



New Developments in Federal Credits & Incentives

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KACPA 11/2/2010 Seminar



Agenda

Federal Credits & Incentives:

Tax Credit Physical

HIRE Act Employment Credit

New Markets Tax Credit

Research & Development Credit Update

American Recovery and Reinvestment Act (ARRA)

Legislative Developments

Contact & Q&A

Federal Credits & Incentives

Tax Credit Physical

Major Areas of Opportunity – The Credit Lifecycle

1. Identify

- Are you taking advantage of all federal tax credits and incentives you are entitled to?

2. Quantify

- Is the correct amount being taken?

3. Substantiate

- Are adequate records kept to substantiate amounts claimed?

4. Compliance

- Is all reporting completed to maintain incentives and avoid tax controversy/recapture?

5. Monetize

- Have you considered selling tax credits and incentives to investors?

Summary of Credits and Incentives

Tax Credit	Brief Summary
Research and Development ("R&D") (§41)	Increasing qualified research and experimentation expenditures
Investment Tax Credits ("ITC") (§47, §48, §48A, §48B, §48C, §48D)	Investment in qualified property by acquisition, rehabilitation or construction (e.g., solar, advanced energy project, therapeutic discovery project, historic rehab, clean coal)
Production Tax Credits ("PTC") (§45, §45K, 45J)	Production-based credits for qualified facilities placed in service (e.g., renewable energy, Indian coal, refined coal, coke, advanced nuclear)
Cash in Lieu of ITC/PTC (ARRA §1603)	Grant in lieu of ITCs or PTCs to reimburse a portion of expense of certain specified energy property (e.g., solar, wind, biomass)
Economic Development Credits (§45D, §42, §1397-1397F, §1400 - 1400U)	Commercial or residential investment in qualifying low-income areas (e.g., New Markets, Low-Income Housing, GO Zone, Empowerment/Renewal Community Credits)
Employment Credits (§51, §45A, §45B, §38, §1396, §1400H)	Wage credits for hiring targeted groups, within empowerment zones, renewal communities, or GO Zone, paying excess social security taxes for employee-received tips, or retaining qualified individuals under the HIRE Act
Renewable and Alternative Fuel Incentives (§40, §40A, §4041, §6426, §6427)	Using, mixing, producing or selling as fuel alcohol, agri-biodiesel, biodiesel, renewable diesel, cellulosic biofuel, and alternative fuels
Energy Conservation Incentives (§25C, §25D, §45L, §45M, §179D)	Producing or investing in certain renewable or energy efficient property (e.g., new energy efficient home credit, energy efficient appliances credit, residential energy efficient property credits, energy efficient commercial building deduction)

Summary of Credits and Incentives (cont'd)

Tax Credit	Brief Summary
Alternative Fuel Vehicle Credits (§30, §30B, §30C, §30D)	Investment credit for acquisition or lease of certain fuel cell, hybrid, lean burn, alternative fuel, plug-in electric motor vehicles
Accelerated Cost Recovery Non-Fossil Fuel (§168(e)(3)(B)(vi), §168(l), §169, §291)	Accelerated cost recovery and expensing provisions for certain renewable and alternative energy property, cellulosic biofuel plant property, and pollution control facilities
Accelerated Cost Recovery Fossil Fuel (§167(h), §168(e)(3)(C)(iii), 168(e)(3)(E)(vii), §169, §179C, §291)	Accelerated cost recovery and expensing provisions for geological and geophysical expenditures, Alaska natural gas pipeline, natural gas gathering and distribution lines, tertiary injectants, intangible drilling costs, depletion, qualified refinery expense
Miscellaneous Credits	Employer provided child care credit (§45F), Railroad track maintenance expenditures (§45G), agricultural chemicals security credit (§45O), Orphan drug credit (§45C) and others

Tax Credit Physical – The Process

Phase 1 - Assessment

- Review strategic plans, capital expenditures, etc. – past, present & future
- Identify qualifying activities that may have credit/incentive potential
- Summarize findings & opportunities
- Cost / benefit and after-tax ROI analysis

Phase 2 - Implementation

- Identify critical path
- Execute
- Document
- Substantiate

Phase 3 - Maintenance

- Establish reporting protocol to maintain compliance
- Monitor changing legislative environment and reporting (fed & state)
- Tax department aligned with strategic business objectives

HIRE Act Employment Credit

HIRE ACT Employment Credit

Payroll Tax Forgiveness

- Exempts employer OASDI tax (6.2%) paid to “qualified individuals” between 03/19/10 and 12/31/10 (up to \$6,621 per employee)
- “Qualified individuals” are persons hired between 02/04/10 and 12/31/10
- Form W-11 HIRE Act Affidavit
 - Unemployed for more than 40 hours during the 60-day period ending on date of employment
- Must not replace another employee unless replaced employee separated voluntarily or for cause (including downsizing)

