



Governor's Conference on Housing & Community Development

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Summary of Solar Possibilities

- I. Existing Project
 - A. 70% Financed by NJHFA/30% Treasury Monetizes Tax Credit
 - B. Treasury Funds Not Taxable Income
 - C. Prevailing Wage
 - D. Depreciation Over Five Years
 - E. Improves Net Operating Income

- II. New Tax Exempt Development Bonds
 - A. See Separate Exhibit
 - B. Protects Against Utility Cost Escalation
 - C. Prevailing Wage



Tax Exempt Bond LLC

NJHMFA Financing	250,317
Incremental Tax Credit Equity	99,683
Treasury Credit Monetization	<u>150,000</u>
Total Cost	500,000
Basis Reduction (\$500,000x30%x1/2)	<u><75,000></u>
Low Income Eligible Basis	<u>425,000</u>
x Tax Credit Rate x 10 Year	143,375
Incremental Equity @ 70 cents	<u>99,683</u>
Soft debt repaid with annual REC proceeds	



Taxable Credit LLC

	Without Added LITC	With Added LITC
Rebate Income	50,000	50,000
Incremental LITC		267,750
Renewable Energy Certificate Based Loan	300,000	32,250
Treasury Credit Monetization	<u>150,000</u>	<u>150,000</u>
Total Cost	<u>500,000</u>	<u>500,000</u>
Basis Reduction (500,000 x 30% x 1/2)		<u><75,000></u>
Low Income Eligible Basis		<u>425,000</u>
x Tax Credit Rate x 10 Years		382,500
Incremental Low Income Credit Equity (70 cents)		267,750



Guidance on Treasury Grant Payments In Lieu Of Tax Credits for Renewable Energy Property and §179D



Overview

- Treasury guidance released July 9th (<http://www.treas.gov/recovery/1603.shtml>). Treasury began accepting applications July 31st
- Treasury will make payments to qualified applicants in an amount equal to 10% or 30% of the basis of the eligible Property ("Property"), depending on the type of Property
- Property must be placed in service in 2009 or 2010 or must be under construction by 12/31/2010 and completed before the applicable credit determination date
- These payments are not includible in gross income. The basis of the Property is reduced by 50% of the payment amount.
- Property for which a grant payment is received cannot be used to claim either the §48 Investment Tax Credit (ITC) or the §45 Production Tax Credit (PTC)
- Applications will be reviewed and payments made within 60 days from the date the completed application is received by Treasury or placed in service.



Applicant Eligibility

- Ineligible applicants include:
 - Any Federal, state or local government, including any political subdivision, agency or instrumentality thereof
 - Any organization that is described in Section 501(c) of the IRC and is exempt from tax under Section 501(a) of the IRC
 - Clean renewable energy bond lenders, cooperative electrical companies, governmental bodies, OR
 - Any partnership or other pass-thru entity which has any direct or indirect partner (or other holder of an equity or profits interest) which is an organization or entity described above unless this person only owns an indirect interest in the applicant through a taxable C corporation.



Applicant Eligibility

- “Blocker” corporations may be used to avoid this issue.
- Neither a Real Estate Investment Trust (REIT), nor a cooperative organization is a pass-thru entity for this purpose.



Eligible Types of Property

Specified Energy Property	Credit Termination Date	Applicable Percentage of Eligible Cost Basis
Large Wind	1/1/2013	30%
Closed-Loop Biomass Facility	1/1/2014	30%
Open-loop Biomass Facility	1/1/2014	30%
Geothermal under IRC sec. 45	1/1/2014	30% (allowed 10% or 30% but not both)
Landfill Gas Facility	1/1/2014	30%
Trash Facility	1/1/2014	30%
Qualified Hydropower Facility	1/1/2014	30%
Marine & Hydrokinetic	1/1/2014	30%
Solar	1/1/2017	30%
Geothermal under IRC sec. 48	1/1/2017	10% (allowed 10% or 30% but not both)
Fuel Cells	1/1/2017	30% (limited to \$1,500 per 0.5 kW)
Microturbines	1/1/2017	10% (limited to \$200 per kW)
Combined Heat & Power	1/1/2017	10%
Small Wind	1/1/2017	30%
Geothermal Heat Pumps	1/1/2017	10%



Placed In Service

- Only for Energy Property placed in service in 2009 or 2010,

OR

- Began construction in either 2009 or 2010,

AND...

