



# Alternative & Renewable Energy Tax Newsalert

## "Fiscal Cliff" Legislation Extends Production Tax Credit and Other Clean Energy Provisions

January 2, 2013

To address the "fiscal cliff" combination of expiring tax provisions and automatic spending cuts, Congress has passed the American Taxpayer Relief Act of 2012 ("ATRA"), which also extends certain expired and expiring individual and business tax provisions through 2013. Several significant renewable and alternative energy provisions are included in ATRA. (For a complete description of the bill, please see PwC's [WNTS Insight](#) publication.)

The most prominent renewable energy provision is the extension of the production tax credit ("PTC") for wind energy by one year to December 31, 2013. Equally significant is the conversion of the 2013 deadline from a "placed in service" deadline to a "begin construction" deadline for all renewable energy facilities under the PTC. These include not only wind facilities but also biomass, geothermal, municipal solid waste, landfill gas, marine and kinetic energy, and certain hydropower facilities. The bill also clarifies that commonly recycled paper is excluded from qualifying as biomass for the PTC.

ATRA also extends taxpayers' ability to elect a 30% investment tax credit ("ITC") in lieu of the PTC for facilities that meet the 2013 begin construction deadline.

The bill also extends and amends through December 31, 2013, several additional alternative

and renewable energy provisions, including the following:

- "Second generation" (formerly cellulosic) biofuels producer credit, while adding algae-based fuel to the list of fuel types eligible for this credit;
- "Second generation" (formerly cellulosic) biofuels bonus depreciation, while adding and adds algae-based fuel to the list of fuel types eligible for this depreciation treatment;
- Incentives for biodiesel and renewable diesel;
- Incentives for alternative fuels and alternative fuel mixtures, although credits for fuel sold or used after December 31, 2011 will not be refundable;
- Credits for alternative fuel vehicle refueling property;
- Credit for the manufacture of energy efficient clothes washers, dishwashers, and refrigerators;
- Indian country coal PTC; and
- Credit for construction of new energy-efficient homes with an updated construction standard.



### **Bonus Depreciation Extended**

ATRA also extends, through December 31, 2013, the 50% bonus depreciation rules that were in effect for 2012. Most renewable energy property is eligible for this bonus depreciation treatment.

### **PwC observations**

While the PTC extension covers only 2013, the addition of "begin construction" language may provide taxpayers a longer window in which to qualify for and claim the credit for both wind and other renewable energy projects. Left unaddressed, however, is how the IRS will determine whether a taxpayer has "begun construction" by December 31, 2013. Although the Treasury section 1603 grant program under the 2009 stimulus bill may provide useful precedents, the specifics of how the IRS will approach this are still to be determined.

More broadly, we anticipate that this provision will spur development activity similar to that seen at the end of 2011 under the Treasury 1603 grant program.

In addition, the extension of the ability to elect into the ITC for PTC property is important because this election has been a key structuring

option for renewable energy projects since it was first enacted in 2009.

Finally, the extension of 50% bonus depreciation is also a welcome development as it is frequently an important factor in overall returns from renewable energy projects.

### **For more information**

For prior alerts on alternative and renewable energy tax issues, please see our [news archive](#).

In addition to the Alternative & Renewable Energy Tax News alert, PwC also publishes a cross-disciplinary news alert providing updates on cleantech, sustainable development, and the business impacts of US climate and energy policy. For further information and to sign up for these alerts, click [here](#).

For more information about using energy tax incentives to meet your renewable energy goals, please contact a member of PwC's Sustainable Business Solutions tax team:

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