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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.*

## IRS imposes additional qualifications for small wind energy property to qualify for tax credits

On January 13, 2015 the Internal Revenue Service (IRS) issued guidance imposing additional requirements on taxpayers seeking renewable energy tax credits related to small wind energy systems. The guidance is effective for all such systems acquired or placed in service (if self-constructed) after January 26, 2015.

Under Section 48 of the Internal Revenue Code, a taxpayer may generally claim a tax credit equal to 30% of the taxpayer's basis in "qualified small wind energy property" placed in service by the end of 2016. Until now, the only requirements property had to meet in order to be treated as "qualified small wind energy property" were:

1. the property needed to use a wind turbine to generate electricity, and
2. the wind turbine in question needed to have a nameplate capacity of 100 kilowatts or fewer.

After January 26, property must meet a third requirement, as the IRS is now mandating that property that is otherwise "qualified small wind energy property" must after that date also meet the performance and quality standards set forth in either the American Wind Energy Association Small Wind Turbine Performance and Safety Standard 9.1-2009 (AWEA), or the International Electrotechnical Commission 61400-1, 61400-12, and 61400-11 (IEC). The applicable standard must be met as of the time the property is acquired or, if self-constructed, at the time the property is placed in service.

A taxpayer may rely on a certification from the manufacturer of the small wind turbine in question that the turbine meets the applicable standard. The certification must be made by a third party that is accredited by the American Association for Laboratory Accreditation (or a similar accreditation body), and must include the manufacturer's name and address, the name and model number of the wind turbine in question, the name and address of the party making the certification, the nameplate capacity of the turbine, and a signed and dated statement by the party making the certification that the turbine complies with the applicable performance and quality standards.

While the primary recordkeeping burden with respect to these certifications is being imposed by the IRS on turbine manufacturers, and not taxpayers, it is critically important that a taxpayer claiming federal income tax credits related to the installation of a small wind turbine obtain an appropriate certification from the manufacturer of the turbine, and retain that certification in the taxpayer's tax records for the year in which the turbine is placed in service. In addition, taxpayers should, as part of their due diligence regarding the manufacturer from which they plan to purchase a small wind turbine, make sure that the IRS has not revoked the manufacturer's right to provide these certifications.

If you have any questions about the additional qualifications for small wind energy property and renewable energy tax credits, please do not hesitate to contact Jed Roher at 608.284.2269 or [jroher@gklaw.com](mailto:jroher@gklaw.com), or John Clancy at 414.287.9256 or [jclancy@gklaw.com](mailto:jclancy@gklaw.com).

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