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## Recent Legislation Affecting the Energy Tax 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 (the “Energy Credit”) extensions that apply to solar power facilities and certain other renewable energy resources, including qualified fuel cell property, microturbine property, combined heat and power system property, geothermal heat pump systems, and qualified small wind energy property.

### General Description of the Energy Credit

The Energy Credit generally provides businesses with a credit for any tax year equal to a certain percentage (either 10% or 30% depending on the type of property) of the basis of each energy property placed in service during the tax year.

### Modifications Made by the Act

The Act amends the applicability of the Energy Credit as follows:

- *Extension of Energy Credit.* The 30% credit for solar energy property and qualified fuel cell property is extended through December 31, 2016. In addition, the Act extends the 10% credit for microturbine property through December 31, 2016.
- *Allowance of Energy Credit against Alternative Minimum Tax (“AMT”).* The Act allows AMT filers and public utilities to claim the Energy Credit.
- *Additional Categories of Property Eligible for the Energy Credit.* For periods after October 3, 2008, the Act adds three new categories of property eligible for the Energy Credit. These include “combined heat and power system property,” “qualifying small wind energy property,” and “geothermal heat pump systems.”
  - To qualify for the Energy Credit, such property must be placed in service prior to January 1, 2017.
  - The Energy Credit applies only with respect to the portion of the basis of such property that was constructed, reconstructed, or erected after October 3, 2008.
  - Combined Heat and Power System Property. In addition to meeting the requirements above, in order to qualify for the 10% Energy Credit with respect to combined heat and power system property, the property must:
    - comprise a system that uses the same energy source to simultaneously or sequentially produce electrical power, mechanical shaft power, or both, while generating steam or other forms of useful thermal energy;
    - produce at least 20% of its total energy in the form of both (i) thermal energy not used to produce electrical or mechanical power (or a combination of the two) and (ii) electrical or mechanical power (or a combination of the two);
    - have an energy efficiency percentage that exceeds 60%; and

- not have a capacity in excess of 50 megawatts or a mechanical energy capacity in excess of 67,000 horsepower or an equivalent combination of electrical and mechanical energy capacities. In addition, the amount of the Energy Credit is reduced with respect to property with a capacity of greater than 15 megawatts or a mechanical energy capacity of more than 20,000 horsepower or an equivalent combination of electrical and mechanical energy capacities.
- Qualified Small Wind Energy Expenditures. In addition to meeting the requirements above, in order to qualify for the 30% Energy Credit with respect to qualified small wind energy expenditures, the property must use a wind turbine with a nameplate capacity (i.e., instantaneous maximum power output in megawatts) of not more than 100 kilowatts (a “qualifying small wind turbine”) to generate electricity. The amount of the credit with respect to qualified small wind energy expenditures is limited to \$4,000.
- Geothermal Heat Pump Systems. In order to qualify for the 10% Energy Credit with respect to geothermal heat pump systems, the system must, in addition to meeting the requirements above, use the ground or groundwater as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure.
- *Fuel Cell Property.* Qualified fuel cell property is eligible for a credit of 30% of the basis of the property placed in service during the tax year. This credit, however, is limited. The Act increases the credit limitation from \$500 to \$1,500.
- *Prohibition on Ownership by Public Utilities of Property Qualifying for Energy Credit.* The Act eliminates the prohibition on ownership by public utilities of property qualifying for the Energy Credit. This provision applies to periods after February 13, 2008.

For more information regarding the modifications made by the Act or the Energy 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 Residential Energy Efficient Property Credit” for a summary of the energy provisions in the Act that directly affect individuals.

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