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Congress Recharges Tax Incentives for the Clean Energy Sector

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As part of the $858 billion Middle Class Tax Cut Act of 2010 extending the Bush-era tax rates and a variety of expiring business tax credits, Congress extended several key tax incentives which benefit the clean technology and renewable energy sectors.

Energy-Specific Incentives

1603 Treasury Grant Program

Congress extended for one year the start-of-construction deadline for the cash grant in lieu of tax credit program, established in Section 1603 of the American Recovery and Reinvestment Act (ARRA).

The Section 1603 program converts existing tax credits for renewable energy into an up-front payment from the Treasury Department shortly after a qualifying facility is placed into service. The program proved popular with renewable energy developers, who typically face large up-front capital costs and lack sufficient income to fully utilize tax credits. After the financial crisis made it extremely difficult for renewable energy developers to turn to large financial institutions to monetize the tax credits, the ARRA cash-grant program significantly increased renewable energy installations. For example, new wind power installations in 2009 (nearly 10 GW) increased by 20% over the previous year, and new solar photovoltaic installations (429 MW) increased 38% over the 2008 total.

To take advantage of the extended deadline, eligible renewable projects must begin construction by December 31, 2011. Construction begins when physical work of a significant nature begins on the project, according to the Treasury's guidance. A "safe harbor" provision in the guidance considers an applicant who incurs or pays more than 5% of the total cost of the property (excluding the cost of any land and preliminary activities) to have begun physical work of a significant nature.

Congress did not extend the deadline for placing projects into service. Therefore, the following in-service deadlines still apply:

- 2012: Large Wind facilities must be placed in service before the end of 2012.
- 2013: Biomass, geothermal, landfill gas and trash, hydropower, and marine and hydrokinetic facilities must be placed in service before the end of 2013.
- 2016: Solar, fuel cell, microturbine, combined heat and power, small wind, and geothermal heat pump facilities must be placed in service before the end of 2016.

Ethanol credits and tariff

The Act also extends various government supports for the ethanol industry. The volumetric ethanol excise tax credit (VEETC) will remain at $0.45 per gallon through 2011 under the Act, as will the $0.10 per gallon credit for small ethanol producers and the $0.54 per gallon tariff on imported ethanol.

Biodiesel credit

The Act retroactively extends the $1 per gallon biodiesel credit, which had expired at the end of 2009, through 2011.

Energy-efficient appliances

Congress also modified standards for, and extended through 2011, the Section 45M tax credit for domestic manufacturers of energy-efficient clothes washers, dishwashers, and refrigerators.

Energy-efficient homes

The Act retroactively extends through 2011 a tax credit of up to $2,000 for builders of new homes that have heating and cooling use ratings that are 50% lower than that found in typical new homes. The credit had expired at the end of 2009.

Congress also updated and extended through 2011 the Section 25C credit for energy-efficient improvements to existing homes, reinstating the credit as it existed prior to the American Recovery and Reinvestment Act of 2009.

Other Incentives Beneficial to the Clean Energy Sectors

Small business capital gains exclusion

The Act extends for one year the 100% exclusion of the gain from the sale of qualifying small business stock (QSBS) that is acquired after September 27, 2010 and is held for more than five years. As extended, such stock must be acquired by December 31, 2011. QSBS is from a C corporation with gross assets under $50 million and which meets a specific active business requirement. The amount of gain eligible for the exclusion cannot exceed the greater of 10 times the taxpayer’s basis in the stock or $10 million.

Bonus depreciation

Capital expenditures for depreciable property placed in service after September 8, 2010 and through December 31, 2011, qualify for 100% bonus depreciation. For investments in business equipment placed in service after December 31, 2011 and before January 1, 2013, the Act allows 50% bonus depreciation. In addition, for taxable years 2011 and 2012, taxpayers may elect to accelerate some Alternative Minimum Tax (AMT) credits in lieu of bonus depreciation.

Some Incentives Discontinued

Section 48C

The Act does not continue the Section 48C Advanced Energy Manufacturing Tax Credit program. The 48C program, enacted as part of the Recovery Act, provided $2.3 billion in investment tax credits, equal to 30% of the cost of personal property and fixtures, to outfit a facility manufacturing renewable energy-related products.

Clean renewable energy bonds (CREBs)

The Act lets expire clean renewable energy bonds, a form of tax credit bonds issued to finance certain renewable energy and clean coal facilities.

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