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Bricker & Eckler LLP

100 South Third Street
Columbus, Ohio 43215-4291

Phone 614 . 227 . 2300
Fax 614 . 227 . 2390
info@bricker.com
www.bricker.com

COLUMBUS | CLEVELAND
CINCINNATI-DAYTON

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Stimulus to Provide Tax Breaks for Manufacturers of Advanced Energy Products and Equipment

On August 13, 2009, The United States Treasury Department and Department of Energy announced the availability of \$2.3 billion in tax credits under the Section 48C Advanced Energy Manufacturing Tax Credit Program (MTC). The tax credit is part of the American Recovery and Reinvestment Act of 2009 (ARRA). The MTC, a competitive program, will provide manufacturers with an investment tax credit of 30 percent for facilities that manufacture certain eligible renewable energy equipment. The manufacturing tax credit is capped at \$2.3 billion, and credits are available for two years or until the cap is reached.

Overview

This program is a collaboration between the Treasury and the U.S. Department of Energy. By working together, the two agencies hope to “increase US manufacturing output, improve energy efficiency and develop alternative sources of energy,” according to Treasury Secretary Timothy Geithner.¹

The code specifies the “properties” that qualify for the tax credit. Section 48C(c)(1)(A)(i) of the federal tax code describes “property” as any non-structure that is a tangible personal property or “other tangible property . . . that is used as an integral part of the qualifying advanced energy project.” Specifically the code provides for a tax break on any property that falls into the following categories:

- Solar, wind and geothermal energy equipment;
- Fuel cells, microturbines and batteries;

- Electric cars;
- Electric grids to support the transmission of renewable energy;
- Energy conservation technologies; and
- Equipment that captures and sequesters carbon dioxide or reduces greenhouse gas emissions.²

For a more detailed list and example projects, please see the Department of Energy’s eligible facilities list at http://www.energy.gov/recovery/documents/Types_of_48C_Projects.pdf.

According to the guidance released with the announcement, the purpose of the program is to encourage taxpayers to re-equip, expand or establish manufacturing facilities for the production of qualifying advanced energy facilities. Key considerations in the selection criteria to be considered by Treasury in determining which qualifying advanced energy projects will be awarded credits include assessing which project will result in the greatest domestic job creation and provide the greatest net reductions in greenhouse gas emissions.

Application and Compliance

The MTC is a competitive program, unlike many other tax credits. Accordingly, the Department of Energy and the Treasury will, “review and make determinations on the eligibility and *merit* of MTC applications,” (emphasis added).³ In determining who receives the tax credit, the departments may consider all of the following factors:

- Expected commercial viability of the project;

Green Strategies Group

Maria J. Armstrong, Chair

614 . 227 . 8821
marmstrong@bricker.com

Sally W. Bloomfield
614 . 227 . 2368
sbloomfield@bricker.com

E. Brett Breitschwerdt
614 . 227 . 2301
bbreitschwerdt@bricker.com

Scott W. Davis
614 . 227 . 4879
sdavis@bricker.com

E. Rod Davisson
614 . 227 . 2377
rdavisson@bricker.com

Susan B. Greenberger
614 . 227 . 8848
sgreenberger@bricker.com

Warren I. Grody
614 . 227 . 2332
wgrody@bricker.com

Raymond C. Headen
216 . 523 . 5471
rheaden@bricker.com

Gregory J. Lestini
614 . 227 . 4893
glestini@bricker.com

Luther L. Liggett, Jr.
614 . 227 . 2399
lliggett@bricker.com

Gordon F. Litt
614 . 227 . 2305
glitt@bricker.com

Frank L. Merrill
614 . 227 . 8871
fmerrill@bricker.com

Thomas J. O'Brien
614 . 227 . 235
tobrien@bricker.com

Terrence O'Donnell
614 . 227 . 2345
todonnell@bricker.com

Daniel C. Reynolds
614 . 227 . 2360
dreynolds@bricker.com

David A. Rogers
614 . 227 . 2367
drogers@bricker.com

Mary R. True
614 . 227 . 4873
mtrue@bricker.com

Kurtis A. Tunnell
614 . 227 . 8837
ktunnell@bricker.com

Meghan Breakenridge
Valentine
614 . 227 . 4813
mvalentine@bricker.com

Matthew W. Warnock
614 . 227 . 2388
mwarnock@bricker.com

Charles H. Waterman III
614 . 227 . 2378
cwaterman@bricker.com

- Potential job creation;
- Expected air pollutants and greenhouse gas emissions reduction;
- Technological innovation;
- Speed-to-market;
- Diversity in project technology, location and size; and
- Regional economic development opportunity.

Each applicant must submit a series of applications to the Department of Energy that include the following:

- A preliminary application and final application for recommendation by DOE; and
- An application for certification under section 48C(d)(2).⁴

The IRS will certify applications in annual allocation rounds beginning in 2009, with an additional round in 2011-2012 if necessary. The 2009 round began August 14 and will continue until December 16, 2009. Applicants must submit preliminary documentation by September 16, 2009, with final applications due October 16, 2009. At that time the Department of Energy will determine a project's eligibility and viability and make a recommendation for the Internal Revenue Service review. The applicant should submit this recommendation to the IRS by the December deadline. The IRS will accept or reject all applications by January 15, 2010.

The tax credit becomes available when a property is "placed into service." This is considered the "year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function."⁵ When a piece of property is a part of a project, its taxable year begins when the item is in place and ready to be used for its intended purpose.

Some exceptions and qualifications apply to the MTC and will be of interest to most manufacturers:

1. The applicant will execute a tax credit agreement with the IRS – any successor in interest, however, must execute a new agreement.

2. If the tax credit becomes available before the property is actually placed in service, the IRS may claw back any credit allocated to the program.
3. For re-equip and expansion projects, only that property dedicated to advanced energy production will qualify for the credit.
4. All credits will be reviewed by February 17, 2013, and those credits may be reallocated if the IRS determines there are not enough qualifying applications pending or any certification has been revoked.
5. Reallocation of the credits may occur by application as determined by the IRS.

Conclusion

In today's economy, manufacturing has been hit particularly hard. The ARRA Manufacturing Tax Credit is aimed at revitalizing manufacturing through the production of advanced energy equipment and products. Energy Secretary Steven Chu has stated the program will, "help create thousands of high quality manufacturing jobs in some of the highest growth segments of the economy." The accuracy of this statement will become clearer after January of next year.

Foot Notes

¹ Source: http://apps1.eere.energy.gov/news/daily.cfm/hp_news_id=196

² Energy generation projects do not qualify for the tax credit.

³ Source: <http://www.energy.gov/recovery/48C.htm>

⁴ U.S. Department of Energy Notice 2009-72.

⁵ U.S. Department of Energy Notice 2009-72.

To learn more about the ARRA Manufacturing Tax Credit or for questions, please contact Gregory J. Lestini at 614.227.4893/glestini@bricker.com or Brett Breitschwerdt at 614.227.2301/ebreitschwerdt@bricker.com.