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Manufacturers Get Tax Credit

BY JEFFREY G. DAVIS

The U.S. Department of the Treasury and the U.S. Department of Energy (DOE) have jointly established a first-of-its-kind program that will award $2.3 billion in tax credits to advanced energy equipment manufacturers.

The American Recovery and Reinvestment Act of 2009 (ARRA) authorized the program through the enactment of Section 48C of the Internal Revenue Code. Unlike production tax credits, investment tax credits or grants that are available in connection with renewable energy production facilities, this program moves the incentive back a step in the supply chain by providing an investment tax credit to the manufacturer of the equipment used in clean energy production or distribution. The stated goal of the program is "to grow the domestic manufacturing industry for clean energy, thereby supporting the larger goals of ARRA to stimulate economic growth, create jobs and reduce greenhouse gas emissions."

Specifically, the program provides a 30% credit for investments in certain property that re-equips, expands or establishes a manufacturing facility for the production of solar, wind or geothermal energy equipment; fuel cells, micro turbines or batteries; electric cars and electric grids to support the transmission of renewable energy; energy conservation technologies; and equipment that captures and sequesters carbon dioxide or reduces greenhouse gas emissions. The credit applies only to investments in tangible personal property (not a building or its structural components) that is necessary to produce the specified equipment and is depreciable. The basis of the manufacturing facility is reduced by the amount of the credit.

The credits will only be awarded to manufacturers that are certified through a multi-step process. Applicants will need to file two applications for recommendation with the DOE and one application for certification with the Internal Revenue Service (IRS).

The DOE will then determine whether a project has a reasonable expectation of commercial viability and merits a recommendation. If a project meets both requirements, the DOE will rank the project relative to other projects. The IRS will then certify and award tax credits to applicants in the order of their DOE ranking, with the highest-ranked project receiving the full amount requested before the next highest-ranked project receives anything.

Essentially, this process will result in all-or-nothing awards to applicants, rather than allocations based on relative project size or merit. It is possible that a small number of applicants with large projects could receive the entire $2.3 billion award.

The DOE will base its rankings on four criteria – expected job creation, reduction of air pollutants and greenhouse gas emissions, potential for technological innovation and commercial deployment, and the time to get a project up and running – all of which will be given equal weight. Four policy factors – technological diversity, geographic diversity, project-size diversity and regional economic development – also will be considered when ranking projects.

The allocation of credits will be made through annual rounds. The first round will be in 2009-2010, and the second round will be in 2010-2011, subject to the availability of unallocated credits. While the ranking process will ensure the incentive has the maximum impact, the policy factors will ensure that the benefit is spread around, rather than promoting a specific region or technology. The limited funding and the ranking process will spur competition,

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making it unlikely that there will be unallocated credits that necessitate a second round.

The key dates for the first-round application process are as follows:

- Sept. 16, 2009 – preliminary application for DOE recommendation due;
- Oct. 16, 2009 – final application for DOE recommendation due;
- Dec. 16, 2009 – application for IRS certification due; DOE determination of feasibility and recommendation will be provided; and
- January 15, 2010 – date by which the IRS will accept or reject an application and notify the applicant.

Accepted applicants will receive a letter of acceptance from the IRS, and they will be required to execute an agreement by March 15, 2010. The IRS will execute and return the agreement by April 16, 2010. Once an application has been accepted, the applicant will have one year to satisfy and provide evidence of the satisfaction of the certification requirements and three years to place the project in service, or the tax credits will be forfeited.

It is too soon to tell which industries or technologies will benefit most from the program. However, the criterion regarding technological innovation, together with the policy factor regarding technological diversity, makes it unlikely that the wind industry will monopolize the allocations. The criterion regarding job creation may favor small businesses and projects that expand or establish (rather than re-equip) manufacturing facilities.

Because applications are limited to 30 pages plus appendices, companies with extremely complex technologies may have a difficult time making the strongest case for an allocation. The fact that the allocation process does not take financial need into account may result in the subsidy's benefiting projects that would have been undertaken even without the credit.

The short time frame for submitting the applications may weed out some applicants, and the competitive process will force other applicants to self-select. The applications require considerable detail, so applicants should be sure their plans are well-developed. In that regard, if an applicant makes any significant changes to its plans, it runs the risk of being denied further consideration or forfeiting any allocation NWP