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Client Alert

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TAX-CUT LEGISLATION EXTENDING CERTAIN EXPIRING ENERGY PROVISIONS IS SIGNED INTO LAW BY PRESIDENT OBAMA

President Obama today signed into law H.R. 4853, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the "Tax Relief Act"). The Tax Relief Act implements President Obama's compromise tax cut proposal to, among other things, extend the so-called "Bush tax cuts" and includes a one-year extension of the existing cash grant program enacted under Section 1603 of the American Recovery and Reinvestment Tax Act (the "Cash Grant"). The extension preserves the current Cash Grant program without change, other than to extend eligibility to projects placed in service in 2011 and to projects placed in service before the existing credit termination dates if construction commences no later than December 31, 2011. The credit termination dates are January 1, 2013 for large wind facilities and January 1, 2017 for solar energy facilities.

In addition to the one-year extension of the Cash Grant, the Tax Relief Act includes various provisions affecting tax credits and other incentives for renewable energy property. Included among these provisions is an extension, through December 31, 2011, of the tax credit under Internal Revenue Code section 40A for biodiesel and renewable diesel used as fuel as well as the Code section 6426 excise tax credit for alcohol fuels, biodiesel and alternative fuel mixtures. In addition, as modified by the Tax Relief Act, the tax credit under Code section 40 for alcohol used as fuel will not apply to the sale or use of such fuel after December 31, 2011 or for any period before January 1, 2012 during which the rates of tax under Code section 4081(a)(2)(A) are 4.3 cents per gallon. Further, the reduced credit amount for ethanol blenders under Code section 40(h) is extended one year through 2011. The Tax Relief Act also extends the production tax credit under Code section 45 to certain refined coal production facilities placed in service after December 31, 2009 and before January 1, 2012.

Extension of bonus depreciation. As amended earlier this year by the *Small Business Jobs Act* of 2010, Code section 168(k) allows businesses to take an additional depreciation deduction allowance equal to 50 percent of the cost of the depreciable property placed in service in calendar years 2008 through 2010. The Tax Relief Act extends and temporarily increases this bonus depreciation allowance for investments in new business equipment. For investments placed in service after September 8, 2010 and through December 31, 2011, taxpayers are allowed 100 percent bonus depreciation and for property placed in service after December 31, 2011 and through December 31, 2012, 50 percent bonus depreciation. The provision also allows taxpayers to elect to accelerate some AMT credits in lieu of bonus depreciation for taxable years 2011 and 2012.

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