

News from our Clean Technologies Group

Guidance Released on Grants in Lieu of the Investment Tax Credit or Production Tax Credit

U.S. Treasury Dept. webpage:

www.treas.gov/recovery/1603.shtml

U.S. Energy Dept. webpage:

www.energy.gov/news2009/7623.htm

On July 9, 2009, the U.S. Treasury Department and Department of Energy released important guidance on how taxpayers can apply to receive cash grants in lieu of the investment tax credit or the production tax credit.

Background

Section 1603 of the American Recovery and Reinvestment Act of 2009 ("ARRA") gives qualifying taxpayers the option of receiving a cash grant (a "Section 1603 Grant") in lieu of the investment tax credit (aka the "energy credit") under Internal Revenue Code ("IRC") Section 48 or the production tax credit under IRC Section 45. The provision is intended to stimulate investment in renewable energy property that has been dampened by the scarcity of financing and decreased appetite for tax credits in the current economic downturn. The U.S. Department of Energy estimates that \$3 billion in Section 1603 Grants will be issued for the development of renewable energy projects across the United States [see complete press release at www.energy.gov/news2009/7623.htm].

A Section 1603 Grant is generally equal to 10% or 30% (depending on the type of property) of the tax basis of qualifying renewable energy property placed in service by the grant applicant. In general, the U.S. Treasury Department must issue a grant to a qualifying applicant within 60

days of the *later* of (i) the date of the complete grant application and (ii) the date the qualifying property is placed in service.

Applications for Section 1603 Grants *must* be received by the Treasury Department before October 1, 2011.

Applicants may receive Section 1603 Grants for investments in the following types of renewable energy property:

- ▶ solar electric, thermal, or lighting property
- ▶ wind energy property
- ▶ closed-loop and open-loop biomass property
- ▶ hydropower property
- ▶ marine and hydrokinetic renewable energy property
- ▶ geothermal property
- ▶ fuel cell property
- ▶ microturbine property
- ▶ combined heat and power system property
- ▶ landfill gas and trash combustion property

To qualify, property must generally be placed in service during 2009 or 2010. However, even if property is placed in service after 2010, it may still qualify if construction on the property began during 2009 or 2010, provided that the property is placed in service before 2013 (in the case of large wind property), 2017 (in the case of IRC Section 48 property), or 2014 (in the case of

other qualifying property). In addition, the property must be eligible for depreciation or amortization.

Guidance released

On July 9, 2009, the Treasury Department issued the following guidance:

- ▶ The Treasury Department's Program Guidance on Section 1603 Grants: www.treas.gov/recovery/docs/guidance.pdf

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- ▶ A “sample” Application Form for Section 1603 Grants: www.treas.gov/recovery/docs/Application.pdf
- ▶ The Terms and Conditions applicable to Section 1603 Grants: www.treas.gov/recovery/docs/energy-terms-and-conditions.pdf

In addition, the Department of Energy issued a press release describing the joint program between the Department of Energy and the Treasury Department to issue Section 1603 Grants: “Treasury, Energy Announce More than \$3 Billion in Recovery Act Funds for Renewable Energy Projects” [see complete press release at www.energy.gov/news2009/7623.htm].

The Treasury Department guidance contains detailed information on numerous topics, including (i) procedures for applying for Section 1603 Grants, (ii) persons eligible to receive Section 1603 Grants, (iii) types of property qualifying for Section 1603 Grants, (iv) supporting documentation to be submitted with a Section 1603 Grant application, (v) recapture of Section 1603 Grants, (vi) assignments to third parties of the right to receive Section 1603 Grants, and (vii) reporting and recordkeeping requirements for recipients of Section 1603 Grants.

Submitting applications

As of July 9, 2009, the Treasury Department webpage at www.treas.gov/recovery/1603.shtml stated that the department was not accepting applications for Section 1603 Grants. The webpage indicated that a notice would be posted when the Treasury Department is ready to begin accepting applications on-line. However, the Treasury Department issued this detailed guidance on Section 1603 Grants so that taxpayers could begin preparing their grant applications ahead of time.

Although the Treasury Department guidance resolves many of the issues related to Section 1603 Grants, numerous questions remain, and it is likely that additional

Where to Register for Announcements and Updates

All federal agencies and departments must post their plans for using Recovery Act funds—as well as announcements for grant competitions, allocations of formula grants, and awards of competitive grants using those funds—on the Recovery Act’s official website: www.recovery.gov.

To receive federal government updates:

- Register at www.recovery.gov to receive Recovery Act updates by email.
- Register at www07.grants.gov/applicants/email_subscription.jsp to receive grant announcements by email.
- Email lgprogram@hq.doe.gov to subscribe to U.S. Department of Energy Loan Guarantee Program Updates.
- Register at apps1.eere.energy.gov/news/subscribe.cfm to receive updates from the U.S. Department of Energy—Office of Energy Efficiency and Renewable Energy.

Cooley plans to publish additional *Cooley Alerts* as critical new information and developments regarding the Recovery Act arise. To receive *Alerts* regarding major legislative and regulatory developments and event announcements relevant to the Clean Technology sector, register at cooley.com.

guidance will be forthcoming. Accordingly, interested parties may wish to register to receive email updates. (See “Where to Register for Announcements and Updates.”) ■

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