HIRE ACT Employment Credit

Employee Retention Tax Credit for Newly Hired Individual in 2010

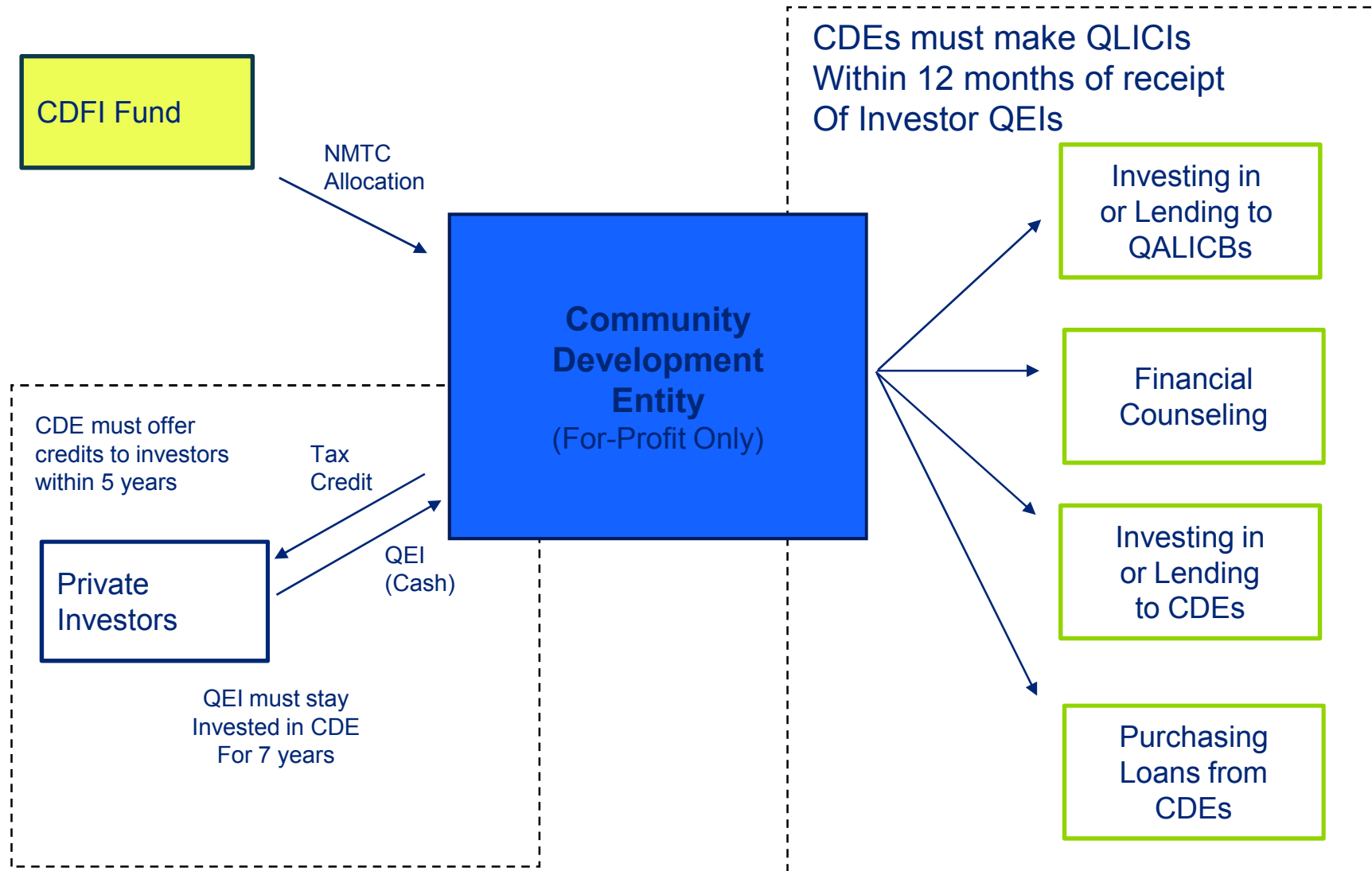
- General business tax credit under section 38(b) increased by the lesser of:
 - \$1,000, or
 - 6.2% of the wages paid by the employer over 52 consecutive weeks
- For each employee that qualifies for the payroll tax exemption provided such employee
 - Is employed on any date during the taxable year;
 - Is employed for at least 52 consecutive weeks; and
 - Is paid wages during the last 26 weeks of that 52-week period equal to at least 80% of wages for the first 26 weeks of the period
- Credit determined in taxable year employee completes 52-weeks of service
 - Claimed in 2011 by calendar year companies
- Credit can be carried back 1 year and forward 20 years, but cannot be carried back to a taxable year that begins before March 18, 2010 (i.e., calendar taxpayer cannot carry back 2011 credit to 2010)

