

U.S. Departments of Treasury and Energy Provide Guidance on \$3 Billion Renewable Energy Cash Grant Program

On July 9, 2009 the Treasury and Energy Departments released guidelines and application instructions for the estimated \$3 billion in cash grants to be awarded to renewable energy projects pursuant to the economic stimulus bill, known as the American Recovery and Reinvestment Act (the "Recovery Act"), which was signed into law on February 17, 2009. The grant program is intended to promote clean energy development in an economic environment which has limited the ability of tax equity investors to monetize the traditionally available production and investment tax credits.

In addition to several other energy provisions, the Recovery Act included a key provision that provides for immediate cash grants in lieu of tax credits for specified energy property placed in service during 2009 or 2010 (or later, under certain conditions) (a "Section 1603 Payment").

Specified energy property includes property used for most types of renewable energy projects, but only tangible property that is an integral part of the energy-producing facility. For instance, if solar panels are mounted on the roof of a building, the building itself is not specified energy property. The July 9 release provides further discussion of qualified property in the context of specific energy applications. Under the program, in exchange for forgoing the production and investment credits available under sections 45 and 48 of the Internal Revenue Code (the "Code"), the taxpayer receives a nontaxable cash grant equal to the

available credit. For most renewable energy projects, the grant would be 30% of the specified energy property's basis. Certain geothermal, combined heat and power, and microturbine projects are instead eligible for a 10% grant, with microturbine projects subject to further limitations. The specified energy property's basis is determined in accordance with the general rules for determining cost basis for federal income tax purposes.

While the Treasury Department is not yet accepting applications, guidelines and sample applications have been provided at www.treas.gov/recovery/1603.shtml. Applications for property to be placed in service in 2009 or 2010 must be submitted before October 1, 2011. Applications will be reviewed and payments made within 60 days from the later of the date the property is placed in service or the date of the completed application. The application requires an applicant to describe the project, including details on the nature and capacity of the facility, actual or projected construction, and how the energy will be sold or used.

The July 9 release also clarifies several other issues, including:

- If the applicant is applying for Section 1603 Payments for multiple units of property that may be treated as a single, larger unit of property, only one application need be filed.

- A foreign person or entity may be eligible for a Section 1603 Payment if more than 50% of the gross income of the foreign person or entity derived from the use of the property is subject to U.S. tax, or (if the entity is a controlled foreign corporation) included in the gross income of a U.S. shareholder.
- Applicants may be permitted to assign the Section 1603 Payment to third parties provided the requirements of the Federal Assignment of Claims Act are met.
- The Section 1603 Payment will not make the specified energy property subject to the

requirements of the National Environmental Protection Act and similar laws.

- The Section 1603 Payment will not make the specified energy property subject to the “prevailing wage rate” or other requirements of the Davis-Bacon Act.



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