

Energy

Treasury, Energy Offer \$2.3 Billion in Credits To Energy Manufacturers Under Recovery Act

Manufacturers of advanced energy equipment would be eligible for \$2.3 billion in tax credits under a program the departments of Treasury and Energy announced Aug. 13.

The program, outlined in Internal Revenue Service Notice 2009-72, also released Aug. 13, would distribute credits to manufacturers of clean energy equipment up to a cap of \$2.3 billion or until the end of two years, whatever threshold is reached first, the release said.

The American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) authorized the program through its creation of a new section of the tax code, Section 48C, which goes back a step in the line of production, opening a 30 percent investment credit to the manufacturers of solar panels, wind turbines, biodiesels, and other mechanisms used in clean energy production. Private sector analysts told BNA that manufacturers building new facilities, expanding facilities, or adding equipment to facilities would all be eligible for the credit; current law provides separate Section 45 production and Section 48 investment tax credits for clean energy, as well as additional energy incentives, on the finished products ([40 DTR G-2, 3/4/09](#)).

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*Katherine Breaks, director, Federal Tax Legislative and Regulatory Services Group,
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“Qualifying manufacturers will produce solar, wind, and geothermal energy equipment; fuel cells, microturbines, and batteries; electric cars; electric grids to support the transmission of renewable energy; energy conservation technologies; and equipment that captures and sequesters carbon dioxide or reduces greenhouse gas emissions,” the release said.

Criteria in Notice 2009-72

Under Notice 2009-72, IRS would only consider Energy Department-recommended and -ranked projects as qualified for the program. The notice said Energy's recommendation hinges on a “reasonable expectation of commercial viability” and meeting four equally weighted qualifying criteria in Section 48C(d)(3)(B) of the tax code stipulating that a given project:

- “provides the greatest domestic job creation (both direct and indirect) during the credit period (February 17, 2009, through February 17, 2013);

- “provides the greatest net impact in avoiding or reducing air pollutants or anthropogenic emissions of greenhouse gases;
- “has the greatest potential for technological innovation and commercial deployment, as indicated by (i) the production of new or significantly improved technologies, (ii) improvements in levelized costs and performance, and (iii) manufacturing significance and value; and
- “has shortest project time from certification to completion.”

The notice also specified four program policy factors as guidelines in addition to the statutory criteria: geographic diversity, technology diversity, project size diversity, and regional economic development.

Limited Funding Spurs Competition

IRS will take Energy's rankings of qualified applicants and match the requests, rather than evenly distribute the money, in the order they appear on the list, said Katherine Breaks, director in the Federal Tax Legislative and Regulatory Services Group of KPMG LLP's Washington National Tax practice. Money could therefore run out before some applicants are reached.

The available \$2.3 billion will increase competition in an environment where a single wind turbine manufacturing facility, for example, can cost hundreds of millions of dollars, Ernst & Young's Michael Bernier told BNA.

The available credits help to provide “a level of funding and subsidy that will help get those projects done,” said Bernier, manager of E&Y's Tax Credit Investment Advisory Services group.

He said various people in Congress have discussed whether the program should be expanded.

Private Sector Expresses Praise, Concerns

Bernier praised the diversity-centric program policy factors as guarding against any specific group receiving the lion's share of available credits.

“The indication is very clear that they plan on spreading it around,” he said. While there is no guarantee, Bernier said he valued the step IRS is taking in considering diversity in addition to the criteria when awarding credits.

Tony Grappone, a principal out of the Boston office of the certified public accounting and consulting firm Novogradac & Company LLP, expressed concern that the program, based on what he has read, might not rule out one applicant receiving the entire award.

Considering distribution of credits in the context of job creation, Grappone noted that small businesses tend to create more jobs than larger businesses, and so distributing the credits over a larger range would likely create more jobs.

He said Novogradac presented comments to IRS and Treasury about a month ago suggesting credit ceilings for applicants to safeguard against one company with a very large project siphoning all the money from the credits pool, with Treasury responding that they would not want to penalize a large company.

Grappone and Breaks expressed an additional concern about the deadlines in the notice, which require preliminary applications by Sept. 16 and final applications by Oct. 16.

Breaks said the narrow window might dissuade some manufacturers lacking the resources to provide so much information from applying.

Another challenge for manufacturers, Breaks said, is the requirement to estimate their projects' greenhouse gas reductions for comparison by IRS.

Still, the program “encourages the producers of renewable energy equipment to build or expand their facilities in the U.S. as opposed to overseas,” Breaks said.

Grappone said the credits will be “extremely helpful” in assisting companies both large and small, particularly start-up companies that are capital restrained and in need of seed money.

By Christine Grimaldi

Texts of the [Treasury release](#) and [Notice 2009-72](#) are in TaxCore.