The Business Council for Sustainable Energy

Tax Benefits for Renewable and Other Energy Activities Included in 2008 Financial Rescue Bill

Included in the Emergency Economic Stabilization Act of 2008, enacted on October 3, 2008, were a number of tax incentives for renewable energy and other energy activities, including the much-anticipated extension of the production tax credit (PTC) and investment-based energy tax credit (ITC) sunset dates. Select provisions include:

PTC Extensions

- *Wind and Refined Coal*. The Act extends the placed-in-service sunset date for wind and refined coal facilities to December 31, 2009
- *Geothermal, Biomass, and Other Qualifying Facilities.* The Act extends the placed-in-service sunset date for closed-loop biomass, open-loop biomass, geothermal, landfill gas, trash, and qualified hydropower facilities to December 31, 2010

PTC Modifications

- *Marine and Hydrokinetic Renewable Energy***.** The Act expands the PTC to include electricity produced and sold after October 3, 2008 from marine and hydrokinetic renewable energy facilities with a nameplate capacity of at least 150 kilowatts that are placed in service on or after October 3, 2008 and on or before December 31, 2011. The credit rate is one-half the general PTC rate. The credit for small irrigation power is eliminated for projects placed in service after October 3, 2008.
- *Trash Facilities***.** The Act eliminates the requirement that municipal solid waste be burned to generate electricity and requires only that such waste be "used" to produce electricity (effective for electricity produced and sold after October 3, 2008).
- *Biomass.* The Act provides that new power generation units placed in service in connection with existing qualified open-loop biomass and closed-loop biomass facilities are themselves treated as qualified facilities to the extent of the increased amount of electricity produced by the new units (effective for property placed in service after October 3, 2008).
- *Nonhydroelectric Dams.* The Act modifies the rules applicable to nonhydroelectric dams (effective for facilities placed in service after December 31, 2008).
- *Annual Investment-Based Cap on PTCs Not Enacted.* The Act does not include a proposal that would have limited the amount of the PTCs to 35% of the project costs.

Investment Based Energy Tax Credit Extension

The Act extends the placed-in-service sunset date for solar, fuel cell and microturbine property to December 31, 2016.

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ITC Modifications

Expansion. The Act expands the ITC to provide:

- A 10% credit for *combined heat and power system property* (defined generally as property that comprises a system that uses the same energy source for the simultaneous or sequential generation of qualifying amounts of electrical power, mechanical shaft power, or both, in combination with the generation of qualifying amounts of steam or other forms of useful thermal energy). The credit is subject to certain reductions and limitations applicable to large projects.
- A 30% credit for *qualified small wind energy property* (property that uses a wind turbine with a nameplate capacity of 100 kilowatts or less to generate electricity). The credit for all qualified small wind energy property placed in service by a taxpayer during the tax year is capped at $4,000.
- A 10% credit for *geothermal heat pump system property* (equipment that uses the ground or ground water to heat or cool a structure).

Under transition rules, the ITC for combined heat and power systems, qualified small wind energy facilities, and geothermal heat pump systems generally applies only to property placed in service after October 3, 2008, and for self-constructed property, only to the extent of the basis attributable to the period after October 3, 2008.

Increase in Credit Limitation for Fuel Cell Property. The Act increases the credit limitation for fuel cell property from $500 to $1,500 per 0.5 kilowatt of capacity. The increase applies only to property placed in service after October 3, 2008, and for self-constructed property, only to the extent of the basis attributable to the period after October 3, 2008.

Inclusion of Cellulosic Biofuel in Bonus Depreciation for Biomass Ethanol Plant Property. The Act extends 50% bonus depreciation to property used to produce cellulosic biofuel (not merely cellulosic biomass ethanol), which is any liquid fuel that is produced from lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis. This provision is effective for property placed in service after October 3, 2008.

Credits for Biofuels and Renewable Diesel. The Act extends through December 31, 2009 the income tax credit, excise tax credit and excise tax refund provisions applicable to small agri-biodiesel producers and to biodiesel, agri-biodiesel, and renewable diesel. Effective for qualifying fuel produced, sold or used after December 31, 2008, the income tax and excise tax credit amounts applicable to biodiesel and biodiesel mixtures are increased from $0.50 to a $1.00 per gallon, eliminating the disparity under prior law between biodiesel and agri-biodiesel credits.

The Act modifies the definition of "renewable diesel" by (1) eliminating the requirement that the fuel be made using a thermal depolymerization process; (2) permitting the Treasury Secretary to identify alternative testing standards to qualify for the credit; (3) including biomass fuel that qualifies as renewable jet fuel (biomass fuel that meets Department of Defense military specifications for jet fuel or ASTM specifications for aviation turbine fuel); and (4) excluding fuel derived from co-processing biomass with a feedstock that is not biomass.

