

THOUGHT LEADERSHIP

LEGAL UPDATES

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Treasury Releases Guidance on Renewable Energy Cash Grants

On July 9, 2009, the U.S. Department of Treasury released detailed guidance on the renewable energy grant program enacted as part of the American Recovery and Reinvestment Act of 2009. Under the program, eligible participants can elect to receive cash payments for certain capital expenses associated with renewable energy projects, including wind and solar property, in lieu of receiving the production or investment tax credits currently available under the Internal Revenue Code. For wind and solar projects, cash grants are available for 30% of the eligible basis of the qualifying solar or wind property.

The cash grant is only available for qualifying property that is placed in service before December 31, 2010, or is at least under construction by that date. A project is considered "placed in service" when it has been installed, tested, and is ready and capable of being used for its intended purpose. Property that is under construction as of December 31, 2010, is eligible for the program if the applicant provides the Treasury with copies of the construction contract and evidence that significant work has begun on the project. All applicants will have until October 1, 2011, to apply for grants.

Eligible applicants include domestic C corporations, domestic S corporations, partnerships, joint ventures, farm cooperatives and real estate investment trusts. Importantly, electric utilities that could otherwise utilize the investment tax credit are eligible to participate in this new cash grant program, either directly for utility-owned projects or indirectly if they are working with project developers to purchase solar or wind electric output from third-party owned systems. For solar or wind projects that are subject to a lease, either the lessor or the lessee (if certain conditions are satisfied) can apply for the cash grants. Because eligibility is determined at the time of application, entities that may be ineligible at the time construction starts but before property is placed in

service will have an opportunity to restructure ownership to qualify for the program.

Cash grants received from the Treasury are subject to the five-year recapture period otherwise attributable to the investment tax credit, although the triggers for recapture are narrower than those that apply to the investment tax credit. Therefore, if an applicant disposes of the eligible property to a disqualified person (as defined in the Guidance) or the property ceases to qualify as an energy property during the five-year period after the property is placed in service, a portion of the cash grant may have to be repaid to the Treasury. The Treasury will monitor compliance with these recapture provisions by requiring grant recipients to annually submit a compliance statement during the five-year recapture period.

The Treasury has assured potential participants that determinations will generally be made within 60 days of receiving an application. More information on the Treasury cash grant program, including the Guidance documents, can be found online at the Treasury website:
<http://www.treas.gov/recovery/1603.shtml>.

What This Means to You

The Treasury's Renewable Energy Cash Grant program provides a unique opportunity to move forward with many solar and wind projects in the near term by allowing owners to recapture investment expenses more efficiently. It is particularly attractive in this current economic environment in which it can be difficult to monetize federal tax credits for these types of projects.

Contact Info

If you have any questions about this or any other renewable energy and tax matters, please contact your Husch Blackwell attorney or David Gardels at 402.964.5027.

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