



Small Wind Property Investment Tax Credit: Questions and Answers

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On October 3, 2008 President Bush signed into law a bill that includes the creation of an investment tax credit for the purchase of small wind turbines used to power individual homes, farms, and other businesses. The following are questions and answers related to this new credit.

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Answers to the following questions were prepared by Joe Mikrut of Capitol Tax Partners.

Amount of Incentives

1. What is the amount of the credit?

For an eligible system used in conjunction with a residence: 30% of the total cost of equipment and installation, but not to exceed the lesser of \$4,000 or \$500 per ½ kilowatt of capacity.

For an eligible system used for trade or business applications: 30% of the total cost of equipment and installation, not to exceed \$4,000.

Examples:

A 5 kilowatt (kW) system used for a home and costing \$30,000 installed would receive a \$4,000 credit. (The least of: $0.30 \times \$30,000 = \$9,000$ –OR- \$4,000 –OR- $\$500 \times 2 \times 5\text{kW} = \$5,000$)

A 50 kW system used for a dairy farm and costing \$200,000 installed would receive a \$4,000 credit. (The least of: $0.30 \times \$200,000 = \$60,000$ –OR- \$4,000.)

2. Can a system owner use the credit in addition to a state credit or rebate, federal grant, or other government incentive? If so, how does this work?

A system owner can use the credit in addition to a state credit or rebate, federal grant, or other government incentive. However, in determining the amount of credits allowable with respect to certain government-subsidized projects, the taxpayer must reduce the cost of the project to reflect the government subsidy.

3. Can a system owner use the credit (either residential or non-residential) against the Alternative Minimum Tax?

Both the residential and business credits can offset the tentative minimum tax of the taxpayer.

4. If a system owner cannot use all of the credit in a single tax year, can the remainder be carried over to (a) following year(s)?

If a system owner cannot use the entire amount of the credit in a taxable year because of insufficient tax liability in such year, the unused amount of the credit may be carried forward to and used in a succeeding taxable year (subject to similar limitations in such succeeding year.)

Owner and Equipment Eligibility

5. What equipment qualifies for the credit? Is there any specific equipment that does not qualify?

In the case of the business credit, the definition of qualified property is property that uses a wind turbine with a nameplate capacity of not more than 100 kilowatts to generate electricity. The property must be constructed or erected by, or the original use of the property must begin with, the taxpayer. The property must be of a character for which depreciation is allowed. The Secretary of the Treasury, in consultation with the Secretary of Energy, may prescribe performance and quality standards for qualified property. Such regulations will be applied prospectively.

In the case of the residential credit, the definition of qualified property is property that uses a wind turbine to generate electricity for use in connection with a dwelling unit located in the United States and used as a residence by the taxpayer.

Expenditures that are allocable to a swimming pool, hot tub, or any other energy storage medium that has a function other than storage does not qualify for the credit. In general, the original use of the property must begin with the taxpayer.

6. Can the credit be applied to used or refurbished equipment?

In general, the property must be new. Tax rules that determine when refurbished equipment is treated as new property are complicated and beyond the scope of this document. A consumer should consult a tax advisor with respect to this and any other issue involving the credit.

7. How is "non-residential use" defined?

In the case of the "non-residential" credit, the property must be of a character for which depreciation is allowed. This generally means that the property is used in a trade or business or held for the production of income.

8. Can utilities use the credit?

For-profit utilities are eligible for the credit. Municipal power systems are not.

9. Can schools use the credit?

For-profit schools are eligible for the credit. Public and tax-exempt schools are not.

10. In the case of a manufacturer leasing equipment to a third party, who claims the credit?

In general, the owner of the property may claim the credit. In the case of a lease, complicated tax rules determine the owner of the property for tax purposes. A

consumer should consult a tax advisor with respect to this and any other issue involving the credit.

11. Must the system be used for a primary residence only, or are second homes eligible?

The legislation does not distinguish between principal residences and second homes.

12. For a home located in conjunction with a business, such as a farm house or home-based business, how is the credit applied?

If less than 80% of the use of an item is for non-business purposes, only that portion of the expenditures for such item that is properly allocable to use for non-business purposes may be taken into account for purposes of the residential credit.

13. In the case of multiple turbines on a single property, can the credit be used toward each installation or just one of them?

There is no limitation based on a single location. The \$500 per half-kilowatt limitation is a turbine-by-turbine limitation. The \$4,000 cap is a taxpayer-by-taxpayer limitation. Both are annual limitations.

14. If two or more taxpayers purchase a turbine together and are each billed for a portion of the turbine, how do they claim the proper portion of the credit?

For the residential credit, in the case of a dwelling unit that is jointly occupied and used by two or more individuals for a calendar year, the maximum expenditures that may be taken into account for all individuals is \$1,667 for each one-half kilowatt of capacity (not to exceed \$13,333) of wind turbines. The \$1,667 and \$13,333 amounts are allocated among the individuals based on their respective qualified expenditures. Special rules apply in the case of cooperative housing and condominiums to allocate credits among the residents.

15. What is the meaning of the "joint property" stipulation of the law?

See answer to question 14 above.

Project Timing

16. When does the credit take effect?

The credit applicable to businesses applies to periods after the date of enactment (October 3, 2008). The residential credit applies to taxable years beginning after December 31, 2007.

17. Can the credit be applied retroactively to turbines installed in 2008, but before the October 3, 2008 enactment of the law?

See answer to question 16 above.

18. How is the "placed-in-service date" for a system defined?

The credit applicable to businesses applies to qualified property when it is placed in service. "Placed in service" is a technical tax term and the determination is based on the underlying facts and circumstances. In general, property is placed in service when it is in a condition or state of readiness and available for its intended use.

a. For a new home, is this the date a homeowner moves in, or the date the installation is completed?

The credit applicable to residences applies to when expenditures are made for qualified property, not when the property is placed in service. For this purpose, an expenditure with respect to an item is deemed to be made when the original installation of the item is completed. In the case of an expenditure in connection with the construction or reconstruction of a structure, the expenditure is deemed made when the original use of the structure by the taxpayer begins.

19. If the installation began before the date of the credit's enactment, or was completed after the credit's expiration in 2016 (assuming the credit is not extended), can the credit still apply?

As described above, the credits generally are applicable with respect to completion activity, not initiation activity.

Applying for the Credit

20. To apply for the credit, what legal forms and documentation does a turbine owner(s) need to complete/provide?

The credits will be claimed on the tax return of the taxpayer for the year for which the credit is claimed. Business credits generally are claimed on Forms 3468 and 3800 and individual energy credits generally are claimed on Form 5695.

a. To whom?

The Internal Revenue Service.

b. At what stage in the process?

With the filing of the tax return for the taxable for which the credit applies.

c. Where are the forms available?

As of 1/5/2008 the forms have not yet been updated to reflect the new law, but should become available on the IRS website (www.irs.gov/formspubs/) before the 2008 filing season.

d. When are the due dates?

With the due date of the applicable tax return.

e. In the case of an installation for a commercial use, are depreciation value calculations affected by this law?

The taxpayer must reduce its depreciable basis in property by the amount of the credit.

21. For what types of issues should a consumer consult a tax advisor?

A consumer should consult its tax advisor with respect to any issue involving either credit.

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