



Energy Improvement and Extension Act of 2008

On October 3, 2008, following weeks of contentious negotiations between the House and Senate, Congress approved, and the President signed into law the *Energy Improvement and Extension Act of 2008* as part of H.R. 1424, the *Emergency Economic Stabilization Act of 2008*.

This legislative alert seeks to provide analysis of energy-related tax provisions contained within the Act.

In total, H.R. 1424 includes \$18 billion over ten years in energy-related tax incentives that are completely offset by freezing a scheduled tax deduction for certain profits deriving from oil and natural gas sales and exchange, creating a new IRS reporting requirement that makes it easier to tax capital gains on stock sales, extending the Federal Unemployment Tax Act's temporary surtax, eliminating the distinction between foreign oil and gas extraction income for tax purposes, and increasing the Oil Spill Liability Trust fund tax through 2017.

The following energy tax provisions were extended under the Act:

- Extends and modifies the Section 45 "Production Tax Credit" for facilities that produce energy from alternative sources such as wind and refined coal through 2009; and open and closed-loop biomass, geothermal, hydropower, landfill gas, trash combustion facilities, and small irrigation through 2010. Most importantly, this legislation does not put a cap on the available tax credit claimed.
- Extends through 2016 a 30 percent tax credit for investment in solar energy and certain fuel cell properties, a 10 percent tax credit for investment in microturbines, and a tax credit for a residence solar property.
- Extends several credits intended to promote domestic fuel security, including a 30 percent credit for alternative refueling properties, a 50 percent deduction for certain refinery property, and a 10 percent credit for biodiesel producers.
- Extends several credits aimed at promoting both conservation and energy efficiency, including a deduction for energy-efficient property in commercial buildings and a credit for energy-efficient improvements to existing homes.

Furthermore, this legislation creates new tax credits aimed at cutting carbon dioxide (CO₂) emissions, while encouraging the use of fuel-efficient vehicles and the production of new forms of renewable energy. The following energy tax provisions were created under the Act:

- \$1.5 billion in new tax credits aimed at coal and carbon sequestration, providing \$1.25 billion for advanced coal electricity projects and \$25 million for coal gasification projects.
- \$1.1 billion in new tax credits for CO₂ capturing at facilities that dispose each qualified metric ton of CO₂ in secure geological storage. Qualified facilities must capture 500,000 metric tons of CO₂ annually.
- \$250 baseline tax credit for plug-in electric drive vehicles, allowing an additional \$417 for each kilowatt hour of traction battery capacity that exceeds 4 kilowatt hours.
- Expands production tax credit to cover hydrokinetic and renewable facilities, combined heat and power systems, and geological heat pumps.
- Issuance of up to \$800 million in new clean renewable energy bonds (CREBs), which can be used to finance clean energy facilities that generate electricity from alternative sources, such as wind and biomass, and would provide investors with tax credits in lieu of tax-exempt interest.

More information of the tax provisions contained in the *Emergency Economic Stabilization Act of 2008* may be found in the Tax Update "Tax Extenders and Alternative Minimum Tax Relief Act of 2008". ■

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