



**Tax Credits, Treasury Grants and Other Tax Incentives
for Landfill Gas and Waste-to-Energy Projects
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Laura Ellen Jones, Hunton & Williams LLP

- Production Tax Credit
- Investment Tax Credit In Lieu of Production Tax Credit
- Brief Overview of Treasury Grant Program
- Application Procedure
- Eligible Applicants
- Eligible Property
- Eligible Basis
- Lease Structures
- Recapture
- Miscellaneous
- Terms and Conditions
- State Tax Incentives
- Questions

- Production Tax Credit of 1.1 cents/kWh
 - Electricity production from landfill gas or municipal solid waste
 - Ten year credit period beginning on date facility is placed in service
 - August 8, 2005
- Facility must be placed in service prior to January 1, 2014
- Electricity must be sold to an unrelated person
- Certain types of “bad” financing reduce the tax credit amount
 - Four flavors
- Anti-double dip rule
- Phase-out

- Investment Tax Credit (ITC) equal to 30% for specified energy property
 - Electricity production from landfill gas or municipal solid waste
- Facility must be placed in service prior to January 1, 2014
- No “bad” financing rules
 - Non-taxable grants
- Anti-double dip rule still applicable
- No phase-out
- However, lots of other ITC rules (original use, recapture rules, tax exempt-use property rules, etc.)
- Compare PTC versus ITC numbers
 - Must have tax appetite

Brief Overview of Grant Program

- Enacted in Section 1603 of the American Recovery and Reinvestment Tax Act of 2009
- 30% cash grant is provided for landfill gas or waste to energy facilities in lieu of PTC or ITC
 - Facility must be placed in service in 2009, 2010 or 2011
 - Facility can be placed in service prior to applicable placed in service deadline (January 1, 2014) if construction began in 2009, 2010 or 2011
 - Construction of facility must begin in 2009, 2010 or 2011
 - Only property placed in service after 2008 will qualify for cash grant
- Applicants who receive a cash grant cannot also claim PTC or ITC

- On-line application process (<https://treas1603.nrel.gov/>)
- For projects placed in service in 2009, 2010 or 2011, application must be submitted after the project is placed in service
- For projects on which construction starts in 2009, 2010 or 2011 but is placed in service after 2011, application must be filed after the project is under construction
 - All applications must be received by October 1, 2012
- If the property has been placed in service at the time of application, payment will be made within 60 days of the date the completed application is received by Treasury
- If the property has not been placed in service at the time of application
 - Two-step application process (initial application and supplemental information provided within 90 days after the property is placed in service)

- Certain tax-exempt entities are not eligible to receive cash grants
 - Federal, state or local government
 - Including any political subdivision, agency or instrumentality thereof
 - 501(c) organizations that are exempt from tax under Section 501(a) of the Code
 - Entities referred to in Section 54(j)(4) of the Code (i.e., CREB lender, electric co-op, governmental body)
 - Partnership or other pass-thru entity with any of the entities above as a direct or indirect partner or holder of equity/profits interest
 - Unless the person only owns an indirect interest in the applicant through a taxable C corporation

- Generally, two broad categories:
 - Certain property described in Section 45
 - No credit can have been allowed under Section 45 for the facility
 - Generally tracks facility definition for purposes of Section 45
 - Certain property described in Section 48
 - Generally tracks facility definition for purposes of Section 48
 - Opportunity?
 - Definition of eligible property is broader than Section 45

Eligible Property – Beginning of Construction

- Construction begins when physical work of a significant nature begins
- Physical work does not include preliminary activities
 - Planning or designing
 - Securing financing
 - Exploring
 - Researching
 - Clearing a site
 - Test drilling to determine soil condition
 - Excavation to change the contour of the land
 - However, excavation for footing and foundations is physical work

Eligible Property – Beginning of Construction

- Physical work does include (provided as an example in the guidance in the context of a wind facility)
 - Excavation for the foundation
 - Setting of anchor bolts into the ground
 - Pouring of the concrete pads of the foundation
 - Physical work of a significant nature begins on the manufacture of modular units at an off-site location
- Continuous program of construction

Eligible Property – Beginning of Construction

- Self construction by applicant:
 - Construction begins when physical work of a significant nature begins
- Construction for the applicant by another person under a written binding contract:
 - Construction begins when physical work of a significant nature begins under the contract
 - Written binding contract is a tax term of art
- Safe Harbor – Physical work of a significant nature begins when:
 - Accrual basis applicant incurs cost for work, or
 - Cash basis applicant pays
 - More than 5% of the total cost of the property (excluding preliminary activities)
 - Safe harbor must be met by the applicant

- Only “specific energy property” is eligible for a cash grant
 - Tangible personal property
 - “Other tangible property” that is an integral part of the facility
 - Look to Section 48 Treasury Regulations defining other tangible property and buildings
 - Property used directly in the qualified facility
 - Essential to the completeness of the activity performed in the facility, and
 - Located at the site of the qualified facility
 - Roadways and paved parking areas example
 - Property for which depreciation (or amortization) is allowable
 - Does not include a building

- Includes
 - Storage devices
 - Power conditioning equipment
 - Transfer equipment
 - Parts relating to the functioning of those items
- Excludes
 - Electrical transmission equipment
 - Equipment beyond the electrical transmission stage
 - Transformers
 - Distribution lines

- Municipal solid waste facilities
 - Includes property used at the plant site for unloading, transfer, storage, reclaiming from storage or preparation of material to be processed at the plant
 - Landfill gas collection system?
 - Geothermal facility example
 - Eligible property includes equipment that transports hot water from the geothermal deposit to a power plant
 - Excludes off-site equipment and equipment or vehicles for transportation to the site

- Cash payments may be assigned
 - Submit Notice of Assignment with application
 - Comply with Federal Assignment of Claims Act
 - Other requirements applicable
- NEPA and Davis-Bacon Act requirements not applicable
- Payments not includable in gross income
 - Generally, basis is reduced by 50% of cash payment
- Applicants must provide certain reports to Treasury

- States offer various incentives for renewable energy projects and property:
 - Corporate tax credits
 - Sales tax exemptions
 - Property tax exemptions for increased value
 - Rebates
 - Grants
 - Loans
 - Bond programs
 - Production incentives

- Bad financing rules need to be considered in light of any state or local incentives
 - State tax incentives generally do not raise issues
 - Grants and rebates may raise issues under Section 45 and possibly under Section 48 (taxable versus nontaxable)
 - Nongovernmental incentives do not raise issues
- Run the numbers to determine the most economic package of incentives
- Excellent state tax incentives website:
 - Database of State Incentives for Renewables & Efficiency
 - <http://www.dsireusa.org>- See the Summary Tables section

Laura Ellen Jones
(804) 788-8746
ljones@hunton.com
Hunton & Williams LLP
951 East Byrd Street
Richmond, VA 23219



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