ALERT
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Energy, Environmental and Utilities Group
News Concerning
Recent Developments in Energy and Environmental Law

COZEN O'CONNOR

"Fiscal Cliff" Bill Also Extends Tax Credits for Renewable Energy, Energy Efficiency and Alternative Fuel Vehicles

On January 1, 2013, the U.S. Congress passed last minute legislation known as the American Taxpayer Relief Act of 2012 (the Act) to avoid an automatic increase in income taxes for millions of Americans and draconian cuts to the budget of the federal government that many feared would plunge the nation's economy back into recession. Also included in this eleventh-hour legislative compromise were extensions of various tax credits related to renewable energy, energy efficiency and alternative fuel vehicles.

RENEWABLE ENERGY

26 U.S.C. § 45 and 26 U.S.C. § 48 Renewable Energy Production and Investment Tax Credits

The Act extended, for one year, the production tax credit (PTC) (26 U.S.C. § 45) and the investment tax credit (ITC)(26 U.S.C. § 48) applicable to renewable energy projects, specifically for wind, closed- and open-loop biomass, landfill gas and trash facilities, qualified hydropower, and marine and hydrokinetic energy facilities.

After hot debate during the 2012 election season, the Act extended the PTC and the ITC for wind energy, previously slated to expire as of January 1, 2013. Although it remains to be seen whether Congress will take up the American Wind Energy Association's proposal for a gradual phase-out over several years, the wind credits are now aligned with other renewables, which were not scheduled to expire until January 1, 2014.

The Act also expanded the class of renewable energy projects that qualify for the PTC and ITC. Previously, these tax credits applied only to those projects actually "placed in service" (i.e., fully commissioned and producing energy) prior to the January deadline. Under the Act, the credits will apply now to renewable energy projects for which construction has started prior to January 1, 2014. Generally speaking, construction starts for the purposes of these credits when physical work of a significant nature (on-site or off-site) has begun, such as the beginning of excavation for foundations or when the manufacture of the specific facility components begins at an off-site location.

By extending the credits for an additional year and broadening their applicability to renewable energy projects that have started construction, Congress has given sponsors additional time to advance projects currently in the development pipeline that had been put on hiatus. While the renewable energy industry has gained only a small measure of economic certainty, this extension hopefully signals Congress's willingness to consider the longer-term solutions for supporting renewables.

ENERGY EFFICIENCY

The Act extended two business and personal tax credits applicable to energy efficient residences and appliances through December 31, 2013. The Act also made them retroactive to their prior expiration date of December 31, 2011, meaning **the credits are now available for both 2012 and 2013**.

26 U.S.C. § 45L Business Tax Credit for New and Renovated Energy Efficient Residences

The Act renewed (actually, revived) the 26 U.S.C. § 45L business tax credit of up to $2,000 for contractors or developers that construct or significantly renovate "dwelling units" (apartments, condos or single-family homes) that meet certain energy efficiency standards.

The credit had previously applied only to homes acquired before December 31, 2011. The Act extended this deadline to homes acquired before December 31, 2013, meaning homes built and acquired **in both 2012 and 2013** will be eligible.

In addition to extending the credit, the Act changed the baseline of energy efficiency required to qualify. Previously, § 45L required a 50 percent reduction in energy usage as compared to the 2003 version of the International Energy Conservation Code (IECC). The Act amended the baseline energy standard to the 2006 IECC.

Although the 2006 IECC made several structural changes to make it easier to use, the Oak Ridge National Laboratory determined that it did not change the level of energy efficiency from the 2003 IECC. Therefore, the change in standard will do little to address a criticism of the credit that most new houses built to building codes in force in most jurisdictions would already qualify for the credit without any special investment in efficiency.

The Act also freezes the credit to the standard "in effect on January 1, 2006," the 2006 IECC. The current IECC version, IECC 2012, is 30 percent more efficient than the 2006 code. To update the baseline energy efficiency standard to more current codes will require further legislative amendment of § 45L.

26 U.S.C. § 25C Individual Tax Credit for Energy Efficient Residential Improvements and Appliances

The Act also revived the 26 U.S.C. § 25C individual tax credit of 10 percent (up to $500) of the cost of certain energy efficient property improvements, like insulation, windows and doors, and energy efficient heating, cooling and water heating appliances.

The credit had previously applied only property placed in service prior to December 31, 2011. The Act extended this deadline to property placed in service before December 31, 2013, meaning property placed in service in **both 2012 and 2013** will now be eligible.

ALTERNATIVE FUEL VEHICLES

26 U.S.C. § 30C Alternative Fuel Vehicle Refueling Property Credit

The Act extended the tax credit for alternative fuel vehicle refueling property until December 31, 2013. This provision extends a tax credit of up to 30 percent the cost of refueling infrastructure, subject to a cap of $1,000 for personal use property and $30,000 for businesses/investment use property. The extension applies retroactively to cover all alternative fuel infrastructure put into service in 2012, including installation of fueling equipment for plug-in electric vehicles, and other alternative fuel vehicles including compressed natural gas (CNG), liquefied natural gas (LNG), propane, ethanol and hydrogen. While the Act does not include tax incentives for natural gas vehicle (NGV) purchases or conversions, it is still expected to have a positive effect on both the NGV and electric vehicle industries.

26 U.S.C. § 30D New Qualified Plug-In Electric Drive Motor Vehicles

The Act also extended tax credits to certain 2- or 3-wheeled electric vehicles, such as motorcycles, bikes and scooters. For qualified 2- or 3-wheeled plug-in electric vehicles, the available tax credit is up to 10 percent of the cost of the vehicle or a maximum of $2,500 and may be applied during the taxable year in which the vehicle is placed into service. A "qualified" vehicle is defined as: (1) having 2 or 3 wheels, (2) having a 2.5 kWh pack (down from 4 kWh), (3) manufactured primarily for use on public roads, (4) capable of achieving a speed of 45 miles per hour or greater, (5) and is acquired between December 31, 2011 and January 1, 2014. The Act did not alter the existing credit for qualified plug-in electric drive motor vehicles with 4 wheels.

Cozen O'Connor's Energy, Environmental & Public Utilities Practice has extensive experience with energy, efficiency and vehicle projects, including capitalizing on all available federal, state and local incentives. Please contact any of our members to discuss questions you may have regarding this Alert or how it may apply to your particular circumstances.