

**BUSINESS ENERGY TAX CREDIT UPDATE
HB 3680-B**

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1. PASS-THROUGH PARTNER PROGRAM

1(A). Pass-Through Credit Allowance

(i) Tax credit of **50 percent** of the eligible project costs taken over **five years** for:

- High Efficiency Combined Heat and Power
- Renewable Energy Resource Generation
- Renewable Energy Resource Equipment Manufacturing Facilities

The tax credit for:

- Homebuilder Installed Renewable Energy Facilities - up to \$9,000
- High Performance Home - up to \$12,000

(ii) For all other projects, the tax credit is **35 percent** of eligible project costs (the incremental cost of the system or equipment that is beyond standard practice), taken over **five years** (with up to an eight-year carry forward). Those with eligible project costs of \$20,000 or less may take the tax credit in **one year**.

1(B). Pass-Through Rates

(i) Rates applicable to all original preliminary certifications issued on or before December 31, 2009, originally found at OAR 330-0990-0140(1)(b)(B):

- (A) 50 percent BETC (>\$20,000 in eligible costs) -- 33.5%
- (B) 50 percent BETC (\$20,000 or less in eligible costs) -- 43.5%
- (C) 35 percent BETC more than \$20,000 in eligible costs -- 25.5%
- (D) 35 percent BETC \$20,000 or less in eligible costs -- 30.5 %

(ii) Rates applicable to all applications that receive a pre-certification on or after January 1, 2010, found in new administrative rules announced January 8, 2010, found at OAR 330-090-0140(1)(a)(A), (B), and (C):

(A) For a five year tax credit issued to a renewable energy resource equipment manufacturing facility, a public body, or to a Federally recognized Indian tribe in Oregon, the net present value, determined by the following formula:

Tax Credit/[1+ (3(5 year Treasury Note) - 3 Year average net change of the Urban CPI for West region)]⁵

DOE estimated ROI: 7.2% ?

(B) For all other five year tax credits, the net present value, determined by the following formula:

Tax Credit/[1+ (2(5 year Treasury Note) - 3 Year average net change of the Urban CPI for West region)]⁵

DOE estimated ROI: 4.3 % ?

(C) For a one year tax credit, the net present value, determined by the following formula:

Tax Credit/[1 + (2(2 year Treasury Note) - Urban CPI for West region)]

DOE estimated ROI: ? _____ %

NOTE: DOE has announced that the annualized internal rate of return under (B) above is **4.29%**, an adjustment down from **9.85%** under the prior rules. This conclusion has not been fully explained, nor have the calculations used to arrive at that rate of return been shared.

1(C). New Five- and Six-Year BETC Requirements

(i) Old rule. "The five-year period shall begin with the tax year of the applicant during which *a certified facility is placed into operation, or the year the facility is certified* under ORS 469.215, *at the election of the applicant.*" Oregon Revised Statute §469.220 (italics added).

(ii) New General rule. "The five-year period for which the tax credit is granted begins with the tax year of the applicant during which **the completed application for final certification is received by the Department of Energy.**" HB 3680-B, Section 13(1) (page 15, emphasis added).

(iii) New Six-year BETC: Exception from new general rule. "For a facility using or producing renewable energy resources with certified costs in excess of \$10 million and that receives final certification under ORS 469.215 after January 1, 2010, the five-year period shall begin with the tax year immediately following the tax year during which the completed application for final certification * * * is received by the Department." HB 3680-B, Section 13(1) page 15, emphasis added).

(iv) No BETC Available for Amended Returns. A pass-through partner may no longer amend prior tax returns and apply a BETC for a refund and reduction in taxes owed in that tax year. The new language that makes this change is found in HB 3680-B, Section 3(5)(d) (page 3, emphasis added): "A transferee holding a credit that has been transferred under ORS 469.206 or 469.208 may not claim the tax credit under this section for any tax year prior to the tax year in which the transferee obtained the credit."

2. **SUNSET PROVISION**

Sections 5(1) and (2) of HB 3680-B (page 7) provide that, generally, all projects must receive final certification before July 1, 2012, except that renewable energy equipment manufacturing facilities must receive preliminary certification before January 1, 2014.

Does Section 13 "received" control Section 5 "final certification?"

3. **TOTAL ANNUAL ELIGIBLE COSTS PER FACILITY**

HB 3680-B Sections 8 and 9 (pages 9-11) set out the following limits on maximum eligible costs per facility. The limits apply to preliminary certificates based on their issue dates:

3(A). January 1, 2010 and before January 1, 2011 (Section 8(1), page 9)

- **\$40 million** in maximum eligible facility costs for a renewable energy resource equipment manufacturing facility (renewable energy storage devices added to this definition)
- **\$20 million** in maximum eligible facility costs for a renewable energy resource facility or high efficiency combined heat and power facility
- **\$10 million** in maximum eligible facility costs for any other facility, not including homebuilder-installed renewable energy facility and high performance home Business Energy Tax Credits (subject to the next bullet)
- 50 percent of the cost not to exceed \$9,000 for a homebuilder-installed renewable energy facility or \$12,000 if the facility also constitutes a high performance home
- For large wind facilities (installed capacity of more than 10 MW), **five percent of total cost but no more than \$7 million**
- For renewable energy equipment manufacturing facilities used to manufacture electric vehicles, **\$2.5 million**

3(B). January 1, 2011 and before January 1, 2012 (Section 9(1), page 10)

- Large wind facilities reduced to **\$5 million**

3(C). After January 1, 2012 (Section 9a(1), page 10-11)

- Large wind facilities reduced to **\$3 million**

4. TOTAL PROGRAM CAPS

Section 2 of HB 3680-B (page 1-2) provides that the total amount of potential tax credits may not, at the time of preliminary certification, exceed:

4(A). For Renewable Energy Resource Facilities

- (i) \$300 million for the biennium ending June 30, 2011
- (ii) \$150 million for the year beginning July 1, 2011, and ending June 30, 2012

For the current biennium, \$220 million has already been pre-certified, leaving \$80 million left for the next 18 months - \$49 million for projects with costs in excess of \$3 million (See Tiered Priority System below).