Must be completed *prior* to:

- 2013 for large wind
- 2014 for certain other Section 45 qualified facilities
- 2017 for Section 48 Property



Beginning of Construction

- Construction begins when “physical work of a significant nature begins.”
- Self Construction – applicant manufactures, constructs, or produces Property for use by the applicant in its trade or business
same rule as above
- Construction by Contract – Property that is manufactured, constructed, or produced on the manufacture, construction, or production of the Property under a written binding contract that is entered into prior to the manufacture, construction or production of the Property
same rule as above



Beginning of Construction

- Safe Harbor
 - Applicant may treat “physical work of a significant nature” as beginning when applicant incurs more than 5% of the total cost of the Property.
 - Costs for planning, designing, securing financing, exploring, or researching the project site are excluded.
 - Economic performance standards of IRC Section 461(h) apply.



Eligible Basis

- The basis of Property is determined in accordance with the general rules for determining the basis of Property for federal income tax purposes.
- Eligible basis includes cost of qualified equipment, installation, labor and derivative soft costs such as permitting, financing and developer fees. Costs of transmission equipment are explicitly excluded.
- Only the cost basis of Property PIS after 2008 is eligible.



Original Use

- The original use of the Energy Property must begin with the applicant.
- The cost of used parts cannot be more than 20% of the total cost of the Property.
- If new Energy Property is originally PIS by a person and sold to applicant and leased back to the person by the applicant within three months, unless the lessor and lessee elect, lessor is considered the original user and would be the applicant for the grant.



Application Procedures

- On-line submission process
<https://treas1603.nrel.gov/>
- Applications being reviewed by the National Renewable Energy Laboratory, a division of DOE
- If approved, payments will be made within 60 days from the later of the date of completed application OR the placed in service (PIS) date.



Application Procedures

- For Property PIS in 2009 or 2010, applications must be submitted after the Property is PIS.
- For Property not PIS in 2009 or 2010 but for which construction began in 2009 or 2010, applications may be submitted after construction commences.
- In either case, ALL applications must be received before October 1, 2011.
- If an applicant is applying for payments for multiple units of Property on the same site that are treated as a single, larger unit of Property, all such units may be included in a single application.



Application Procedures

- A completed application includes the signed and completed application form, supporting documentation (detailed cost breakdown), signed Terms & Conditions and completed payment information
- For applications requesting a grant payment greater than \$1 million, supporting documentation includes an independent accountant's certification (takes the form of an Examination Report)
- For applications requesting a grant payment on costs greater than \$500,000 but less than \$3,333,000, supporting documentation includes an independent accountant's Agreed-Upon Procedures Report



Required Documentation

- Eligible Property
 - Design plans
 - Final engineering design documents stamped by a licensed professional engineer
 - Documents establishing nameplate capacity

- Placed In Service
 - Commissioning report
 - Interconnection agreement (only for properties interconnected with a utility)



Required Documentation

- Under Construction (not PIS)
 - Paid invoices for work actually performed
 - Other financial documents demonstrating that “physical work of a significant nature” has begun
 - Binding contract (meeting the requirements of the guidance)

- Leased Property
 - Written agreement between the lessor and lessee meeting the requirements of the guidance

- Independent Accountant’s certification required if over grant payment is over \$500,000



Leased Property

- A lessor may irrevocably elect to pass-through the payment to a lessee.
- The lessor and lessee must agree in writing, that the lessor waives all right to a Section 1603 payment or a PTC or ITC with respect to the Property, BEFORE the lessee may apply for a Section 1603 payment with respect to such Property.



Leased Property

- The lessee must agree to include 50% of the payment ratably in gross income over the five year recapture period.
- Both the lessor and the lessee must be persons eligible to receive a payment.
- This election may not be made by a lessor that is a mutual savings bank or similar financial organization, a regulated investment company or a real estate investment trust.



Recapture

- If the applicant disposes of the Property to a disqualified person or the Property ceases to qualify as a specified energy Property within 5 years from the PIS date, a certain percentage of the payment must be repaid to Treasury.
- Property is considered disposed if any interest in the Property is sold to a disqualified person.
- Temporary cessation will not result in recapture if the owner “intends to resume production.”



Recapture

- Property ceases to qualify if the use of the Property changes so that it no longer qualifies as specified energy Property.
- Permanent cessation will result in recapture (unless if permanent cessation is due to natural disaster).



Recapture

- If a lessor elects to pass through the payment to a lessee and the lessor sells the Property to a disqualified person, the lessee is liable to the Treasury for the recapture amount.
- If the lease is terminated and possession of the Property is transferred to the lessor or any other person, the lessee is liable to the Treasury for the recapture amount if the use of the Property changes during the recapture period so that it no longer qualifies as specified energy Property.



