Tax Breaks for Businesses, Utilities, and Governments

The American Recovery and Reinvestment Act of 2009[1 (#1)] ("Recovery Act") amended or added numerous energy tax incentives available to businesses, utilities, and government. Many of these incentives were previously modified by Emergency Economic Stabilization Act in 2008[2 (#2)]. The majority of the incentives were originally passed into law under the Energy Policy Act of 2005 (EPACT)[3 (#3)]. The Recovery Act also provided additional tax incentives for consumers (/taxbreaks.htm) .

For a summary of previous energy tax incentives, please read the Emergency Economic Stabilization Act of 2008 (/media/HR_1424.pdf) (PDF 48kb). Download Adobe Reader (http://get.adobe.com/reader/) .

RENEWABLE ENERGY INCENTIVES

The Recovery Act amends several provisions of the U.S. Tax Code, expanding or providing new renewable energy incentives for businesses, utilities, and governments who produce or utilize renewable energy. These incentives generally take the form of tax credits for the production of electricity from, and facilities that utilize wind, refined coal, geothermal, biomass, solar, and combined heat and power systems.

GOVERNMENTS | CLEAN RENEWABLE ENERGY & QUALIFIED ENERGY CONSERVATION BONDS

A. Clean Renewable Energy Bonds ("CREBs")[4 (#4)]

CREBs may be used by primarily public sector entities to finance renewable energy projects. CREBs are issued, theoretically, with a 0% interest rate. The borrower only pays back the principal of the bond, and the bondholder receives federal tax credits in lieu of the traditional bond interest. CREBs differ from traditional tax-exempt bonds because CREB tax credits are treated as taxable income for the bondholder.

CREB tax credits may be taken each year the bondholder has a tax liability, as long as the credit amount does not exceed the limits established by the EPACT. The U.S. Department of the Treasury lists the treasury rates for prior CREB allocations (https://www.treasurydirect.gov/SZ/SPESRates?type=CREBS) , or "old" CREBs, as well as rates for new CREBs and other qualified tax credit bonds (https://www.treasurydirect.gov/govt/rates/irs/rates_qtcb.htm) .

The list of qualifying technologies is generally the same as that used for the federal renewable energy Production Tax Credit (See below). Electric cooperatives, government entities (states, cities, counties, territories, Indian tribal governments or any political subdivision thereof), and by certain lenders are eligible to issue CREBs.

The Recovery Act authorized an additional $1.6 billion of Clean Renewable Energy Bonds (CREBs), which help facilitate the finance of renewable facilities. This sum raises the previously capped $800 million ceiling on CREB issuances, and raises the maximum allowable issuance to $2.4 Billion. Please see IRS Notice 2009-33 (http://www.irs.gov/pub/irs-drop/n-09-33.pdf) for further information (PDF 133 kb). Download Adobe Reader (http://get.adobe.com/reader/) .

B. Qualified Energy Conservation Bonds (QECBs)[5 (#5)]

QECBs may be used by state, local, and tribal governments to finance certain types of energy projects. QECBs are qualified tax credit bonds, and in this respect are similar to new CREBs. The Recovery Act increases the amount of funds available to issue qualified energy conservation bonds from the one-time national limit of $800 million to $3.2 billion.

The definition of "qualified energy conservation projects" is fairly broad and contains elements relating to energy efficiency capital expenditures in public buildings; renewable energy production; various research and development applications; mass commuting facilities that reduce energy consumption; several types of energy related demonstration projects; and public energy efficiency education campaigns. Renewable energy facilities that are eligible for CREBs are also eligible for QECBs.

The advantage of QECBs is that they are theoretically issued with a 0% interest rate. The borrower pays back only the principal of the bond, and the bondholder receives federal tax credits in lieu of the traditional bond interest. The tax credit may be taken quarterly to offset the tax liability of the bondholder.

In contrast to CREBs, QECBs are not subject to a U.S. Department of Treasury application and approval process. Bond volume is instead allocated to each state based on the state's percentage of the U.S. population as of July 1, 2008. Each state is then required to allocate a portion of its allocation to "large local governments" within the state based on the local government's percentage of the state's population. Large local governments are defined as municipalities and counties with populations of 100,000 or more. Large local governments may reallocate their designated portion back to the state if they choose to do so.

Please see IRS Notice 2009-29 (http://www.irs.gov/pub/irs-drop/n-09-29.pdf) for a list of the QECB allocations for each state and U.S. territory (PDF 27kb). Download Adobe Reader (http://get.adobe.com/reader/) .

BUSINESS & UTILITIES | GENERATION TAX CREDITS

The Recovery Act added greater flexibility to the Investment Tax Credit ("ITC"), Production Tax Credit ("PTC"), as well as creating a new "Grant in Lieu of" PTC/ITC Tax Credit program, administered by the Department of Treasury.

