

## **Reznick Group Client Alert: Application Guidance for Section 1603 Renewable Energy Grant Program**

On July 9, 2009, the U.S. Treasury released a 20 page guidance document providing information on the application process for the grants in lieu of energy credits program. Established under Section 1603 of the American Recovery and Reinvestment Act of 2009, this program gives owners of many types of renewable energy facilities the ability to offset project costs through a 30% grant (10% in the case of certain type of energy property) instead of the energy tax credit under Internal Revenue Code Sections 45 and 48.

While official DOE and Treasury guidance has been released, the actual grant applications are not yet being accepted by the DOE. The government will start accepting applications on or about August 1, 2009 and all official applications must be received by the government by October 1, 2011. Please stay tuned for further Reznick Group Client Alerts once the program goes "live."

### **Program Overview**

#### **Qualifications**

To qualify, eligible facilities must be placed in service in 2009 or 2010, or can be placed in service in certain cases as far out as 2017 (but construction must begin in 2009 or 2010). Grants will not be made available unless the project is in service or operational, although applications can be submitted prior to being placed in service. Grant monies will issue when energy production by an eligible property commences. The government essentially requires that projects will be fully pre-funded through other means.

#### **Eligibility Requirements**

With only a few exceptions, eligible facilities are those qualifying for the federal "production tax credit" and/or the Federal Energy Credit ("ITC"). These include wind, biomass, geothermal, landfill gas, municipal solid waste and hydro as well as solar, fuel cell, microturbine and small wind. Applicants receiving the cash grant cannot also receive a tax credit.

Only property used in a trade or business, and eligible to be depreciated for federal tax purposes, can qualify. Personal use property does not qualify. Property owned or leased directly or indirectly by governments or tax exempt entities and some foreign owned entities will not qualify for the grant (Speak with your Reznick Group professional for special structures that might facilitate governmental, tax exempt or foreign owned entities that may benefit from this grant).

Once eligible, cash grant payments may be assigned, e.g., to a lender or vendor. Lessors may assign the benefits to lessees. Such an election is irrevocable.

#### **Regulations and Other Information**

NEPA and Davis-Bacon requirements will generally not pertain unless applicable under another program. However, the restrictions of the Buy American Act generally don't apply to this cash grant.

REITs and RICs are subject to existing limits under the tax credit rule (see your Reznick Group Professional to learn more about special structures that can benefit REITs or RICs).

Public Utilities remain subject to the Normalization Rules.

The grant application and its contents must be signed under penalty of perjury and certain grant application disclosures can and will be shared with other agencies. Limited information on each applicant/recipient will be publicly available.

Disputes between the applicant and the government are ultimately subject to the powers of the United States Attorney and not the IRS jurisdiction. To the extent the federal government requires "recapture," a return of the cash is required. As this is not a tax program, any disputes with the government will be settled in cash.

Though the application is designed to be user-friendly and internet based, there are a number of required certifications and verifications of expenditures and operation. These vary according to the type of renewable energy property in the project.

Among the types of supporting materials and certifications that must be submitted, the following list illustrates those that your Reznick Group professional can help with:

**1. Cost Certifications**

For properties with a cost basis in excess of \$500,000 applicants must submit an independent accountant's certification attesting to the accuracy of all costs claimed as part of the basis of the property.

**2. Assessment of Leased Property Value**

A lessor eligible to receive a Section 1603 payment with respect to a property may elect to pass-through the Section 1603 payment to a lessee. An independent assessment of the fair market value on the date the property is transferred to the lessee must be conducted under the requirements of the grant program.

**3. Placed in Service Certification**

For property eligible for a Section 1603 grant, documentation must be provided to demonstrate that the property has been placed in service. An independent third party must be used to certify that the equipment has been installed, tested, and is ready and capable of being used for its intended purpose.

**4. Safe Harbor Compliance Testing**

An applicant may treat physical construction as having started if more than 5 percent of the total cost has been incurred or paid. Reznick Group can provide a "5% test" of total costs to ensure the grant applicant is in compliance with the economic performance standards of IRC section 461(h).

**5. Other Application and Registration Services**

Grant applicants must apply for several identifying data elements including a Data Universal Numbering System (DUNS) number from Dun and Bradstreet. They are also required to register with the Central Contractor Registration (CCR). Reznick Group can provide a variety of grant application advisory services to ensure all required applications and registrations are fulfilled.

The American Recovery and Reinvestment Tax Act of 2009 has created many other financial incentives for the renewable energy industry. We can help you optimize these incentives and help your business.

For more information on the services provided through Reznick Group's Renewable Energy practice, please visit [www.reznickgrouprenewableenergy.com](http://www.reznickgrouprenewableenergy.com).