4(B). For Renewable Energy Equipment Manufacturing Facilities

- (i) \$200 million for the biennium ending June 30, 2011
- (ii) \$200 million for the biennium ending June 30, 2013
- (iii) \$50 million for the six months beginning July 1, 2013, and ending Dec. 31, 2013

5. APPLICATION REVIEW FACTORS; TIERED PRIORITY SYSTEM

Administrative rules due to be released on or before May 1, 2010, are expected to include criteria for allocating program funds and establishing a tiered priority system. Factors that the director may include are listed in HB 3680-B, Section 6(2)(a) through (p) (pages 7-8):

- (a) Technology-specific energy production standards;
- (b) Market sector;
- (c) Delivery of energy into existing distribution and transmission network;
- (d) Investment payback period;
- (e) Expected lifespan of the facility;
- (f) Potential for long-term viability;
- (g) Environmental standards established by the director;
- (h) Potential to create and sustain new jobs;
- (i) Projected siting in a location that is geographically or socioeconomically advantageous;
- (j) Demonstrated readiness to begin implementation;
- (k) Amount and quality of energy generated;
- (l) Strength of business plan;
- (m) Provision of operations and maintenance data, with appropriate protections for trade secrets consistent with ORS chapter 192;
- (n) Connection to existing infrastructures;
- (o) Third-party review of the applicant's business plan; or
- (p) Data related to projected return on investment.

In addition to those factors, the Department is also directed to establish by rule standards regarding what constitutes a single facility. HB 3680-B Section 7(6) (pages 8-9).

For manufacturing facilities, the director may consider factors such as phases of development, expansion of or addition to existing facilities or production lines, increased production and number of jobs created or maintained. (Allows for additional BETCs) HB 3680-B, Section 7(4)(b)(B) (page 8).

6. PROPOSED TIERED PRIORITY SYSTEM FACTORS FROM DOE

The Department of Energy has shared some insight into application review criteria that it may include in the rules. The following is from a Department document dated February 3, 2010:

Tier One (All projects – \$500,000 and below – 10% cap level)

- Energy production standards (technology specific)
- Market sector
- Delivery of energy into the existing distribution/transmission system
- Payback period
- Life of project

Tier Two (Medium and Large projects – \$3 million and below – 20% cap level issued quarterly)

- All Tier One factors
- Long-term viability
- Environmental standards
- Jobs
- Location
- Readiness
- Amount of energy generated
- Business plan strength
- Innovation/Market transformation
- Strength of Financial Plan
- Provision Operations and Maintenance Data (with public record protection)
- Connection to infrastructure

Tier Three (Large projects – \$3 million and above – 70% cap level issued biennially)

- All Tier One and Tier Two factors
- Third party review of business plan
- Return on investment data

March 2010 to February 2011 Session
What's next for the BETC program?

1. **Adopt permanent rules addressing November 2009 temporary rules.**
 - (a) Adopt rules for accountability standards in HB 3680-B.
 - (b) Recraft November 09 temporary rules.
 - (c) Adopt stakeholder and public comments to November 09 temporary rules.
 - (d) March 30, 2010, public hearing.
 - (e) May 1, 2010, permanent rule adoption.

2. **Adopt rules implementing finance and other remaining issues in HB3680-B**
 - (a) Tiering/prioritizations
 - (b) Sunsets
 - (c) Caps
 - (d) 3/30-4/30/10, public hearing
 - (e) 5/1-7/1/10, permanent rule adoption

3. **BETC pass-through rates**
 - (a) 4/10 next quarterly review of PTP rate.
 - (b) Not much data; likely a result of uncertainty surrounding new rule and statute adoptions.
 - (c) Need hard evidence, not anecdotal stories for rate changes.
 - (d) ODOE willing to adjust rate in 2010 to allow pass-through program to work; not waiting for 2011.

4. **Miscellaneous**
 - (a) ODOE/Oregon Business to study transfer of manufacturer's BETC to Oregon Business
 - (b) ODOE obtain \$100K to study BETC—report due 10/10
 - (c) \$1 million swept _____ ODOE BETC account (goodbye computer upgrades)
 - (d) 6.5 FTEs funded—Field Compliance Officers, Program Managers

5. **Strategies for 2011 session**
 - (a) Actively participate in rulemaking to ensure a well-functioning program.
 - (b) Actively participate in crafting 2011 legislation. What is and is not working in HB3680-B.
 - (c) Advocate for substantive change to the pass-through partner program. Refundable credit; slice and dice, etc. 2011-13 budget—bad press may lead to new funding source
 - (d) Advocate for extension of July 2012 sunset.