

Renewable Energy Cash Grant in Lieu of Tax Credit Program Extended through 2011

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On December 17, 2010, President Obama, as part of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, signed into law a one-year extension of the popular renewable energy cash grant in lieu of tax credit program established by Section 1603 of the American Recovery and Reinvestment Tax Act of 2009. To qualify for a cash grant under the extended program, a taxpayer must place "specified energy property" in service in 2009, 2010, or 2011, or after 2011 if construction begins in 2009, 2010, or 2011 provided such property is placed in service by the end of 2012 (for wind projects), 2013 (for closed- and open-loop biomass, geothermal, landfill gas, municipal solid waste, qualified hydropower, and marine and hydrokinetic facilities), or 2016 (for solar projects).

While the deadline to place a project in service has not been changed (e.g., wind farms must still be placed in service by the end of 2012 to be eligible for the cash grant), providing projects another year to begin construction is a significant development allowing more renewable projects to take advantage of the grant funds as the debt and equity markets continue to stabilize. The cash grant program has already provided more than 1,450 renewable energy projects with funding in excess of \$5.5 billion.

Our client alerts detailing the original July 2009 cash grant guidance, March 2010 revisions to such, and additional guidance released in June 2010 on the beginning of construction requirement (which will now be relevant for projects placed in service after 2011), can be found at:

- http://www.paulhastings.com/assets/publications/1367.pdf?wt.mc_ID=1367.pdf;
- http://www.paulhastings.com/assets/publications/1559.pdf?wt.mc_ID=1559.pdf and;
- http://www.paulhastings.com/assets/publications/1642.pdf?wt.mc_ID=1642.pdf.

The law also provides for 100 percent bonus depreciation for new qualified property acquired and placed in service after September 8, 2010 through the end of 2011. Subject to certain exceptions, qualified property for bonus depreciation purposes is generally new property with a depreciable recovery period of 20 years or less. By way of example, equipment which uses solar or wind energy to generate electricity has a depreciable recovery period of five years. Thus, taxpayers placing new solar or wind energy equipment in service after September 8, 2010 and before the end of 2011 will essentially be able to immediately expense the cost of such equipment. The law also provides for bonus depreciation in 2012, but at a reduced rate of 50 percent.

In addition, the law reinstates the biodiesel and renewable diesel credit, the alternate fuel credit and the alternate fuel mixture credit through the end of 2011, all retroactive to the beginning of 2010. However, so-called "black liquor" fuel derived from the production of paper or pulp is excluded from credit eligibility.



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

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