

# ***IRS announces second phase of Section 48C qualifying advanced energy project tax credits***

*February 8, 2013*

## ***In brief***

Yesterday, the Internal Revenue Service released Notice 2013-12, which announces the reallocation of approximately \$150 million in Section 48C credits that were not used by original awardees and provides the process for applicants to be considered for a second round of allocations.

While the IRS has determined that no single project will receive more than a \$30 million allocation, we expect that competition will be very intense for this round of allocation. We advise potential applicants to immediately begin working on developing a compelling Concept Paper describing its proposed project, as these Papers must be submitted to the Department of Energy for evaluation by April 9, 2013.

## ***In detail***

Under the American Recovery and Reinvestment Act of 2009, Section 48C provided \$2.3 billion in tax credits for investments in manufacturing facilities and processes that had energy saving and greenhouse gas reduction impacts. The tax credits were allocated through a competitive process that resulted in 183 projects receiving approval for tax credits in January 2010. The awardees were required to certify their continued eligibility for the award within one year and had three years from the date of certification to place the project into service.

Specifically, Section 48C provides a 30% investment tax credit that is designed to

encourage the reequipment, expansion, or establishment of a manufacturing facility for the production of:

- property that is designed to be used to produce energy from the sun, wind, geothermal deposits, or other renewable resources;
- fuel cells, microturbines, or an energy storage system for use with electric or hybrid-electric motor vehicles
- electric grids to support the transmission of intermittent sources of renewable energy, including storage of that energy
- property designed to capture and sequester carbon dioxide emissions
- property designed to refine or blend renewable fuels (but not fossil fuels), or to produce energy conservation technologies (including energy-conserving lighting technology and smart grid technology), but excluding transportation fuels
- new qualified plug-in electric drive motor vehicles, plug-in electric drive vehicles, or components specifically designed for use in such vehicles (including electric motor, generator, or power control unit) or
- other advanced energy property designed to reduce emissions of greenhouse

gases as may be determined by the Secretary of the Treasury.

### **Second round application process**

In the initial round of Section 48C allocations, credits were awarded for 30% of eligible project costs regardless of total costs. However, the IRS has determined that no project will receive an allocation in excess of \$30 million in credit in the second phase.

The Notice sets out two deadlines for applications:

1. applicants must submit 'Concept Papers' to the Department of Energy by April 9, 2013 and
2. applicants must submit full applications to the DOE and the IRS by July 23, 2013.

The Notice provides details on what must be included in the Concept Papers and Full Applications.

Upon receipt of all applications, the DOE will rank projects with the highest ranked project receiving the full amount of credit requested, not to exceed \$30 million. The remaining credits available then will be allocated to the second and lower ranked projects until the approximately \$150 million allocation is exhausted.

The application period begins on February 7, 2013 and ends on July 23, 2013. DOE will provide recommendations for awards by October 11, 2013 and the IRS will notify applicants of the final awards by November 15, 2013.

### **The takeaway**

The second round of allocations under Section 48C is welcome news to taxpayers that have projects involving potentially eligible technologies. Based on our experience in the first

round of allocations, there will be significant interest in the credit, and it is likely that the second round will be similarly oversubscribed. Thus taxpayers should consider immediately whether they have potentially eligible technologies and begin the process of creating Concept Papers to meet the April 9 deadline. However, the Notice specifically states that all applications will be considered on their merits rather than when during the application period they are received. Thus, applicants should plan to use the full application period to enhance the quality of their applications.

The second round allocation process will differ from the initial round as administered under Notice 2009-72. For this round, the IRS and the DOE have created a multi-stage application process but also have provided more clarity about how they will rank applications. Appendix B of Notice 2013-12 provides that the Concept Papers will be used as the first "cut" for applicants. DOE will review the Concept Papers and invite only 50 applicants to submit full applications in July. Thus, potential applicants should be prepared put forth maximum effort into these documents. Appendix B also sets forth the weighting given to the various review criteria that will be applied to rank the applicants. Potential applicants should review these criteria closely and tailor their submissions accordingly. As with the initial allocation of these credits, there is no appeal process.

Finally, the Notice is silent as to the timing of acquisition of assets and eligibility for the credit. It is unclear at this point when applicants had to have acquired project assets to retain eligibility. During the initial

allocation, the IRS was willing to engage in informal conversations to answer such questions; given the short timeframes for responding to this notice, it is likely that the IRS will adopt a similar approach for the second round.

### **Additional resources**

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

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

### **Let's talk**

For a deeper discussion about using energy tax incentives to meet your renewable energy goals, please contact:

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