

## TAX RELIEF ACT OF 2010

### ENERGY PROVISIONS

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The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (H.R. 4853), the “**Tax Relief Act**” or “**Act**”, was passed by the Senate on December 16, 2010 and is expected to be signed by the President on Friday, December 17<sup>th</sup>, 2010. Below is a brief summary of provisions of the Tax Relief Act affecting the energy sector.

#### **General Tax Provisions**

- Tax Rates. The Act extends the current individual income tax brackets of 10 percent, 25 percent, 28 percent, 33 percent, and 35 percent through 2012. Without the passage of the Act income tax brackets would have increased to 15%, 28%, 31%, 36% and 39.6% for 2011 and forward.
- Capital Gains and Dividends. The Act temporarily preserves both the capital gains and dividend tax rates at the 15 percent level for the next two years. (Alternatively, capital gains would then increase from 15 percent to 20 percent; dividend rates would increase from 15 percent to being taxed as ordinary income).

#### **Energy Related Provisions**

- 30% Treasury Grant Extended for 1-Year. The Act extends the 30% Treasury Grant applicable to renewable energy property in lieu of the ITC or the PTC until the end of 2011. This means that renewable projects that were once contemplating commencement of construction in late 2010 in order to qualify for the 30% Treasury Grant now can be assured the 30% Treasury Grant will be available even when construction does not commence until the end of 2011.
- 100% Bonus Depreciation. For assets placed in service after September 8, 2010 through December 31, 2011, bonus depreciation will be allowed for 100% rather than 50% for the qualifying property. This provision greatly increases the tax benefits in the year renewable energy property, such as wind turbines, are placed in service. For example, a wind developer will now be able to fully depreciate the cost of wind turbines in the year the Project reaches commercial operation. 100% Bonus depreciation will provide

significant benefits to energy purchasers and developers in Tax Equity deals and might even call for the re-pricing of any pending Tax Equity transactions. 50% Bonus Depreciation is also extended for qualifying assets placed in service during 2012.

- AMT credits in lieu of bonus depreciation. Under current law, corporations paying alternative minimum tax (AMT) are allowed a credit for the tax in future years to the extent their regular tax exceeds their AMT liability. The R&D credit is part of the general business credit and must sometimes be carried forward. Corporations may elect to claim additional AMT or R&D credits in lieu of bonus depreciation for property purchased and placed into service after March 31, 2008, and before January 1, 2010. The additional R&D or AMT credits are limited to twenty percent of the amount of the depreciation that the corporation forgoes by not using bonus depreciation. The credits are also limited to the lesser of \$30 million or six percent of the corporation's R&D or AMT carryforwards from taxable years beginning before 2006. The increased allowable credits are refundable. Under the bill, this provision would be extended for 2011 and 2012, but only with respect to AMT credits.
- No BABs. The Build America Bonds (BABs) program was not extended.
- Biodiesel and Renewable Diesel. Incentives for biodiesel and renewable diesel are extended until the end of 2011.
- Residential Energy Efficiency Credit. New energy efficient home credits are extended until the end of 2011.
- Excise tax credits and outlay payments for alternative fuel and alternative fuel mixtures. The provision clarifies that "black liquor" are not eligible for the alternative fuel credit and establishes a refund process for late-year 2010 credit claims.
- Extension of Special Rules for Sales of Electric Transmission Property. The deferral of gain on sales of transmission property by vertically integrated electric utilities to FERC approved independent transmission companies are extended through 2011.
- Alcohol Fuels. Provisions related to alcohol used as fuel (e.g., ethanol) are extended until the end of 2011.
- Energy Efficient Appliance Credit. This credit is updated with new energy efficient standards and with a new \$25 million allocation per taxpayer.
- Credit for Non-business Energy Property. This credit returns to its pre-stimulus levels, i.e., a 10-percent credit for the cost of non-business energy property with a maximum lifetime limit of \$500.

- Alternative Fuel Vehicle Refueling Property. This credit returns to its pre-stimulus levels, i.e., a 30-percent credit for the cost of installing clean-fuel vehicle refueling property with a \$30,000 cap.

If you have any questions regarding the Tax Relief Act of 2010 or any other matter affecting your utility, feel free to contact partners Don Cohen at [dcohen@gth-law.com](mailto:dcohen@gth-law.com) (206.676.7531), Durham McCormick at [dmccormick@gth-law.com](mailto:dmccormick@gth-law.com) (206.676.7584), or Eric Christensen at [echristensen@gth-law.com](mailto:echristensen@gth-law.com) (206.676.7539).

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