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- by Roger A. McEowen

Overview

In late 2008 and early 2009, two major pieces of legislation were enacted into law with the stated goal of spurring the economy. The 2008 legislation (H.R. 1424) was titled the Emergency Economic Stabilization Act of 2008. Division B of the 2008 law contains the energy-related provisions. The 2009 law (H.R. 1) is known as the American Recovery and Reinvestment Act of 2009 and is the largest spending bill in U.S. history. Energy-related provisions are included among the various provisions of the bill.

EMERGENCY ECONOMIC STABILIZATION ACT OF 2008

Division B – The Energy Improvement and Extension Act of 2008

- Extension of the “renewable” energy credit through 2009, for wind and refined coal, and through 2010 for other sources of “renewable” energy. *Act, Division B, Title I, Subtitle A, Sec. 101, amending I.R.C. §45(d).*

Note: The Act also expands the types of facilities qualifying for the credit to new biomass facilities and to those that generate electricity from marine renewables (e.g., waves and tides) and makes the credit available through 2011. *Act, Division B, Title I, Subtitle A, Sec. 102, amending I.R.C. §45(d).*

- Extension of the 30 percent energy-efficient property credit through 2016, with the credit offsetting AMT liability. *Act, Division B, Title I, Subtitle A, Sec. 103, amending I.R.C. §48(a), (c)(1) and (c)(2).*
 - Qualified solar energy property (and removal of the \$2,000 maximum limit), and qualified fuel cell property.
 - 10 percent credit for micro-turbines.
 - 30 percent credit for the building of small wind turbines (nameplate capacity of not more than 100 kw) used to generate electricity, capped at \$4,000 per year. *Act, Division B, Title I, Subtitle A, Sec. 104, amending I.R.C. §48(c). Effective for periods after October 3, 2008, in tax years ending after Oct. 4, 2008, through 2016.*
 - Credit worth 30 percent of the cost (capped at \$2,000 per year), for geothermal heat pump systems through 2016. *Act, Division B, Title I, Subtitle A, Sec. 105, amending I.R.C. §48(a) by adding new subsection vii. Effective for periods after October 3, 2008, in tax years ending after October 3, 2008.*
 - Extension of the residential energy efficient property credit to property placed in service on or before December 21, 2016. *Act, Division B, Subtitle A, Sec. 106, amending I.R.C. §250D(g).*

- The creation of a credit for carbon dioxide sequestration in the amount of \$20 per metric ton of qualified carbon dioxide (captured from an industrial source) which the taxpayer captures at a qualified facility (an industrial facility at which carbon capture equipment is placed in service which captures not less than 500,000 metric tons of carbon dioxide during the tax year) the taxpayer owns and disposes of in secure geological storage, and \$10 per metric ton of qualified carbon dioxide which the taxpayer captures at a qualified facility and uses as a tertiary injectant in a qualified oil or natural gas recovery project. *Act, Division B, Title I, Subtitle B, Sec. 115, adding I.R.C. §45Q. Effective for carbon dioxide captured after October 3, 2008.*
- Expansion of the 50 percent bonus depreciation allowance for cellulosic biofuels property to cellulosic biofuels other than ethanol. *Act, Division B, Title II, Sec. 201, amending I.R.C. §168(l). Effective for property placed in service after October 3, 2008, and before 2013, and for tax years ending after October 3, 2008.*
- Extension of the credit for biodiesel and “renewable” diesel through 2009, and increasing the credit from \$.50 to \$1.00, for fuel produced, sold or used in 2009. *Act, Division B, Title II, Sec. 202, amending I.R.C. §40A(g); 6426(c)(6) and 6427(e)(5)(B).*
- Clarification that fuel credits are designed to provide an incentive for domestic production by specifying that imported biodiesel that is immediately resold is ineligible for the biodiesel fuel credit. *Act, Division B, Title II, Sec. 203, amending I.R.C. §40A(d). Effective for claims for credit or payment made on or after May 15, 2008.*
- A three-month extension, through 2009, and modification of the alternative fuel credit. *Act, Division B, Title II, Sec. 204, amending I.R.C. §6426(d). Effective to fuel sold or used after October 3, 2008.*
- Creation of a credit for new qualified plug-in electric drive motor vehicles in the amount of \$2,500 plus \$417 for each kilowatt hour of traction battery capacity in excess of 4 Kwh (subject to a ceiling amount on the credit based on the GVW rating of the vehicle). *Act, Division B, Title II, Sec. 205, creating I.R.C. §30D. Effective for tax years beginning after 2008 and for eligible property purchased before 2015.*
 - The credit is subject to a ceiling amount of \$7,500 for qualified vehicles with a gross vehicle weight (GVW) rating of 10,000 pounds or less (higher limits apply to heavier vehicles).
 - The credit is subject to a phaseout period beginning with the second calendar quarter following the calendar quarter which includes the first date on which the total number of a qualified vehicle sold for use in the U.S. is at least 250,000. The rate of reduction of the credit is 50 percent for the first two calendar quarters of the phaseout period, and 25 percent for the third and fourth calendar quarters of the phaseout period.
 - A vehicle that qualifies for the credit is one that draws propulsion using a traction battery using at least 4 Kwh of capacity, uses an offboard source of energy to recharge the battery, has a GVW rate (for passenger vehicles) of 8,500 pounds or less, and conforms to applicable Clean Air Act standards.
 - The credit can be used to offset AMT.
 - For a qualified vehicle used by a tax-exempt entity, the seller of the vehicle is treated as the taxpayer with respect to the vehicle.
 - The taxpayer must reduce their basis in the vehicle by the amount of the credit allowed.

