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Energy Law ALERT

MAY 2011

Cash Grants for Renewable Development in the United States

As initially adopted in the “American Recovery and Reinvestment Act of 2009” and subsequently extended in the “Tax Relief, Unemployment Reauthorization, and Job Creation Act of 2010”, developers of many types of renewable generation in the United States may apply for cash grants from the US Department of Treasury. These grants are in lieu of tax-related incentives – the Investment Tax Credit (ITC) and the Production Tax Credit (PTC) – that are also available. In the case of solar, fuel cells, small wind turbines and “Qualified Facilities” (which includes certain smaller units fueled by wind, biomass, hydro, marine and geothermal, among others) the grant is equal to 30 percent of the eligible cost of the project. For Combined Heat and Power (CHP) facilities, among others, the grant is equal to ten percent of the eligible costs.

Grants are available for “eligible property” placed in service in 2009, 2010 or 2011. Grants are also available for projects on which construction begins by 2011, provided they are placed in service by the following dates:

- January 1, 2013: wind
- January 1, 2014: closed-loop biomass, open-loop biomass, landfill gas, trash, qualified hydropower, marine and kinetic
- January 1, 2017: fuel cells, small wind, solar, geothermal, micro-turbines and CHP

Construction commences when physical work of a significant nature begins, whether by self-construction or construction by a third party pursuant to a binding written contract. Generally, any physical work on the specified energy property is sufficient. However, to provide certainty, a “safe harbor” has been established – if the applicant has incurred or paid at least five percent of the total eligible cost of the project, construction is deemed to have begun.

Applications must be filed by October 1, 2012. If the project is in service when the application is submitted, Treasury will act on the application within 60 days. If the project is not yet in service at that time, Treasury will review the application and notify the applicant if all eligibility requirements have been met (to the extent such requirements can be met before service begins). In that case, within 90 days of placing the project in service, the applicant must submit supplemental information to Treasury for final consideration.

Tax-exempt owners of wind projects are not eligible for the cash grant. However, the cash grant is available to the owner of the property leased to a tax-exempt entity. Thus, a developer can lease a wind project to a government agency without losing the cash grant, as long as the lease qualifies as a true lease and is not considered a disguised sale. All or part of the cash grant is subject to repayment if the taxpayer disposes of property or ceases to use it in a qualified manner within five years.

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