaces, hot water heaters and other property placed in service after the enactment date. The credit is extended one year through December 31, 2010.

Similarly, the Act removes the maximum individual credit amount under section 25D for residential energy efficient property including solar electric, solar water, fuel cell, small wind and geothermal heat pumps. There is no longer a reduction in the credit amount for receipt of subsidized energy financing currently offered by many states. By removing the maximum limits for credit receipt and increasing credit amounts, each of these provisions will likely stimulate individual taxpayers to install additional energy efficient improvements, as the net cost of that property to the taxpayer is significantly decreased.

Alternative vehicles, alternative vehicle refueling property and transportation benefits

The Act amends the treatment of the credit for certain plug-in electric vehicles under section 30D. The number of plug-in hybrid vehicles eligible for the full credit amount is limited to 200,000 per manufacturer, a decrease from the former 250,000 limitation. After the limitation is reached, the credit phases out over a four quarter period. The credit amount for vehicles ranges from \$2,500 to \$7,500 per vehicle, depending on the battery capacity, and basis reduction rules apply. The new limitations are applicable to plug-in hybrid vehicles purchased after December 31, 2009.

While the Act excludes low speed vehicles from the plug-in hybrid motor vehicles credit under section 30D, it does provide for a new 10 percent credit for low-speed vehicles, motorcycles and three-wheelers that otherwise qualify, up to a limit of \$2,500, under section 30. Basis reduction rules apply and the credit is treated as a general business credit. The credit terminates after December 31, 2011.

The Act also includes a credit under section 30B with respect to the costs associated with converting any motor vehicle into a plug-in electric drive motor vehicle. The credit amount is 10% of qualified costs, up to a \$4,000 maximum credit. The credit terminates after December 31, 2011.

The Act also provides that any credit under section 30B for alternative motor vehicles is a personal credit allowed against the alternative minimum tax. The section 30B credits include those for qualified fuel cell motor vehicles, lean burn technology motor vehicles, qualified hybrid motor vehicles, qualified alternative fuel motor vehicles and plug-in conversion kits.

The Act includes a provision increasing the credit rate under section 30C for non-hydrogen alternative fuel vehicle refueling property from 30 percent to 50 percent, for property placed in service during 2009 and 2010. The maximum credit available is increased to \$200,000 from \$30,000 for hydrogen refueling property and to \$50,000 from \$30,000 for non-hydrogen property. For non-business property, the maximum is increased to \$2,000 from \$1,000.

The Act also includes a provision to increase the exclusion from gross employee income for employer-provided transit and vanpool benefits under section 132. The exclusion is increased to the same level as the exclusion for employer-provided parking, \$230 per month indexed for inflation. The increase terminates after December 31, 2010.

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