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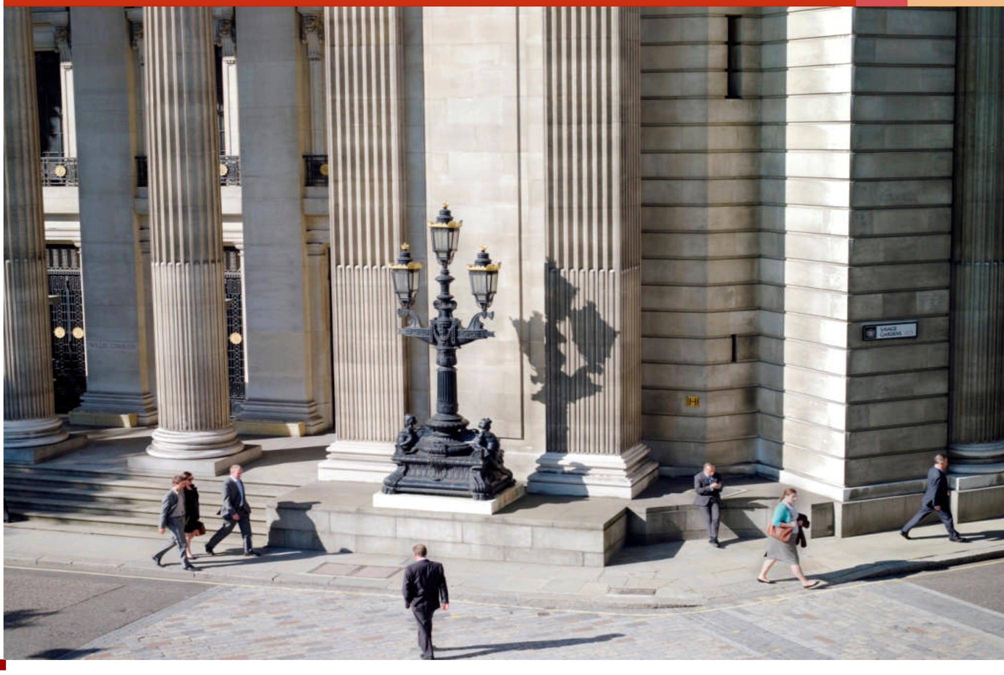
"Tax extenders"

What the cleantech community should watch for

October 2012



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"Tax extenders"

Many valuable renewable energy tax incentives either have expired or are scheduled to expire soon. Congress frequently deals with these provisions and other similar tax provisions by passing periodic "tax extenders" legislation that continues these tax benefits for a year or two. In August, the Senate Finance Committee approved a tax extenders package and proposed draft legislative language to implement it.

Most importantly for the cleantech community, the bill would extend the production tax credit ("PTC") for wind energy by one year to December 31, 2013. The scheduled expiration of the PTC has brought new wind projects to a virtual halt in the second half of 2012, and this extension would be welcome news for the industry.

The Senate bill also would convert the 2013 PTC deadline from a "placed in service" deadline to a "begin construction" deadline. This change would apply 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. Finally, the bill also would extend provisions allowing companies to elect a 30% investment tax credit ("ITC") instead of the PTC for facilities that meet the 2013 "begin construction" deadline.

Other Notable Proposed Energy "Tax Extenders"

- Cellulosic biofuels producer credit
- Cellulosic 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

Several other current or recently expired renewables provisions, including credits for ethanol production and the Treasury Section 1603 grant program, were not included in the Senate Finance Committee's markup. Tax credits for solar and fuel cells are not scheduled to expire until 2016 and, thus, were not addressed in the bill.

What would this mean for cleantech?

Under current law, PTC projects must be completed prior to the statutory expiration dates to qualify for tax credits. If the Senate bill passes, converting 2013 to a "begin construction" deadline would give companies significant opportunities to plan and start projects next year for completion in 2014 or later. This could spur development activity similar to that seen at the end of 2011 under the Treasury 1603 grant program.

Additionally, the ITC election has been an important structuring option for renewable energy projects since it was first allowed in 2009. We expect that most developers would elect the ITC instead of the PTC if that option remains available because the net present value of the upfront ITC typically exceeds that of a ten-year stream of PTCs.

What comes next?

Congress will not pass a tax extenders bill before the November election, and some of these provisions (notably the PTC extension) have become election year issues. However, while the Senate Finance Committee's action represents only the beginning stages of the extender process, it suggests that a compromise on extending the wind PTC and other renewable energy provisions may emerge as Congress addresses tax legislation after the November election.

Will 1603 Grants Fall Over the "Fiscal Cliff"?

On September 14th, the Office of Management & Budget (OMB) reported to Congress regarding the across-the-board spending cuts that will take effect on January 1st if the Administration and Congress fail to agree by the end of the year on legislation that would avoid an automatic "sequestration" of over $100 billion in federal spending. OMB confirmed that, if this so-called "fiscal cliff" is reached, the Treasury Section 1603 cash grant program would be subject to sequestration. Details of implementation remain unclear, but grant applicants could see their awards reduced by approximately 7.6 percent, and it is uncertain whether they would be entitled to receive the remaining grant amount retroactively if and when a budget deal is reached.

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