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*The information contained herein is based on a summary of legal principles. It is not to be construed as legal advice. Individuals should consult with legal counsel before taking any action based on these principles to ensure their applicability in a given situation.*

## How to Meet the Critical 2013 “Begin Construction” Requirement for Renewable Energy Tax Credits Even Though It’s 2014

Absent Congressional action, the federal production tax credit and its related 30% investment tax credit for renewable energy facilities has begun a slow march to extinction. The credit remains available, but only for projects on which construction was begun before the beginning of this year. November and December were busy months for us, as we worked with many developers of renewable energy facilities to have as many projects as possible meet this deadline, advising them to begin actual construction on their projects or at least incur a sufficient amount of anticipated project costs before the end of 2013.

Even if you were not focused on this issue in 2013, if you have a renewable energy facility that you anticipate bringing on line this year or next, you may already have engaged in activities with respect to that facility that will allow it to qualify for the production tax credits. Since qualifying projects will become an increasingly rare commodity, now is the time to take stock and determine if your project is credit-eligible, as you should be able to attract tax credit-based financing on favorable terms.

Moreover, qualifying projects that would otherwise be abandoned should have significant value, as the tax credit qualification will “travel” with the qualifying facility in the event of a sale or transfer of the work done on the facility to date. In fact, we are already working with clients to do just this.

Finally, even if you have not done what is needed to begin construction in 2013, you may be able to purchase key components from other projects that do.

*What is at Stake:* The federal production tax credit is available to owners and operators of certain renewable energy facilities, including wind, open-loop and closed-loop biomass, geothermal and waste-to-energy facilities. The credit can either be taken over the facility’s first 10 years of operation, in which case the available credit is either 1.1 or 2.3 cents (depending on the renewable resource) per kilowatt hour, or it can be taken in the facility’s first year of operation, in which case the available credit is 30% of the qualifying cost of constructing the facility. Developers of renewable energy facilities who have insufficient tax liability to utilize the full amount of these tax credits can partner with tax credit investors (individuals or, more commonly, corporations, with sufficient tax appetite for the credits) to reduce the developers’ costs when constructing these facilities.

However, a renewable energy facility will qualify for the production tax credit only if construction of the facility began before January 1, 2014. This construction can be on-site or off-site (on project components), it can be performed by the owner of the facility or for the owner of the facility... and it doesn’t even need to be “construction” at all! If a developer incurred at least 5% of the credit-eligible costs of a facility by the end of 2013, the IRS will treat construction as having begun on that facility.

## Questions to Ask:

- Have you spent any money (or, for accrual method taxpayers, incurred any costs) with respect to the development of the facility? Did you pay to have design work done for the facility? Did you buy any parts or supplies for the facility? Did you pay for any construction activities related to the facility?
- Have you engaged in (or contracted for) any on-site construction on the facility? Did you have any foundation work done? Did you work on any electric infrastructure that will transfer the power from the facility to a substation or step-up transformer? Did you start work on the roads for the facility?
- Have you engaged in (or contracted for) any off-site construction of parts for the facility?
- Would it be beneficial for your project to obtain components that allow it to meet the begin construction requirement?

If you can answer “yes” to any of the above, it is critical to evaluate whether and how your facility can qualify for the federal production tax credit. We stand ready to assist you with that process. Should you wish to discuss your project’s ability to qualify for the federal production tax credit, please contact John Clancy at 414.287.9256 or [jclancy@gklaw.com](mailto:jclancy@gklaw.com), or Jed Roher at 608.284.2269 or [jroher@gklaw.com](mailto:jroher@gklaw.com).

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