Tax Accounting

- The legislation refers to this as a grant but the statute states that it's not includible in gross income.
 - This is not "tax exempt income"
 - Guidance still lacking but should be a "tax exempt receipt"
- The grant is cash but we don't yet have guidance on what impact that cash will have on the tax return balance sheet (debit/credit).
 - This should be an increase to equity because the grant is a substitute for tax equity
- Statute says you make a basis reduction equal to 50% of the grant amount.
 - Guidance lacking, but it should follow that partner's capital accounts should be increased for the 1603 payment amount, then reduced for this adjustment



Tax Accounting

- Payments passed to Lessee
 - Section 1603 and guidance are unclear, but...
 - Lessee should report income ratably over 5 years.
 - Capital account of lessee partners should increase.
 - Should not be reduction to lessor's basis

- Payments Assigned to third party financial institution
 - Again, no guidance...
 - Will the Applicant (owner) make the 50% basis adjustment or will the Assignee recognize income equal to 50% of the assigned payment ratably over 5 years?



§179D: What Does It Mean For You?

The Basics: Deductions v. Credits

- Tax deductions are a reduction of a taxpayer's total income that decreases the taxable income used in calculating the actual tax to be paid.

What is a deduction worth?

\$1 Deduction = \$1 x Tax Rate

- assume 35% Tax Rate
- $\$1 \times 0.35 = 0.35\text{¢}$ of tax savings

- Tax credits reduce dollar-for-dollar the amount of tax actually payable to IRS.

What is a tax credit worth?

\$1 tax credit = **\$1 of tax savings**



Federal Deduction: Energy Efficient Commercial Buildings

- This is a **DEDUCTION**, not a tax credit.
- Section §179D allows a deduction for part or all the cost of energy efficient commercial building property that the taxpayer places in service until December 31, 2013.
- “Building Property” means only lighting, HVAC, and building envelope.
- The building itself generally is **NOT** covered, other than the envelope.

Plus tax credit produces more depreciation



How Much Are We Talking About?

- The deduction is equal to energy-efficient commercial building property expenditures made by the taxpayer, subject to a cap. The deduction is limited to an amount equal to **\$1.80 per square foot** of the building/structure (see IRS notice) for which such expenditures are made.
- The deduction is allowed in the year in which the energy-efficient property (not the building) is placed in service.
- For tax purposes, "placed in service" generally means the time at which the energy-efficient property (not the building) is ready for its intended use.



Available To Owners Or Lessees

- This deduction is available to either an owner **OR** lessee of a commercial building that installs energy efficiency property as part of the commercial building's interior lighting systems, heating, cooling, ventilation, and hot water systems, or building envelope.
- Must obtain a certification that the building/structure satisfies the energy efficiency requirements.



Energy Efficient Commercial Building Property: Three Conditions

CONDITION #1

- The property is installed **on or in** a building located in the U.S. that is wholly or partially enclosed within exterior walls, or within exterior or party walls, and a roof, and that affords shelter to persons, animals, or property.
- The building may **NOT** be a *single-family house*, a *multi-family structure of three stories or fewer above grade*, or a *manufactured house* (i.e., a mobile home or a modular house).



Energy Efficient Commercial Building Property: Three Conditions

CONDITION #2

- The property is installed as part of the interior lighting systems; or
- the heating, cooling, ventilation, and hot water systems;
- or the building envelope.



Energy Efficient Commercial Building Property: Three Conditions

CONDITION #3

- It is **CERTIFIED** that the systems, or the building envelope, will reduce the total annual energy and power costs with respect to the combined usage of the building's heating, cooling, ventilation, hot water, and interior lighting systems to an IRS defined level.



Certification – IRS Notice 2006-52

- It must be certified that the eligible systems **have been incorporated** “on or in” the building **OR** that the taxpayer **plans to incorporate** into the building and when installed, **will reduce the total annual energy and power costs** with respect to combined usage of the building's heating, cooling, ventilation, hot water, and interior lighting systems.
- Must have a reduction of 50% or more as compared to a Reference Building that meets the minimum requirements of Standard 90.1-2001.



Transfer of §179D Deduction for Public Property

- In the case of a federal, state, or local government building, the **person who designs** the energy efficient commercial building property may claim the deduction even though the government can't take the deduction.
- This can provide many business opportunities for **architecture and engineering firms** designing government buildings.
- This rule does **NOT** apply to non-government or tax-exempt buildings.