
\$150 Million of Credits Available Under Phase II of Qualifying Advanced Energy Project Credit Program

2013-02-13

The qualifying advanced energy project credit program (the “Program”) was established in 2009 by the Treasury Department (“Treasury”), the Internal Revenue Service (the “IRS”) and the Department of Energy (the “DOE”) following the enactment of Section 48C of the Internal Revenue Code (the “Code”), part of the American Recovery and Reinvestment Tax Act of 2009. The initial phase of the Program (“Phase I”) was designed to facilitate the allocation, on a competitive basis, of \$2.3 billion in credits to taxpayers that invested in the re-equipment, expansion or establishment of domestic manufacturing facilities producing certain clean, renewable or efficient energy products, which investment was certified by Treasury (each, a “qualifying advanced energy project”). Treasury, in accordance with the terms of Code Section 48C(d)(4), recently conducted a review of the credits allocated under Phase I and announced on February 7, 2013, that approximately \$150 million in credits is available for reallocation under a second phase of the Program (“Phase II”).

[Notice 2013-12](#) provides the parameters of Phase II of the Program. As with Phase I, the IRS will consider a project under Phase II only if the DOE provides a recommendation and ranking for the project. The DOE will provide a recommendation and ranking only if it determines that the

project has a reasonable expectation of commercial viability and merits a recommendation based on the project's potential for domestic job creation and for reducing air pollution and greenhouse gas emissions, its technological innovation, the cost of any generated or stored energy, and the projected time to project completion. In Phase II, the DOE has said that it will also consider diversity of geography, technology, project size and regional economic development.

Therefore, for each project it sponsors, a taxpayer must submit: (1) a concept paper for DOE consideration (the "Concept Paper"); and (2), if invited by the DOE, (x) an application for recommendation by the DOE and (y) an application for certification under Code Section 48C(d)(2) by the IRS (the submissions described at (2), together, the "Applications"). All submissions must be made through the [eXCHANGE website](#), an online application portal used by the DOE.

The application period for Phase II certification began on February 7, 2013. Concept Papers must be submitted to the DOE by April 9, 2013. The Applications, if invited by the DOE, must be submitted by July 23, 2013. All timely submitted applications will be evaluated and ranked regardless of when in the application period they are submitted and the DOE will provide its recommendations to the IRS by October 11, 2013. The IRS will accept or reject a taxpayer's application for certification by November 15, 2013 and will notify taxpayers, by letter, of its decision. In Phase II, the amount of the qualified investment that is eligible for the credit with respect to any project is limited to \$100 million. Accordingly, the maximum amount of credits allocated per project will be \$30 million. The IRS' acceptance letter will state the amount of the credit allocated to a particular project. Once a credit has been allocated to the taxpayer, the taxpayer must execute an agreement with the IRS and, thereafter, satisfy certain certification requirements within one

year of the IRS' acceptance of the application in order to obtain IRS certification.

For additional details regarding Phase II of the Program, including a discussion relating to the process of applying for DOE recommendation and the instructions for filing a Concept Paper or Application, refer to [Notice 2013-12](#) or contact a member of the WilmerHale Tax Practice.

Authors



**Julie Hogan
Rodgers**

PARTNER

Vice Chair, Tax Practice

✉ julie.rodgers@wilmerhale.com

☎ +1 617 526 6543



Ciara R. M. Baker

PARTNER

✉ ciara.baker@wilmerhale.com

☎ +1 202 663 6747