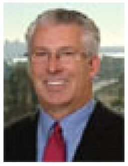

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Eco-Friendly Tax Planning for Corporations

Eleven tips show you how.

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Today, it is unusual to open a Web page, newspaper or business magazine without seeing a reference to Al Gore, global warming, pollution issues and the need for energy conservation. The Green Movement is now firmly entrenched in the majority of business plans.

Whether business executives decide to be environmentally responsible for altruistic reasons, economic reasons or simply to comply with myriad federal, state and local regulations, once a decision has been made to invest in infrastructure that addresses energy and pollution issues, businesses should consider the numerous tax incentives available in the federal tax code.

CPAs, tax directors and CFOs should carefully consider the availability of potential tax credits and other benefits, whenever a business does the following:

- Constructs, builds-out or renovates a building,
- Acquires heating, cooling, ventilation or co-generation equipment,
- Involves itself in manufacturing, processing, construction, R&D or energy production.

Keep in mind that amended returns can be filed for some of these credits for up to three years.

Common Federal Tax Credits

Following is a summary of some of the more common environmental-related federal tax credits and other benefits available to business taxpayers who purchase, enter into capital leases or otherwise incur costs for:

- Energy Conservation Equipment
- Alternative Energy Property
- Water or Air Pollution Control
- Soil Remediation

The costs associated with these expenditures are generally very significant. Fortunately, the federal tax law, as well as the law in most states, has numerous tax breaks to defray a portion of the aforementioned costs and entice taxpayers with incentives to "do the right thing."

Due to the technical aspects of these projects and the specialized nature of these credits and deductions, these benefits are often overlooked or understated.

Here are 11 of the more common federal environmental tax breaks available to business taxpayers:

1. **Energy Efficient Commercial Building Credit/Deduction** — A credit of up to $1.80 per square foot on purchased or leased commercial buildings. Generally requires that the building be 50 percent or more energy efficient than "referenced buildings." Building must be independently certified as meeting the energy efficiency tests and certain IRS approved energy efficiency monitoring software must be used. Partial credits are also allowed to the extent the building meets energy efficiency standards (25% to 50% greater) with respect to lighting, HVAC or window/doors, etc. See IRC § 179D, Information Releases (IR)-2006-88, 2006-52 and 2006-26. Generally must be placed in service before December 31, 2008.

2. **Geothermal or Solar Energy Property** — 10 percent credit for geothermal property and 30 percent potential credit for qualified solar property (see IRC 46 and 48). Generally must be placed in service before January 1, 2009. To claim the credit use Form 3468 "Investment Credit."

3. **Qualified Fuel Cell or Microturbine Property** — A *Fuel Cell Plant* must generate at least 0.5 kilowatts of electricity and a Microturbine Plant (generally a cogeneration plant that converts a fuel source such as natural gas into electrical energy), which must have a capacity of less than 2,000 kilowatts. The energy credit is generally 30 percent of the qualified equipment (see IRC § 46 and 48). Generally must be placed in service before December 31, 2008. To claim the credit use Form 3468.

4. **Contractor Energy Efficient Home Credit —** up to a $2,000 credit per home to the extent the home meets minimum energy efficiency standards. IRC § 45L. Generally to qualify for energy efficient home credit, home must be completed before December 31, 2008. To claim credit, use Form 8908 "Energy Efficient Home Credit."

5. **Hybrid Passenger Automobiles and Light Trucks —** For qualified vehicles (generally only the first 60,000 of each model sold) with "gross vehicle weight" of 8,500 pounds or less. Credit amounts range from $250 to $4,000 per vehicle depending on a number of factors, including overall fuel efficiency and vehicle cost (see IRC § 30B(d), IRS Notice 2006-9 and IRS Form 8910). Note that the Hybrid Credit cannot currently be used to offset AMT. To claim credit, use Form 8910 "Alternative Motor Vehicle Credit."

6. **Alcohol, Ethanol and Biodiesel Fuels Credits** — To encourage use of alternative fuels, producers of alternative fuel mixtures are allowed credits. The *alcohol credit* ranges from $0.45 per gallon to $0.60 per gallon and the *ethanol credit* is generally $0.10 per gallon. These credit amounts are scheduled at these rates through 2010. The carryover period is three years after the termination of the credit program (see IRC § 40 and IRS Form 6478). To claim credit, use Form 8911 "Alternative Fuel Vehicle Refueling Property Credit."

