

ALTERNATIVE ENERGY INCENTIVES FOR BUSINESSES

In the United States there are currently three major alternative energy incentive programs available for businesses. The first two incentives are the investment tax credit and the production tax credit. Both of these tax incentives are provided for under the Internal Revenue Code and equate to a tax credit that can be claimed on a taxpayer's federal income tax return. The third incentive is a grant program that is provided for under Act Section 1603 of the American Recovery and Reinvestment Act of 2009. Under the grant program a business can receive a cash payment from the United States government for purchasing alternative energy property. The grant program is administered by the Department of the US Treasury.

The investment tax credit, the energy production tax credit or the federal energy grant cannot be claimed in tandem, meaning that a taxpayer can only choose one of these incentives. Obviously care will need to be taken in deciding which energy incentive will be best for a specific taxpayer.

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1. INVESTMENT TAX CREDIT. Under Internal Revenue Code Section 48, a taxpayer can claim a tax credit equal to thirty percent of the cost of qualified eligible energy property placed in service. Property eligible for the federal tax credit are:

- Solar property,
- Geothermal property,
- Qualified fuel cell property,
- Stationary micro turbine property,
- Combined heat and power system property,
- Qualified small wind energy property, and
- Geothermal heat pump property

In addition for a limited time (2009 through 2013) an election can be made to treat energy projects that utilize the following sources of energy producing electricity as qualifying for the investment tax credit:

- Wind,
- Closed-loop biomass,
- Open-loop biomass,
- Geothermal energy,
- Landfill gas,
- Municipal solid waste,
- Hydropower, or
- Marine hydrokinetic renewable energy

The federal tax credit is not considered to be taxable income; however, the cost basis of the energy property will need to be reduced by one-half of energy credit claimed.

The investment tax credit is also subject to an alternative minimum tax limitation. The credit cannot reduce a taxpayer's regular tax below the taxpayer's alternative minimum tax. Any unused credit can be carried back one year and forward twenty years.

A percentage of the investment tax credit will have to be recaptured if the energy property is disposed of within five years of being placed in service.

2. **PRODUCTION TAX CREDIT.** Under Internal Revenue Code Section 45, a taxpayer can claim a tax credit equal to a percentage (between .0075 cents and 2.1 cents per kilowatt-hour) of energy generated from qualified energy resource property placed in service. The credit can be claimed for a ten year period starting with the date that the energy resource property is placed in service.

Eligible energy resources include:

- Wind,
- Closed-loop biomass,

- Open-loop biomass,
- Geothermal or solar energy,
- Small irrigation power,
- Municipal solid waste,
- Qualified hydropower production, and,
- Marine and hydrokinetic renewable energy

Unlike the investment tax credit, the cost basis of energy property does not have to be reduced by the production tax credit claimed. In addition, for facilities that generate electricity, there is no alternative minimum tax credit limitation for the first four years that a facility is placed in service. Similar to the investment tax credit, an unused energy credit can be carried back one year and forward twenty years.

- 3. GRANT FOR INVESTMENTS IN SPECIFIED ENERGY PROPERTY.** Under Act Section 1603 of the American Recovery and Reinvestment Act of 2009, the United States Government will make cash payments to eligible taxpayers who place in service specific energy property. Only taxpayers that are in a trade or business can qualify for this grant. Residential energy efficient property does not qualify for this grant.

The grant is in lieu of the investment tax credit or the production tax credit mentioned above, meaning that a taxpayer can apply for the grant or claim one of the business tax credits, but not both.

The grant mirrors the investment tax credit in IRC Section 48 in that generally the amount of the grant is equal to thirty percent of the cost of specified energy property placed in service. The grant only applies to specified energy property placed in service in 2009 or 2010. There are transitional rules for energy projects that were started in 2009 or 2010 and are completed between 2013 and 2017.

Any qualifying applicant will have to file an application with the United States Treasury in order to receive payment. For energy projects placed in service in 2009 or 2010, the application will have to be submitted no later than September 30, 2011. The Treasury will make payment within sixty days of receiving a complete application.

The following persons are not eligible to receive payment under Act Section 1603:

- Federal, state or local governments,
- Non-profit organizations,
- Cooperative electric companies.

Property eligible for the grant are the same types of property that qualify for the investment tax credit under IRC 48 and the production tax credit under IRC 45 as described above.

The cost basis on which the payment is based upon is its original cost and includes all costs which are normally part of property's depreciable basis such as installation and cost of freight.

Similar to the investment tax credit, the cost basis of the property has to be reduced by fifty percent of the grant received. In addition, to the extent that specified energy property is disposed of within five years of being placed in service a percentage of the grant will need to be recaptured.

As the rules that govern these three tax incentives are very complex and this article is intended as a brief outline of these rules, it is advised that you consult with a tax advisor to determine your eligibility for these incentives.