

ALERTS

Grants in Lieu of Credits

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Grants in Lieu of Production Tax Credits and Investment Credits

On July 31, 2009, the Treasury Department and the Department of Energy (the "DOE"), announced that they are now accepting applications for grants in lieu of (a) production tax credits ("PTCs") and (b) investment credits for specified energy properties ("Energy Credits"). Section 1603 of the American Recovery and Reinvestment Tax Act of 2009 (the "ARRA"), signed into law on Feb. 17, 2009, authorized funding to subsidize investments in certain renewable energy projects as more fully described below ("Section 1603 grants").

A copy of the guidance information and sample application may be downloaded at the following web address: <http://www.ustreas.gov/recovery/1603.shtml> According to the guidance, taxpayers must submit applications after the property is placed in service and before October 1, 2011 for property placed in service in 2009 or 2010, and after construction commences and before October 1, 2011 for property on which construction began in 2009 or 2010.

Application forms may be accessed at <https://treas1603.nrel.gov/>

Section 1603 grants equal (a) 30 percent for qualified energy property which is (i) part of a qualified wind, closed-loop biomass, open-loop biomass, geothermal energy, landfill gas, trash, qualified hydropower, and marine or hydrokinetic facility, (ii) qualified fuel cell property, (iii) solar property, or (iv) qualified small wind energy property, and (b) 10 percent for qualified energy property which is (i) geothermal property, (ii) qualified microturbine property, (iii) CHP property and (iv) geothermal heat pump property. The qualified energy property must be depreciable or subject to amortization in lieu of depreciation and must either (a) be placed in service in 2009 or 2010 or (b) have construction begun in 2009 and 2010 and be placed in service before the "credit termination date" with respect to such qualified energy property. The credit termination date is Jan. 1, 2013 for a wind facility; Jan. 1, 2014 for a closed-loop biomass, open-loop biomass, geothermal energy, landfill gas, trash, qualified hydropower, and marine or hydrokinetic facility; and Jan. 1, 2017 for other qualified energy property described in Section 48 of the Code. According to the Committee Reports to the ARRA, the basis of any qualified energy property that is the subject of a Section 1603 grant is reduced by one-half of the amount of the Section 1603 grant.

If the Treasury Department provides a Section 1603 grant for any specified energy property, PTCs and Energy Credits for the taxable year in which such grant is provided and for any subsequent taxable year with respect to such specified energy property are denied. If a taxpayer claims PTCs or Energy Credits in a taxable year prior to the taxable year in which a Section 1603 grant is provided, the taxpayer must recapture the amount of

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such credits claimed with respect to the specified energy property that is the subject of the Section 1603 grant.