

RENEWABLE ENERGY AND CLIMATE CHANGE

CLIENT ALERT

FEBRUARY 20, 2009

AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (the "ARRA") into law. The ARRA contains significant provisions designed to accelerate investment in and deployment of renewable energy projects.

Appropriations Provisions.

- Renewable energy and energy efficiency. \$2.5 billion for renewable energy and energy efficiency applied research, development, demonstration and deployment activities.
- Smart grid. \$4.5 billion to modernize the electric grid, enhance security and reliability of the energy infrastructure, facilitate recovery from disruptions to the energy supply, develop transmission plans, develop a framework to achieve interoperability of smart grid devices and systems, support smart grid demonstration projects, train workers and fund energy storage.
- Loan guarantees for renewable energy projects. \$6 billion to guarantee loans authorized by Section 1705 of the Energy Policy Act of 2005 for projects (including renewable energy system projects) that commence construction by September 30, 2011.

Tax Provisions.

- Extension of the PTC. The period during which renewable energy facilities may be placed in service to qualify for the production credit is extended through 2012 for wind facilities and through 2013 for all other eligible renewable energy facilities (including biomass, geothermal and solar facilities).
- Election of the ITC. A renewable energy producer may make an irrevocable election to claim an investment credit (generally 30%) in lieu of a production credit, provided that the facility is placed in service between 2009 – 2013 (or between 2009 – 2012 if the facility produces wind energy).
- Modification of the business energy credit. The business energy credit for the cost of certain new renewable energy equipment is modified to (i) eliminate the credit cap applicable to qualified small wind property and (ii) remove the rule that reduces the basis of the property for purposes of claiming the credit if the property is financed by subsidized energy financing or with proceeds from private activity bonds. The modification applies to periods after December 31, 2008.
- Grants in lieu of tax credits. The Secretary of the Treasury is authorized to provide a grant to a renewable electricity producer for a project that is eligible for a production credit, an investment credit or a business energy credit. Generally, the grant amount is 30% of the basis of the property. A project may be eligible if construction commences in 2009 or 2010 and is completed prior to 2013 (for wind facilities), 2014 (for other facilities eligible for a production credit) or 2017 (for facilities eligible for an investment credit). A recipient of such a grant may not claim a production credit, an investment credit or a business energy credit.
- Expansion of CREB program. ARRA raises the national new clean renewable energy bonds limitation by \$1.6 billion.

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- Expansion of qualified energy conservation bonds program. ARRA raises the national new qualified energy conservation bonds limitation by \$2.4 billion and expands eligibility for such bonds.
- New advanced energy property credit. ARRA creates a new 30% credit for investment in certain depreciable or amortizable property used in a “qualified advanced energy manufacturing project”, meaning a project which re-equips, expands or establishes a manufacturing facility for the production of property designed to be used to produce renewable energy, fuel cells, microturbines, certain energy storage systems, electric grids to support transmission of intermittent sources of renewable energy, property designed to capture and sequester carbon dioxide emissions, property designed to refine or blend renewable fuels or to produce energy conservation technologies, certain electric vehicles, and certain other advanced energy property designed to reduce greenhouse gas emissions. Credits are available only for projects certified by the Secretary of the Treasury in consultation with the Secretary of Energy. \$2.3 billion in credits are available.

Please do not hesitate to contact Anne E. Mudge (415.262.5107) or Stephanie S. Wang (415.262.5137) of Cox, Castle & Nicholson's Renewable Energy and Climate Change Practice Group if you have any questions concerning this Client Alert.

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