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Recent Legislation Affecting the Residential Energy Efficient Property Credit

On October 3, 2008, the President signed into law H.R. 1424 (the “Act”), which, among other items, provided the long-awaited renewable energy tax credit extensions. The following provides a summary of the key renewable and alternative energy provisions applicable to individuals contained in the Act.

General Description of the Residential Energy Efficient Property Credit

As amended by the Act, the residential energy efficient property credit (the “REEP Credit”) generally allows individuals a personal tax credit for expenditures for qualified solar electric property, qualified solar water heating property, qualified fuel cell property, residential wind property, and geothermal heat pumps. Depending on the individual and the type of property, such credit may be subject to limitations.

Modifications by the Act

- *Extension of the REEP Credit.* Effective for tax years beginning after December 31, 2007, the Act extends the REEP Credit for eight years, through December 31, 2016.
- *Eliminates Annual Limitation with respect to Qualified Solar Electric Property.* Prior to amendment by the Act, taxpayers were allowed the REEP Credit equal to 30% of their expenditures for property that uses solar energy to generate electricity for use in a U.S. residential dwelling (“qualified solar electric property expenditures”) during the tax year, up to a maximum of \$2,000. Effective for tax years beginning after December 31, 2008, the Act eliminates the \$2,000 limitation on the credit allowed for a tax year for qualified solar electric property expenditures.
 - For this purpose, an expenditure is treated as made when the original installation is completed. Thus, an individual who is planning to spend more than \$6,667 on qualified solar electric property should consider waiting until 2009 to complete the installation.
- *New Categories of Property Eligible for the REEP Credit.* The Act adds two new categories of property eligible for the REEP Credit, “residential wind property” and “geothermal heat pumps.”
 - Both of these categories require that the component be used in connection with a U.S. residence. However, this requirement does not appear to be limited to a taxpayer’s principal residence. Thus, it appears that both components may also be installed on a second residence.
 - These provisions are effective for tax years beginning after December 31, 2007 and for property that is placed in service before January 1, 2017.

- As with qualified solar electric property (discussed above), an expenditure is treated as made when the original installation is completed. Thus, an original installation of qualified small wind energy property or qualified geothermal heat pump property that is completed in 2008, even if begun earlier, would qualify for the credit.
- Residential Wind Property. The Act adds a new component to the REEP Credit equal to 30% of a taxpayer's expenditures for property that uses a wind turbine to generate electricity for use in connection with the taxpayer's U.S. residence ("qualified small wind energy property expenditures") that are made by a taxpayer during the tax year.
 - The amount of this credit is limited to \$500 for each 0.5 kilowatt of capacity, not to exceed \$4,000, of wind turbines for which qualified small wind energy property expenditures are made.
- Geothermal Heat Pumps. The Act adds a new component to the REEP Credit equal to 30% of a taxpayer's expenditures for any equipment that (i) uses the ground or groundwater as a thermal energy source to heat or cool a dwelling unit; and (ii) meets the Energy Star program requirements in effect when the expenditure is made, ("qualified geothermal heat pump property expenditures").
 - The amount of this credit is limited to \$2,000 for any qualified geothermal heat pump property expenditures.
 - *Credit against Alternative Minimum Tax ("AMT")*. The REEP Credit may be claimed against both regular tax and AMT.

For more information regarding the modifications made by the Act or the REEP Credit in general, please contact Charles H. Purcell. In addition, please see our summary "Recent Legislation Affecting the Production Tax Credit" for a summary of energy provisions included in the Act that address other types of renewable energy, such as wind, and our summary "Recent Legislation Affecting the Energy Tax Credit" for a summary of the energy provisions in the Act that address solar power facilities.

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