New Markets Tax Credit

NMTC Program Overview

- What:** Federal tax credit program signed into law by President Clinton in December 2000 to spur private investment and economic development in urban and rural low-income communities.
- How:** CDFI Fund allocates NMTC authority to registered Community Development Entities (CDEs) through a competitive application process.
- Investors make cash investments in CDEs in exchange for equity or capital and earn tax credits on the investment.
- CDEs use cash proceeds to make loans or equity investments in real estate projects, community facilities, or businesses operating in low-income community.
- Benefits:** Tax Credit Investors obtain 39% federal income tax credit over 7 years on investment in a CDE.
- 5% the first 3 years; 6% the following 4 years
 - Example: \$100 investment yields \$39 of tax credits.
- CDEs receive fee and services income
- Low-income community-based business receives flexible financing typically in the form of equity, forgivable debt, or below-market interest rates.
- \$1 of project debt/equity yields approximately \$0.20 of benefit at closing**

NMTC - How it Works



NMTC Program Overview

Opportunity for Tax Credit Monetization to Qualifying Projects

- **New Markets Tax Credits (NMTCs)** can be used to fill 'gap' financing needed for qualifying projects located in low-income communities.
- Qualifying Projects can include:
 - Commercial Real Estate
 - Mixed-Use Real Estate
 - Community Facilities
 - Business Loans (i.e., asset purchases or working capital)
 - Renewable energy development (i.e., solar panels or wind turbines)
- Opportunities to combine other tax credits, grants, or incentives with NMTC financing
- Position project to leverage additional project sources
 - Increase position to work with market rate lenders
 - Leverage sources of subsidized capital for investing in distressed areas

NMTC Program Overview

QEI Issuance (As of September 1, 2010)

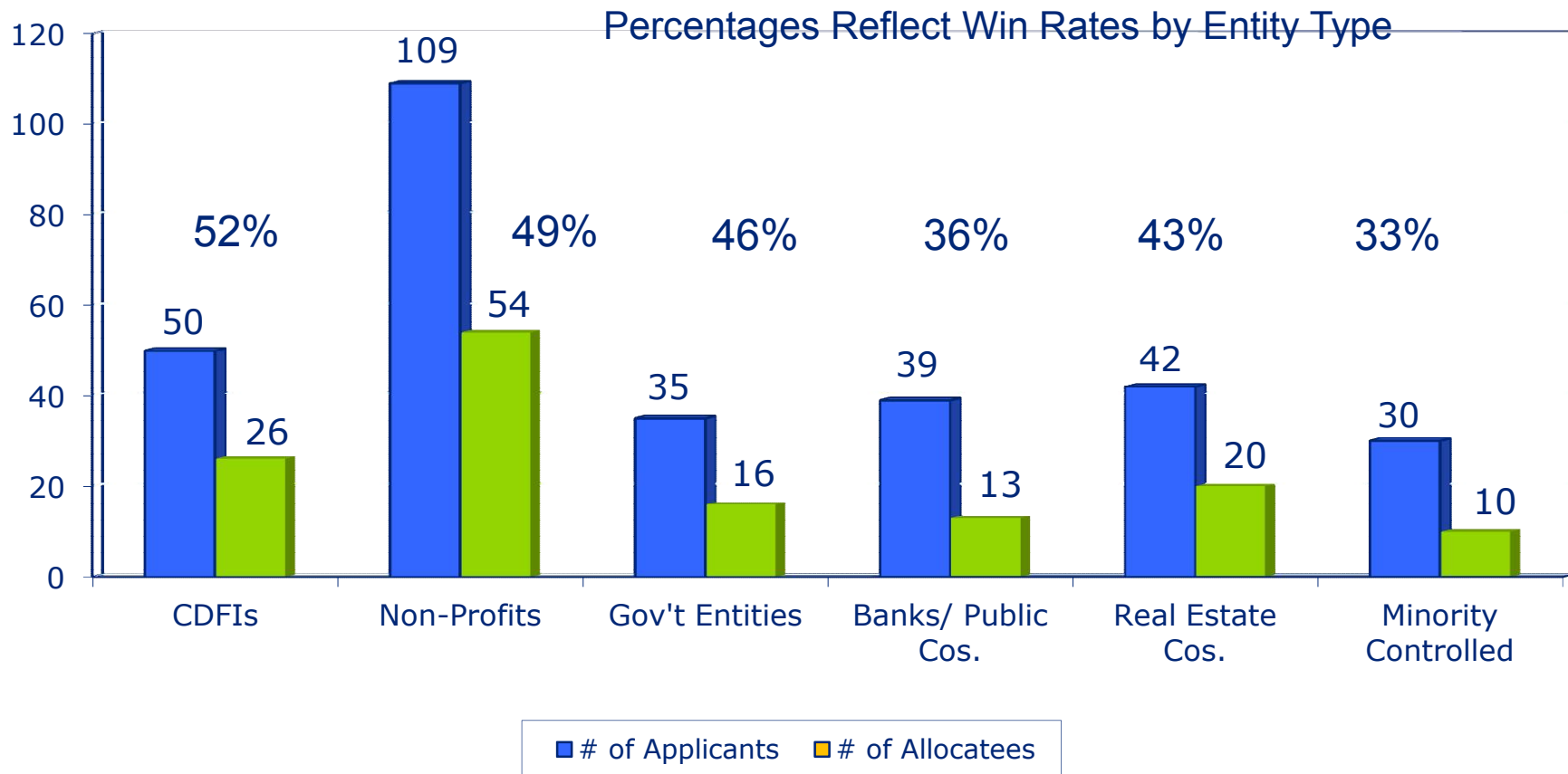
Round/ Year	Total Allocation	Amount Finalized	Amount Committed	Amount Remaining
1/2003	\$2,491,000,000	\$2,485,699,041	\$4,774,793	\$526,165
2/2004	\$3,500,000,000	\$3,493,786,204	\$157,946	\$6,055,850
3/2005	\$2,000,000,000	\$1,928,862,302	\$8,340,000	\$62,797,698
4/2006	\$4,100,000,000	\$3,747,400,808	\$80,399,327	\$272,199,865
5/2007	\$3,909,000,000	\$3,023,057,144	\$101,223,231	\$784,719,624
6/2008	\$5,000,000,000	\$2,635,368,505	\$69,056,742	\$2,295,574,754
7/2009	\$5,000,000,000	\$1,047,432,780	\$0	\$3,952,567,220
8/2010*	\$5,000,000,000*	\$0*	\$0*	\$5,000,000,000*
Total	\$26,000,000,000	\$18,361,606,785	\$263,952,039	\$7,374,441,176