A. Investment Tax Credit ("ITC")[6 (#6)]

An ITC generally allows taxpayers to take a single tax credit against the project's tax basis equal to 30% in its first year and allows a taxpayer to elect certain qualified facilities to be characterized as energy property eligible for a 10% or 30% ITC, depending on the technology. The Recovery Act repealed the $4,000 limit on the ITC for small wind energy property, and the limitation on property financed by subsidized energy financing. The repeal applies to property placed in service after Dec. 31, 2008.

B. Production Tax Credit ("PTC")[7 (#7)]

Alternatively, the Recovery Act allows a tax credit for the generation of qualified energy from qualified facilities. The PTC amounts, credit periods, definitions of qualified facilities are technology-specific. Qualified energy resources include:

- Wind
- Closed-loop biomass
- Open-loop biomass
- Geothermal
- Solar
- Small Irrigation Power
- Municipal Solid Waste
- Qualified Hydropower Production
- Marine & Hydrokinetic Renewable Energy

To be eligible for the credit, electricity produced from qualified energy resources at qualified facilities must be sold by the taxpayer to an unrelated person.

The Recovery Act generally extends the "eligibility dates" of a tax credit for facilities producing qualified electricity. The Recovery Act also extends the "placed in service date" for wind facilities to Dec. 31, 2012. For the other facilities, the placed-in-service date was extended from Dec. 31, 2010 (Dec. 31, 2011 in the case of marine and hydrokinetic renewable energy facilities) to Dec. 31, 2013.

Please see IRS Notice 2009-40 (http://www.irs.gov/irb/2009-19_IRB/ar07.html) for more information.

C. ITC and PTC Elections[8 (#8)]

A taxpayer cannot take both an investment tax credit (ITC) and a production tax credit (PTC) for a facility that could qualify for both - they must elect to either receive an ITC or PTC for each project.

A taxpayer may *irrevocably* elect the ITC instead of the PTC for qualifying renewable energy projects. If a taxpayer does elect to take an ITC for energy property that qualifies for a PTC, the amount of the ITC will be 30% of the property's tax basis.

Please see IRS Notice 2009-52 (http://www.irs.gov/pub/irs-drop/n-09-52.pdf) for more information (PDF 15kb). Download Adobe Reader (http://get.adobe.com/reader/) .

D. §1603 Grant in Lieu of ITC Program[9 (#9)]

Recovery Act §1603 created a new renewable energy grant program administered by the U.S. Department of Treasury. This cash grant may be taken in lieu of the ITC. In July 2009, the Department of Treasury issued documents detailing guidelines for the grants, terms and conditions and a sample application. The tax credit for such property ranges between 10% and 30%, depending on the type of property.

Generally, Treasury grants are available to eligible property placed in service in 2009 or 2010, or property if construction began in 2009 or 2010, but not "placed in service" until after - with certain caveats. More specifically, Treasury guidelines include a "safe harbor" provision, defining the beginning of construction as the point at which the applicant has incurred or paid at least 5% of the total cost of the property, excluding land and certain preliminary planning activities.

There is an online application process, and applications are currently being accepted. For more information, please visit the 1603 program web site (http://www.treas.gov/recovery/1603.shtml) for further information.

BUSINESS | ADVANCED ENERGY MANUFACTURING TAX CREDIT ("MTC")[10 (#10)]

The Recovery Act authorizes the Department of Treasury to award $2.3 billion in tax credits for qualified investments in advanced energy projects, to support new, expanded, or re-equipped domestic manufacturing facilities. The MTC seeks to grow domestic manufacturing industries for clean energy.

The MTC provides a 30% credit for investments in new, expanded, or re-equipped advanced energy manufacturing projects. Up to $2.3 billion in MTCs will be allocated for advanced energy projects, which will support total capital investments of almost $7.7 billion in new renewable and advanced energy manufacturing projects.

The Department of Energy (DOE) and the Internal Revenue Service (IRS) will review and make determinations on the eligibility and merit of MTC applications. Applicants will receive tax credits based on the expected commercial viability of their project and the ranking of their project relative to other projects. Rankings are based on: expected job creation, reduction of air pollutants and greenhouse gas emissions, technological innovation, and ability to have the project up and running quickly. Technology, geographic & project size diversity, and regional economic development will also be considered when rating projects.

The application period opens August 14, 2009. Preliminary applications are due to DOE by Sept. 16, 2009, followed by final applications being due to DOE and IRS on October 16, 2009. By Jan. 15, 2010, IRS will certify or reject applications, and notify the certified projects with the approved amount of their tax credit. Awardees will receive acceptance agreements from the IRS by April 16, 2010. Credits will be allocated until the program funding ($2.3 billion) is exhausted. Subsequent allocation periods will depend on remaining funds.

Projects must be completed within four years of their tax credit acceptance. Eligible investment credits cover future expenditures and do not award past investment. All other applicable sections of the Internal Revenue Code are in force.

