

Getting Green For Going Green—Tax Incentives For Energy-Efficient Projects



By William W. Toole

When Kermit the Frog lamented that it wasn't easy being green, he didn't know about federal and state tax incentives that can help pay for green-energy and energy-efficient projects. Today there are a number of tax credits and deductions available for energy-efficient installations in both commercial and residential buildings. Smart meter or smart electric grid equipment receives accelerated depreciation treatment. Investors in qualifying advanced energy projects may also receive tax credits for their investments. And in some cases there may be ways for municipalities, non-profits or private businesses to transfer tax credits to taxpayers that can use credits to offset tax payments. Even some North Carolina counties have gotten into the act, offering permit fee rebates on qualifying green projects. Read on to see how to avoid the warts and turn the frog into a prince.

The 2009 American Recovery and Reinvestment Act (Stimulus Act) includes approximately \$20 billion in tax incentives for renewable energy, and more than \$41 billion for energy-related programs. Incentives come in many forms, including tax credits and deductions, rebates, low-interest loans, grants, bond programs, sales and property tax exemptions, and green building incentives. Tax credits are offsets against the total tax that is due. Tax deductions reduce the amount of taxable income.

Unprecedented Interest in Green Buildings

"Green buildings" are designed to consume comparatively less resources and energy during both construction and operation, and to provide comfortable and healthy indoor air quality, lighting, and temperature controls. Due to unprecedented numbers of government initiatives, heightened residential consumer demand, and improvements in sustainable materials, the overall green building market—both non-residential and residential—is predicted to increase from today's \$36-49 billion market to \$96-140 billion by 2013. Green homes may be especially appealing to potential buyers, and thus important to real estate developers, as a prestige item and because they have the potential to save residents money on their energy and water bills, reduce their carbon footprints, and protect their health.

Tax Incentives and Grants for Installing Renewable Energy Technology

Renewable energy does not include energy from nuclear reactions or fossil fuels—it is derived from solar radiation, vegetation, organic wastes, moving water, or wind. Investments in renewable energy technology are the largest source of federal and state tax incentives. The biggest federal tax incentive is the Business Energy Investment Tax Credit, which allows tax credits of between 10% and 30% of the system and installation costs for renewable energy property, including solar, fuel cells, geothermal heat pumps and small wind turbines. These investment tax credits expire December 31, 2016.

Recognizing that the current depressed economy limits the use of tax credits for many taxpayers, federal cash grants in lieu of the tax credits are available to corporate taxpayers as part of the Stimulus Act for energy projects placed in service in 2009 or 2010 and that meet the qualifications. Grants also are available for projects placed in service after 2010 if significant physical construction began during 2009 or 2010 and the property is placed in service within the applicable credit termination date. The credit termination dates vary by type of project. Cash grant applications must be received before October 1, 2011. Grants will be paid out within 60 days of the later of the date of the completed application or the date the property is placed in service.

In North Carolina, there are significant tax incentives for renewable energy property, including a 35% tax credit (subject to certain credit ceilings) for the cost of renewable energy property constructed, purchased, or leased by a taxpayer. If the property serves a single-family dwelling, credit is taken for the taxable year in which the property is placed in service. If the property is a multi-family dwelling or non-residential, the credit is taken in five equal installments beginning with the year the property is placed in service. Moreover, in North Carolina 80% of the costs of solar energy electric systems are exempted from property taxes.

Businesses also may accelerate the depreciation of various investments. For example, the federal tax code now provides for an accelerated six-year depreciation period for solar thermal, solar electric, geothermal, wind, fuel cells, microturbines and fiber optic solar collection systems (solar hybrid lighting) that distribute outside sunlight indoors.

Tax Incentives for Energy Efficiency

Under federal tax laws, a tax deduction of up to \$1.80 per square foot is available to owners of new or existing commercial or government buildings that install (1) interior lighting, (2) building envelope, or (3) heating, cooling, ventilation, or hot water systems that reduce the building's total energy and power cost by 50% or more in comparison to a building meeting certain minimum standards. The deductions are available primarily to building owners, although tenants may be eligible if they make construction expenditures. In the case of energy efficient systems installed on or in government property, tax deductions will be given to the person primarily responsible for the systems' design. The deduction is taken in the year construction is completed. The deduction is set to expire in 2013.

Under North Carolina's Green Building Incentive certain localities, including Mecklenburg County and the City of Asheville, will rebate a portion of construction permit fees for specific projects that promote energy efficiency or include eligible renewable energy technologies.

Retrofit Rebates and Loans May be Coming

Federal support for increased energy efficiency is likely to increase. Rebates for home energy efficiency retrofits and a low interest loan pool for energy efficiency retrofits for manufacturing plants are included in jobs creation legislation currently proposed in the Senate. If the "Home Star" program becomes law, homeowners would receive rebates up to \$1,000 for adding insulation, replacing windows, and installing energy-efficient furnaces, air conditions or heat pumps. The separate "Building Star" program would provide rebates and tax incentives for commercial building energy efficiency retrofits. The Investments for Manufacturing Progress and Clean Technology (IMPACT) Act of 2009 would provide states with money to assist small and medium-sized manufacturers improve energy efficiency in their plants.

These days going green can bring in the green.

Robinson, Bradshaw & Hinson, P.A. is a corporate and commercial law firm with more than 130 attorneys. The firm has offices in Charlotte and Chapel Hill, North Carolina, and Rock Hill, South Carolina. For fifty years, the firm has consistently provided innovative solutions to its clients' business needs from both a legal and practical perspective. The firm serves as counsel to public and closely held corporations operating in domestic and foreign markets; limited liability companies; limited and general partnerships; individuals; municipal, county and state agencies; public utilities; health care institutions; financial institutions and tax-exempt organizations. For more information on Robinson, Bradshaw & Hinson, please visit our Web site at www.rbh.com.