*** Pending enactment of extenders legislation. Proposals would also allow credits to be claimed against AMT for qualified investments made between March 15, 2010 through January 1, 2012.**

NMTC Allocations Overview

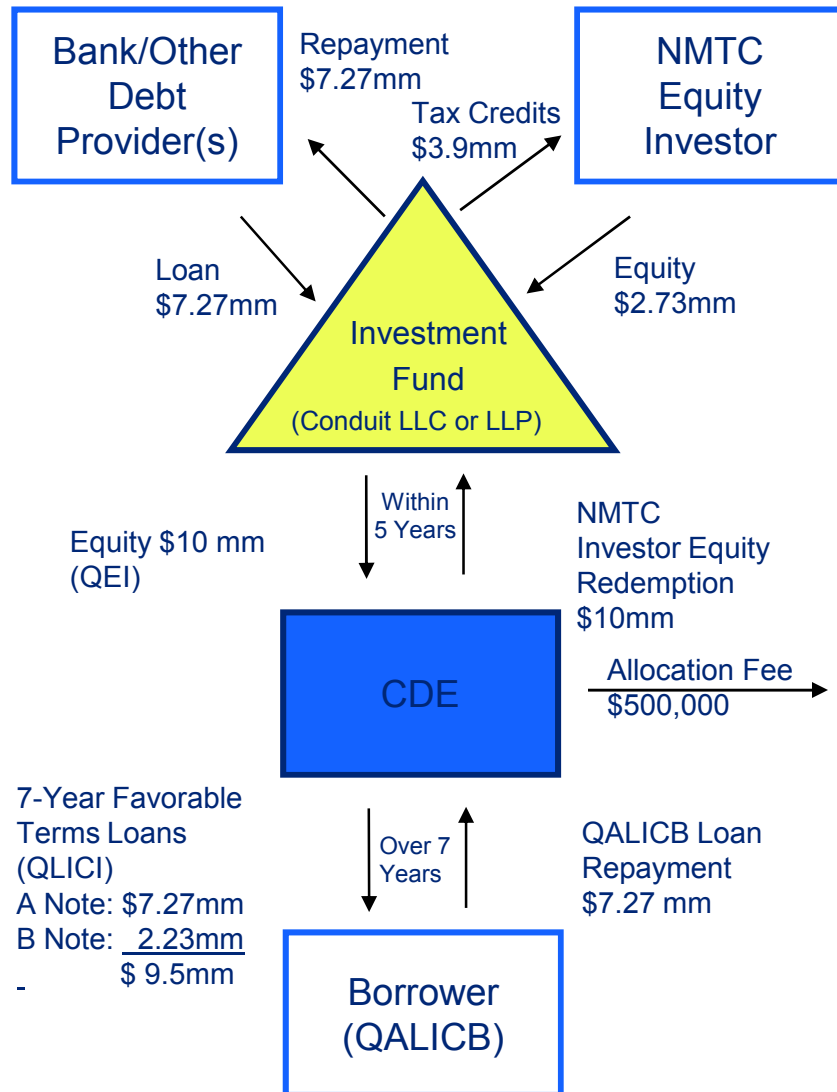
Allocatees – Round 7 (Calendar Year 2009)

Number of Applicants & Allocatees by Entity Type



Note: The total number of applicants for each category does not equal the total applicant pool of 249 since some applicants are classified in more than one entity type and others do not fall under an identified category.

