

## ENERGY, TAX TRANSACTIONS UPDATE

### US Energy Tax Implications of the Economic Stabilization Act of 2008

*October 14, 2008*

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The Emergency Economic Stabilization Act of 2008 (the “Act”) contains numerous extensions, additions, and modifications of certain renewable and other energy tax credits. Division B of the legislation, entitled the Energy Improvement and Extension Act of 2008 provides nearly US\$18 billion in tax provisions for the energy industry. Of particular note are the Act’s extension of several production tax credits (PTCs) set to expire on December 31, 2008, the repeal of the restriction against investment tax credits for public utility property, and the inclusion of a new credit for carbon dioxide sequestration. Each of these should provide welcome relief to the alternative energy industry, which had been actively lobbying, and anxiously waiting, for Congressional action regarding the scheduled PTC expiration.

#### Section 45 Renewable Electricity Credit

The placed-in-service date for facilities claiming the section 45 production tax credit for the generation of electricity from wind or refined coal was extended for one year, through 2009. The placed-in-service date for geothermal, open and closed loop biomass, landfill gas, trash combustion, and

qualified hydropower facilities was extended for two years, until the end of 2010. The Act also expands the definition of “qualified energy resources” under section 45 to include marine and hydrokinetic renewable energy from waves, tides, and currents from oceans, rivers and streams, as well as energy from canals and ocean thermal energy conversion. Hydrokinetic facilities must be placed in service after October 3, 2008, and before January 1, 2012, in order to qualify.

The Act also broadens the scope of the credit for energy production from refined coal to include “steel industry fuel” that is produced and sold after September 30, 2008. Steel industry fuel includes fuel produced by liquefying coal waste sludge, then placing it on coal for use as a feedstock to manufacture coke, a substance used to make steel.

#### Credit for Sequestration of Carbon Dioxide

The Act also adds a new tax credit for the capture and use of carbon dioxide for enhanced oil and gas recovery, as well as for its sequestration in secure geologic storage. The credit equals US\$10 per metric ton used for enhanced oil recovery, and US\$20 per

metric ton that is placed in secure geologic storage. To qualify for either of these credits, the taxpayer must both capture and use the carbon dioxide for recovery or storage. In addition, the taxpayer must own the facilities used for sequestration, and such facilities must capture a minimum of 500,000 tons of carbon dioxide during the year. The credit applies for carbon dioxide captured after October 3, 2008.

### Section 48 Investment Tax Credit

The Act extends the investment credit for solar, fuel cell, and micro-turbine residential and commercial property for eight years, through 2016. It also expands the definition of “energy property” to include small wind turbines, and equipment that uses the ground or ground water to heat or cool a structure. Also, a new investment tax credit was added for combined heat and power property systems (CHP). A CHP system is one that uses the same energy source for the simultaneous generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other useful forms of thermal energy, and which produces (i) at least 20 percent of its energy in the form of thermal energy, (ii) at least 20 percent of its energy in the form of electrical or mechanical power, and (iii) the energy efficiency percentage of which exceeds 60 percent. CHP property must be placed in service before January 1, 2017.

The exclusion for public utility property is removed from the section 48 investment tax credit, effective for periods after February 13, 2008.

And, for tax years beginning after October 3, 2008, the section 48 energy credit is allowed to offset the alternative minimum tax.

US\$1.25 billion in additional investment tax credits is provided for qualifying advanced coal projects under section 48A. However, the requirements for the credit are modified to require that a qualifying project use equipment that separates and sequesters at least 65 percent of the project’s total carbon dioxide emissions.

The Act also adds US\$250 million in new investment tax credits under section 48B for qualifying gasification projects that includes equipment that separates and sequesters at least 75 percent of a project’s total carbon dioxide emissions.

### Section 25D Residential Energy Efficient Property Credit

The Act also extends through 2016 the 30 percent investment credit for residential energy efficient property, and adds a new 30 percent investment credit for geothermal heat pump systems (with a cap of US\$2000) and a 30 percent credit (with a cap of US\$500 per half-kilowatt-capacity, or US\$4000 overall) for residential wind property. It removes the US\$2000 cap on the section 25D solar electric property credit for tax years beginning after 2008. The residential property credit may also be used to offset the alternative minimum tax for tax years beginning after 2007.

### Clean Renewable Energy Bonds

The Act extends the deadline for issuing section 54 clean renewable energy bonds (CREBs) through the end of 2009, and provides US\$800 million for “new” CREBs issued after October 3, 2008. These new CREBs may be used to finance projects owned by public power providers, electric

cooperatives, or governmental bodies. These three categories of owners are each allocated one-third of the total CREB limit.

The Act also provides for US\$800 million in new conservation bonds, which may be issued by state and local governments to finance certain conservation purposes. These bonds are allocated in accordance with state populations.

## Other Provisions

- Five year extension of the section 179D deduction for the cost of energy efficient property for commercial buildings.
- Extension through 2009 of credits for biodiesel and other renewable diesel products that are sold or used after December 31, 2008, and an increase of such credit to US\$1.00 per gallon.
- Bonus depreciation for cellulosic biofuel facilities, allowing an immediate write off of 50 percent of the cost of such facilities that are placed in service before 2013.
- Bonus 50 percent depreciation for machinery placed in service after August 31, 2008 that is used to collect, distribute, or recycle qualified reuse or recycle materials.
- Accelerated depreciation for smart electric meters and smart electric grid equipment,

permitting the cost of such equipment to be recovered over a 10-year instead of a 20-year period.

- Extension through 2013 of the section 179C election by small refiners to currently expense 50 percent of qualified refinery property in the first year that such property is placed in service.

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*For more information concerning the implications of the Economic Stabilization Act of 2008 please contact the following attorneys.*

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