Energy Efficiency and Other Provisions

Residential Energy Credit. The Act extends through December 31, 2016 the 30% residential energy credit available to individuals for expenditures for qualified solar electric property, qualified solar water heating property, and qualified fuel cell property. The Act removes the $2,000 cap on the credit for solar electric property but does not modify the other applicable caps, effective with respect to taxable years beginning after December 31, 2008. The Act expands the credit to apply to qualified small wind energy property and to qualified geothermal heat pump property, subject to certain caps (effective with respect to taxable years beginning after December 31, 2007 for property placed in service on or before December 31, 2016). The Act provides that the credit may be used against AMT liability, effective with respect to taxable years beginning after December 31, 2007.

Accelerated Depreciation for Qualified Smart Electric Meters and Qualified Smart Electric Grid Systems. The Act generally allows 10-year accelerated depreciation for qualified smart electric meters and qualified smart electric grid systems placed in service after October 3, 2008, unless the property otherwise qualifies for a shorter recovery period.

Accelerated Depreciation for Qualified Reuse and Recycling Property. The Act allows 50% bonus depreciation (including for AMT purposes) for certain qualified reuse and recycling property purchased and placed in service after August 31, 2008.

Extension of the Energy Efficient Commercial Buildings Deduction. The Act extends through December 31, 2013 the energy efficient commercial buildings deduction, which generally allows a deduction for the cost of energy efficient commercial building property, subject to a lifetime cap per building of $1.80 per square foot.

Extension of the New Energy Efficient Home Credit. The Act extends through December 31, 2009 the new energy efficient home credit, which generally allows a tax credit of up to $2,000 for builders of qualified new energy efficient homes.

Extension and Modification of the Energy Efficient Appliance Credit. The Act extends and makes numerous changes to the credit for the production of qualifying energy-efficient dishwashers, clothes washers, and refrigerators, effective for appliances produced after December 31, 2007.

Tax Exempt Bonds and Tax Credit Bonds. The Act authorizes the issuance of up to $800 million of new clean renewable energy bonds and up to $800 million of qualified energy conservation bonds. The Act also extends to September 30, 2012 the sunset date for issuing qualified green building and sustainable design project bonds.

Gain Deferral for Qualifying Electric Transmission Transactions. The Act provides for an election to defer gain recognition from qualifying electric transmission transactions the proceeds of which are used to purchase exempt utility property. The election applies to transactions occurring between January 1, 2008 and December 31, 2009.

Carbon Mitigation

Carbon Dioxide Sequestration Credit. The Act creates a new credit for qualified carbon dioxide captured and sequestered at a qualified facility after October 3, 2008. The amount of the credit is $20 per metric ton of carbon dioxide disposed of in secure geological storage and $10 per metric ton of carbon dioxide used by the taxpayer as a tertiary injectant in a qualified oil or natural gas recovery project.

- "Qualified carbon dioxide" is carbon dioxide captured from an industrial source that would otherwise be released into the atmosphere as industrial emissions of greenhouse gas. Qualified carbon dioxide includes only the initial deposit of captured carbon dioxide and does not include carbon dioxide that is recaptured, recycled, and re-injected as part of the enhanced oil and natural gas recovery process or that is captured and disposed of or used outside the United States and its possessions.
- A "qualified facility" is any industrial facility that captures at least 500,000 metric tons of carbon dioxide during the tax year.

Revenue Raisers

Reduction of Deduction for Income Attributable to the Domestic Production of Oil and Gas. The Act eliminates the increase of the section 199 domestic production activities deduction that was scheduled to take effect in taxable years beginning after 2009 for oil related qualified production activities income. As a result, the section 199 deduction for such income will remain at 6%.

Elimination of Differing Treatment of Foreign Oil and Gas Extraction Income and Foreign Oil Related Income for Purposes of the Foreign Tax Credit. The Act imposes certain limits on foreign tax credits available to oil companies by repealing the foreign oil related income (FORI) limitation and expanding the scope of the prior-law foreign oil and gas extraction income (FOGEI) rules to apply to all foreign income from production and other activity related to the sale of oil and gas products (i.e., the sum of FORI and FOGEI as classified under prior law).

Extension of Oil Spill Liability Trust Fund Tax and Increase in Tax Rate. The Act extends the oil spill liability trust fund tax through December 31, 2017. The Act also increases the tax rate from $0.05 to $0.08 per barrel from January 1, 2009 through December 31, 2016, and then increases the rate to $0.09 per barrel for calendar year 2017. The provision also repeals the requirement that the tax be suspended when the unobligated balance in the fund exceeds $2.7 billion.

In addition to the energy-related provisions, H.R. 1424 contains a variety of other tax provisions.