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QUALIFYING ADVANCED ENERGY PROJECT CREDIT

What Is the Credit?

The Treasury Department and the Department of Energy (DOE) issued guidance detailing the requirements for qualifying for the new Qualifying Advanced Energy Project (QAEP) credit. The QAEP program, which was created by the American Recovery and Reinvestment Act, provides a 30% federal income tax credit for investment in property which "re-equips, expands, or establishes a manufacturing facility" that produces renewable energy property. The total amount of QAEP credit available for allocation is \$2.3 billion. The first allocation round of allocation began on August 14, 2009. Subsequent allocation rounds will depend upon remaining funds.

The application submission, review and award process is on a fast track:

- An applicant wishing to claim the QAEP credit must submit a preliminary application to DOE by **September 16, 2009**;
- An applicant must submit a final application to DOE by **October 16, 2009**;
- DOE will complete its merit review process by **December 16, 2009**;
- The Internal Revenue Service (IRS) will accept or reject an application by **January 15, 2010**;
- A QAEP credit agreement with the IRS must be executed by the applicant by **March 15, 2010**;
- The QAEP credit agreement will be executed by the IRS by **April 16, 2010**.

Investment Credit Overview

The QAEP credit is an investment-based credit. The credit equals 30% of the basis in the property certified as eligible for the credit. There is no tax credit cap per project. The credit is not refundable and applicants may not elect to receive a cash grant in lieu of the credit. The credit is for manufacturing facilities; the credit does not support energy generation or efficiency projects.

The credit may be claimed in the tax year in which the qualified property is placed in service. In general, property is considered placed in service when it is placed in a condition or state of readiness and availability for a specifically assigned function. If the applicant does not have sufficient tax liability to utilize the full amount of available credit in the year the project is placed in service, any remaining credit may be carried forward up to 20 years or back one year. In addition, the tax credits can be syndicated through a pass-through/master tenant structure.

A project need not be in any particular stage of development to apply for a QAEP credit. However, an applicant has three years from the date the certification for the QAEP credit is issued to place the project in service. Certification must occur within one year of acceptance of the credit allocation.

As an investment-based credit, the QAEP credit is subject to recapture if, within five years of being placed in service, the taxpayer disposes of the property (or an interest in the property) or the property ceases to be used for a qualified purpose.

The QAEP credit can be twinned with Federal New Markets Tax Credits and other Federal and state tax credits. However, the QAEP credit cannot be combined with the energy credit under Section 48 of the Code, the qualifying advanced coal project credit under Section 48A of the Code or the qualifying gasification project credit under Section 48B of the Code.

If you have any questions regarding the QAEP credit application process, or receiving a tax credit equity investment, please contact United Fund Advisors.

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Eligibility

To qualify for an allocation of QAEP credit, property must be used to re-equip, expand or establish a manufacturing facility for the production of specified advanced energy property (SAEP) or property that, after further manufacture, will become specified advanced energy property. Components may be SAEP but the relative value of the components to the finished product will be taken into consideration in DOE ranking process described below.

SAEP is:

- Property designed to be used to produce energy from the sun, wind, geothermal deposits or other renewable resources;
- Fuel cells, microturbines or an energy storage system for use with electric or hybrid-electric motor vehicles;
- Electric grids to support the transmission of intermittent sources of renewable energy, including property for the storage of such energy;
- Property designed to capture and sequester carbon dioxide emissions;
- Property designed to refine or blend renewable fuels (but not fossil fuels) or to produce energy conservation technologies (including energy-conserving lighting technologies and smart grid technologies);
- New plug-in electric drive motor vehicles, qualified plug-in electric vehicles, or components designed specifically for use with such vehicles, including electric motors, generators and power control units; or
- Other property designed to reduce greenhouse gas emissions as may be determined by the IRS.

The property must be tangible property (other than a building or its structural components) subject to the allowance for depreciation or amortization, and must be an integral part of the qualifying project. A manufacturing facility is defined as a facility that makes or processes raw materials into finished products (or accomplishes any intermediate stage in that process).

DOE Recommendation and Ranking

Preliminary applications must be submitted to DOE by September 16, 2009 and final applications must be submitted by October 16, 2009. The IRS will not consider an application for a credit allocation unless DOE has provided a recommendation and ranking for the project. DOE will provide a ranking (in descending order) of all projects for which it provides a recommendation. Credits will be fully allocated to a higher ranked project before any credits are allocated to the next project on the list.

DOE will consider four evaluation criteria, equally weighted, in making recommendation and ranking determinations:

- Projects that provide the greatest ***domestic job creation*** (both direct and indirect) during the credit period (February 17,2009, through February 17, 2013);
- Projects that provide the greatest net impact in ***avoiding or reducing air pollutants or emissions of greenhouse gases***;
- Projects that have the greatest potential for ***technological innovation and commercial deployment***, as indicated by (i) the production of new or significantly improved technologies, (ii) improvements in levelized costs and performance, and (iii) manufacturing significance and value; and
- Projects that have the ***shortest projected time from certification to completion***.

In addition, DOE will consider four overall program policy factors:

- Geographic diversity;
- Technological diversity;
- Project size diversity; and
- Regional economic development.

DOE will also assess the commercial viability of the project. To describe the project economics and present evidence of commercial viability, the applicant should provide:

- A business plan which provides a description of the proposed project; and
- A financial plan for the proposed project.

IRS Certification and Allocation

A separate application must be made to the IRS for certification of the project and allocation of the credit. The deadline for submission of this application is December 16, 2009. If an application for certification is accepted, the applicant will be notified by letter (i.e., the acceptance date). The applicant will be required to execute an agreement with the IRS by March 15, 2010. The IRS will execute and return the agreement by April 16, 2010. Any successor in interest to the applicant will be required to execute a new agreement.

Applicants whose applications for certification are accepted will have one year from the acceptance date to provide documentation establishing that the following requirements for certification have been met:

- The applicant has received all federal, state, and local permits, including environmental authorization or reviews necessary to commence construction of the project; and
- The applicant has completed all steps that must be accomplished during the one-year period beginning on the acceptance date if the project is to be placed in service before the end of the three-year period beginning on the date of issuance of the certification (assuming such certification will be issued on the one-year anniversary of the acceptance date).

If these requirements are satisfied, the IRS will then decide whether to certify the project. The date of the IRS letter certifying the project is considered the date of certification, which begins the three-year period for placing the project in service.