



**THOMPSON
HINE**

August 2010

ENERGY & TAX UPDATE

Billions in Federal Tax Credits and Grants Soon May Be Extended to Support Renewable Energy

TAX CREDITS/GRANTS FOR MANUFACTURERS OF CERTAIN RENEWABLE ENERGY PROPERTY

Congress is considering legislation that would make up to \$5 billion in federal tax credits and/or grants available for projects to construct, expand or re-equip domestic manufacturing facilities to produce specified property used to generate energy from renewable sources or to reduce greenhouse gas emissions. This Advanced Energy Manufacturing Tax Credit (MTC) would be allocated to eligible manufacturers by the Internal Revenue Service (IRS) and Department of Energy (DOE) based on a competitive, data-intensive application process. The MTC would be equal to 30 percent of eligible project costs. However, final legislation may give successful applicants the option of receiving a portion of the MTC amount as a cash payment in lieu of a tax credit.

The MTC program originated in 2009 as part of economic recovery legislation and, during a very short period, \$2.3 billion of MTCs were allocated to 183 projects in 43 states. Projects that were awarded MTCs in 2009 included a project to establish a manufacturing facility to produce large steam turbines used in nuclear power plants; a project to expand a manufacturing facility to produce components for wind turbines; and a project to expand a manufacturing facility to produce solar modules. Qualifying property includes wind, solar, geothermal, fuel cells, microturbines, electric grids and carbon sequestration property, among others. The MTC program has been widely praised for its stimulus of renewable energy manufacturing and production of green jobs. There is broad support from industry, special interest groups and politicians to extend and expand the MTC as one of the more successful programs of economic recovery. There is a good chance that Congress will pass legislation by the end of summer or beginning of fall, making additional MTCs available for allocation. The new MTC program likely will mirror the MTC program from 2009, with slight modifications.

If Congress authorizes additional MTCs, interested manufacturers likely will have a *very short window* of time in which to compile data and submit applications for consideration. Under last year's MTC program, applicants had just 30 days to submit an initial application summarizing the project, followed by an additional 30 days in which to submit a final application for DOE consideration and IRS certification. A similar application process is expected for the new round of MTCs. Thus, projects that are already in the initial planning phase probably are best suited for application. The application process will require the disclosure of very detailed technical and financial information, and only projects with a *reasonable expectation of commercial viability* will be considered. The DOE specifically will consider which projects will provide the greatest domestic job creation; provide the greatest net impact in avoiding or reducing air pollutants or anthropogenic emissions of greenhouse gases; have the greatest potential for technological innovation and commercial deployment; have the lowest levelized cost of generated or stored



energy, or of measured reduction in energy consumption or greenhouse gas emission; and have the shortest project time from certification to completion. Consideration also will be given to geographic diversity, technological diversity, project size and regional economic development.

Successful applicants will have to satisfy certain certification requirements within one year of project acceptance, and will have three years from the actual certification date to place the project in service.

FEDERAL GRANTS FOR FACILITIES GENERATING ENERGY FROM RENEWABLE SOURCES

Currently, cash grants also are available for the placement in service of specified renewable energy projects, such as wind turbines, solar installations, and biomass, geothermal and landfill gas facilities. The grant is equal to 30 percent of eligible project costs, which can include construction costs as well as certain transportation and installation costs. The Treasury Department already awarded almost \$5 billion in grant proceeds for more than 900 projects in 45 states since 2009. The cash grant was originally made available under Section 1603 of the American Recovery and Reinvestment Act of 2009 (ARRA). Right now, the grant is only available for projects that are either operational by the end of 2010 or that are under construction by the end of 2010. To date, approximately 88 percent of grant awards have helped to fund wind facilities.

Due to the overwhelming popularity of the cash grant, Congress is likely to extend the program along with the MTC (described above). Although the ARRA Section 1603 grant is not allocated on a competitive basis like the MTC, eligibility still requires an *extensive application process* to the Treasury Department, which includes, among other things, detailed substantiation of eligible costs and satisfaction of technical tax rules.

HOW THOMPSON HINE CAN HELP

Our lawyers have the experience to handle the technical, regulatory, environmental, tax and corporate structuring issues that arise in renewable energy projects. We can assist eligible parties in the planning and implementation of these projects, as well as with the application processes for both the MTC and the ARRA Section 1603 cash grant programs described above. We also can provide information on grants and tax incentives that may be available at the state level for renewable energy projects. For example, Ohio recently enacted grants, tax incentives and funding programs for renewable energy and biofuels projects.

FOR MORE INFORMATION

Please contact one of the lawyers listed below, or any member of our **Climate Change and Sustainable Business Solutions** group, for more information about the potential extension of these federal grants and tax credits and Thompson Hine's capabilities related to renewable energy.

Gregory J. Gawlik	216.566.5908	Gregory.Gawlik@ThompsonHine.com
Peter C. Lesch	202.263.4175	Peter.Lesch@ThompsonHine.com
Michael J. Zimmer	202.973.2740	Michael.Zimmer@ThompsonHine.com



Circular 230 Disclosure

Nothing contained herein or in any attachment hereto is intended to be used, or can be used (i) to avoid penalties imposed under the Internal Revenue Code, or (ii) for promoting, marketing or recommending to another party any transaction or matter addressed herein.

If you do not wish to receive future communications by email, please send an email with “unsubscribe” in the subject line to Rick.Santangelo@ThompsonHine.com.

This advisory may be reproduced, in whole or in part, with the prior permission of Thompson Hine LLP and acknowledgement of its source and copyright. This publication is intended to inform clients about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in it without professional counsel.

This document may be considered attorney advertising in some jurisdictions. Some of the design images and photographs in this document may be of actors depicting fictional scenes.

© 2010 THOMPSON HINE LLP. ALL RIGHTS RESERVED.