Applications Window Opens for Tax Credits for Green Manufacturers

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Companies that plan by early 2014 to have built new factories or expanded or equipped existing facilities in the United States for manufacturing solar panels, wind turbines and other equipment used in renewable energy projects have until September 16 to apply for federal tax credits to help pay the cost.

The tax credits will cover 30% of the cost.

Only $2.3 billion in total credits are available nationwide. Companies interested in them must apply first to the US Department of Energy for a ranking and then to the Internal Revenue Service.

The Department of Energy will rank proposals based on how many jobs they are expected to create, the potential innovation in product lines and cost reductions, and the degree to which the products the factories produce help reduce air pollution and greenhouse gas emissions. A proposal will not receive a ranking unless DOE concludes it has a "reasonable expectation of commercial viability." DOE will look at how much benefit the government will receive per dollar of tax credits.

The Internal Revenue Service will then work down the DOE rankings, awarding the full amount of tax credits to the project ranked number one, then number two, and so on until all of the tax credits have been used up.

Qualifying Products

The credits are also available for factories that make plug-in cars and trucks or components for them, fuel cells, gas micro-turbines, smart grid technology, equipment used to transmit electricity from wind farms, solar facilities and other intermittent generators, batteries and other storage devices for renewable energy projects, equipment to capture and sequester carbon dioxide emissions, and equipment for plants that refine or blend renewable transportation fuels or that make energy conservation devices, including lights that conserve energy.

A preliminary application must be submitted to the Department of Energy by September 16. The final application is due by October 16. The government would like data in the preliminary application to be within 10% of the figures in the final application, but there is no penalty if the final figures vary by more than this amount. The Department of Energy will let the IRS know by December 16 how it ranked all the proposals it considers commercially viable. Companies will find out whether they were awarded any credits by January 15, 2010.

No fee has to be paid to the government to process the application.

Any company awarded tax credits will face two deadlines. It must have all the permits needed to start construction within one year of the award. It must have completed construction within three years of the award. The IRS has no authority to extend the three-year deadline.

A significant change in plans later could lead to loss of tax credits. A change is significant if it might have caused DOE to assign the project a different ranking.

The IRS may still challenge whether a project was entitled to the tax credits a company claimed in a later audit.

The tax credits may be recaptured if the factory or an interest in the factory is sold within the first five years after construction is completed. Only the "unvested" credits will be recaptured. The credits vest ratably over five years. Thus, if a factory is sold in year four, 40% of the tax credits claimed would have to be repaid to the government.

Economic Effect

A company claims its tax credit in full in the year the project is completed, unless the factory is expected to take at least two years to build, in which case tax credits can be claimed on the progress payments made to the contractor during construction.

There are two federal tax subsidies potentially on the project. The owner can also depreciate the project (or deduct the cost). However, if a tax credit is claimed, only 70% of the cost can be deducted.

Tax Credits

continued

European and Asian companies moving into the US market and smaller US manufacturers may find the tax benefits hard to use because they lack a US tax base against which to use them.

Unused credits can be carried back one year and forward for 20 years until used. Unused depreciation can be carried back two years and forward for 20.

A manufacturer may be able to convert the tax benefits into cash more quickly by entering into one of three forms of “tax equity” or “monetization” transactions essentially to barter the tax credits to a bank, insurance company or other large institutional investor who can use them in exchange for capital to build or upgrade his factory. For example, the factory can be sold to a bank that can use the tax benefits and leased back. The bank would share the tax benefits with the manufacturer in the form of reduced rent.

August 22, 2009