Tax Incentives Supporting the Financing of Renewable Energy Facilities

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Date

- Broad Public Support
- Currently nearly all States have adopted some form of Renewable Energy Portfolio (“RPS”) standards
- While Wind and Solar are most often in the new Incentives Apply to other Renewable Technologies

- Federal Credits Still Available
- Production Tax Credit (IRC Section 45)
- Investment Tax Credit (IRC Section 48)

- Production Tax Credit
  - Subsidizes Production by providing a tax credit based on the number of Kilowatt Hours produced.
  - In BioMass space, there is a distinction between Closed Loop and Open Loop BioMass facilities

- Closed Loop Biomass facilities are fueled with plant matter grown for that purpose
- Open Loop facilities are fuelled with Livestock Waste and other solid cellulosic and lignin material
- A Biomass facility does not include any facility which cofires with fossil fuel

- Production Tax Credits are generally available for ten years after the facility is placed in service.
- Rates for Closed Loop credit id 50% of the rate for Open Loop credits
- Other financing enhancement (such as exempt bonds or grants) can reduce the PTC by up to 50%

- Investment Tax Credits:
  - Based on the eligible cost of the facility (30%)
  - Taxpayer must elect to take this in lieu of PTC
  - Reduction in Depreciable Basis of 50% of Credit
  - Taken in the year the Project is placed in Service
  - Subject to recapture for five years

- Eligible Costs
  - Generally the cost of depreciable personal property or other depreciable property other than a building or its structural components.
  - Can include roadways and support facilities located on site which are an integral part of the facility.

- Election to Use ITC
- Taxpayer must make an affirmative election to use ITC in lieu of PTC
- Critical factor is the ratio of cost to anticipated production
- Additionally in the case of Open Loop facilities of facilities funded with exempt bonds, the lower PTC rates will apply.

- Tax Incentives and Limitations:
- The use of tax incentives is limited by the Developers ability to utilize credits.
- Limitations may be based on the other tax liability of the Developer which can be offset.

- Monetizing Tax Incentives:
- Tax incentives are most often “sold” to a credit investor
- Provides low cost investment funding since the tax benefits greatly increase the rate of return
- Typical structures include a Partnership structure or a lease structure

- Combining with other incentive
- Depending on the state, there may be important incentives that pertain, such as REC's, grants or direct financial support.
- Exempt Bond Financing may be available.
- New Market Tax Credit if the project is located in development district.
- Even historic tax credits could be available if a suitable site could be found

- Life of tax incentives:
- Federally, incentives have continued solely through the device of “extenders”
- Currently most renewable credits would not be available after 2016.
- American Energy Innovation Act (September 2015) would provide long term extension of credits.

- On the other hand, Sen. Lankford introduced legislation in October that would end all energy subsidies.
- Likely result will be a trade off of extended credit for lifting oil export limits.