



OREGON'S BUSINESS ENERGY TAX CREDIT

Over the last several years, one of the most pressing issues facing Oregon businesses has been the drastic increase in the cost of energy. As a result, there have been increased governmental efforts to develop alternative energy forms to reduce dependence on foreign energy sources while also reducing our impact on the environment. These efforts are driven, in part, through state tax incentives. One of the most often-claimed incentives provided by the Oregon legislature is the Business Energy Tax Credit ("BETC").

The BETC encourages Oregonians to produce and use renewable energy, and is available to those who invest in energy conservation, recycling, renewable energy resources, and less-polluting transportation fuels used in their trade or business. In summary, the BETC is equal to thirty-five (35%) percent of the eligible project costs, or, the incremental cost of the system or equipment beyond standard practice. The BETC credit may offset either individual tax or corporate income excise tax, and is spread out over five years: ten (10%) percent in the first and second years, and five (5%) percent each year thereafter. If you are unable to utilize the BETC credit in a given year, you may carry the credit forward for up to eight years.

For most taxpayers, the BETC functions in one of two ways. The first method is called the "Straight Tax Credit Option." Here, the taxpayer receives a state income tax credit of up to 50% of qualified capital costs for renewable energy projects. The "eligible cost" for purposes of obtaining the BETC is equal to the lesser of the facility cost or the maximum eligible cost for a particular project as determined by the Oregon Department of Energy ("DOE"). Depending on the type and size of a project, along with the amount of increased efficiency created by such project, the maximum amount of eligible costs is capped at \$20 million.

Eligible costs must be directly related to the project. Such costs include equipment, engineering and design fees, materials, supplies and installation. Loan fees, permits and legal fees also may be claimed. If the total eligible costs of the project are \$20,000 or less, the taxpayer may receive a tax credit of up to \$10,000 in the year of the project. If the total eligible costs exceed \$20,000, the taxpayer gets a credit of 10% of the eligible costs for a period of five years. If the tax credit in a particular year exceeds your tax liability, you can carry forward the unused portion for up to eight years.

The Closely Held Business Team attorneys at Harrang Long Gary Rudnick are committed to serving the needs of business owners in a responsive and proactive manner. They understand the challenges and the opportunities provided by the law in today's business climate, and are focused on the advancement of each client's success in business.

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The second way to take advantage of the BETC is by using the “pass through” or “monetization” option. Here, the individual or business transfers the credit to a third party in return for a lump-sum cash payment upon project completion. The payment amount varies based on a “pass-through rate,” which takes into account the BETC’s net present value (as determined by the DOE). The pass through option may be advantageous for businesses (with or without tax liability) that wish to reduce energy costs while infusing capital into current projects.

Recently, the Oregon legislature extended the BETC to home builder installed renewable energy systems, with an added credit for certain “high performance homes.” The basic credit is up to \$9,000 for a single family dwelling and up to a \$12,000 credit for high performance homes. A “high performance home” is defined as a dwelling constructed by a builder licensed under the Oregon Residential Specialty Code. The home must meet certain BETC technical requirements established by the DOE that result in a reduction of the net energy purchased for the home’s use.

BETC eligibility requires adherence to strict guidelines. All projects eligible for the BETC must be pre-approved by DOE. Applications must be received by DOE before a project begins and must be completed within three years of preliminary certification by DOE. Furthermore, all credits must be claimed within eight years of the tax credit date.

Although most people support the idea of the private production of renewable energy, one focal concern has always been its prohibitive cost. Investors in such systems wish to see a short “break even” point, in which the sum of savings on energy bills exceeds the up-front installation costs. Due to the availability of various public and private incentives, as well as advances in renewable energy technology, the break even point continues to grow shorter. For example, in some cases, businesses installing solar energy production cells have seen the break even point achieved in as little as five years.

Oregon’s government has a strong commitment to renewable energy. Private investors are showing a strong commitment as well, investing billions in capital in recent years in renewable energy technology. With the recent explosion in energy costs, the public is also increasing their use of renewable resources. In fact, the Oregon House Revenue Committee has been told to expect the use of up to \$300 million in BETC tax credits over the next five years. It might make sense to see if your business can take advantage of this available incentive.

If you have questions whether the BETC credit is beneficial to you and your business, please contact out closely held business members Randall L. Duncan or Jonathan D. Mishkin, LL.M., at (503) 242-0000, and we will be glad to assist you.

Nothing in this communication creates or is intended to create an attorney-client relationship with you, constitutes the provision of legal advice, or creates any legal duty to you. If you are seeking legal advice, you should first contact a member of the Closely Held Business Team with the understanding that any attorney-client relationship would be subsequently established by a specific written agreement with Harrang Long Gary Rudnick P.C. To maintain confidentiality, you should not forward any unsolicited information you deem to be confidential until after an attorney-client relationship has been established.

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