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The Latest on Clean Renewable Energy Bonds and Tax Credits

Douglas E. Lamb & Laura Ellen Jones

Hunton & Williams LLP

10th Annual LMOP Conference and Project Expo

January 2007

- Clean Renewable Energy Bonds Overview
- Extension of CREBs Program
- CREBs Pronouncements
- CREBs Program Allocations
- Key CREBs Considerations
- Section 45 Credits – Legislative Developments
- Section 45 Credits – Regulatory Developments
- Questions and Contact Information

- Section 1303 of EPAct created a new category of tax credit bonds: Clean Renewable Energy Bonds (CREBs)
 - New section 54 of the Code
- Initially authorized \$800,000,000 of CREBs for the financing of certain section 45 projects, including LFGTE projects (without regard to placed in service date)
 - No more than \$500,000,000 to governmental body borrowers

- Section 202 of the Tax Relief and Health Care Act of 2006 extended the CREBs program
- The Act increases the available CREBs allocation from \$800 million to \$1.2 billion
 - Of the additional \$400 million, no more than \$250 million may be allocated to governmental body borrowers
- All CREBs must be issued by 12/31/08, including the initial allocation of CREBs

→ JCT Explanation of the Extension

- It is “expected that the additional [CREBs] authority will be allocated through a new application process similar to [Notice 2005-98]”
- It is “expected that Congress will review the efficacy of the program [including the limitation on amount to governmental bodies] before granting additional extensions”

IRS Notice 2005-98

- Provided allocation process for initial round
- Application deadline was 4/26/06
- Dictated that full amount of CREBs limitation be allocated beginning with projects for which the smallest dollar amount is requested and continuing with the next smallest dollar amount
- Described remedial action and arbitrage provisions
- Announced future publication of temporarily proposed regulations

IRS Notice 2006-7

- Supplements Notice 2005-98
- Details coverage of future regulations
 - Project may include functionally related and subordinate facilities owned by borrower
 - “Political subdivision” interpreted as defined in Treas. Reg. §1.103-1
 - “On behalf of issuers” included
 - Borrowers include governmental instrumentalities

- 709 Applications for 786 projects requesting \$2.6 billion in CREBs ranging from \$23,000 to \$80 million
 - 610 projects received allocations
- 532 projects for governmental borrowers
 - Ranged from \$23,000 to \$3.2 million
 - 23 landfill gas facilities
- 78 projects for cooperative borrowers
 - Ranged from \$120,548 to \$31 million
 - 13 landfill gas facilities

- Project to be owned by qualified borrower
- 95% or more of the proceeds must be used for capital expenditures of a “qualified borrower”
 - Mutual or cooperative electric company
 - Governmental body (e.g., state or local political subdivision or instrumentally thereof)
- CREBs must be issued by a “qualified issuer”
 - CREB lender (e.g., CFC or CoBank)
 - Cooperative electric company
 - Governmental body

- Level amortization required
- IRC §148 arbitrage principles apply (e.g., yield restriction and rebate obligation)
- Tax Credit is includable in recipient's gross income
- Credit and sources of repayment
- Pooling

Need for Correction

As published, the notice of publication of inflation adjustment factor and reference prices for calendar year 2006 contains an error that may prove to be misleading and is need of clarification.

Correction of Publication

Accordingly, the publication of inflation adjustment factor and reference prices for calendar year 2006, which was the subject of FR Doc. E6-4668, is corrected as follows:

On page 16421, column 2, line 6, the language “and solar energy, and 0.9 cent per” is corrected to read “and solar energy, and 1.0 cent per”.

- Section 201 of the Tax Relief and Health Care Act of 2006 extended the placed in service deadline for Section 45 projects (including LGFE projects) by one year
 - Deadline is now December 31, 2008
- For 2006, Section 45 tax credit for the production of electricity for landfill gas is 1.0 cents/kWh with no phase-out
 - The IRS initially incorrectly computed the amount to be 0.9 cents/kWh
 - Still no word on how the IRS will determine the phase-out reference price for 2007

United States Senate
WASHINGTON, DC 20510

December 15, 2006

The President
The White House
Washington, DC

Dear Mr. President:

As you move to complete your Administration's Fiscal Year 2008 budget request, we strongly urge that you include a proposal to extend the renewable energy Production Tax Credit (PTC) for five years.

