
Court of Federal Claims Rules Treasury Compelled to Award Section 1603 Grant If Statutory Requirements Met

2011-01-31

The United States Court of Federal Claims has held that Section 1603 of the American Recovery and Reinvestment Tax Act of 2009 compels the United States Treasury Department ("Treasury") to award grants in lieu of renewable energy tax credits under the Section 1603 program to qualified applicants and provides Treasury no discretion to refuse to award a grant to an applicant that has met all statutory requirements for the program. Under the Section 1603 program, if a person places specified energy property into service in 2009, 2010, or 2011, or begins construction in 2009, 2010, or 2011 on specified energy property that will be placed into service after 2011 (but before the applicable deadline) and otherwise meets the requirements under Section 1603, the person will be awarded a grant equal to either 10% or 30% of the basis of the specified energy property, depending on the type of property. The Court of Federal Claims' decision should provide assurance to renewable energy developers and investors that the benefits of the Section 1603 program will be available for renewable energy projects that meet the statutory requirements.

[Read our prior alert](#) regarding the Section 1603 program, including the statutory requirements and applicable deadlines.

The Decision: *ARRA Energy Co. I v. United States*

The plaintiffs, ARRA Energy Co. I, ARRA Energy Co. II, and ARRA Energy Co. III, placed 25 mobile solar-powered generating systems into service in 2009 at a cost of approximately \$7.8 million. The plaintiffs purchased the systems from a manufacturer and leased the systems to end-users to be used to generate off-grid electricity. The plaintiffs applied for Section 1603 grants for the systems, submitting one application for each system and requesting approximately \$2.3 million in grants (equal to 30% of the systems' cost basis). With their applications, the plaintiffs submitted initial valuation reports prepared by the manufacturer to substantiate the systems' cost basis and the amounts claimed in the grant applications. At Treasury's request, the plaintiffs later submitted an independent fair market valuation report to further support the amounts. Treasury subsequently denied the plaintiffs' applications on the grounds that the claimed cost basis for the systems was not supported by sufficient documentation. The plaintiffs otherwise met all statutory requirements for award of the grants.

The plaintiffs filed suit in the Court of Federal Claims, asserting that Treasury violated Section 1603 by denying the grant applications. The government brought a motion to dismiss for lack of subject matter jurisdiction over the plaintiffs' claims on the grounds that Section 1603 is not a "money-mandating source of law."

The Court of Federal Claims denied the government's motion to dismiss, finding that Section 1603 is a money-mandating source of law. Whether a statute is a money-mandating source of law turns on whether the government has discretion to refuse to make payments under the statute. The court found that Section 1603 "compels the government to provide a grant to any person who places specified energy property into service,

subject only to the express requirements set forth in the statute." The government has no discretion under Section 1603 to refuse to award a grant when the specific requirements of the statute are met. The government is only permitted to make a "ministerial determination" that the requirements are met (for example, that specified energy property was placed into service during the relevant time period). The government is permitted to determine that the statutory requirements have not been met or that a claim is fraudulent. The government is also permitted to conclude (as it did here, according to the court) that an applicant has miscalculated or misrepresented the cost basis of the property in an application; however, the government has no discretion to award grants to qualified applicants for less than (or more than) 30% of the correct cost basis.

Conclusion

As held by the court, Section 1603 does not provide Treasury with the discretion to deny an application under the Section 1603 grant program if the applicant has met the express requirements of Section 1603. It is not clear from the court's opinion what documentation the plaintiffs should have provided to properly substantiate their representation as to the cost basis of the property or whether the plaintiffs must (or would be permitted to) resubmit their applications until they meet the statutory requirements to the satisfaction of Treasury. The court's order instructed the parties to confer to determine how to proceed and to determine whether the issue may be settled.

View the court's opinion, [*ARRA Energy Co. I v. United States*, No. 10-84 C \(Fed. Cl. Jan. 18, 2011\)](#).

IRS CIRCULAR 230 DISCLOSURE:

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

For more information on this or other matters relating to the Section 1603 grant program or other energy tax credits, contact [Julie Hogan Rodgers](#) or [Mark C. Kalpin](#).

Authors



**Julie Hogan
Rodgers**

PARTNER

Vice Chair, Tax Practice

✉ julie.rodgers@wilmerhale.com

☎ +1 617 526 6543



Meghan M. Walsh

PARTNER

✉ meghan.walsh@wilmerhale.com

☎ +1 617 526 6132