

Section 1603 Program for Grants in Lieu of Renewable Energy Tax Credits Extended

2010-12-21

On December 17, President Obama signed the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the "2010 Tax Relief Act"), which provides a one-year extension of the Section 1603 program (the "Program") for grants in lieu of renewable energy tax credits under Sections 45 and 48 of the Internal Revenue Code (the "Code"). The Program, created by the American Recovery and Reinvestment Act of 2009 ("ARRA"), is intended to monetize renewable energy tax credits for developers facing difficulty attracting investors to monetize the credits due to the financial crisis.

The Program was originally available only for specified energy property placed in service in 2009 or 2010 or property placed in service after 2010 (but before the applicable deadline) for which construction began in 2009 or 2010. The 2010 Tax Relief Act extends the Program to property placed in service in 2011 or property placed in service after 2011 (but before the applicable deadline) for which construction began in 2009, 2010, or 2011. Construction begins when physical work of a significant nature begins. Pursuant to U.S. Treasury Department guidance, an applicant may treat physical work of a significant nature as beginning when more than 5% of the total cost of the property has been paid or incurred. The application deadline for the Program has been extended through October 1, 2012.

The 2010 Tax Relief Act does not extend the deadline for placing property for which construction began in 2009, 2010, or 2011 into service. To be eligible for the grant, the property must be placed in service by certain dates (the end of 2012, 2013, or 2016, depending on the type of property). As provided under Section 1603 of ARRA, specified energy property includes certain property described under Section 48 of the Code, including property which is part of a wind facility, solar facility, biomass facility, or landfill gas or trash facility.

To be eligible for the Program, the specified energy property must be used in a trade or business or held for the production of income. Residential or nonbusiness properties are not eligible.

Eligible applicants under the Program receive grants of either 10% or 30% of the basis of the

specified energy property, depending on the type of property. Approximately \$5.8 billion has been granted under the Program thus far. The Program has no cap, and grants are not awarded on a competitive basis.

For additional guidance from the Treasury regarding eligibility for the Program and application procedures, click [here](#).

Additional Energy Credit Extensions

In addition to extending the Section 1603 Program for an additional year, the 2010 Tax Relief Act extends the following energy-related credits through December 31, 2011:

- the Section 40 alcohol fuels credit;
- the Section 40A biodiesel fuels credit; and
- the Section 45M credit for manufacturers of qualified energy-efficient appliances.

The 2010 Tax Relief Act also extends the Section 45 renewable electricity production credit for refined coal facilities for an additional two years to cover facilities placed in service before January 1, 2012.

The 2010 Tax Relief Act does not extend the Section 48C qualifying advanced energy project credit, which reached its cap of \$2.3 billion earlier this year.

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.

Authors



**Julie Hogan
Rodgers**

PARTNER

Vice Chair, Tax Practice

✉ julie.rodgers@wilmerhale.com

☎ +1 617 526 6543