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Senate Finance Committee Passes Extension of Energy Tax Credit Provisions

On January 30, 2008, the Senate Finance Committee passed, by a vote of 14-7, the Economic Stimulus Act of 2008 (the "Senate Bill"). The Senate Bill contains a one-year extension of the placed-in-service deadline (through December 31, 2009) for the Section 45 production tax credit for the production of electricity from certain renewable resources. The one-year extension would also apply to refined coal facilities, but would not apply to solar or Indian coal facilities. The Senate Bill also contains a one-year extension of the 30 percent investment tax credit under Section 48 for solar energy property and qualified fuel cell power plants and the 10 percent investment tax credit under Section 48 for qualifying stationary micro-turbine power plants.

The Senate Bill would provide an additional $400 million in Clean Renewable Energy Bonds ("CREBs"), which must be issued prior to January 1, 2010. Under current law, an equal amount of principal must be paid by the qualified issuer during each *calendar year* that the CREB is outstanding. Accordingly, CREBs issued near the end of the calendar year are required to make a principal payment before the end of the year. However, the Senate Bill would modify the CREBs' amortization requirement such that amortization is not required until after the first 12-month period that the CREBs are outstanding and would eliminate the requirement to make a principal payment at the end of the first *calendar year*.

Copies of the Joint Committee on Taxation's description of the original version of the Senate Bill and the Chairman's Modification to the Senate Bill are attached: http://www.house.gov/jct/x-11-08.pdf and http://www.house.gov/jct/x-8-08.pdf.

The Senate is expected to consider and vote on the Senate Bill on Monday. However, as with past energy tax legislation, the proposals again could be removed in an effort to conform the Senate Bill to the Recovery Rebates and Economic Stimulus for the American People Act of 2008 (the "House Bill"), passed by the House of Representatives on January 29, 2008. The House Bill did not contain any extensions of energy tax credit provisions and certain House and Senate leaders are concerned that additional provisions will delay the passage of an economic stimulus package. Moreover, if the energy tax credit provisions survive a vote on the Senate floor, the provisions would also have to survive a House-Senate conference to reconcile the differences between the two bills. Accordingly, despite strong bipartisan support, the passage of the proposals in the Senate Bill remains uncertain.

The House Bill and the Senate Bill also contain provisions that would provide for additional depreciation deductions for certain qualified property. The Senate Bill would provide an additional depreciation deduction equal to 25 percent of the adjusted basis of qualified property for the first and second taxable years.

The House Bill would provide an additional depreciation deduction equal to 50 percent of the adjusted basis of qualified property for the first taxable year. If enacted, such additional depreciation deductions may be available for projects that also qualify for Section 45 or 48 tax credits, provided that the various requirements are met and the property is placed in service before January 1, 2009.

For additional information, visit the Energy Tax Credit Practice and the Clean Renewable Energy Bonds Practice.