



## ***Win for Wind on Taxes***

### **Federal Income Tax Wind Farm Production Credit Extended for 2015 through 2019**

### **"Phase-Out" Limits Credit for Projects Beginning Construction in Later Years**

**January 4, 2015**

Wind farm electric generation facilities in Oklahoma have received a favorable federal income tax credit extension.

The federal income tax credit for production of electricity by a qualified facility from wind ("qualified wind facility") has been retroactively extended for a five-year period by the Consolidated Appropriations Act of 2016 (the "Act"), enacted December 18, 2015. The changes are retroactively effective beginning January 1, 2015.

Prior to this retroactive extension, the credit had effectively expired for new wind farm projects — no credit was allowable for any wind farm project the construction of which did not begin before January 1, 2015. The changes in the Act provide that the credit will now be allowed for any qualified wind facility the construction of which begins on or after January 1, 2015, and before January 1, 2020.

The changes are tax incentive "good news" for wind farm electric generation facility development, subject to the phase-out of the credit in later years. As indicated, the Act retroactively restores the credit for any qualified wind facilities the construction of which began in 2015, and it extends eligibility for the credit for new facilities the construction of which begins in the following four years. This should provide greater tax planning certainty for new qualified wind facility project development than the shorter credit "extenders" Congress has previously enacted. However, the Act provides that the credit will be reduced and thus provide less favorable treatment for qualified wind facilities the construction of which begins in 2017, 2018, and 2019. Finally, the credit will not be allowed for any wind farm facility the construction of which begins after December 31, 2019.

### **Retroactive Extension of Qualified Wind Electricity Production Credit For Facilities Beginning Construction January 1, 2015 through December 31, 2019**

Under the federal tax code, as amended by the Act, the renewable electricity production credit is allowed against federal income tax for electricity produced by a qualified wind facility owned by the taxpayer and sold to an unrelated person. The amount of the credit is calculated

by multiplying a specified base monetary rate of 1.5 cents by the kilowatt hours of electricity produced by the taxpayer at a qualified wind facility and sold to an unrelated person. For purposes of the credit, as amended by the Act, a "qualified wind facility" now generally means any facility owned by the taxpayer which is originally placed in service after December 31, 1993, and the construction of which begins before January 1, 2020.

The renewable energy production credit for a qualified wind facility is allowed for electricity produced and sold during the 10-year period beginning on the date the facility was originally placed in service. The 1.5 cent base monetary rate of the credit is subject to reference price and inflation adjustments, and the adjusted rate for 2015 is 2.3 cents per kilowatt hour produced and sold.

A qualified wind facility the construction of which begins in 2015 or 2016 will be allowed the full amount of the credit, calculated as described above. However, a "phase-out" (reduction) of the amount of the credit applies to the owner of a qualified wind facility the construction of which begins in 2017, 2018, and 2019. Finally, the credit will not be allowed for a wind facility the construction of which begins after December 31, 2019.

#### **Phase-Out of Qualified Wind Electricity Production Credit For Facilities Beginning Construction in 2017, 2018, and 2019**

While the Act has provided a longer than customary extension of the renewable electricity production credit for qualified wind facilities, it is coupled with the phase-out feature that limits the amount of the credit allowed for qualified wind facilities the construction of which begins in 2017, 2018, or 2019. Therefore, while availability of the credit has been made more certain due to the five-year extension period, the tradeoff in the new law is that the amount of the credit allowed will be gradually reduced for qualified wind facilities the construction of which begins in 2017, 2018, or 2019.

The credit is to be phased out by a specified percentage for each of the final three years of the extension period in which the construction of a qualified wind facility begins:

Year in which qualified wind facility construction begins	Credit reduction amount
2017	20%
2018	40%
2019	60%

Thus, for qualified wind facilities the construction of which begins in 2017, the credit amount allowed for each year during the 10-year period will be the base amount, calculated and adjusted as described above, and then reduced by 20%. For facilities the construction of which begins in 2018, the credit amount will be reduced by 40%, and for facilities the construction of which begins in 2019, the credit amount will be reduced by 60%. For owners of qualified wind

facilities the construction of which begins after December 31, 2019, the renewable energy credit will not be allowed, unless Congress chooses to further extend it by future legislation

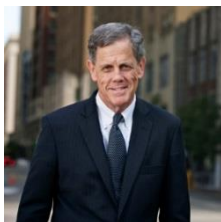
### **Qualified Wind Facility: Date *Construction Begins* Remains Important**

The extension of the credit for qualified wind facilities, including the phase-out amounts of the credit allowed in later years, continues to place great importance on the time when construction of a facility is considered to begin. If construction of a qualified wind facility begins before January 1, 2017, the full amount of the credit will be allowed over the 10-year period for which the credit may be taken. For construction of qualified wind facilities that begins in 2017, 2018, or 2019, differing and reduced amounts of the credit will be allowed. And if construction of a facility begins after December 31, 2019, no credit will be allowed. Taking advantage of the extended favorable tax credit for qualified wind facilities thus continues to turn on ensuring those key words, "*construction which begins*," are in fact satisfied in the intended year of qualification.

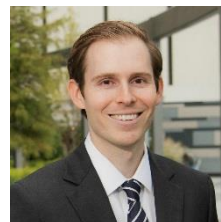
The Internal Revenue Service ("IRS") has previously published specific guidance for determining when construction will be considered to begin on a qualified wind facility for purposes of the credit. This guidance includes IRS Notices 2013-29, 2013-60, 2014-46, and 2015-25, all of which were published before the Act's retroactive extension of the credit. The IRS Notices can be found on the IRS website, <https://www.irs.gov/>.

Based upon its prior action, it seems likely the IRS will publish more guidance to aid in determining when the construction of a qualified wind facility has begun for purposes of eligibility for the credit and the amount to be allowed. Taxpayers and their advisors interested in developing new wind farm facilities and realizing the tax incentive advantage of the credit should continue to look for the publication of updated guidance by the IRS.

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