

# Client Alert

Current Issues Relevant to Our Clients

February 9, 2015

## IRS Publishes Guidance on Performance and Quality Standards Applicable to Small Wind Energy Property

On January 13th the IRS published Notice 2015-4 to specify that the performance and quality standards applicable to small wind energy property intended to qualify for the investment tax credit are those established by the American Wind Energy Association or the International Electrotechnical Commission, as described below.

The Notice also includes testing dates, recordkeeping requirements for the taxpayer and the manufacturer, and the correct form for the certification.

### Background

Under the investment tax credit (ITC), taxpayers can claim a 30% credit for small wind energy property for periods ending before January 1, 2017. Small wind energy property means property that generates electricity using a turbine with a nameplate capacity of 100 kilowatts or less. The Internal Revenue Code also requires small wind energy property and other energy property to meet performance and quality standards, if any have been prescribed by the Secretary of the Treasury. On January 13th, the IRS set out these standards for small wind energy property in Notice 2015-4.

Prior to this Notice, no performance and quality standards had been published for energy property under the ITC. Furthermore, no standards for types of energy property other than small wind energy property were published in this Notice.

### New Performance and Quality Standards for Small Wind Energy Property

Small wind energy property can meet the performance and quality standards for the ITC by meeting the standards set up in one of two sets of guidelines: (1) the American Wind Energy Association Small Wind Turbine Performance and Safety Standard 9.1-2009 (AWEA) or (2) the International Electrotechnical Commission International Standards 61400-1, 61400-12 and 61400-11 (IEC).<sup>1</sup>

### Date for Testing Whether Standards Are Met

If the taxpayer acquires the turbine, the project must meet the standards that are in effect at the time of acquisition of

the small wind turbine. If the taxpayer constructs, reconstructs or erects the turbine, rather than acquiring it, it must meet the standards in effect at the time the turbine is placed in service.

The Notice provides two examples that illustrate the fact that the standards in effect at the time of acquisition are the relevant standards, even if the taxpayer does not receive the certification until a later date.

### Certification and Recordkeeping Requirements for Manufacturers

The manufacturer may provide the certification to the taxpayer in printable form on its website, or in any other manner that would allow the taxpayer to retain the certification for tax recordkeeping purposes. It must be issued by an eligible certifier, which is a third party that is accredited by the American Association for Laboratory Accreditation or other similar accreditation body.

The certification must include the following information:

1. The name and address of the manufacturer;
2. The property name and model number;
3. The name and address of the eligible certifier;
4. The nameplate capacity of the wind turbine; and
5. A signed and dated statement by the eligible certifier that the property complies with the performance and quality standards of AWEA or IEC.

If a manufacturer provides the certification to a taxpayer, the manufacturer must retain documentation establishing

that it meets the certification requirements below and must make such documentation available for inspection by the IRS. If the IRS determines that the turbine does not actually meet the required standards, the manufacturer's right to provide a certification on future purchases will be withdrawn.

The Notice reminds manufacturers that an erroneous certification may result in the imposition of penalties under Code Section 7206 for fraud and making false statements and under Code Section 6701 for aiding and abetting an understatement of tax liability (in the amount of \$1,000 per return on which a credit is claimed in reliance on the certification).

### Recordkeeping Requirements for Taxpayers Claiming the Credit

A taxpayer may rely on a manufacturer's certification that a small wind turbine meets the appropriate standards. Although the taxpayer is not required to attach the certification to its tax return, it must maintain such books and records as are sufficient to establish its entitlement to the credit claimed, including the certification statement.

However, if the IRS withdraws the manufacturer's right to provide such a certification, taxpayers may not rely on the manufacturer's certification for purchasing turbines after the date of the IRS announcement of the withdrawal. Nonetheless, taxpayers may continue to rely on the certification for turbines purchased on or before the date of the announcement, even if the property is not installed or the credit is not claimed before the announcement.

---

<sup>1</sup> The AWEA standards can be found on their website at: <http://www.awea.org/Issues/Content.aspx?ItemNumber=4651>. The IEC International Standards can be purchased at their website at <http://webstore.iec.ch>.

### For More Information

*For more information, please contact your primary Chapman attorney or visit us online at [chapman.com](http://chapman.com).*

This document has been prepared by Chapman and Cutler LLP attorneys for informational purposes only. It is general in nature and based on authorities that are subject to change. It is not intended as legal advice. Accordingly, readers should consult with, and seek the advice of, their own counsel with respect to any individual situation that involves the material contained in this document, the application of such material to their specific circumstances, or any questions relating to their own affairs that may be raised by such material.

To the extent that any part of this summary is interpreted to provide tax advice, (i) no taxpayer may rely upon this summary for the purposes of avoiding penalties, (ii) this summary may be interpreted for tax purposes as being prepared in connection with the promotion of the transactions described, and (iii) taxpayers should consult independent tax advisors.

© 2015 Chapman and Cutler LLP. All rights reserved.

Attorney Advertising Material.