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Energy

IRS Official Predicts Some Energy Credits For Manufacturers Will Be Reallocated

by Lauren Gardner

An Internal Revenue Service official Sept. 25 said he expects that there will be money under a $2.3 billion stimulus tax credit program for manufacturers of advanced energy equipment that will have to be reallocated at an unknown later date.

Chuck Ramsey, branch chief, Office of Chief Counsel Branch 6 (Passthroughs and Special Industries), said at the American Bar Association Section of Taxation's fall meeting that there were a number of recipients of credits from past programs under tax code Sections 48A and 48B for clean coal and other facilities who later decided not to go ahead with their projects.

"For whatever reasons, there will be some people who don't go forward with their projects, is my prediction," he said.

Credits under Section 48C may also be recaptured in the future if IRS finds that some manufacturers who received them did not meet the requirements for the program, said **Laura Jones of Hunton & Williams**, Richmond, Va. The 2009 economic recovery legislation added Section 48C to the code, providing a 30 percent credit to the manufacturers of solar panels, wind turbines, biodiesels, and other mechanisms used in clean energy production (171 DTR G-1, 9/8/09).

The service has received a "tremendous number" of preliminary applications for the credits, Ramsey said. Other panelists during the energy and environmental taxes session said the program will almost definitely exhaust its funds by next year.

Possible Guidance on Treasury Grant Program

The government hopes to publish a set of questions and answers concerning the Treasury Department and Energy Department's joint recovery act program that provides grants for energy production companies in lieu of tax credits, Ramsey said.

Ramsey did not disclose when such guidance would be published but said he hoped it would answer questions like one asked by an audience member concerning potential changes to the basis of a new energy facility.

The audience member provided an example in which a new facility has been placed in service but there is a possible contingent payment that would increase the facility's basis. The taxpayer wants to get the grant money on the existing basis now, but the application seems to give the taxpayer only one chance, he said.

Ramsey said he does not recommend waiting until the taxpayer receives the final accounting of the basis to submit an application. The issue of having an additional cost that was overlooked, has to be capitalized, and about which the taxpayer did not know when the facility was placed in service was one IRS thought about early on and for which it never came up with an answer, he said.

The problem works both ways, Ramsey said, because there will also be honest applicants who will realize they received too large of a grant and return a portion to the service.

Tax-exempt entities are not eligible to receive the cash grants, which includes partnerships having one of these entities as a partner, said Hunton & Williams's Jones. The guidance on the grant program says that a partnership is eligible if a blocker corporation is put in place between the tax-exempt entity and the partnership, making all partners taxpaying entities, she said.

The grant is paid to the entity that places the facility in service, and it must have a blocker corporation in place by then, Ramsey said. He also noted that while putting a blocker corporation in place works for the grant, it may not work for all tax consequences.

"People should be aware that the grant program doesn't give them a bye in other areas," Ramsey said.

The guidance does not say that the lessor who is taking the grant and intends to keep it cannot lease to a tax-exempt entity, Ramsey said, which is something IRS could not allow if the situation involved the investment credit. "I don't think it's an oversight," he said of the decision.