

IRS, DOE Provide Guidance on Advanced Energy Manufacturing

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This article is the second in a two-part series covering the new Advanced Energy Manufacturing Tax Credit (MTC) created by the American Recovery and Reinvestment Act under Section 48C of the Internal Revenue Code (IRC). The first article appeared in the August 2009 issue of the Journal of Tax Credit Housing. That article summarized the fundamental rules of Section 48C; discussed and analyzed the comments that Novogradac & Company LLP presented to members of the IRS and Treasury who are responsible for establishing the program; and, based on a meeting with the IRS and Treasury and an understanding of analogous tax credit programs, attempted to forecast certain aspects of the then anticipated IRS guidance on how taxpayers are to apply for a credit award. This article will clarify and/or confirm that forecast with the new information that was provided by the Department of Energy and the Internal Revenue Service (IRS) on August 13. The IRS's position is contained in its recently issued Notice 2009-72, which establishes the MTC program and lists the rules for applying for a credit award.

The MTC was enacted on February 17, 2009 as part of the American Recovery and Reinvestment Act of 2009, which authorizes Treasury to award up to \$2.3 billion in tax credits that will allow eligible taxpayers to claim a 30 percent general business investment tax credit in exchange for a qualified investment made during the taxable year and that is part of a qualifying advanced energy project.

A qualified investment generally means tangible personal property subject to depreciation and that is part of a qualifying advanced energy project. Property that is part of the building or its structural components is specifically excluded from eligibility. Generally, a qualifying advanced energy project is a project that enables a manufacturing facility to produce at least one of the following:

- ♦ Property designed to generate energy from renewable sources such as wind, solar and geothermal deposits;
- ♦ Fuel cells, microturbines or energy storage systems needed to power electric and/or hybrid-electric motor vehicles;
- ♦ Electric grids that support transmitting and/or storing renewable energy;
- ♦ Property designed to capture/sequester carbon emissions;
- ♦ Property designed to refine/blend renewable fuels, generate energy-saving lighting technologies and/or to develop smart grid technologies;
- ♦ Property used in making new qualified plug-in electric drive motor vehicles, qualified plug-in electric vehicles, or components that are designed specifically for use with such vehicles, including electric motors, generators and power control units; and/or
- ♦ Producing other advanced energy property used for reducing greenhouse gas emissions that wasn't specifically mentioned above and approved by the Treasury.

In order to participate, taxpayers must apply for and receive a credit award. Awardees will not be allowed to claim the credit for costs for which the credits under IRC sections 48, 48A or 48B (and/or payments under Section 1603 of the Recovery Act) were also claimed.

Program establishment

The rules for the MTC program were established in Notice 2009-72, which was issued on August 13, 2009 as part of a joint effort between the IRS Office of Chief Counsel for passthroughs and special industries (known as Branch 6) and the U.S. Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy (EERE).

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Application rounds

Notice 2009-72 provides for as many as two rounds of applications (the 2009-2010 round and a 2010-2011 round). However, there will be no second round if the entire credit authority is awarded during the initial 2009-2010 round.

Application form

Applying for the MTC program is a multi-step process. First, applicants must submit a preliminary application to DOE. The preliminary application requires applicants to submit a project narrative of 300 words or less and complete a questionnaire that is fewer than two pages in length.

Next, applicants must submit a final application to DOE. Applicants will simultaneously submit to the IRS a copy of the final application, along with certain additional documents. The final application involves, among other things, completing an executive summary that provides a description and location of the project, the amount of

credit requested, the parties involved and the project's current status. Applicants will also be required to demonstrate commercial viability by submitting a business and financing plan. In addition, applicants are asked to provide information on projected job creation, environmental impacts/benefits, technological advancements and a time frame in which to complete the project.

Due dates for the 2009-2010 initial round of applications are listed below in the Application & Award Schedule.

Application & Award Schedule	
Preliminary Applications	9/16/2009
Final Applications	10/16/2009
48C Certification Application	10/16/2009
DOE Recommendation to IRS	12/16/2009
48C Certification Acceptance Notification	1/15/2010
Taxpayer Acceptance	3/15/2010
IRS Execution of Agreement	4/16/2010

(Source: IRS Notice 2009-72, Novogradac & Company LLP)

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Application review and ranking

The DOE will review and rank applications using a competitive process. Eligible projects will be evaluated and ranked primarily on:

1. Domestic job creation;
2. greatest impact in avoiding or reducing air pollutants/greenhouse gas (GHG) emissions;
3. greatest technology innovation; and
4. shortest project time.

Awarding credits and limits

The DOE will recommend projects to the IRS for credit award based on the rankings determined in the competitive process described above. The IRS will award the highest ranking application with the full amount of credit requested before allocating credits to the next highest ranking application. The IRS will continue this credit award process until the entire credit authority has been exhausted.

Because of this award process it is conceivable that one applicant could win the entire credit authority. However, Notice 2009-72 does provide for program policy factors that indicate a desire to award credits to a variety of projects across a geographically diverse area.

Compliance monitoring

The guidance under Section 48C requires awardees satisfy one-year and three-year progress requirements. To satisfy the one-year requirement, awardees must have received all federal, state and local permits, including environmental authorization or reviews necessary to begin construction of the project. To satisfy the three-year re-

quirement, projects simply must be placed in a condition or state of readiness consistent with the rules set forth in Section 1.46-3(d)(1)(ii) of the income tax regulations.

Ownership structures

Based on the guidance provided in Notice 2009-72, it is expected that the ownership structures that historically have been employed in the other investment tax credit programs (such as the historic rehabilitation tax credit and the renewable energy tax credit) will also be utilized by MTC program participants.

Special tax rules

Although Notice 2009-72 did not specifically address certain tax concerns, such as safe harbor provisions or the profit motive test, it did mention that the at-risk rules in Section 49 and the recapture rules in Section 50 will also apply to the MTC. It is anticipated that the rules and guidance that govern the other investment tax credit programs will also apply to the safe harbor rules, profit motive and other special tax rules of the MTC.

Webinar and additional information

On August 25, Novogradac & Company LLP presented a webinar on the MTC program. For more information on how to obtain a recording of this webinar, or to learn more the MTC and other renewable energy programs and events please visit www.energytaxcredits.com. To learn about the professional services Novogradac & Company LLP provides in connection with these programs, send an e-mail to cpas@novoco.com. ❖

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