

Renewable Energy Alert – Update on the New §48C Tax Credit for Investments in Clean Energy Manufacturing Equipment

By Tony Grappone, CPA, Novogradac & Company LLP

This article is the first of a two part series covering the new qualifying advanced energy project credit under Section 48C of the Internal Revenue Code (IRC). The credit was enacted on February 17, 2009 as part of the American Recovery and Reinvestment Act of 2009 (The Recovery Act) that 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. Specifically excluded is property that is part of the building or its structural components. Generally, a qualifying advanced energy project is a project that enables a manufacturing facility to produce 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

- 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 need to apply for and receive a credit award. The official guidance on applying is expected this month in an Internal Revenue Service (IRS) notice. Some of the criteria to be considered in awarding credits include commercial viability, domestic job creation, net impact in avoiding/reducing air pollutants or greenhouse gas emissions, technological innovativeness, commercial deployment, cost of generating or storing energy and time frame for completing the project.

Awardees will not be allowed to claim the credit for costs for which the credits under IRC sections 48, 48A or 48B were also claimed.

Novogradac & Company LLP has been tracking the development of the credit program since its enactment and has been in communication with the Internal Revenue Service representatives responsible for issuing formal guidance. Earlier this month, Novogradac & Company was invited to Washington to present comments to the IRS regarding issues surrounding the credit. During the meeting comments were presented on applications, awards, compliance monitoring, ownership structures and special tax rules. Although the final guidance is still subject to change, the IRS representatives provided feedback suggesting the following:

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Program establishment

The establishment of the new credit program is a joint effort between the IRS Office of Chief Counsel for passthroughs and special industries (known as Branch 6), as well as the U.S. Department of Energy's Office of Energy Efficiency and Renewable Energy (EERE).

Timing for issuing application and guidance

Official guidance is not expected in advance of the expiration date: August 17, 2009.

Application form

It is anticipated the application form and procedures will bear similarities to the application procedures under IRC sections 48A and 48B.

Application scoring

It is anticipated applications will be scored on a competitive basis; however it is unclear how much of the scoring system will be made available to applicants.

Application rounds

Although one round of credit award is envisioned, if the full \$2.3 billion of credit authority cannot be awarded as part of the initial round, subsequent round(s) will likely be announced until the full credit authority has been awarded.

Award limits

It is uncertain whether or not there will be credit award limits per applicant (as there is in the New Markets Tax Credit (NMTC) program, for example). It is also uncertain whether or not each eligible production use will be allocated a minimum amount of credit. Currently, the guidance under IRC Section 48C does not provide for

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Journal of Tax Credit Housing Information

Address all correspondence and editorial submissions to:

Jane Bowar Zastrow

Telephone: 415.356.8034

Address inquiries regarding advertising opportunities to:

Emil Bagalso

Telephone: 415.356.8037

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Novogradac & Company LLP
246 First Street, 5th Floor
San Francisco, CA 94105
E-mail: cpas@novoco.com



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credit floors or ceilings for applicants or production uses.

Compliance monitoring

The guidance under Section 48C requires awardees to satisfy a one-year and three-year progress requirement; however it is unclear as to what evidence awardees will need to submit to satisfy either requirement. Although it is possible that particular compliance monitoring measures may be imposed (i.e. like carryover requirements and final cost certification requirements in the low-income housing tax credit (LIHTC) program or the substantially-all requirement in the NMTC program) it is uncertain if this guidance will be part of the application guidance that is expected to be published yet this month.

Ownership structures

It is envisioned that the ownership structures that his-

torically have been employed in the other investment tax credit programs (such as the historic rehabilitation credit and the energy credit) will also be utilized as part of the Section 48C program.

Special tax rules

It is anticipated that the rules and guidance that govern the other investment tax credit programs will apply to the Section 48C program as well, and additional new guidance is not expected.

Following the release of the anticipated IRS guidance, the Journal of Tax Credit Housing will publish the second of this two part series covering the new qualifying advanced energy project credit under Section 48C of the Internal Revenue Code (IRC). The follow-up article will confirm and clarify our understanding of the new credit program rules and provide additional insight on applying for and obtaining a credit award. ❖

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