Example of NMTC Leveraged Transaction



Transaction Summary

- The investment fund, the conduit LLC, obtains lender financing of \$7.27 million and an equity contribution of \$2.73 million (assuming \$0.70 tax credit pricing).
- The investment fund, using those combined proceeds, provides a QEI to the CDE totaling \$10 million in Year 1.
- The CDE (after allocation fees) provides \$9.5 million in debt financing to the QALICBs, structured as \$7.27 million in senior debt at market interest and \$2.23 million in deeply subordinated debt with nominal interest.
- The senior debt is structured to mature in seven years, consistent with the schedule of tax credits available to investors. The subordinated debt is structured to mature in 30 to 40 years.
- The CDE earns interest on the \$9.5 million, and the investment fund LLC pays interest only on the \$7.27 million debt financing to the LLC.
- At the end of the seven-year compliance period, the \$7.27 million note is repaid or refinanced and the \$2.23 million note is “forgiven” through a put option to the borrower, at which time the CDE redeems the QEI.

Simple Math – The Benefit (\$10 Million Allocation)

- Closing:
 - \$10,000,000 NMTC allocation
 - x 39% over 7-years
 - \$ 3,900,000 tax credit benefit
 - x 0.70 (NPV credits based on market pricing)
 - \$ 2,730,000 tax credit investment
 - (500,000) upfront allocation fee (5%)
 - (175,000) loan closing costs (origination, legal, accounting, other)
 - \$ 2,030,000 B Note net of closing costs
- Annual costs:
 - \$ (350,000) annual asset management fees (0.5%)
 - (140,000) annual audit and tax prep (\$20,000)
 - \$ (490,000)
- Exit:
 - (2,230) put price
 - \$ 1,537,770

Research & Development Credit Update

R&D Credit Update

§ 41 credit expired for expenses incurred after December 31, 2009

- Anticipate retroactive extension for 2010 expenses
- Extended temporarily 13 times in the past

Fiscal-year TPs may claim credit for 2009 expenses, with prorated base

Credit carryforwards despite expiration

Alternative computation methods for 2009 expenses

- 20% regular credit
- 14% alternative simplified credit (ASC)

Additional credit amounts for basic research payments to universities and nonprofits, as well as payments to energy research consortia

Financial statement benefit for 2010 expenses?

Legislation must be signed by President before end of reporting period

Expected extension of credit considered for estimated tax purposes?

President's recent proposal:

Permanent extension

Increase ASC rate from 14% to 17%

\$100 billion cost over ten-year budget window

R&D Credit – recent court decisions

Recent court recent court decisions generally taxpayer-favorable

- United States v. McFerrin, 570 F.3d 672 (5th Cir. 2009)(discovery test and substantiation; Cohan rule applies to estimation and oral testimony)
- Union Carbide v. Commissioner, *T.C. Memo. 2009-50* (qualified activities, substantiation, and supplies)
- TG Missouri v. Commissioner, 133 T.C. No. 13 (2009)(prototypes built for sale)
- FedEx v. United States, 2009-1 USTC par. 50,435 (W.D. Tenn. 2009)(internal-use software)
- Trinity Industries Inc. v. United States, No. 3:06-cv-00726 (N. Dist. of Texas 2010)(qualified activities, substantiation, and prototypes)
- Procter & Gamble v. United States, No. 1:08-cv-00608 (W. Dist. of Ohio 2010)(gross receipts from transactions with foreign affiliates)

