

Client Alert.

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American Taxpayer Relief Act of 2012: Extends Production Tax Credit for Wind and Many Other Cleantech Tax Incentives

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On January 1, 2013, the Senate and the House of Representatives passed the American Taxpayer Relief Act of 2012 (“ATRA”), averting the so-called “fiscal cliff.” The legislation, which was signed by President Obama, extends numerous energy-efficiency and renewable energy deductions and credits, including the “production tax credit” (the “PTC”) under Section 45 of the Internal Revenue Code (the “Code”) for wind power and other forms of non-solar renewable energy.

PRODUCTION TAX CREDIT EXTENSION

The PTC, which is determined based on the amount of electricity sold to an unrelated taxpayer which is produced at a qualified renewable energy facility over a 10-year period beginning on the date the facility is placed in service, allows owners of the qualified facilities to offset federal income taxes with the credits generated from the sale of this electricity. ATRA extends the PTC for wind and other non-solar renewable energy sources for an additional year. Importantly, ATRA treats a facility as an eligible facility with respect to which the owner has “begun construction” prior to January 1, 2014.

Since there is no outside date by which the wind project must be fully constructed and operational, as long as the developer “begins construction” prior to January 1, 2014, the project will qualify for the PTC. Because wind and other renewable energy projects typically are placed in service more than one year after the date construction commences, using the date on which construction begins (as opposed to the date the project is placed in service) will enable significantly more projects to qualify for the PTC. The Internal Revenue Service will need to issue guidance addressing what is considered “beginning construction” for purposes of satisfying this provision. Presumably, the IRS will construe this provision in a similar manner as the Department of Treasury has for the cash grant program.

In addition, taxpayers may claim a 30% investment tax credit for renewable energy projects under Section 48 of the Code in lieu of the PTC as long as construction on such projects has commenced prior to January 1, 2014.

EXTENSION OF 50% BONUS DEPRECIATION

ATRA extends the applicability of “bonus depreciation” under Section 168(k) of the Code for another year. “Bonus depreciation” allows taxpayers to immediately deduct 50 % of the adjusted basis of certain types of property. Under prior law, certain types of property would no longer have been eligible for this deduction as of January 1, 2013. Accordingly, project developers placing new solar, wind, or other renewable energy equipment in service prior to January 1, 2014 may immediately expense 50% the cost of such equipment or, in the case of property on which the cash grant or a tax credit has been claimed, 42.5% of the cost of the equipment.

CASH GRANT AND POSTPONEMENT OF SEQUESTRATION

Amounts payable to taxpayers that are qualified to receive the cash grant for renewable energy projects under Section 1603 of the American Recovery and Reinvestment Tax Act of 2009 but have not yet placed their projects in service would

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be subject to the automatic sequester of spending cuts. Although ARTA postpones for two months the automatic sequester, if Congress cannot reach a workable long-term agreement by March 1, 2012 and sequestration goes into effect, cash grants to eligible taxpayers that have not received payment will be reduced. In September, the Office of Management and Budget issued a report providing that, if sequestration occurred, the cash grant program would be subject to a 7.6 percent reduction starting in 2013. Neither the Department of Treasury nor the Office of Management and Budget has provided clarity on which renewable projects would be affected.

EXTENSIONS OF OTHER RENEWABLE ENERGY AND ENERGY-EFFICIENCY INCENTIVES

ARTA also extends through December 31, 2013 the following renewable energy and energy-efficiency incentives:

- the 30% investment tax credit for alternative fuel vehicle refueling property credit (non-hydrogen refueling property);
- incentives for alternative fuel and alternative fuel mixtures (other than liquefied hydrogen);
- tax credit under Section 25C of the Code for energy-efficient improvements to existing homes;
- the individual income tax credit for highway-capable plug-in motorcycles and three-wheeled vehicles;
- production tax credit on cellulosic biofuel (as well as expanding credit to allow fuels produced through algae to qualify);
- biodiesel and renewable diesel credits and cellulosic biofuels bonus depreciation;
- tax credit for construction of new energy efficient homes that achieve a 30% or 50% reduction in heating and cooling energy consumption; and
- tax credit for U.S.-based companies that manufacture energy-efficient washing machines, dishwashers, and refrigerators.

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