- A taxpayer may elect to not have the credit apply.
- The credit is part of the general business credit.

Note: The Chevrolet Volt (forthcoming) is projected to be eligible for the full \$7,500 credit by virtue of using a 16 kWh capacity Lithium-Ion battery.

- Extension of the alternative fuel vehicle refueling property credit through 2010 (2014 for hydrogen fueled vehicles). *Act, Division B, Title II, Sec. 207. Effective for property placed in service after October 3, 2008, in taxable years ending after October 3, 2008.*
- Extension through 2009 of the suspension on the taxable income limit for purposes of percentage depletion of a marginal oil or natural gas well. *Act, Division B, Title II, Sec. 210.*
- A provision allowing employers to provide employees who commute to work by bicycle limited fringe benefits (up to \$20 per month as an exclusion from income) to offset the cost of such commuting. *Act, Division B, Title II, Sec. 211, amending I.R.C. S §132(f). Effective for tax years beginning after 2008.*

Note: The provision is not indexed for inflation.

- Extension of the credit for non-business energy-saving property (such as windows, insulation and HVAC systems) through 2009, and inclusion of energy-efficient biomass fuel stoves (with a thermal efficiency rating of 75 percent or more) and asphalt roofs with cooling granules as new classes of energy-efficient property eligible for a consumer tax credit up to \$500. *Act, Division B, Title III, Sec. 302. Effective for expenditures made after December 31, 2008, and before 2010.*

Note: The bill clarifies that water heaters must have either an energy

factor of at least .80 or a thermal efficiency rating of at least 90 percent to qualify for the credit. Also, while the credit is generally worth up to \$500 for various improvements, it is limited to \$200 for windows and \$300 for biomass fuel stoves.

- Extension of the energy-efficient commercial buildings deduction through 2013. *Act, Division B, Title III, Sec. 303.*
- For eligible contractors, extension of the credit for energy-efficient improvements to new homes acquired from eligible contractors for use as a residence before 2010. *Act, Division B, Title III, Sec. 304.*
- Modification and extension of the energy-efficient appliance credit through 2010. *Act, Division B, Title III, Sec. 305.*

Revenue Raisers

- A limitation on the deduction for income attributable to domestic production of oil and gas (capping the deduction at 6 percent), while extending the deduction to strategic film and television production. Effective for tax years beginning after 2008 (with the reduction taking effect in 2010). *Act, Division B, Title IV, Sec. 401, amending I.R.C. §199(d).*
- A provision requiring broker reporting of customer basis and gain in securities transactions—stocks, bonds, mutual funds and other securities using either the FIFO method or the average cost method (beginning in 2011 on a phased-in basis) on Form 1099-B. In addition, a broker must specify whether the gains are long-term or short-term. The applicable dates are as follows: 1) corporate stock-Jan. 1, 2011; (2) mutual funds-Jan. 1, 2012; (3) other securities-Jan.1, 2013.

Note: The provision also extends the timeframe in which Form 1099-B (or statements) must be sent to customers by brokers from Jan. 31 to Feb. 15 for

statements furnished after Dec. 31, 2008. In addition, for people who transfer their securities from one brokerage to another, the old broker will need to provide the new broker with the required cost basis and acquisition date information. *Act, Division B, Title IV, Sec. 403, amending I.R.C. §6045.*

- A provision extending the .2 percent FUTA surcharge on the first \$7,000 of wages (or salary) paid after December 31, 2008, through calendar year 2009 (e.g., 6.2 percent; 6.0 percent beginning Jan. 1, 2010 and thereafter). *Act, Division B, Title IV, Sec. 404, amending I.R.C. §3301.*

ENERGY-RELATED PROVISIONS OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

1. **Advanced energy credit.** The Act creates an investment tax credit in the amount of 30 percent of qualified expenditures in a “qualifying advanced energy project.” That’s a project that re-equips, expands or establishes a manufacturing facility for the production of the following:

- Property designed to be used to produce energy from “renewable” resources (sun, wind and geothermal deposits);”
- Fuel cells, microturbines, or energy storage systems for use with electric or hybrid electric motor vehicles;
- Electric grids to support the transmission of intermittent sources of “renewable” energy;
- Property designed to capture or sequester carbon dioxide emissions;
- Property designed to refine or blend “renewable” fuels or to produce energy conservation technologies;
- New qualified plug-in electric drive motor vehicles, qualified plug-in electric vehicles or components designed for use with such vehicles; and
- Other advanced energy property designed to reduce greenhouse gas emissions

