Global Project Finance

Fiscal Cliff Legislation: Renewable Energy Highlights

January 2, 2013

The President is expected to sign H.R. 8, titled" The American Taxpayer Relief Act" that averts the so-called "fiscal cliff" of automatic spending cuts and tax increases.

- The act has a number of benefits for the renewable energy industry:
- The act extends the production tax credit for wind for an additional year.
- The act changes the requirement from a wind project having to be "placed in service" to "begin construction." Consequently, wind projects merely need to begin construction prior to January 1, 2014.
- There is no outside date as to when the wind project must be fully constructed and operational, so long as it "begins construction" prior to January 1, 2014.
- We are hopeful that "begin construction" means merely incurring five percent of the cost in 2014, which is how that requirement is interpreted by the Department of the Treasury for the Cash Grant program. That interpretation will need to be confirmed by the Joint Committee's report on the act or by Department of the Treasury or the IRS.
- The overall implication is that potentially, the owner of a wind project could incur $5 million to purchase blades in 2013 and use those blades in a wind project with a tax basis not to exceed $100 million, that is completed in 2017 (or even later), and that project would be eligible for ten years of production tax credits starting in 2017.
- Since the act is the Senate version of the bill, where the wind industry has allies in leadership positions, there is no phaseout of production tax credits. (Note, projects that begin construction after 2013 would not be eligible for production tax credits).
- The act postpones for two months the sequestration rules that impose a 7.6 percent reduction in Treasury Cash Grants. See [prior client alert]. Therefore, Treasury Cash Grants will continue to be paid at 30 percent of "eligible basis" until March 1, 2013. This issue will be revisited in conjunction with the upcoming debt ceiling negotiations.
- Wind projects that would qualify for the production tax credit may elect to instead claim a 30 percent investment tax credit (but not a Cash Grant). Such an election may be advantageous for projects with lower "capacity factors" (i.e., in less windy areas), where an investment tax credit of 30 percent of the tax basis may exceed the present value of ten years of production tax credits. Such an election also enables lease structures, which are precluded by the production tax credit rules.

- Fifty percent bonus depreciation is extended for another year. Many developers struggle to find tax equity investors willing to monetize bonus depreciation, but there are a handful of tax equity investors who will monetize it for particularly strong projects.

- The new market tax credit, which several renewable energy projects have used, is extended through 2013. The credit requires an allocation from the Treasury and the project must be in certain areas with low income populations. Consequently, it is not frequently available for renewable projects.

- Various tax incentives for individuals to purchase energy efficient appliances, energy efficient new homes and electric vehicles and for plug-in stations for electric vehicles are also extended.

Overall, the renewable energy industry fared well in the act. There were two proposals that, unfortunately, were not incorporated in the act. First, the solar industry was not able to obtain a comparable "begin construction" change for the 30 percent investment tax credit that expires at the end of 2016. Given the long runway that credit has, it was difficult to find support for such a proposal in the legislative atmosphere of the fiscal cliff. Second, income from renewable energy projects was not added to the definition of "qualified income" for master limited partnerships, which are publicly traded companies that are not subject to corporate income tax.

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