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## Renewable Energy Alert

### IRS and DOE Provide Guidance on Advanced Energy Manufacturing Tax Credit

The American Recovery and Reinvestment Tax Act of 2009 created a new program to issue up to \$2.3 billion in federal income tax credits to projects which expend funds to newly construct, expand, or re-equip a manufacturing facility that builds renewable energy property. On August 13, 2009, guidance for this program was issued.

#### **Manufacturing Tax Credit Generally:**

The tax credit equals 30% of the tax basis of depreciable tangible property (i.e., excluding a building or its structural components) used to re-equip, expand or establish a manufacturing facility for the production of any of the following:

1. property designed to be used to produce energy from the sun, wind, geothermal deposits or other renewable resources;
2. fuel cells, microturbines or other energy storage systems used in electric motor vehicles;
3. electric grids to support the transmission of intermittent sources of renewable energy, including property for the storage of such energy;
4. property designed to capture and sequester carbon dioxide emissions;
5. property designed to refine or blend renewable fuels or to produce energy conservation technologies (including energy-conserving lighting and smart grid technologies);
6. plug-in electric vehicles and vehicle components (motors and generators); or
7. other property designed to reduce greenhouse gas emissions.

A manufacturing facility is any facility that makes or processes raw materials into finished products (or accomplishes any intermediate stage in that process). Thus, in contrast to other renewable energy tax incentives, this manufacturing credit is designed to stimulate the construction/expansion of manufacturing plants, rather than the actual generation of electricity or fuels.

#### **Receipt of the Credit:**

The credit is received in the tax year in which the tangible property is placed in service (i.e., when it is placed in a condition or state of readiness and availability for a specifically assigned function). The property must be placed in service within four years from the date the Internal Revenue Service ("IRS") accepts the application.

#### **Credit Limitations:**

The maximum amount of manufacturing tax credits issued to all applicants in all years is \$2.3 billion. Because demand for the credits is expected to outstrip the \$2.3 billion cap, the application for the credit is expected to be a competitive process.

#### **Application Process Generally:**

The application for the manufacturing tax credit is a complicated two step process. First, the taxpayer must apply to the U.S. Department of Energy ("DOE"). Second the taxpayer must apply to



the IRS for certification for eligibility under the tax credit program. Each step is described in further detail below.

**Step 1 – DOE Application:**

The DOE Application is itself a two-part process. A short preliminary application (available at [http://www.energy.gov/recovery/documents/48C\\_Preliminary\\_Application.doc](http://www.energy.gov/recovery/documents/48C_Preliminary_Application.doc)) must be submitted electronically to the DOE by September 16, 2009. A final application must be received by the DOE by October 16, 2009. The contents of the final application is a narrative no longer than 30 pages (guidance available at [http://www.energy.gov/recovery/documents/Federal Notice 48C.pdf](http://www.energy.gov/recovery/documents/Federal_Notece_48C.pdf)) plus an accompanying spreadsheet that solicits certain quantitative information about the project (available at [http://www.energy.gov/recovery/documents/Applicant\\_Data\\_Input\\_Spreadsheet.xls](http://www.energy.gov/recovery/documents/Applicant_Data_Input_Spreadsheet.xls)).

Once all final applications are submitted, the DOE will rank all applicants in descending order (i.e., first, second, third, etc.) based on the following factors (each of which are equally weighted):

1. Expected job creation;
2. Reduction of greenhouse gas emissions and other air pollutants;
3. Technological innovation; and
4. Ability to have the project up and running quickly.

The DOE will recommend to the IRS that the project receiving the highest ranking (i.e., first) will be allocated the full amount of credit requested before any credit is allocated to a lower-ranking project. The amount of credit allocated to a project reduces the amount of credit available to lower-ranked projects. The same process will apply to the second and lower-ranked projects until the amount available for allocation is exhausted. If the \$2.3 billion in credits is not fully allocated in the 2009 allocation round, a similar round will be conducted in 2010.

**Step 2 – IRS Application:**

In addition to the two-part DOE application, a taxpayer must submit an IRS application on or before December 16, 2009. The contents of the IRS application are described in guidance (available at [http://www.energy.gov/recovery/documents/Federal Notice 48C.pdf](http://www.energy.gov/recovery/documents/Federal_Notece_48C.pdf)). The IRS will follow the DOE's recommendation in awarding the credit and will accept or reject applications by January 15, 2010.

**IRS Issuance of Certification:**

Within one year after the IRS accepts an application, the taxpayer must prove to the IRS that (a) all permits have been received and (b) all steps have been accomplished during the prior year necessary to place the project in service within three years (i.e., four years after the application was first accepted by the IRS). At this point the project is certified by the IRS, subject to special rules for changes in plans.

For additional information on this topic, please contact one of the authors of this alert or your Michael Best attorney.

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