

MAKING PROJECTS HAPPEN – FEDERAL TAX INCENTIVES FOR LANDFILL GAS ENERGY

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Presentation Overview

- Focus on electricity production side
- Current tax rules
- Potential future changes

Available Tax Incentives

- Cost Recovery
 - Accelerated Depreciation
 - Expensing
- Production Tax Credit (“PTC”)
- Investment Tax Credit (“ITC”)
- Tax Credit Bonds (“CREBs”)

Cost Recovery Rules for LFG

- General tax depreciation life for electrical generation equipment is 15 years (Rev. Proc. 87-56, Asset Class 49.15)
- May “expense” (deduct currently) in 2008 up to \$250,000 invested in new equipment (as long as total investment in 2008 less than \$800,000) (IRC § 179)
- 50% “bonus depreciation” allowed in 2008 (IRC § 168(k))

45 PTC – Basic Rules

- Placed in service before January 1, 2011 (IRC § 45(d)(6))
- Basic credit rate \$10/MWh in 2008 – adjusted for inflation (IRC § 45(a)(1); IRC § 45(b)(2); Notice 2008-48)
- Ten-year credit period (IRC § 45(a)(2)(A)(ii))
- Credit reduced up to 50% for use of government grants, tax-exempt bonds, subsidized energy financing or other federal tax credits (IRC § 45(b)(3))

PTC – Special Issues for LFG

- “Anti-Double-Dipping” rule – cannot claim section 45 PTC if use any gas from a landfill that claimed section 29/45K alternative fuel credit in a prior year (IRC § 45(e)(9))
- Each engine is a separate “facility” under section 45 (Rev. Rul. 94-31)
- Both of these affected by “80/20 Rule” (Notice 2008-60)

ITC – Microturbines

- Tax credit equal to 10% of investment in LFG microturbine equipment (IRC § 48(a)(2)(A)(ii); IRC § 48(a)(3)(A)(iv); IRC § 48(c)(2))
- Placed in service before January 1, 2017
- Nameplate capacity less than 2,000 kW
- At least 26% efficient at ISO conditions
- Credit limited to \$200/kW capacity

ITC – Combined Heat and Power

- Added in 2008 “Bailout” bill (P.L. 110-343)
- Tax credit equal to 10% of investment in LFG microturbine equipment (IRC § 48(a)(2)(A)(ii); IRC § 48(a)(3)(A)(v); IRC § 48(c)(3))
- Placed in service before January 1, 2017

ITC – Combined Heat and Power

- At least 20% thermal energy and at least 20% electrical or mechanical power
- At least 60% efficient
- Credit reduced for capacity greater than 15 MW/20,000 hp
- Credit eliminated for capacity greater than 50 MW/67,000 hp

ITC – General Rules

- 5-year holding period (IRC § 50(a))
- Reduce depreciable basis by 50% of credit amount (IRC § 50(c)(3))
- Not available if claim section 45 PTC (IRC § 48(a)(3))

Capturing Tax Credit Value

- If cannot use PTC or ITC currently or ever, then may “monetize” the credit to obtain value
- May sell project outright
- May use partnership structure (Rev. Proc. 2007-65; Ann. 2007-112)
- For ITC, may use lease or sale-leaseback (IRC § 50(d)(4))

CREBs

- For projects owned by governmental bodies or cooperatives (IRC § 54C)
- \$800,000,000 to be allocated by U.S. Treasury (IRC § 54C(c)(2))
- Bond holder gets tax credit instead of interest (IRC § 54A(b))
- Tax credit amount included in holder's income as interest (IRC § 54A(f))

Crystal Ball Gazing

- Depreciation/Expensing
 - Will Congress extend benefit into 2009?
- PTC
 - Modify anti-double-dip rule?
 - Extend placement-in-service date?
 - Extend tax-credit period?
 - Increase tax credit rate/rate parity?
 - Cap on total credit to mimic ITC?
 - Make the credit tradable or refundable?

THANK YOU!