The Solar Investment Tax Credit Frequently Asked Questions

On October 3, 2008, the President signed the Emergency Economic Stabilization Act of 2008 into law (P.L. 110-343). This legislation contains a number of tax incentives designed to encourage both individuals and businesses to make investments in solar energy, including 8-year extensions of the section 48 business solar investment tax credit (ITC) and the section 25D residential solar ITC. The following is a brief summary of the provisions directly and indirectly benefitting the solar industry, and answers to frequently asked questions about how the provisions operate.

Provisions Directly Benefitting the Solar Industry:

Business Solar Investment Tax Credit (IR Code §48). The bill extends the 30% ITC for solar energy property for eight years through December 31, 2016. The bill allows the ITC to be used to offset both regular and alternative minimum tax (AMT) and waives the public utility exception of current law (i.e., permits utilities to directly invest in solar facilities and claim the ITC). The five-year accelerated depreciation allowance for solar property is permanent and unaffected by passage of the eight-year extension of the solar ITC.

Residential Solar Investment Tax Credit (IR Code §25D). The bill extends the 30% ITC for residential solar property for eight years through December 31, 2016. It also removes the cap on qualified solar electric property expenditures (currently $2,000), effective for property placed in service after December 31, 2008. The bill allows individual taxpayers to use the credit to offset AMT liability, and to carry unused credits forward to the next succeeding taxable year. The $2,000 monetary cap on solar water heating property was not lifted and remains in effect.

New Clean Renewable Energy Bonds ("CREBs"). The bill authorizes $800 million of new clean renewable energy bonds to finance facilities that generate electricity from renewable resources, including: solar, wind, closed-loop biomass, open-loop biomass, geothermal, small irrigation, qualified hydropower, landfill gas, marine renewables and trash combustion facilities. This $800 million authorization will be allocated as follows: 1/3 will be used for qualifying projects of State/local/tribal governments; 1/3 for qualifying projects of public power providers; and 1/3 for qualifying projects of electric cooperatives. The bill also extends the termination date for existing CREBs by one year. Thus, State and local governments, public power providers and electric cooperatives will be allowed to issue CREBs to finance new renewable electric power facilities, including solar installations, through December 31, 2009.

Provisions Indirectly Benefitting the Solar Industry:

Extension of Energy-Efficient Buildings Deduction. Current law allows taxpayers to deduct the cost of energy-efficient property installed in commercial buildings. The amount deductible is up to $1.80 per square foot of building floor area for property installed in commercial buildings as part of: (i) interior lighting systems, (ii) heating, cooling, ventilation, and hot water systems, or (iii) the building envelope. Expenditures must be certified as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to the interior lighting systems, heating, cooling, ventilation, and hot water systems of the building by 50 percent or more in comparison to certain established standards. The bill extends the energy efficient commercial buildings deduction for five years, through December 31, 2013.

Qualified Energy Conservation Bonds. The bill creates a new category of tax credit bonds, "Qualified Energy Conservation Bonds" (QECBs) to finance State and local government initiatives designed to reduce greenhouse emissions. QECBs can be issued to finance capital expenditures incurred for: (1) reducing energy consumption by at least 20%; (2) implementing green community programs; and (3) rural development involving the production of electricity from renewable resources. The bonds can also be used to finance research facilities and provide research grants for, among other things, technologies to reduce peak use of electricity. There is a national limitation of $800 million, allocated to States, municipalities and tribal governments.

Research and Development Tax Credit. The bill would extend the research and development tax credit equal to 20 percent of the amount by which a taxpayer's qualified research expenditures for a taxable year exceed its base amount for that year. The R&D tax credit expired December 31, 2007. The provision would be extended retroactively to January 1, 2008 and through the end of 2009. In addition, the proposal would increase the alternative simplified credit from 12% to 14% for the 2009 tax year, and repeal the alternative incremental research credit for the 2009 tax year. The proposal is effective for amounts paid or incurred after December 31, 2007. Thus, research expenditures incurred by the solar energy industry would qualify for the credit.

