

January 2009

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Senate Finance Committee Releases Stimulus Bill; House Ways & Means Committee Passes House Version of Bill

On January 22, 2009, the House Ways & Means Committee, by a vote of 24-13, passed the tax titles of the "American Recovery and Reinvestment Tax Act of 2009," as amended by Chairman Rangel. The energy tax credit provisions in the bill were unchanged and are the same described in our [previous alert](#). The Joint Committee on Taxation also released a description of the [House Bill](#) as introduced and a description of the [changes made](#) by the Chairman's amendment. The House of Representatives is expected to vote on the bill on Wednesday, January 28, 2009.

On January 23, 2009, the Senate Finance Committee released a summary of its version of the stimulus package (the "Senate Bill") and the Joint Committee on Taxation also released a description of the [Senate Bill](#). (Statutory language for the Senate Bill is not yet available). The Senate Bill is scheduled to be marked-up by the Senate Finance Committee on Tuesday, January 27, 2009.

The energy tax credit provisions in the Senate Bill are very similar to the provisions contained in the bill passed by the House Ways & Means Committee on the previous day. However, the provisions are not identical, and the differences between the two bills will need to be reconciled.

Both appear to contain identical provisions regarding: (1) the extension of the Section 45 tax credit, (2) the election to claim investment tax credits in lieu of production tax credits, and (3) the repeal of the reduction in Section 48 tax credit basis due to the use of subsidized energy financing/private activity bonds. These provisions were described in our [prior alert](#).

The Senate Bill does *not* contain the provision which would authorize the Department of Energy to provide grants in lieu of production or investment tax credits. However, the Senate Bill contains certain provisions, not contained in the House version of the stimulus package, which would:

- Permit taxpayers to carryback general business credits claimed in 2008 and 2009 for five years (rather than one year).
- Permit taxpayers to use general business credits carried to 2008 and 2009 to offset their entire income tax liability. In addition, taxpayers may carryback general business credits claimed in 2008 and 2009 to offset their entire income tax liability in the prior five years.
- Establish a 30% investment tax credit for certain property used in a

“qualified advanced energy manufacturing project” — a project that re-equips, expands, or establishes a manufacturing facility for the production of property designed to (1) produce energy from the sun, wind or geothermal deposits, (2) manufacture fuel cells, microturbines, or energy storage systems for certain electric motor vehicles,

(3) manufacture electric grids to support the transmission of intermittent renewable energy sources, or (4) manufacture equipment for use for carbon capture or sequestration.

This tax credit is subject to a Department of Energy certification process and a Treasury Department allocation process similar to the

investment tax credit programs for certain advanced coal-based generation projects and certain gasification projects under Sections 48A and 48B of the Code. The Secretary of Treasury is authorized to allocate up to \$2 billion in such tax credits, and must establish the certification program within 180 days of enactment of the bill.

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