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U.S. Department of the Treasury and U.S. Department of Energy Announce Guidelines and Applications for $2.3 Billion in Advanced Energy Manufacturing Tax Credits

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The American Reinvestment and Recovery Act of 2009 ("ARRA") authorizes the U.S. Department of the Treasury ("Treasury") to award $2.3 billion in tax credits for investments in manufacturing facilities that support energy generation and conservation (the "MTC").

The Treasury and the U.S. Department of Energy ("DOE") recently announced the long-awaited guidelines and applications for the MTC. The MTC is structurally similar to the previously existing energy tax credit in Section 48 of the Internal Revenue Code (and is also a component of the "investment credit" of a taxpayer, and therefore subject to other rules of the Internal Revenue Code governing investment credits). The energy credit derives from placing in service energy generation projects themselves, whereas the MTC derives from investment in the manufacturing facilities for energy generation equipment.

The MTC is governed by new Section 48C to the Internal Revenue Code. Under that provision, a taxpayer's MTC for a taxable year is an amount equal to 30 percent of the taxpayer's "qualified investment" with respect to any "qualifying advanced energy project" of the taxpayer placed in service during such taxable year. Section 48C defines a "qualified investment" as the basis of "eligible property" that is part of a "qualifying advanced energy project" placed in service during such taxable year. "Eligible property" is most tangible personal property used in a project eligible for the MTC other

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Our Practice

The Energy, Environment & Natural Resources lawyers at Manatt have one of our firm's fastest-growing practices. That growth reflects our depth of experience and skill in dealing with the interaction of increasingly complex environmental and energy regulations that confront every company doing business in the United States. Our attorneys blend a sophisticated legal understanding with a practical business perspective to enhance the competitive flexibility of all our clients ...more than buildings and structural components.

In general, a "qualifying advanced energy project" is a project that re-equips, expands or establishes a new manufacturing facility for the production of the following advanced energy facilities:

Technologies that create energy from renewable resources (sun, wind, geothermal and other renewable resources);
Energy storage technologies (fuel cells, microturbines or other energy storage systems used in electric vehicles);
Advanced transmission technologies that support renewable generation (including storage);
Renewable fuel refining or blending technologies;
Energy conservation technologies (advanced lighting, smart grid);
Plug-in electric vehicles and vehicle components (motors, generators);
Property to capture and sequester carbon dioxide; or
Other property designed to reduce greenhouse gas emissions.

Property used to refine or blend transportation fuels (other than renewable fuels) is excluded.

The application period began August 14, 2009, and preliminary applications are due to DOE by September 16, 2009. Final application will be due to DOE and Treasury by October 16, 2009. By January 15, 2010, Treasury will certify or reject applications and inform accepted applicants of the approved amount of their tax credits. Awardees will receive acceptance agreements from Treasury by April 16, 2010. Successful applicants must complete their projects within four years of their tax credit acceptance. DOE and Treasury will continue to allocate MTCs until the $2.3 billion aggregate cap is reached.

To view the Preliminary DOE Application, please click here.
To view the Federal Notice of Internal Revenue Code Section 48C, please click here.

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Michael A. Lehmann Mr. Lehmann specializes in tax issues relating to tax-exempt organizations and in the tax treatment of cross-border transactions. In the tax-exempt organizations field he regularly advises a large number of tax-exempt organizations, including hospitals and other health care providers, research organizations, low-income housing developers (with a particular focus on Section 42 tax credits), trade associations, private foundations and arts organizations on issues that include obtaining and maintaining tax-exempt status, managed care, executive compensation, reorganizations and joint ventures, acquisitions, unrelated business income planning and foundation excise taxes.

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