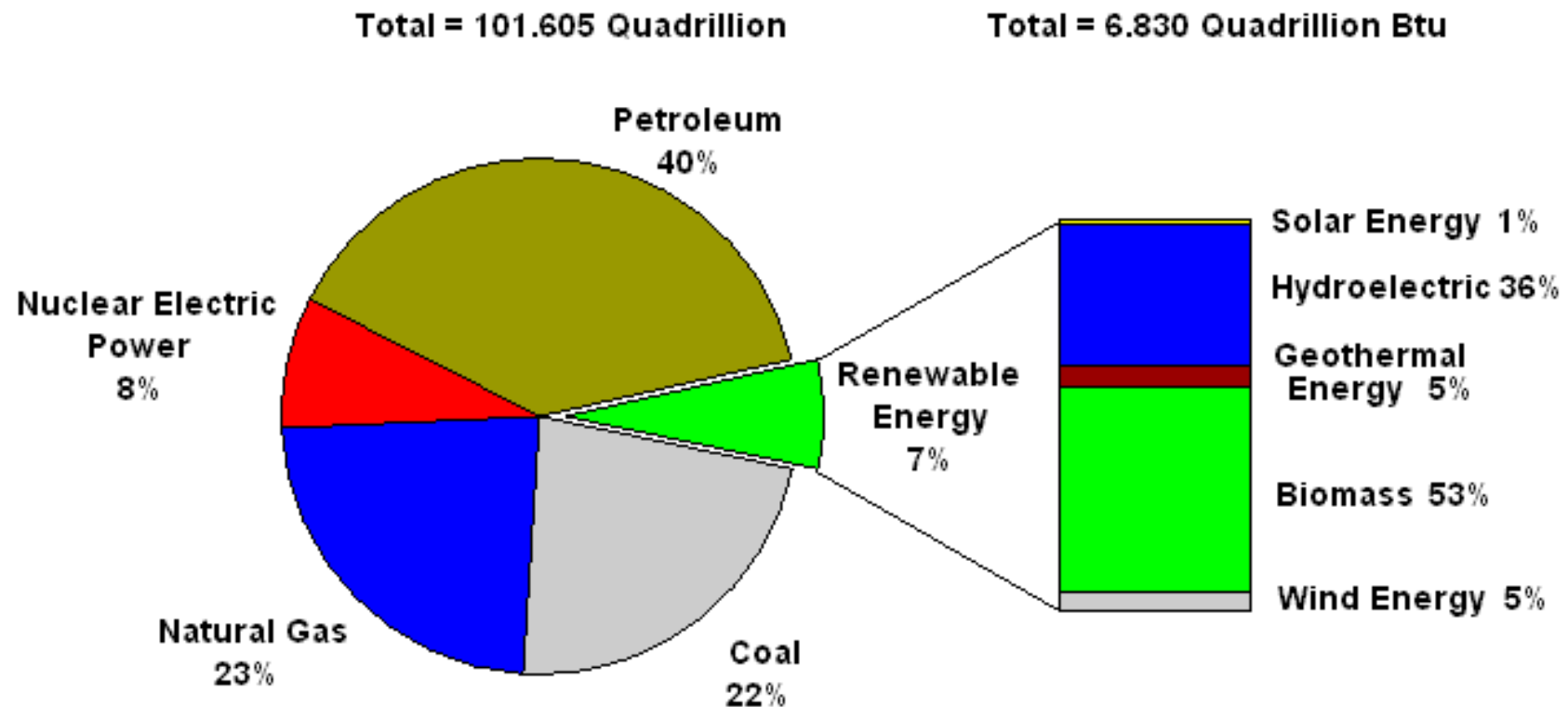
How will these court decisions impact IRS enforcement initiatives?

Tier 1 designation for R&D credit claims on amended returns

Gross receipts from CFCs

American Recovery and Reinvestment Act (ARRA)

The Role of Renewable Energy Consumption in the Nation's Energy Supply, 2007



Source: Energy Information Administration, Renewable Energy Consumption and Electricity Preliminary 2007 Statistics, May 2008.

American Recovery and Reinvestment Act of 2009

Production tax credit (“PTC”)

- **Available for qualified resources under Section 45**

Investment tax credit (“ITC”)

- **Available for qualified facilities under Section 48 or in lieu of PTC**

Treasury grants (“§1603 Grants”)

- **Available in lieu of PTC or ITC, under the American Recovery and Reinvestment Act of 2009**

Advanced energy project credit (“§48C ”)

- **Available for manufacturers of certain specified advanced energy property**

A High Level Summary of Incentives

Production Tax Credit

- 10-year credit period for qualified resources
- 2.2 cents per kWh
- Credit reduction for subsidized or tax-exempt financing
- Third-party sales requirement
- Owner/producer requirement
- No basis reduction in property

Investment Tax Credit

- One-time tax credit (30% or 10% of eligible basis)
- No credit reduction for subsidized or tax-exempt financing after 12/31/08
- No third-party sales requirement
- No ownership requirement
- 50% basis reduction of property
- Recapture applies
- Normalization required

Treasury Grant

- Cash payment (30% or 10% of eligible basis)
- If not placed in service in 2009 or 2010, construction must begin during 2009 or 2010, completed by required placed-in-service date
- Received within 60 days of receipt of complete application
- May be taxable by certain states or localities
- No ownership requirement
- 50% basis reduction of property
- Limited recapture applies
- Normalization required

Summary of Qualifying Resources and Facilities

Qualified Resources/ Facilities	Credit Amount	Placed-in-Service Date	30% ITC Election	Treasury Grant
Solar	30%	Before 1/1/2017	N/A	30%
Fuel cell	30%	Before 1/1/2017	N/A	30%
Stationary microturbine	10%	Before 1/1/2017	N/A	10%
Geothermal heat pump	10%	Before 1/1/2017	N/A	10%
Small wind	30%	Before 1/1/2017	N/A	30%
Combined heat/power	10%	Before 1/1/2017	N/A	10%
Geothermal	10%	N/A	Section 45 is available	10%

