



Small Wind Property Investment Tax Credits: Questions and Answers

February 17, 2009

The Emergency Economic Stabilization Act of 2008, enacted on October 3, 2008, provided investment tax credits for small wind facilities placed in service before 2017 with respect to certain business and residential uses (sections 48 and 25D, respectively, of the Internal Revenue Code). The business and residential credits were subject to certain dollar limitations. On February 17, 2009 President Obama signed into law "The American Recovery and Reinvestment Act of 2009 (ARRA)" that, among many other things, removes the cost caps from the small wind investment tax credits. The ARRA legislation also provides a grant program in lieu of certain credits.

The following are questions and answers related to the business and residential credits and the grant program.

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Amount of Incentives

1. What is the amount of the business and residential credits?

Thirty percent of the total installed cost of the system.

2. Can a system owner use the credit in addition to a state credit or rebate, federal grant, or other government incentive? If so, how does this work?

Pursuant to ARRA, for periods after December 31, 2008, a system owner can use either credit in addition to a state credit or rebate, federal grant, or other government incentive. Under prior law, in determining the amount of credit allowable with respect to certain government-subsidized projects, the taxpayer was required to reduce the cost of the project to reflect the government subsidy.

3. Can a system owner use the credit against the Alternative Minimum Tax?

The credit can offset the tentative minimum tax of the taxpayer.

4. If a system owner cannot use all of the credit in a single tax year, can the remainder be carried over to (a) following year(s)?

If a system owner cannot use the entire amount of the residential credit in a taxable year because of insufficient tax liability in such year, the unused amount of the credit

may be carried forward to and used in a succeeding taxable year (subject to similar limitations in such succeeding year.) The business small wind credit is part of the general business credit and may be carried forward 20 years.

Owner and Equipment Eligibility

5. What equipment qualifies for the credits? Is there any specific equipment that does not qualify?

In the case of the business credit the definition of qualified property is property that uses a wind turbine with a nameplate capacity of not more than 100 kilowatts to generate electricity. The property must be constructed or erected by, or the original use of the property must begin with, the taxpayer. The property must be of a character for which depreciation is allowed, must be used in the United States, and generally cannot be owned or used by a government agency, foreign person or other tax-exempt person. The Secretary of the Treasury, in consultation with the Secretary of Energy, may prescribe performance and quality standards for qualified property. Such regulations will be applied prospectively.

In the case of the residential credit, the definition of qualified property is property that uses a wind turbine to generate electricity for use in connection with a dwelling unit located in the United States and used as a residence by the taxpayer. Expenditures that are allocable to a swimming pool, hot tub, or any other energy storage medium that has a function other than storage does not qualify for the credit. In general, the original use of the property must begin with the taxpayer.

6. Can the credits be applied to used or refurbished equipment?

In general, the property must be new. Tax rules that determine when refurbished equipment is treated as new property are complicated and beyond the scope of this document. A consumer should consult a tax advisor with respect to this and any other issue involving the credit.

7. How is "business use" defined?

In the case of the "business" credit, the property must be of a character for which depreciation is allowed. This generally means that the property is used in a trade or business or held for the production of income.

8. Can utilities use the business credit?

For-profit utilities are eligible for the business credit. Municipal power systems are not eligible.

9. Can schools use the business credit?

For-profit schools are eligible for the business credit. Public and tax-exempt schools are not eligible.

10. In the case of a manufacturer leasing equipment to a third party, who claims the credit?

In general, the owner of the property may claim the credit. In the case of a lease, complicated tax rules determine the owner of the property for tax purposes. A consumer should consult a tax advisor with respect to this and any other issue involving the credit.

11. In the case of the residential credit, must the system be used for a primary residence only, or are second homes eligible?

The legislation does not distinguish between principal residences and second homes.

12. In the case of multiple turbines on a single property, can the credit be used toward each installation or just one of them?

There is no limitation based on a single location.

Project Timing

13. When do the credits take effect?

The credit applicable to businesses applies to periods after the date of enactment (October 3, 2008). The residential credit applies to taxable years beginning after December 31, 2007.

14. Can the credit be applied retroactively to turbines installed in 2008, but before the October 3, 2008 enactment of the law?

See answer to question 13 above.

15. How is the “placed-in-service date” for a system defined?

The credit applicable to businesses applies to qualified property when it is placed in service. “Placed in service” is a technical tax term and the determination is based on the underlying facts and circumstances. In general, property is placed in service when it is in a condition or state of readiness and available for its intended use.

a. For a new home, is this the date a homeowner moves in, or the date the installation is completed?

The credit applicable to residences applies when expenditures are made for qualified property, not when the property is placed in service. For this purpose, an expenditure with respect to an item is deemed to be made when the original installation of the item is completed. In the case of an expenditure in connection with the construction or reconstruction of a structure, the expenditure is deemed made when the original use of the structure by the taxpayer begins.

16. If the installation began before the date of the credit’s enactment, or was completed after the credit’s expiration in 2016 (assuming the credit is not extended), can the credit still apply?

As described above, the credits generally are applicable with respect to completion activity, not initiation activity.

Applying for the Credit

17. To apply for the credit, what legal forms and documentation does a turbine owner(s) need to complete/provide?

The credits will be claimed on the tax return of the taxpayer for the year for which the credit is claimed. Business credits generally are claimed on Forms 3468 and 3800 and individual energy credits generally are claimed on Form 5695.

a. To whom?

The Internal Revenue Service.

b. At what stage in the process?

With the filing of the tax return for the taxable for which the credit applies.

c. Where are the forms available?

As of 1/5/2008 the forms have not yet been updated to reflect the new law, but should become available on the IRS website (www.irs.gov/formspubs/) before the 2008 filing season.

d. When are the due dates?

With the due date of the applicable tax return.

e. In the case of an installation for a business use, is the amount subject to depreciation affected by this law?

The taxpayer must reduce its depreciable basis in property by the half the amount of the credit. A full basis reduction is required for residential use property, although such property is not subject to depreciation.

Grant Program

18. What is the grant program?

ARRA provides that in lieu of certain business energy credits (including the small wind energy credit) an owner may elect to apply for a cash grant from the Department of Treasury in an amount equal to the foregone credit (i.e., 30% of the cost of a small wind facility).

19. Who is eligible for the grant?

In general, taxpayers that are eligible to claim the business tax credit for qualified properties may apply for the grant. Tax-exempt entities (e.g., governmental bodies, charities, co-operatives) or partnerships with a tax-exempt partner are not eligible for the grant.

20. What small wind properties qualify for the grant?

The property must otherwise qualify for the business credit described above and generally must be placed in service in 2009 or 2010. If the property is placed in service after 2010, and before 2017, construction of the property must have begun in 2009 or 2010. The grant program is not available for property eligible for the residential tax credit.

21. How does one apply for the grant?

The Treasury has not yet issued guidance for grant applications. ARRA provides that grants will be paid during the 60-day period beginning on the later of (1) the date of the application for the grant, or (2) the date the property is placed in service. No grant will be made unless the application for the grant is received before October 1, 2011.

23. How is the grant treated for tax purposes?

The receipt of the grant is not taxable. In general, the rules otherwise applicable to the investment tax credit (recapture rules, no reduction for government subsidies, partial reduction in depreciable basis, etc.) apply to the grant.

24. For what types of issues should a consumer consult a tax advisor?

A consumer should consult its tax advisor with respect to any issue involving either credit.

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