7. **Fuel Cell Motor Vehicle Credit —** These include vehicles that are propelled by one or more cells and which convert chemical energy directly into electricity by combining oxygen and hydrogen fuel that is stored on the vehicle. These types of vehicles will likely be even more common in coming years. Credits range from $1,000 to $4,000 depending on efficiency and the *fuel cell credits* that are currently scheduled to be available until 2014. See IRC § 30B(b) to claim credit use Form 8911 "Alternative Fuel Vehicle Refueling Property Credit."

8. **Advanced "Lean Burn Technology" Motor Vehicle Credit —** This credit ranges from $400 to $2,400 per vehicle, and increases from the base $400 for vehicles that are "direct injection" and achieve at least 125 percent fuel efficiency as compared to 2002 model year city fuel economy (2002 MYCFE) targets, with the maximum credit available for vehicles achieving 250 percent of 2002 MYCFE. The *lean burn credit* is available through 2010 (see IRC § 30B(c), IRS Fact Sheet 2007-9). To claim credit, use Form 8911 "Alternative Fuel Vehicle Refueling Property Credit."

9. **Alternative Fuel Vehicle Credit —** This applies to passenger cars and trucks that operate entirely on alternative fuel, and also to certain "mixed-fuel" vehicles that use both alternative fuel and petroleum-based fuel. In order to qualify for the credit, the vehicle must meet four tests:

- It is capable of operating only on an "alternative fuel" (LNG, CNG, Liquid Petroleum Gas, Hydrogen or a mix including up to 85% methanol),
- The property must be purchased new (capital leases will also generally qualify),
- The vehicle is acquired for use by the purchaser or lease to another (but not for resale),
- The vehicle is made by a manufacturer (vs. retrofitted or assembled by third parties).

The Alternative Fuel Vehicle Credit can range from $2,500 to $4,000 for vehicles less than 8,500 pounds, up to $20,000 to $32,000 for vehicles with a gross weight of more than 26,000 pounds (see IRC § 30B(e) and Form 8910). To claim credit, use Form 8911 "Alternative Fuel Vehicle Refueling Property Credit."

10. **Pollution Control Equipment —** For plants placed in service prior to 1976, pollution control equipment with a useful MACRS (modified accelerated cost recovery system) life in excess of 15 years can be amortized over a 60-month period under IRC § 169. Pollution control equipment added to coal-fired plants after April 11, 2005 can be amortized over a 60-month or 84-month period, depending on when the plant was placed in service.

11. **Soil Remediation Costs —** These costs are virtually always significant. While some cleanup costs must be capitalized, others are deductible to the extent they are for:

- "incidental repairs" (for example, containing toxic substances by sealing them in some manner); or
- cleaning up contamination that a taxpayer created on his own property. For example, if an oil processor contaminates soil on his property and expends funds to either clean or replace the soil, such costs will generally be currently deductible (see Rev. Rul. 2004-18).

Benefits for Going Green

For expenses paid or incurred before January 1, 2008, an election is available under IRC Section 198 to treat certain environmental expenditures that would otherwise have to be capitalized as deductible in the year paid or incurred for both regular tax and alternative minimum tax (AMT) purposes. The expenditures must be paid or incurred in connection with the abatement or control of hazardous substances (which includes a variety of federally designated substances, including petroleum products) at a qualified contaminated site.

This election must be made on or before the due date (including extensions) for filing the income tax return for which the remediation expenditures were paid or incurred.

Other benefits, such as Research & Development Credits, IRC §179 expensing and alternate depreciation benefits may also overlap with some of the aforementioned tax breaks. The majority of states have a variety of similar incentives, and it is fairly common for utility companies to offer rebates and more favorable rate structures for businesses making an effort to reduce energy consumption. Finally, many of the state *enterprise zone* programs offer enhanced equipment tax incentives for equipment used in one of these designated areas.

Conclusion

Many of these programs also apply to individual taxpayers who make direct investment in such property. The aforementioned credits also generally flow through to the equity holders of S Corps, LLCs and Partnerships that make the investment in the qualifying property.

These tax credits and accelerated write-offs can have a materially beneficial impact on these project costs and should be fully accessed in order to bring down the after-tax costs of these worthwhile expenditures.