AICPA Corporate Taxation Insider Newsletter

Going Greener - Tax Incentives "Energized" in the 2009 Stimulus Package

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One of the centerpieces of the 2009 American Recovery and Reinvestment Act of 2009 (Stimulus Bill) involves a variety of energy tax incentives and alternative fuels funding provisions focused on reducing America's dependency on carbon-based energy.

The energy related tax provisions total approximately $20 billion of tax incentives and the energy funding provisions represent approximately $45 billion of the spending provisions.

A. ***Alternative Energy Producer's Investment Tax Credit***

IRC Section 48 generally allows a 10% investment tax credit for new "qualified alternative energy property". Such property includes most solar, wind, co-generation and geo-thermal equipment. These credits can be used to offset both regular and Alternative Minimum Tax (AMT) liabilities and unused credits can be carried back one year and over to the subsequent 20 years. These credits are allowed under IRC Section 48 (a) through (d) and are claimed on IRS Form 3468.

Generally, for periods beginning January 1, 2009 through December 31, 2016, the Stimulus Bill expanded these provisions as follows:

1) the credit on solar energy property is increased from 10% to 30% and no reduction in basis or credit is required for property financed by government grants or Private Activity Bonds,

2) the small wind energy credit (maximum rating of 100 kilowatts) is now 30% of the qualifying costs, but the previous lowly $4,000 annual taxpayer limit is now eliminated through December 31, 2016.

B. Investment Credit Elections

IRC Section 45 allows tax credits for producing electricity from alternative fuel sources. The Stimulus Bill allows these producers to treat certain production assets as eligible for the 30% tax credit allowed under IRC Section 48 for property placed in service for periods from 2009 through 2013 (or 2012 in the case of wind generation property).

C. Alternative Fuel Stations

While alternative fuel vehicles are a great idea, this concept only works if the vehicle owners can easily access the alternative fuel source. Therefore, the government has incentivized taxpayers to construct these facilities.

Under IRC Section 30C, the previous 30% credit for alternative vehicle refueling property has been increased to 50% per location. The credit is capped at $50,000 for non-hydrogen related depreciable property and $2,000 for non-hydrogen related non-depreciable property.

This increased credit amount is effective for property placed in service in 2009 and 2010. Qualified property includes property other than buildings and their structural components that are used for storage and dispensing of fuels such as natural gas; liquefied natural gas; liquefied petroleum gas; hydrogen (special limitations apply); electricity and certain clean burning fuel mixtures.

In the case of more complex hydrogen refueling properties, the credit is still 30%; however the cap has been increased to $200,000 per station.

The refueling station credit is claimed on form 8911.

D. ***<u>Bonus Depreciation/ Section 179 Expensing</u>***

Many energy and pollution control assets will also qualify for the liberalized 2009 depreciation rules.

The 50% first year bonus depreciation (IRC Section 168(k), and IRS Form 4562) on qualifying NEW property which was reintroduced for 2008 in the 2008 Economic Stimulus Act has been retroactively extended through December 31, 2009 as a result of the Stimulus Bill.

Along with bonus depreciation, the increased Sec. 179 capital asset expensing allowance of $250,000 (up from $133,000) and annual investment limitation of $800,000 (up from $530,000) have been extended one additional year through December 31, 2009.

Taxpayers building or retrofitting buildings to LEEDs standards can also still obtain valuable deductions under IRC Section 179D.

E. ***<u>2009 New Vehicle Sales/ Excise Tax Deduction</u>***

In order to encourage new car sales, Congress originally proposed a federal tax credit, but ultimately settled on a tax deduction, which is worth only about 1/3 the value of a credit. This rule applies to both conventional and alternative fuel vehicles.

For individual taxpayers, an above-the-line tax deduction will be allowed for excise tax or state and local sales tax paid on the purchase of a new car, light trucks/ SUV's, RV's and motorcycles (domestic or foreign) between February 17 and December 31, 2009. The deduction is available for the tax paid on the first $49,500 of purchase price, and is phased out for taxpayers with adjusted gross incomes over $125,000 ($250,000 for joint filers).

This deduction is generally available for any new vehicle, foreign or domestic, under 8,500 pounds. Leased vehicles also do not qualify for the deduction. Taxpayers who itemize must still watch the interplay with AMT.

F. <u>Vehicle Tax Credits</u>

Components of the IRC Section 30B Alternative Motor Vehicle Credit, which is reported on form 8910, have been added and updated as noted below. In addition, this credit will be treated as a non-refundable personal tax credit for tax years after 2008. These credits can be used to offset both regular tax and alternative minimum tax. If they are claimed on business-use vehicles they are treated as part of the General Business Credit (IRS Form 3800):

Plug-in Electric Drive Motor Vehicle Credit – Credit of between $2,500 and $15,000, based upon the number of kilowatt hours of traction battery capacity and the weight of the vehicle. After 2009, the maximum is reduced to $7,500 and the credit will phase out after the 200,000th vehicle per manufacturer is sold.

Plug-in Electric Vehicle Credit – Credit of 10% of the cost of acquiring 2 or 3 wheeled or low-speed (such as golf carts) qualified plug –in electric vehicles after February 17th 2009 and prior to December 31, 2011. The credit is capped at $2,500.

Plug-in Electric Drive Motor Vehicle Conversion Credit – A credit equal to 10% of the cost of converting a vehicle to a “qualified plug-in electric drive motor vehicle” after February 17th 2009 and prior to December 31, 2011. The maximum credit is $4,000.

For updated information on qualifying vehicles for the Alternative Motor Vehicle Credit, visit the IRS information page at http://www.irs.gov/newsroom/article/0,,id=157632,00.html

Existing Benefits for Other Personal and Commercial Vehicles

Hybrid Passenger Automobiles and Light Trucks — For qualified vehicles credit amounts range from $250 to $4,000 per vehicle depending on a number of factors (see IRC § 30B(d), IRS Notice 2006-9 and IRS Form 8910).

Alternative Fuel Vehicle Credit — Applies to passenger cars and trucks that operate entirely on alternative fuel, and also to certain "mixed-fuel" vehicles that use both alternative fuel and petroleum-based fuel.

The Alternative Fuel Vehicle Credit can range from $2,500 to $4,000 for vehicles less than 8,500 pounds, and from $8,000 to $32,000 for vehicles with a gross vehicle weight ranging from more than 8,500 to 26,000 pounds, respectively (see IRC § 30B(e) and IRS Form 8910).

G. Tax Basis and AMT Caution

These credits reduce the taxable basis in the underlying asset for depreciation purposes. While these credits can generally offset a taxpayer's regular tax liability and can be carried back for one year if not used in the current year, in most cases (other than IRC section 30B credits) the credits cannot always offset a taxpayer's alternative minimum tax liability. See IRS Forms 4626 for corporations and 6251 for individuals.

H. State and Local Tax Incentives

In addition to the aforementioned federal tax incentives, most states have their own state-level tax incentives, including credits, grants, exemptions, and accelerated deductions for taxpayers investing in pollution control and energy conservation equipment. There are also numerous recycling zone benefits available in many states.

While going green is a positive business trend that is gaining momentum with the support of federal and state agencies, the added costs of adopting alternative technologies can be offset in whole or in part with a wide-variety of federal and state tax incentives.

With a little research on the part of CPA s and corporate tax departments tax savings can be maximized and the after-tax cost of being environmentally responsible can be minimized.