Summary of Qualifying Resources and Facilities

Qualified Resources/ Facilities	Credit Amount for 2010	Placed-in-Service Date	30% ITC Election	Treasury Grant
Wind	2.2 cents/kwh* (10 years)	Before 1/1/2013	2009-2012	30%
Geothermal (new facilities)	2.2 cents/kwh* (10 years)	Before 1/1/2014	2009-2013	30%
Closed-loop biomass	2.2 cents/kwh* (10 years)	Before 1/1/2014	2009-2013	30%
Open-loop biomass	1.1 cent/kwh* (10 years)	Before 1/1/2014	2009-2013	30%
Municipal solid waste (landfill gas, trash)	1.1 cent/kwh* (10 years)	Before 1/1/2014	2009-2013	30%
Hydropower	1.1 cent/kwh* (10 years)	Before 1/1/2014	2009-2013	30%
Refined coal	\$6.27/ton* (10 years)	Before 1/1/2010	N/A	N/A

* Adjusts for inflation. 2010 rate.

Summary of Qualifying Resources and Facilities

Qualified Resources/ Facilities	Credit Amount for 2010	Placed-in-Service Date	30% ITC Election	Treasury Grant
Indian coal	\$2.2/ton* (7 years)	Before 1/1/2009 (not extended)	N/A	N/A
Marine and hydrokinetic renewables (including small irrigation power)	1.1 cents/kwh* (10 years)	Before 1/1/2014	2009-2013	30%

* Adjusts for inflation. 2010 rate.

Treasury Grant Administrative Procedures

Application due dates

- Applications for projects placed in service during 2009 or 2010 made after project placed in service
- Construction must begin by December 31, 2010 and the project must be placed in service before credit termination date to be eligible for the grant
- All applications due by October 1, 2011, in online Treasury Department system

Documentation required

- Significant documentation required for application
- Independent accountant certification statement of cost qualification required for projects > \$500k
- Annual performance reporting to Treasury required

Treasury Grant Administrative Procedures (cont'd)

Five critical steps that must be completed before December 31, 2010 to meet “when construction begins” 5% safe-harbor

1. Sign binding contracts
2. Have contractor or vendor certify accrual of more than 5% of contract costs
3. Reserve right to get proof
4. Take care when amending contracts
5. File application early to get this issue confirmed

Recent Treasury actions:

- Issuing 21-day letters; backlog of grant requests
- Guidance updated; modified construction begins rules
- Asking many more questions before approving
- Treasury **is auditing some payments already made**

Administrative Procedures for ITC in lieu of PTC

Notice 2009-52 provides administrative procedures for electing ITC in lieu of PTC

- **Taxpayers claim ITC on the Form 3468, with detailed attachment information**
 - Description of facility and eligible property
 - Documentation of placed-in-service date
 - Computation of eligible basis
- **Election to claim the ITC is irrevocable**
- **No ITC or PTC allowed for any property for which a Treasury Grant is received**

Qualifying Advanced Energy Project “§48C ITC”

30% ITC for certain property used in a “qualified advanced energy project”

- **A project that re-equips, expands or establishes a manufacturing facility for the production of:**
 - (1) property designed to produce energy from renewable resources;
 - (2) fuel cells, microturbines, or an energy storage system for use with electric or hybrid-electric vehicles;
 - (3) electric grids to support the transmission, including storage, of intermittent sources of renewable energy;
 - (4) property designed to capture and sequester carbon dioxide emissions;
 - (5) property designed to refine or blend renewable fuels or to produce energy conservation technologies;
 - (6) electric drive motor vehicles that qualify for tax credits or components designed for use with such vehicles, and
 - (7) other advanced energy property designed to reduce greenhouse gas emissions.
- Includes tangible personal property and other tangible property that is used as an integral part of the qualifying advanced energy project (does not include buildings or structural components)
- **\$2.3 billion tax credit allocation was awarded on January 7, 2010 (\$7.7 billion investment)**
 - 183 projects; average award = \$12.5 million (\$42 million average project size)

Qualifying Advanced Energy Project Credit Program

Section 48C - Notice 2009-72 Deadlines and Timeline

Event	Deadline	Party Taking Action
Preliminary Application for DOE Recommendation	September 16, 2009	Taxpayer
Final Application for DOE Recommendation	October 16, 2009	Taxpayer
Application for IRS Certification	December 16, 2009	Taxpayer
Completion of Merit Review / DOE Recommendations	December 16, 2009	DOE
IRS Accepts or Rejects Application for IRS Certification	January 7, 2010 (Acceptance Date)	IRS
Certification Agreement Executed and Returned	March 15, 2010	Taxpayer
Certification Agreement Executed and Returned	April 16, 2010	IRS
Certification Requirements Documentation Submitted	January 7, 2011	Taxpayer
Certification Letter Issued or Project Rejected	(Certification Date)	IRS
Project Must be Placed in Service	Three Years from Certification Date	Taxpayer

