Tax Credits, Treasury Grants and Other Tax Incentives for Landfill Gas and Waste-to-Energy Projects
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Production Tax Credit

- 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

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
Application Procedure

- 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)
Eligible Applicants

- 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
Eligible Property

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
Eligible Property

- 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
Eligible Property – Special Rules

- 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
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