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Summary of Cleantech Provisions in the Bailout Bill

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On October 3, 2008, the President signed the "Emergency Economic Stabilization Act of 2008" (the "Act") into law. Congressional negotiators inserted a number of tax provisions into the Act as part of an effort to keep the legislation from looking like a gift to Wall Street. In addition to the financial rescue package, the Act contains a number of tax provisions that derive from the House-passed H.R. 6049, the Renewable Energy and Job Creation Act of 2008, including a number of tax incentives for renewable energy.

The clean-energy tax provisions in the Act, which total approximately $18 billion, provide tax incentives for energy production and conservation, extend expiring tax provisions relating to such incentives, and extend tax benefits to individual and business taxpayers. These provisions generally take effect for periods after the enactment of the Act and for taxable years after such date. The following is a summary of the clean-energy incentives included in the Act that are most relevant to Cleantech businesses.

Tax Credits for Solar, Wind and Other Alternative Energy

Extension and Modification of Production Tax Credit. Section 45[1] allows a credit (the "production tax credit") of up to 1.5 cents (adjusted for inflation) for each kilowatt hour of electricity that is (1) produced in the United States by wind, solar and certain other alternative energy facilities during the first 10 years the facility is in service and (2) sold to unrelated persons. The Act extends the placed-in-service date for the production tax credit under Section 45 through December 31, 2009 in the case of wind and refined coal, and through December 31, 2010 in the case of geothermal and solar energy closed-loop and open-loop biomass, small irrigation power, municipal solid waste, trash combustion, and qualified hydropower. The Act also expands the types of facilities qualifying for the credit to new biomass facilities and to those that generate electricity from marine renewables (e.g., waves and tides).

Note that a taxpayer is not entitled to this credit with respect to geothermal or solar energy property if it has taken the investment tax credit discussed in the next paragraph. In addition, the credit discussed below is not available for wind facilities.

Long-Term Extension and Modification of Energy Credit. A nonrefundable, business energy credit is allowed for the cost of new property used to produce alternative energy, including equipment that uses solar energy to generate electricity, to heat or cool a structure. The Act extends the 30% investment tax credit for solar energy property and qualified fuel cell property, as well as the 10% investment tax credit for microturbines, through 2016. The Act increases the $500 per half kilowatt of capacity cap for qualified fuel cells to $1,500 per half kilowatt of capacity, and adds small commercial wind as a category of qualified investment. The Act also provides a new 10% investment tax credit for combined heat and power systems and geothermal heat pumps. The Act allows these credits to be used to offset the alternative minimum tax.

Tax Incentives for Carbon Mitigation and Coal

Carbon Capture and Sequestration Demonstration Projects. The Act provides $1.5 billion in new tax credits for the creation of advanced coal electricity projects (Section 48A) and certain coal gasification projects (Section 48B) that demonstrate the greatest potential for carbon capture and sequestration technology. These tax credits will be awarded by Treasury through an application process, with applicants that demonstrate the greatest CO2 sequestration percentage receiving the highest priority. The Act also clarifies that gasification projects producing transportation grade liquid fuels are eligible under Section 48B.

CO2 Capture Credit. The Act provides a $10 credit per ton for the first 75 million metric tons of CO2 captured and transported from an industrial source and stored or used in the United States for use in enhanced oil recovery and a $20 credit per ton for CO2 captured and transported from an industrial source for permanent storage in a geologic formation. Qualifying facilities must capture at least 500,000 metric tons of CO2 per year.

Steel Industry Fuel. The Act adds a credit for coal used in the manufacture of coke, a feedstock used in steel production. The credit amount is $2 per barrel-equivalent of oil, available for facilities that place in service before January 1, 2010.

Tax Incentives for Alternative Fuels

Publicly Traded Partnership Income Treatment of Alternative Fuels. A partnership will not be treated as a corporation under the “publicly traded partnership rules” for any tax year if 90% or more of the gross income of the partnership for the tax year consists of “qualifying income.” The Act permits publicly traded partnerships to treat income derived from the transportation, or storage of certain alternative fuels, as well as anthropogenic CO2, as qualifying income for purposes of the publicly traded partnership rules.

Extension of Biodiesel Production Tax Credit; Extension and Modification of Renewable Diesel Tax Credit. The Act extends the $1.00 per gallon production tax credit for biodiesel and the 10¢ per gallon credit for small biodiesel producers through 2009. The Act also extends the $1.00 per gallon production tax credit for diesel fuel created from biomass. The Act eliminates the current-law disparity in credit for biodiesel and agri-biodiesel, and eliminates the requirement that renewable diesel fuel must be produced using a thermal depolymerization process. Diesel fuel created by co-processing biomass with other feedstocks (e.g., petroleum) will be eligible for the 50¢ per gallon tax credit for alternative fuels. Biodiesel imported and sold for export will not be eligible for the credit effective May 15, 2008.

Extension and Modification of Alternative Fuels Credit. The Act extends the alternative fuel excise tax credit under Section 6426 through December 31, 2009 for all fuels except hydrogen (which maintains its current-law expiration date of September 30, 2014). The Act further provides that biomass gas versions of liquefied petroleum gas and liquefied or compressed natural gas, and aviation fuels qualify for the credit.

Depreciation Incentives and Other Deductions for Measures Taken to Increase Energy Efficiency

Extension of Energy-Efficient Buildings Deduction. Current law allows taxpayers to deduct the cost of energy-efficient property installed in commercial buildings. The amount deductible is up to $1.80 per square foot of building floor area for buildings achieving a 50% energy savings target. The Act extends the energy-efficient commercial buildings deduction for five years, through December 31, 2013.

Accelerated Depreciation for Smart Meters and Smart Grid Systems. The Act provides accelerated depreciation for smart electric meters and smart electric grid equipment. The Act allows taxpayers to recover the cost of this property over a 10-year period, unless the property already qualifies under a shorter recovery schedule.

Investments in Recycling. The Act allows taxpayers to claim accelerated depreciation for purchase of equipment used to collect, distribute or recycle a variety of commodities.

Energy Conservation Bonds

Qualified Energy Conservation Bonds. The Act creates a new category of tax credit bonds to finance state and local government initiatives designed to reduce greenhouse emissions. There is a national limitation of $800 million, allocated to states, municipalities and tribal governments.

Extension and Modification of Qualified Green Building and Sustainable Design Project Bonds. The Act extends the authority to issue qualified green building and sustainable design project bonds through the end of 2012.

Footnotes:

[1] All references to “Section” herein refer to sections of the Internal Revenue Code of 1986 as amended.