



Client Alert

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DEPARTMENT OF TREASURY ISSUES GUIDANCE ON ENERGY GRANT PROGRAM

The Department of Treasury recently published program guidance to assist developers of renewable energy projects who wish to apply for cash grants in lieu of energy credits, as authorized by the fiscal stimulus legislation that was passed by Congress earlier this year (the American Recovery and Reinvestment Act of 2009 or "ARRA").

Production Tax Credits and Investment Tax Credits previously have been available under Sections 45 and 48 of the Internal Revenue Code for qualifying renewable energy projects. Although ARRA extended the application of these credits, Section 1603(a) of the Act also authorized the Department of Treasury ("Treasury") to make cash grant payments to eligible parties that place specified types of renewable energy projects into service in order to offset a portion of the expenses of the property. These grants can be in the amount of 30% of the eligible cost basis for most types of projects. The ability to use the grants instead of the tax credits has been expected to revive the renewable energy industry by providing an alternative financing mechanism at a time when traditional lending has dried up and when tax credit investors have substantially diminished demand for tax credits. The actual commencement of the cash grant program, however, has been on hold until Treasury issued guidelines on how the system would work.

The much anticipated [guidance](#) from Treasury, which was finally issued on July 9, 2009, provides more information on exactly what types of projects and developer entities are eligible for the program, how one applies for the grants and when payments will be made by Treasury. Treasury is expected to begin accepting applications in August, 2009. Applications must be received by October 1, 2011. To be eligible, a project generally must be one that otherwise would have qualified for the Production or Investment Tax Credits, such as wind, solar, biomass, geothermal and similar renewable energy projects.

The guidelines also supply essential details as to what constitutes commencement of construction and placement in service. To qualify for the program, most eligible facilities must be actually placed in service by December 31, 2010. In certain cases, however, as long as construction begins by that date, the project will still qualify as long as the application is actually received by the October 1, 2011 deadline. Under such circumstances, payment of the grants will not be made until the project is actually placed in service, which must occur in any event by December 31, 2017. There is also important guidance on what constitutes a disqualifying event that would require repayment of the grant funds to Treasury.

If one follows the rules, the cash grant program and the existing Production



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Tax Credits and Investment Tax Credits can be very useful components for the financing of solar, wind, biomass and other renewable energy projects. The [Renewable and Alternative Energy Team](#) at Arnall Golden Gregory can assist you with the process at every step.

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