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Clean Energy Bonds Expanded by the Economic Stimulus Act

Two bonding mechanisms for financing renewable energy and energy efficiency systems have been expanded under the tax section of the American Recovery and Reinvestment Act of 2009, which President Barack Obama signed on February 17. The act authorizes the allocation of as much as $1.6 billion in new Clean Renewable Energy Bonds (CREBs), which are tax credit bonds for financing renewable energy projects. CREBs were previously limited to a maximum of $800 million. The act also authorizes the allocation of $2.4 billion in qualified energy conservation bonds, up from the current limit of $800 million. These tax credit bonds are allocated to states and large local governments to finance a variety of clean energy projects.

Unlike normal bonds that pay interest, tax credit bonds pay the bondholders by providing a credit against their federal income tax. In effect, the new tax credit bonds will provide interest-free financing for clean energy projects. But because the federal government essentially pays the interest via tax credits, the U.S. Internal Revenue Service must allocate such credits in advance. However, tax credit bonds require the investment of a bondholder that will benefit from the federal tax credits, and those investors may be hard to find during the current business downturn. To try to draw more investment, a separate measure in the tax bill will allow regulated investment companies to pass through to their shareholders the tax credits earned by such bonds. Yet another measure adds a prevailing wage requirement to projects financed with CREBs or energy conservation bonds. See pages 39-41 and 143-149 of the American Recovery and Reinvestment Tax Act of 2009 (PDF 5.9 MB), as well as PDF pages 100-101, 118-123, and 148 of the accompanying joint explanatory statement of the conference committee (PDF 24.9 MB). Download Adobe Reader.

Clean Renewable Energy Bonds (CREBs) for facilities that generate electricity from:

1. wind
2. closed-loop biomass
3. open-loop biomass
4. geothermal
5. small irrigation
6. qualified hydropower
7. landfill gas
8. marine renewables
9. trash combustion

The new bond authorization is allocated into thirds among qualifying:

- projects of state, local, tribal governments
- projects of public power providers

- electric cooperatives

Clean renewable energy bonds (CREBs) may be used by certain entities -- primarily in the public sector -- to finance renewable energy projects. The list of qualifying technologies is generally the same as that used for the federal renewable energy production tax credit (PTC). CREBs may be issued by electric cooperatives, government entities (states, cities, counties, territories, Indian tribal governments or any political subdivision thereof), and by certain lenders. CREBs are issued, theoretically, with a 0% interest rate.* The borrower pays back only the principal of the bond, and the bondholder receives federal tax credits in lieu of the traditional bond interest.

Participation in the program is limited by the volume of bonds allocated by Congress for the program. Participants must first apply to the Internal Revenue Service (IRS) for a CREBs allocation, and past allocations have also included an expiration date by which the bonds had to be issued. The current allocation is $800 million, but there does not appear to be a time frame for issuing the bonds. (See "History" section below for information on previous allocations.) Public power providers, governmental bodies, and electric cooperatives are each reserved an equal share (33.3%) of the most recent allocation. The tax credit rate is set daily by the U.S. Treasury Department. Under past allocations, the credit could be taken quarterly on a dollar-for-dollar basis to offset the tax liability of the bondholder. However, under the new allocation, the credit has been reduced to 70% of what it would have been otherwise.

CREBs differ from traditional tax-exempt bonds in that the tax credits issued through CREBs are treated as taxable income for the bondholder. The tax credit may be taken each year the bondholder has a tax liability as long as the credit amount does not exceed the limits established by the federal . CREBs rates are available here.

History

The federal *Energy Policy Act of 2005* (EPAct 2005) established Clean Energy Renewable Bonds (CREBs) as a financing mechanism for public sector renewable energy projects. This legislation originally allocated $800 million of tax credit bonds to be issued between January 1, 2006, and December 31, 2007. Following the enactment of the federal *Tax Relief and Health Care Act of 2006*, the IRS made an additional $400 million in CREBs financing available for 2008 through Notice 2007-26.

In November 2006, the IRS announced that the original $800 million allocation had been reserved for a total of 610 projects. The additional $400 million (plus surrendered volume from the previous allocation) was allocated to 312 projects in February 2008. Of the $1.2 billion total of tax-credit bond volume cap allocated to fund renewable-energy projects, state and local government borrowers were limited to $750 million of the volume cap, with the rest reserved for qualified mutual or cooperative electric companies.

For more information on CREBs, contact Zoran Stojanovic or Timothy Jones of the IRS Office of Associate Chief Counsel at (202) 622-3980.

http://www.dsireusa.org/library/includes/incentive2.cfm?Incentive_Code=US45F&State=federal&currentpageid=1&ee=0&re=1

CREBs are a new form of tax credit bond in which interest on the bonds is paid in the form of federal tax credits by the United States government in lieu of interest paid by the issuer. CREBs, therefore, provide qualified issuers/qualified borrowers with the ability to borrow at a 0% interest rate. The federal tax benefit to the holder of a CREB is greater than the benefit derived from taxexempt municipal bonds in that the tax credit derived from a CREB can be used to offset, on a dollarfor-dollar basis, a holder's current-year tax liability, as opposed to excluding interest from gross income, as permitted for tax-exempt bonds. Unlike tax-exempt bonds, CREBs are taxable obligations, and the tax credits received are treated as interest and included in a bondholder's taxable income.[1]

http://www.orrick.com/fileupload/636.PDF