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## IRS Issues Guidance for the ITC in Lieu of PTC Election

On Friday, June 5, the Internal Revenue Service (the "Service") released Notice 2009-52 (the "Notice"), which provides the procedures for taxpayers to elect to claim an investment tax credit ("ITC") under Section 48 of the Internal Revenue Code (the "Code") in lieu of production tax credits ("PTC") provided under Section 45 of the Code. The Notice is procedural in nature and does not address substantive questions that may be raised in connection with the ITC election. A copy of the Notice is [attached](#).

Section 1102 of the American Recovery and Reinvestment Act of 2009 provides taxpayers with an election to claim a 30 percent ITC in lieu of PTCs for certain renewable energy facilities (wind, closed-loop biomass, open-loop biomass, geothermal, municipal solid waste, hydropower and marine facilities). The election is available for facilities placed in service after December 31, 2008, and before the current placed-in-service deadline for such facility (January 1, 2013, for wind and January 1, 2014, for all other facilities). The election is irrevocable and no PTCs under Section 45 are allowed once the election is made for a facility.

The Notice provides that in order to make the election, a taxpayer must claim the energy credit on [Form 3468](#) and file the form with the taxpayer's income tax

return for the year in which the property is placed in service. Section 2.01 of the Notice provides that a separate election must be made for each qualified facility. Note that the Service has ruled that each individual wind turbine constitutes a separate "facility" for purposes of Section 45 of the Code. See Rev. Rul. 94-31. However, the Notice does not provide guidance on this issue, and it is unclear whether a separate Form 3468 must be filed for each individual wind turbine that is part of a wind farm. Requiring separate elections for each wind turbine would be administratively burdensome. We understand that the Service is still considering this issue and may release additional guidance on this issue in the future.

The taxpayer must attach a statement to the Form 3468 that includes the following information:

- The name, address, taxpayer identification number and telephone number of the taxpayer.
- For *each* qualified investment credit facility:
  - A detailed technical description of the facility, including generating capacity.
  - A detailed technical description of the energy property placed in

service during the taxable year as an integral part of the facility, including a statement that the property is an integral part of such facility.

- The date that the energy property was placed in service.
- An accounting of the taxpayer's basis in the energy property.
- A depreciation schedule reflecting the taxpayer's remaining basis in the energy

property after the energy credit is claimed.

- A statement that the taxpayer has not and will not claim a Section 1603 Treasury grant for such property.
- A "penalties of perjury" declaration, applicable to the statement and any accompanying documents, signed by the taxpayer, or signed by a person currently authorized to bind the taxpayer in such matters. The declaration must read:

- "Under penalties of perjury, I declare that I have examined this statement, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this statement are true, correct, and complete."

If a taxpayer makes the ITC election, the taxpayer must retain the Form 3468 and the required statement as well as all supporting documentation relevant to the election and the taxpayer's ITC claim so that the Service may verify that the property satisfies the applicable requirements of Section 48 and the Notice.

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