

*"Fiscal cliff"
legislation extends
production tax
credit, but
sequestration hits
section 1603 grants*

March 2013



Over the New Year's holiday, Congress passed legislation to address the much-reported "fiscal cliff" of expiring tax provisions and automatic spending cuts. That legislation also extended and expanded many significant clean energy provisions.

Most importantly for the cleantech community, the new law extends the production tax credit ("PTC") for wind energy through 2013. The scheduled expiration of the PTC had brought new wind projects to a virtual halt, and the wind industry had advocated strongly for an extension.

Under the revised PTC, the 2013 deadline requires companies to "begin construction" rather than complete projects. This change applies to all types of renewable energy eligible for the PTC — not only wind facilities, but also biomass, geothermal, municipal solid waste, landfill gas, marine and kinetic energy, and certain hydropower facilities. Companies also can elect a 30% investment tax credit ("ITC") instead of the PTC for facilities that meet the 2013 "begin construction" deadline.

IRS guidance will be required to define what it means to "begin construction" in 2013, but many observers expect the government to use rules similar to those used for the Treasury section 1603 cash grant program.

The new legislation also extends many additional business tax provisions through December 31, 2013 (see box at right). Several provisions were both extended and modified, and these changes are important for the cleantech community:

Other provisions extended through the end of 2013

- "Second generation" (formerly cellulosic) biofuels producer credit
- "Second generation" biofuels bonus depreciation
- Incentives for biodiesel and renewable diesel
- Incentives for alternative fuels and alternative fuel mixtures
- Credits for alternative fuel vehicle refueling property
- Credit for certain nonbusiness energy property
- Indian country coal PTC
- Credit for construction of new energy-efficient homes

- Algae-based fuels are now eligible for the cellulosic biofuels producer credit and associated bonus depreciation.
- The plug-in vehicle credit is now specifically available for two- and three-wheeled vehicles.
- The energy-efficient homes tax credit has an updated construction standard.
- The new law clarifies that commonly recycled paper cannot qualify as biomass for the PTC.
- Tax credits for alternative fuels and alternative fuel mixtures are no longer cash-refundable.

Several other current or recently expired renewables provisions, including ethanol credits and the Treasury section 1603 grant program, were not extended. Tax credits for solar and fuel cells are not scheduled to expire until 2016 and, thus, were not addressed in the bill.

The new legislation also extends 50% bonus depreciation through 2013. Most renewable energy property is eligible for this bonus depreciation treatment.

This year creates critical opportunities to develop PTC-eligible pipeline

Under the new legislation, 2013 will likely be a critical year for developers of wind, biomass, and other PTC-eligible projects to begin construction on a pipeline of projects for delivery over the next several years. We anticipate development activity similar to that seen at the end of 2011 under the Treasury 1603 grant program, as developers seek to “grandfather” projects into the PTC (or ITC, after election). Another year of 50% bonus depreciation is also a welcome development for projects that will be completed in 2013, as it is frequently an important factor in overall returns from renewable energy projects.

Treasury announces that section 1603 cash grants will be subject to an 8.7% sequester

On March 4, 2013 Treasury announced that all awards made under the Treasury 1603 cash grant program on or after March 1, 2013 through September 30, 2013 will be reduced by 8.7% – regardless of when the application was received by Treasury. After Congress and the Administration failed to reach agreement on alternative means of achieving targeted budget deficit reductions, automatic across-the-board cuts in many federal programs (“sequestration”) took effect on March 1, 2013. Awards made prior to March 1, 2013 will not be affected. The 8.7% reduction will be applied until the end of the fiscal year (September 30, 2013), at which time the sequestration rate is subject to change. At this time, it is unclear whether grant applicants could be made whole for reductions in their awards if and when alternative budget measures replace the sequestration process.

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