The following advanced energy facilities, for which manufacturing projects would be eligible:

- Technologies that create energy from renewable resources (sun, wind, geothermal and other renewable resources)
- Energy storage technologies (fuel cells, microturbines or other energy storage systems used in electric or hybrid-electric vehicles)
- Advanced transmission technologies that support renewable generation (including storage)
- Renewable fuel refining or blending technologies
- Energy conservation technologies (advanced lighting, smart grid)
- Plug-in electric vehicles & vehicle components (motors, generators)
- Property to capture and sequester carbon dioxide
- Other property designed to reduce greenhouse gas emissions

It should be noted this tax credit does not support energy generation projects, but rather the manufacturing facilities that support generation and conservation.

Please see IRS Notice 2009-72 (http://www.irs.gov/pub/irs-drop/n-09-72.pdf) for more information (PDF 415kb). Download Adobe Reader (http://get.adobe.com/reader/) .

TRANSPORTATION & DOMESTIC FUEL SECURITY

The Recovery Act amends tax credits for alternative fueling stations and plug-in drive vehicles.

A. Plug-in Electric Drive Vehicle Credits[11 (#11)]

I. Major Amendments | The Recovery Act modifies the credit for qualified plug-in electric drive vehicles purchased after Dec. 31, 2009. To qualify, vehicles must be newly purchased, have four or more wheels, have a gross vehicle weight rating of less than 14,000 pounds, and draw propulsion using a battery with at least four kilowatt hours that can be recharged from an external source of electricity. The minimum amount of the credit for qualified plug-in electric drive vehicles is $2,500 and the credit tops out at $7,500, depending on the battery capacity. The full amount of the credit will be reduced with respect to a manufacturer's vehicles after the manufacturer has sold at least 200,000 vehicles.

Please see IRS Notices 2009-54 (http://www.irs.gov/pub/irs-drop/n-09-54.pdf) (PDF 29kb) and 2009-58 (http://www.irs.gov/pub/irs-drop/n-09-58.pdf) (PDF 19kb) for more information. Download Adobe Reader (http://get.adobe.com/reader/) .

II. Low Speed & 2/3 Wheeled Vehicles[12 (#12)] | The Recovery Act law also creates a special tax credit for two types of plug-in vehicles - certain low-speed electric vehicles and two- or three-wheeled vehicles. The amount of the credit is 10 percent of the cost of the vehicle, up to a maximum credit of $2,500 for purchases made after Feb. 17, 2009, and before Jan. 1, 2012.

To qualify, a vehicle must be either a low speed vehicle propelled by an electric motor that draws electricity from a battery with a capacity of 4 kilowatt hours or more or be a two- or three-wheeled vehicle propelled by an electric motor that draws electricity from a battery with the capacity of 2.5 kilowatt hours. A taxpayer may not claim this credit if the plug-in electric drive vehicle credit is allowable.

Please see IRS Notice 2009-58 (http://www.irs.gov/pub/irs-drop/n-09-58.pdf) for more information (PDF 19kb).

III. Conversion Kits[13 (#13)] | The Recovery Act also provided a tax credit for plug-in electric drive conversion kits. The credit is equal to 10 percent of the cost of converting a vehicle to a qualified plug-in electric drive motor vehicle and placed in service after Feb. 17, 2009. The maximum amount of the credit is $4,000. The credit does not apply to conversions made after Dec. 31, 2011. A taxpayer may claim this credit even if the taxpayer claimed a hybrid vehicle credit for the same vehicle in an earlier year.

Please see the IRS website for more information on Alternative Motor Vehicle Credits (http://www.irs.gov/businesses/corporations/article/0,,id=202341,00.html) .

B. Alternative Fuel Vehicle Refueling Property[14 (#14)]

The Recovery Act provides a temporary increase in the tax credit and limit amounts for Alternative Fuel Vehicle Refueling Property placed in service in 2009 and 2010. Qualified property (other than property relating to hydrogen) is now eligible for a 50% credit, and the per-location limit increases to $50,000 for business property (increases to $2,000 for other/residential locations). Property relating to hydrogen keeps the 30% rate as before, but the per-business location limit rises to $200,000.

[1 ()] Pub. L. No. 111-5 (February 17, 2009).
[2 ()] Pub. L. No. 110-343 (October 2, 2008).
[3 ()] Pub. L. No. 108-58 (August 9, 2009).
[4 ()] See 26 U.S.C. §54.
[5 ()] See 26 U.S.C. §54D.
[6 ()] See 26 U.S.C. §48.
[7 ()] See 26 U.S.C. §45.
[8 ()] See 26 U.S.C. §48(a)(5).
[9 ()] Pub. L. No. 111-5 §1603.
[10 ()] See 26 U.S.C. §48C (2009) ; Pub. L. No. 111-5 §1302.
[11 ()] See 26 U.S.C. §30D (2009); Pub. L. No. 111-5 §1141.
[12 ()] See 26 U.S.C. §30 (2009); Pub. L. No. 111-5 §1142.
[13 ()] See 26 U.S.C. §30D (2009); Pub. L. No. 111-5 §1143.
[14 ()] See 26 U.S.C. §30C (2009); Pub. L. No. 111-5 §1123.