The PTC is a vital component in financing new renewable energy projects. As you know, it is crucial to our national security that we expand and strengthen investment in renewable energy resources. The continued development of renewable energy also will spur significant economic development opportunities, stabilize prices by diversifying the electric generation supply, and help reduce greenhouse gas emissions.

The current PTC is due to expire on December 31, 2008. In the past, the short-term, start-and-stop nature of the credit has not sufficiently provided utilities, developers, manufacturers and investors with the necessary certainty to maximize the vast potential for renewable technologies. A long-term credit of five years will give businesses the stability necessary to plan and finance renewable energy projects.

Tapping into our enormous renewable energy potential through a five-year PTC extension is an important step toward ensuring our energy independence. Moreover, it will provide a signal to businesses that we are serious about investing in our energy future by developing new renewable energy technologies to meet our increasing electricity demands.

Sincerely,


Jeff Bingaman
United States Senate


Pete Domenici
United States Senate

- ➔ In December 2006, 42 Senators sent a letter to the President strongly urging him to include a proposal to extend the Section 45 placed-in-service deadline by five years.
- ➔ Outlook for additional extension?

<p>109TH CONGRESS 2D SESSION</p> <p>H. R. 5027</p> <p>To amend the Internal Revenue Code of 1986 to provide a credit against tax proportional to the number of million British thermal units of natural gas produced by a high Btu fuel facility.</p> <hr/> <p>IN THE HOUSE OF REPRESENTATIVES</p> <p>Mr. JINDAL introduced the</p> <hr/> <p>To amend the Internal Revenue Code of 1986 to provide a credit against tax proportional to the number of million British thermal units of natural gas produced by a high Btu fuel facility.</p> <p>1 <i>Be it enacted</i> 2 <i>by the United States</i> 3 SECTION 1. SHORT TITLE. 4 This Act may be cited as the "Landfill Gas Act of 5 2006".</p> <p>6 SEC. 2. CREDIT FOR PRODUCTION OF NATURAL GAS. 7 (a) ALLOWANCE OF CREDIT.—Subpart D of part IV 8 of subchapter A of chapter 1 of the Internal Revenue Code</p>	<p>109TH CONGRESS 2D SESSION</p> <p>S. 3997</p> <p>To amend the Internal Revenue Code of 1986 to provide a credit against tax proportional to the number of million British thermal units of natural gas produced by a high Btu fuel facility.</p> <hr/> <p>IN THE SENATE OF THE UNITED STATES</p> <p>SEPTEMBER 29, 2006</p> <p>Mr. SANTORUM introduced the following bill, which was read twice and referred to the Committee on Finance</p> <hr/> <p>A BILL</p> <p>To amend the Internal Revenue Code of 1986 to provide a credit against tax proportional to the number of million British thermal units of natural gas produced by a high Btu fuel facility.</p> <p>1 <i>Be it enacted by the Senate and House of Representa-</i> 2 <i>tives of the United States of America in Congress assembled,</i></p> <p>3 SECTION 1. SHORT TITLE. 4 This Act may be cited as the "Landfill Gas Act of 5 2006".</p> <p>6 SEC. 2. CREDIT FOR PRODUCTION OF NATURAL GAS. 7 (a) ALLOWANCE OF CREDIT.—Subpart D of part IV 8 of subchapter A of chapter 1 of the Internal Revenue Code</p>
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→ In the 109th Congress, three bills were introduced which would provide a \$2.00/MMBtu tax credit for the production of gas from a high Btu fuel facility

→ Prospects for the introduction and passage of such a provision in the 110th Congress are uncertain

- IRS has not issued any Section 45 landfill gas PLRs
- We understand that there is an informal no-rule position for LFGE projects
- IRS has an official no-rule position for transactions that use a “flip” structure
- Due to manpower issues, the IRS has expressed a preference for issuance of public rather than private guidance

→ Questions?

→ Contact Information:

Laura Ellen Jones
(804) 788-8746
ljones@hunton.com

Doug Lamb
(804) 788-8513
dlamb@hunton.com

Hunton & Williams LLP
951 East Byrd Street
Richmond, VA 23219
www.hunton.com

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