Congress Passes Bill Extending Section 1603 Grant and Other Energy-Related Incentives

December 17, 2010

The U.S. Congress recently passed a bill extending the Section 1603 grant program for one year, prolonging certain credits for biodiesel producers and both continuing and expanding first-year bonus depreciation.

On December 16, 2010, the U.S. Congress passed the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (Tax Relief Act) primarily to address and extend expiring individual income tax rates, capital gain rates and dividend rates that were set to increase at the end of this year. Additionally, the Tax Relief Act addresses the reinstatement of estate tax in 2011 and provides for lower estate tax rates. The act also contains several important energy-related provisions, including the extension of the Section 1603 grant program for one year, the extension of certain credits for biodiesel producers and the extension and expansion of first-year bonus depreciation. These energy-related provisions are the focus of the summary below.

The Tax Relief Act is currently awaiting signature by President Obama.

Extension of Section 1603 Grants

Significantly, the Tax Relief Act extends for one year the availability of the U.S. Treasury grant for renewable energy projects provided under Section 1603 of the American Recovery and Reinvestment Act of 2009. The grant permits certain qualified facilities to apply to receive a cash grant from the U.S. Treasury in lieu of the Internal Revenue Code (IRC) Section 48 investment tax credit. View additional information on the grant program and its requirements.

Under current law, taxpayers may receive a grant with respect to eligible property placed in service in 2009, 2010 or after 2010, so long as construction begins in either 2009 or 2010 and is completed prior to 2013 (wind facility), 2017 (solar facility) or 2014 (other energy technologies). The Tax Relief Act extends the deadlines to place property in service or to begin construction on property to 2011.

As discussed earlier this year, previous grant proposals had suggested a refundable tax credit to replace the program in 2011. The Tax Relief Act, however, instead extends the current grant program for one year.

Other Energy-Specific Provisions

The Tax Relief Act extends through 2011 several important energy tax credits and provisions:

- $1.00 per gallon production tax credit for biodiesel
- $0.10 per gallon credit for small biodiesel producers
- $1.00 per gallon production tax credit for diesel fuel created from biomass
- Credit for refined coal facilities
- $0.50 per gallon alternative fuel credit (except for liquid fuel derived from black liquor)
- Credit for certain energy-efficient new homes
- Credit for certain energy-efficient improvements to existing homes
- Credit for production of certain energy-efficient appliances
- Per gallon credits and outlay payments for ethanol
- Tariffs on imported ethanol and ethyl tertiary-butyl ether
- Elective provision to defer gain on the sale or disposition of electric transmission property
- Suspension on the taxable income limit for purposes of depreciating a marginal oil or gas well

General Business Provisions

The Tax Relief Act also extends several general business credits and provisions that are important to energy industry participants, such as the new market tax credit, the research and development credit and bonus depreciation.

New Markets Tax Credit

The Tax Relief Act extends and modifies the new market tax credit for investments in low-income communities. The new market tax credit is taken over seven years and is generally equal to 5 percent of the amount of the taxpayer's investment for the first three years and 6 percent of the investment for the last four years. This credit is extended through 2011, with a maximum allocation amount of $3.5 billion for each of 2010 and 2011.

Research and Development Credit

The Tax Relief Act also extends through 2011 the research and development credit pursuant to IRC Section 41. The research and development credit equals 20 percent of eligible costs for qualified research and experimentation expenditures above a base amount. The base amount is generally computed by looking at the ratio of the taxpayer's research expenditures to its gross receipts for past periods.

Bonus Depreciation

The Tax Relief Act extends through 2012 the availability of "bonus depreciation" for qualified property and increases the incentives under the bonus depreciation regime. Bonus depreciation generally permits a taxpayer to deduct 50 percent of the cost of qualified property on the date the property is placed into service, in addition to regular tax depreciation. However, the bonus depreciation provisions were set to expire at the end of this year. The Tax Relief Act extends those provisions for another two years, such that qualified property placed in service in 2011 or 2012 would generally be eligible. Additionally, for qualified property that is acquired and placed into service by the taxpayer between September 8, 2010, and December 31, 2011, the bonus depreciation amount will be 100 percent instead of 50 percent of the cost of such property. The bonus depreciation amount will return to 50 percent for qualified property placed in service after December 31, 2011, and through December 31, 2012.

The material in this publication may not be reproduced, in whole or part without acknowledgement of its source and copyright. On the Subject is intended to provide information of general interest in a summary manner and should not be construed as individual legal advice. Readers should consult with their McDermott Will & Emery lawyer or other professional counsel before acting on the information contained in this publication.

© 2010 McDermott Will & Emery. The following legal entities are collectively referred to as "McDermott Will & Emery," "McDermott" or "the Firm": McDermott Will & Emery LLP, McDermott Will & Emery/Stanbrook LLP, McDermott Will & Emery Rechtsanwälte Steuerberater LLP, MWE Steuerberatungsgesellschaft mbH, McDermott Will & Emery Studio Legale Associato and McDermott Will & Emery UK LLP. McDermott Will & Emery has a strategic alliance with MWE China Law Offices, a separate law firm. These entities coordinate their activities through service agreements. This communication may be considered attorney advertising. Previous results are not a guarantee of future outcome.