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Tax Law Alert

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David A. Tumen
Chair, Tax Practice Group; Member, Green Practice Group
614-227-2260
dtumen@porterwright.com

Mark A. Snider
Member, Tax Practice Group
614-227-2150
msnider@porterwright.com

Environmental Practice Members

Robert L. Brubaker
614-227-2033
rbrubaker@porterwright.com

Daniel R. Conway
614-227-2270
dconway@porterwright.com

Dennis D. Hirsch
614-227-2064
dhirsch@porterwright.com

Robert A. Meyer, Jr.
Chair, Green Practice Group
614-227-2096
rmeyer@porterwright.com

Recent Legislation Enhances Energy Tax Credits and Other Incentives

In keeping with President Obama's plan to make green-sector projects a significant aspect of economic stimulus efforts, the recently enacted 2009 federal stimulus legislation includes a number of provisions devoted to fostering alternative energy investment. Many of these provisions come in the form of tax credits, grants, and incentives and are available to a wide spectrum of taxpayers including businesses and utilities.

In particular, the stimulus legislation extends the years during which alternative energy tax credits are available and offers taxpayers tax-free grants in lieu of tax credits in some situations. In addition, legislation adopted in late 2008 substantially expands the types of projects eligible to receive federal alternative energy tax credits.

The recent trend has been an expansion of tax credits and incentives for renewable energy, and additional renewable energy tax credit provisions are possible in the coming year. A slate of state and local tax credits and incentives may also be available.

Renewable energy grants

The 2009 stimulus legislation permits a taxpayer to elect to obtain a non-taxable **grant**, instead of the IRC Section 45 production or Section 48 investment tax credits discussed below, equal to 10 percent or 30 percent of the cost basis of certain renewable energy property placed in service in 2009 or 2010 or for which construction was begun in 2009 or 2010. These grants reduce the depreciable basis of the equipment by 50 percent.

IRC Section 48 renewable energy investment tax credits

The investment tax credit under Section 48 of the Internal Revenue Code provides the owner of certain energy equipment with a federal income tax credit equal to a certain percentage of the cost of the equipment placed in service during the tax year.

- The credit is available for certain types of solar, fuel cell, microturbine, wind, geothermal, geothermal heat pump, and combined thermal-electrical energy equipment.
- The credit amount is either 10 percent or 30 percent of the cost basis of the property, depending on the type of equipment.
- The credit is available for property placed in service through 2015 or 2016, depending on the type of equipment.

- The credit may be used to offset alternative minimum tax (AMT) liability and can now be claimed by utilities that invest in qualified renewable energy equipment.

IRC Section 45 electricity production tax credits

The electricity production tax credit under Section 45 of the Internal Revenue Code provides a federal income tax credit to producers of electricity from certain renewable energy sources.

- The credit ranges from 1.05 to 2.1 cents per kilowatt hour, depending on the fuel source.
- The credit is available each year for ten years starting in the year the renewable fuel source property is placed in service.
- The credit is indexed yearly for inflation and may be used against AMT for the first four years.
- The credit for producing electricity from wind is available for projects placed in service through 2012, and the credit for producing electricity from refined coal is available for projects placed in service through 2009.
- The credit for producing electricity from hydropower, landfill gas, trash combustion and utilization, closed and open-loop biomass, qualified marine and hydrokinetic, and geothermal technologies is available for projects placed in service through 2013.
- The 2009 stimulus legislation permits a taxpayer to elect to obtain a **one-time 30 percent investment tax credit**, based on the cost basis of the equipment, instead of grants or Section 45 production tax credits for most types of property eligible for the Section 45 tax credit if the equipment is placed in service through 2012 or 2013.

Other new federal incentives:

- Extend through 2009 a tax credit for biodiesel and other renewable diesels and increase the credit amount to $1.00 per gallon;
- Authorize $2.4 billion of new clean renewable energy bonds to finance renewable energy facility construction; and
- Increase to 30 percent the tax credit for “clean coal” and “coal gasification” projects.

Enhanced depreciation

The 2009 stimulus legislation extends 50 percent first-year bonus depreciation for property placed in service through 2009 and extends the ability of taxpayers to expense rather than depreciate up to $800,000 of new property first placed in service through 2009.

Federal cash incentives

The federal Renewable Energy Production Incentive (REPI) provides payments for electricity produced and sold by new qualifying renewable energy facilities. Eligible electric production facilities include not-for-profit electrical cooperatives, public utilities, state governments, and political subdivisions. Qualifying systems must generate electricity using solar, wind, geothermal, biomass, landfill gas, livestock methane, or ocean-movement technologies.

Ohio incentives

Ohio provides incentives in the form of grants, low-interest loans, and tax exemptions for certain solar, wind, and biofuel projects. Local property tax exemptions may also be available. In addition, a 2008 law requires that Ohio utilities provide 20 percent of their retail electricity supply from alternative energy resources by 2025. To meet this requirement, electricity may be generated from solar, wind, geothermal, biomass, methane, landfill gas, and certain types of municipal solid waste. Investing in renewable energy equipment helps utilities meet these goals.

Structuring transactions

Companies interested in taking advantage of these provisions of the stimulus legislation will need to structure transactions and investments carefully to ensure eligibility. With careful planning, businesses can maximize cash flow and investment value and optimize the use of tax credits and governmental incentives. Partnerships and LLC structures, sale lease-back transactions, leveraged structures, and power purchase agreements may all offer appropriate routes to significant tax savings.

Porter Wright Morris & Arthur LLP
www.porterwright.com

Cincinnati, Ohio 800-582-5813
Cleveland, Ohio 800-824-1980
Columbus, Ohio 800-533-2794
Dayton, Ohio 800-533-4434
Naples, Florida 800-876-7962
Washington, DC 800-456-7962