Legislative Developments

Legislative Update

- 1. Hiring Incentives to Restore Employment Act (HIRE Act) (March 18, 2010)**
 - Payroll Tax Forgiveness
 - Business Retention Credit
 - Expanded §179; No Bonus Depreciation
- 2. Patient Protection and Affordable Care Act (March 23, 2010)**
 - §48D Qualifying Therapeutic Discovery Project Credit
- 3. Health Care and Education Affordability Reconciliation Act (March 30, 2010)**
 - Economic Substance Codification (\$4.5B)
 - §40(b)(6) Cellulosic Biofuel Producer Credit Amendments (\$23.6B)

Legislative Update (cont'd)

4. Small Business Jobs Act (September 27, 2010)

- Bonus depreciation
- Special rule for long-term contract accounting
- Miscellaneous small business provisions
 - Increased 179 expensing limitation; exclusion of gain on certain small business stock; 5-year carryback of general business tax credits; general business tax credits creditable against AMT; and several others

5. American Jobs and Closing Tax Loopholes Act

- Substitute amendment to legislation passed by both House and Senate (using different revenue raisers)
- Business extenders
- Certain energy extenders
- Revenue raisers

Legislative Update (cont'd)

4. Domestic Manufacturing and Energy Jobs Act

- ARRA §1603 grant extension / elective payment
- § 48C Qualifying Advanced Energy Project Credit
- § 48E Renewable Energy and Conservation Project Credit
- § 45M Energy Efficient Appliance Credit extension / elective payment

5. Other items to watch

- § 168(k)(4) refundable credit in lieu of bonus depreciation
- § 53(g) refundable credit to monetize AMT credits
- Tax-credit bonds

Tax Expenditure Estimates, Fiscal 2009 - 2013

Tax Credit	FY 2009 – 2013	Expires
Credits for alcohol fuels (§40)	\$41.9 billion	12/31/10 12/31/12 CBP
Low- Income Housing Credit (“LIHC”) (§42)	\$30.0 billion	Permanent special rules 12/31/09
Research and Development (“R&D”) (§41)	\$14.1 billion	12/31/09
HIRE Act Payroll Tax Forgiveness and Business Retention Credit (§38)	\$12.8 billion (FY 2010 – 2014)	12/31/10
Renewable Energy Production Tax Credit (§45)	\$7.9 billion	12/31/12 (wind) 12/31/13 (others)
Grants for specified energy property in lieu of tax credits (ARRA §1603)	\$5.2 billion (awarded to date)	12/31/10
Energy Credit (§48)	Positive < \$50 million	12/31/16 (30%)
Historic Rehabilitation Tax Credit (“HTC”) (§47)	\$3.6 billion	Permanent Special rules 12/31/11
New Markets Tax Credit (“NMTC”) (§45D)	\$3.5 billion	12/31/09
Credit for Energy Efficient Improvements to Existing Homes (§25C)	\$3.2 billion	12/31/10
Credit for Employer-Paid FICA on Tips (§45B)	\$3.1 billion	Permanent

Tax Expenditure Estimates, Fiscal 2009 - 2013

Tax Credit	FY 2009 – 2013	Expires
Credit for Alternative Technology Vehicles (§30, §30B, and §30D)	\$2.8 billion	Varies 12/31/09 – 12/31/14
Orphan Drug Credit (§45C)	\$2.6 billion	Permanent
Work Opportunity Tax Credit (§51)	\$2.4 billion	08/31/11 Veterans 12/31/10
Empowerment Zone Tax Incentives	\$1.4 billion	12/31/09
Qualifying Advanced Energy Project Credit (§48C)	\$1.3 billion	12/31/09
Renewal Community Tax Incentives	\$1.1 billion	12/31/09
Qualifying Therapeutic Discovery Project Credit (§48D)	\$900 million (FY 2010 – 2014)	12/31/10
Qualifying Advanced Coal Project Credit and Qualifying Gasification Project Credit (§48A and §48B)	\$900 million	Allocation Based
Energy Efficient Commercial Building Deduction (§179D)	\$900 million	12/31/13
Residential Energy Efficient Property Credit (§25D)	\$800 million	12/31/16
Energy Efficient Appliance Credit (§45M)	\$400 million	12/31/10
Railroad Track Maintenance Credit (§45G)	\$300 million	12/31/09

Tax Expenditure Estimates, Fiscal 2009 - 2013

Tax Credit	FY 2009 – 2013	Expires
Enhanced Oil Recovery Credit (§43)	\$300 million	Permanent
Alternative Fuel Vehicle Refueling Property Credit (§30C)	\$200 million	12/31/10
New Energy Efficient Home Credit (§45L)	\$100 million	12/31/09
Nonconventional Source Production Credit (§45K)	\$100 million	Permanent Special Limitations
Refined Coal Production Credits (§45(e)(8))	\$100 million	12/31/09
Indian Coal Production Credit (§45(e)(10))	\$100 million	12/31/09

Contacts, Questions

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