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Important Energy-Related Tax Measures Included in Bailout Legislation

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On October 3, 2008, President Bush signed into law H.R. 1424, which includes the Emergency Economic Stabilization, Energy Improvement and Extension, and Tax Extenders and AMT Relief Acts of 2008. These constitute the bulk of the "bailout" widely discussed in the media. Although the primary motivation and stated purpose of the legislation is the restoration of liquidity and stability to the American financial system, the Energy Improvement and Extension Act (the "Act") contains a number of energy-related income tax provisions.

The most important of these provisions are summarized below.

Renewable Energy Incentives

The Act extends the renewable energy production tax credit for wind and refined coal production facilities through 2009, and for most other qualifying renewable source facilities through 2010. For periods after October 3, 2008, the Act also amplifies the credit to include new expansions of existing biomass facilities and activities generating electricity from renewable marine sources, e.g., waves and tides. In addition, for coal sold from facilities placed in service after December 31, 2008, the Act increases the emissions standards for the refined coal credit and removes the market value test.

The Act extends through 2016 the 30% investment tax credit for solar energy property and qualified fuel cell

property and the 10% investment tax credit for qualified microturbine property (both credits are components of the general business credit). For periods after October 3, 2008, the Act adds small commercial wind as a category of qualified investment for the 30% credit, and provides for a new 10% investment tax credit for combined heat and power systems and geothermal heat pumps. The Act also increases the cap for qualified fuel cells beginning after October 3, 2008. Although most general business credits, including the energy credit, cannot be used to offset the alternative minimum tax ("AMT"), the Act makes these energy credits available to offset a taxpayer's AMT liability for taxable years beginning after October 3, 2008.

The Act extends the clean renewable energy bond ("CREB") credit through 2009 and, effective October 3, 2008, creates a new category of qualified tax credit bonds to provide financing for state and local government initiatives designed to reduce greenhouse gas emissions.

Carbon Mitigation Provisions

The Act provides \$1.5 billion in new tax credits for the creation of advanced coal electricity projects and certain coal gasification projects. These credits will be awarded through an application process. Applications for the new credits must, in addition to meeting the existing rules for credit qualification, demonstrate that the subject equipment separates and sequesters at least 65% (for advanced coal electricity projects) or 75% (for coal gasification projects) of the project's total carbon dioxide ("CO₂") emissions. Highest priority in the application process is given to those projects with the greatest separation and sequestration percentages. Tax credit recipients who fail to meet standards in practice would forfeit these credits.

For CO₂ captured after October 3, 2008, the Act adds a new credit of \$10 per metric ton for the first 75 million metric tons of qualified CO₂¹ captured and transported from an industrial source for use in enhanced oil recovery, and a credit of \$20 per metric ton for qualified CO₂ captured

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and transported from an industrial source for permanent underground storage. Facilities qualifying for this credit must capture not less than 500,000 metric tons of CO₂ during the applicable taxable year. This credit only applies to CO₂ which is captured and disposed of within the United States (or certain U.S. possessions).

Fuel Provisions

For property placed in service after October 3, 2008, the Act expands the provision allowing taxpayers to write off immediately 50% of the cost of facilities that produce cellulosic biofuels ethanol to include production of other cellulosic biofuels.

The Act increases the per gallon production tax credit for biodiesel not previously qualifying for a \$1 per gallon credit (i.e., biodiesel other than agri-biodiesel or renewable diesel) from 50¢ to \$1 for fuel produced after December 31, 2008. It extends through 2009 both this credit and the 10¢ per gallon credit for small biodiesel producers. The Act expands the application of this credit to any diesel fuel produced after December 31, 2008 that is created from biomass (without regard to the process used) if such fuel is usable as home heating oil, as a fuel in vehicles, or as aviation jet fuel. The Act maintains the \$1 per gallon production tax credit for agri-biodiesel and renewable diesel. The Act also clarifies that these credits are not designed to apply to biodiesel which is produced outside the United States for use as a fuel outside the United States.

The Act extends through 2010 the 30% credit for non-hydrogen related qualified alternative fueling property, such as natural gas or E85. In addition, the Act adds electric vehicle recharging property placed in service after October 3, 2008 to the types of property eligible for the credit. The credit for hydrogen refueling property is unchanged.

Energy Conservation and Efficiency

The Act extends through 2013 the provision allowing taxpayers to deduct the cost of certain energy-efficient property installed in commercial buildings.

The Act extends through 2010 the provision allowing manufacturers to receive a tax credit for the production of energy-efficient appliances, and the credit's standards and amounts are increased for appliances manufactured after December 31, 2007.

For property placed in service after October 3, 2008, the Act reduces the depreciable life of smart electric meters and smart electric grids from 20 years to 10 years, and uses the 150% declining balance method to calculate depreciation for such property.

Individual Taxpayers

There are a number of tax provisions that are relevant to individual taxpayers as well, such as a new plug-in electric drive vehicle credit and a bicycle commuting fringe benefit, and extensions of and modifications to certain energy-efficient home improvement credits.

¹Qualified CO₂ is CO₂ captured from an industrial source that would otherwise be released into the atmosphere as industrial emission of greenhouse gas, and is measured at the source of capture and verified at the point of disposal or injection.

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