Frequently Asked Questions:

1. When is the extension of the ITC effective for commercial property?

   Answer: The extension of the ITC for commercial solar property is effective on the date of enactment, October 3, 2008. Since the existing credit was not scheduled to expire until December 31, 2008, this means that the credit has been seamlessly extended through 12/31/2016.

2. What is the effective date for the allowance of the sec. 48 commercial ITC against AMT liability?

Answer: The allowance of the sec. 48 ITC against AMT liability is effective for taxable years beginning after the date of enactment. For most taxpayers, this will mean that the credit against AMT is effective beginning on January 1, 2009. However, business taxpayers have flexibility in choosing their fiscal year for tax purposes. If a taxpayer uses a fiscal year that runs from November 1 - October 31st, it would mean that they can begin using the credit against AMT beginning November 1, 2008, rather than having to wait until January 1, 2009.

3. What is the effective date for waiver of the public utility exception?

Answer: This provision is effective for periods after February 12, 2008, in taxable years ending after such date.

4. When is the ITC effective for residential solar energy efficiency property?

Answer: The extension of the ITC for residential solar energy efficiency property is effective on the date of enactment, October 3, 2008. Since the existing section 25D credit was not scheduled to expire until December 31, 2008, this means that the credit has been seamlessly extended through 12/31/2016.

5. What property qualifies for the section 25D residential ITC?

Answer: The credit applies to "qualified solar water heating property," (defined as "property to heat water for use in a dwelling unit located in the U.S. and used as a residence by the taxpayer if at least half of the energy used by such property is derived from the sun), and to "qualified solar electric property" (defined as property which uses solar energy to generate electricity for use in a dwelling unit located in the U.S. and used as a residence by the taxpayer).

6. Does the elimination of the $2,000 cap on the section 25D residential credit apply to solar thermal property?

Answer: No. The elimination of the $2,000 cap applies only for qualified solar electric property expenditures.

7. What is the effective date of the elimination of the $2,000 cap for solar electric property expenditures?

Answer: The elimination of the $2,000 cap for solar electric property expenditures is effective for property placed in service after December 31, 2008. State laws dictate when in-state property is placed-in-service.

8. If I begin a residential installation now, can the lifted cap apply to this project?

Answer: That depends on whether the installation is completed after December 31, 2008. Section 25D(e)(8)(A) provides in general that an expenditure with respect to an item shall be treated as made when the original installation of the item is completed. In other words, the taxpayer may claim the credit as of the date that the installation of the residential solar electric property is completed and the property is placed into service. If an installation is begun in 2008, but the property is not placed into service until after December 31, 2008, the taxpayer may claim the credit for 30% of the expenditures made with regard to the installation.

X 9. Why was the $2,000 cap not lifted for residential solar water heating projects?

Answer: Although House and Senate staff agreed to lift the $2,000 cap for solar water heating projects, members of the Solar Thermal Division of SEIA voted overwhelming to maintain the cap.

9. What is the effective date for allowance of the solar ITC against the AMT?

Answer: The provision allowing individual taxpayers to use the solar ITC against AMT liability is effective for taxable years beginning after December 31, 2007. Thus, individual taxpayers who are required to pay alternative minimum tax liability (rather than regular tax liability) for the 2008 tax year may take a credit of up to $2,000 (the maximum credit amount for solar residential property placed in service during 2008) against the AMT liability. For the 2009 tax year, filers will be eligible to apply the full 30% ITC against the AMT liability.

10. Were the bonus depreciation provisions enacted as part of the Economic Stimulus Package earlier this year that are currently set to expire on 12/31/08 extended as part of the Emergency Economic Stabilization Act?

Answer: No, the bonus depreciation rules were not extended. Bonus depreciation should not be confused with the five-year accelerated depreciation of solar property under Section 48.