



CHP Investment Tax Credit and Related Provisions of the Emergency Economic Stabilization Act of 2008

The Energy Improvement and Extension Act of 2008, signed into law October 3, 2008 as part of the Emergency Economic Stabilization Act (P.L. 110-343) included several provisions beneficial to the clean heat and power community, including:

- a new 10% investment tax credit (ITC) for CHP and waste energy projects through 2016;
- extension of a five-year accelerated depreciation schedule to CHP systems;
- extension of existing investment tax credits for fuel cells (30%) and microturbines (10%) through 2016; and,
- extension of renewable energy tax credits through 2010.

CHP ITC and Accelerated Depreciation

Combined heat and power (CHP) property qualifies for a 10-percent ITC under section 48(a)(3)(A)(v) of the Internal Revenue Code (IRC). The ITC is equal to 10 percent of the costs of the first 15 megawatts of qualifying CHP “energy property”. Eligible CHP property includes systems up to 50 MW in capacity that exceeds 60% energy efficiency. To qualify, the original use of the equipment must begin with the taxpayer or it must be constructed by the taxpayer. Energy property must be operational in the year in which the credit is first taken. The CHP ITC may be used to offset the alternative minimum tax (AMT). The ITC terminates on January 1, 2017.

CHP and other energy property, as defined under section 48(a)(3)(A), also qualify for accelerated depreciation. Section 168(e)(3)(B)(vi)(I) sets out that “5-year property includes...any property which is described in subparagraph (A) of section 48(a)(3).” Section 168 of the IRC provides a Modified Accelerated Cost Recovery System (MACRS) through which “energy property” qualifies for a five-year, depreciation method.

Fuel Cell and Microturbine ITCs

The Energy Improvement and Extension Act of 2008 amended Sections 48(c)(1) and 48(c)(2) of the IRC to extend the existing 30% ITC for fuel cell property and 10% ITC for microturbines through December 31, 2016. To qualify:

- Fuel cells must have a minimum 0.5kW capacity and have minimum electric-only efficiency of 30%
- Microturbines up to 2MW must have minimum 26% efficiency.

Renewable Energy Tax Credits

The Energy Improvement and Extension Act of 2008 amended Section 45 of the IRC to extend the renewable energy production tax credit (PTC) for closed-loop and open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste and certain qualified hydropower production, and hydrokinetic energy.

The statute provides a 1.5 cent per kWh production tax credit. Electricity produced from closed-loop biomass receives full credit; open-loop biomass is eligible for half credit.

The PTC's duration depends upon the facility:

- Credit is available for a 10 year period for closed-loop biomass, wind, trash combustion, refined coal production, and qualified hydropower.
- Open-loop biomass, geothermal, solar, small irrigation, and landfill gas qualify for a 5 year period.

Open-loop biomass does not qualify for the PTC if it is co-fired with fossil fuel in excess of the minimum amount of fossil fuel required for start-up or flame stabilization.

Taxpayers must meet two general requirements to earn credit for electricity production. First, the taxpayer must be the owner and produce the electricity at a qualified facility placed in service within the eligible period. Second, the taxpayer must sell the electricity to an unrelated person. There is an exception to the ownership rule which is applicable to biomass facilities; where the owner of the biomass facility is not the producer of electricity, the person eligible for the credit is the lessee or operator of the facility.

“Double Dipping”

In general, the IRC does not allow a project to utilize both the ITC and the PTC. Indeed, IRC Section 48(a)(3) states that qualifying energy property does not include “any property which is part of a facility the production from which is allowed as a credit under section 45 for the taxable year or any prior taxable year.”

Furthermore, projects that qualify for a production tax credit that receive additional tax incentives such as federal grants or tax-free bonds may be subject to a “haircut” provision, which reduces the PTC proportionally to the added incentives received.

USCPA recommends Members consult a tax attorney to discuss applicability of the ITC and PTC for specific projects or for further clarification of the provisions of the Energy Improvement and Extension Act of 2008.