Eligible property must be depreciable tangible personal property or other depreciable tangible property that is used as an integral part of the qualified investment credit facility. The Act specifies that up to \$2.3 billion credits can be certified. The credit is not allowed for any qualified investment for which a credit is allowed under I.R.C. §§48, 48A or 48B. *Act, Sec. 1302, amending I.R.C. §46 by adding subparagraph (5) and creating I.R.C. §48C.*

2. **Energy-efficient improvements to existing homes.** The Act extends through 2010, the existing tax credits for improvements to energy-efficient existing homes. The Act also increases the credit from to 30 percent (up from 10 percent) of the amount paid or incurred for qualified energy efficient improvements. The Act also replaces the item-by- item dollar caps with an overall \$1,500 cap on all qualified property. In addition, the Act modifies the existing standards for energy-efficient building property (i.e., electric heat pumps, central air conditioners, water heaters, wood stoves, natural gas, propane and oil furnaces, natural gas and oil hot water boilers, propane furnace, propane hot water boiler, exterior windows, doors and skylights, and insulation). *Act, Sec. 1121, amending I.R.C. §25C.*
3. **Credit for alternative fueling property.** The Act increases the existing alternative refueling property credit (non-hydrogen property) from 30 percent to 50 percent, and increases the cap from \$30,000 to \$50,000. The Act keeps the hydrogen refueling pumps credit at 30 percent, but raises the cap to \$200,000. The Act also increases the credit from 30 to 50 percent for individuals and raises that cap to \$2,000 (from \$1,000) for non-hydrogen property placed in service in 2009 and 2010. *Act, Sec. 1123, amending I.R.C. §30C(e).*
4. **Extension of credit for electricity produced from renewable resources.** The

Act extends the credit for electricity produced from wind through 2012, and 2013 for other renewable sources, such as biomass facilities, geothermal and solar. *Act, Sec. 1101, amending I.R.C. §45(d).*

5. **Investment credit in lieu of production credit.** The Act allows owners of facilities that produce electricity from wind, open and closed-loop biomass, geothermal, small irrigation, hydropower, landfill gas, waste-to-energy, and marine renewable to claim a 30 percent investment tax credit for property placed in service in 2009-2012 for wind facilities, and 2009-2013 for property placed in service for the other type of facilities. The investment tax credit, if claimed, is in lieu of the renewable energy production tax credit that would otherwise be allowable. *Act, Sec. 1102, amending I.R.C. §48(a).*
6. **Small wind energy property.** The Act eliminates the dollar limitation on the otherwise available credit for small wind energy property. *Act, Sec. 1103(a), amending I.R.C. §48(c)(4).*
7. **Plug-in vehicle credit.** The Act increases the base amount \$2,500 tax credit for plug-in vehicles if the vehicle is purchased after 2009 and draws propulsion from a battery with at least 5 kWh capacity. The credit is increased by \$417 for each qualified vehicle which draws propulsion from a battery with at least 5 kWh of capacity, plus another \$417 for each kWh of capacity in excess of 5 kWh up to 16 kWh (not to exceed \$5,000). The full credit is available through the end of the first calendar quarter in which the vehicle manufacturer has sold 200,000 units of the vehicle. The credit is reduced in following calendar quarters. The Act also provides for a new credit (capped at \$2,500) of 10 percent of the cost of low-speed vehicles, motorcycles and 3-wheeled vehicles that would otherwise be classified as a qualified plug-in vehicle but for the fact that they are low speed or do not have four wheels, for purchases made after February 17, 2009 through 2011. In addition, the Act provides a credit (through 2011) against the

costs incurred in converting a vehicle into a plug-in vehicle through a conversion kit. This credit is pegged at 10 percent of the cost of conversion that does not exceed \$40,000. The income tax basis in a vehicle used in a trade or business is reduced by any credit amount that is claimed with respect to such converted vehicle. For vehicles used by a tax-exempt entity or governmental entity, the credit belongs to the vehicle seller. *Act, Secs. 1141, 1142 and 1143, amending I.R.C. §§ 30 and §30D.*

8. **Carbon sequestration.** The Act clarifies that a taxpayer claiming the carbon dioxide capture tax credit must be permanently stored in a geologic formation. *Act, Title XVI, Subtitle B, Part IV, Sec. 1131, amending I.R.C. §45Q(a)(2).*
9. **Grants in Lieu of Tax Credits.** The Act provides that a taxpayer, upon making application to the Treasury Secretary, can receive a grant for placing in service certain specified energy property to reimburse the taxpayer for a portion of the expense of such property. Such grants are in lieu of the taxpayer claiming any applicable credits with respect to such property. *Act, Sec. 1603.* The provision specifies that the amount of any grant is either 30 percent or 10 percent of the property's basis depending on the type of property involved. *Act, Sec. 1603(b)(2).* The provision also specifies that certain taxpayers are not eligible for grants. *Act, Sec. 1603(g).* Grants can only be made to taxpayers that make application for grants that the Secretary receives by September 30, 2011, for property that is placed in service during 2009 or 2010 or after 2010 and before the credit termination date for the property at issue if construction of the property began during 2009 or 2010. *Act, Part V, Subtitle G, Secs. 1603(a) and (j).*