



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

December 28, 2009

Number: **INFO 2010-0025**

Release Date: 3/26/2010

CONEX-152686-09

UIL: 45.00-00, 48.00-00

The Honorable Tom Harkin
United States Senator
210 Walnut Street, Suite 733
Des Moines, IA 50309

Attention:

Dear Senator Harkin:

I am responding to your inquiry dated December 2, 2009, on behalf of your constituent, . In 2009, placed in service a small wind energy system on his farm in . asked questions about how to qualify for and receive tax credits or other incentives for placing in service the small wind energy system.

1) What happens if a taxpayer claims tax credits in excess of his or her tax liability?

The tax laws provide a production tax credit for wind energy systems during the first ten years the system is in service. Currently, the credit is 2.1 cents for each kilowatt-hour of electricity produced; the credit adjusts annually for inflation.

A taxpayer may choose to take an energy investment tax credit instead of a production tax credit for qualifying wind energy systems. This credit is 30 percent of the cost of the wind system.

The production tax credit and the energy investment tax credit are both allowable to the extent of a taxpayer's tax liability in the year the taxpayer places the wind system in service. Generally, if a taxpayer cannot use all or part of these credits in one year, the taxpayer may carry the unused credits back one year and forward for 20 years.

2) How can a taxpayer show that a wind energy system was placed in service in 2009?

The law requires no specific documentation to show that the taxpayer placed the property in service. Property is placed in service when it is ready and available for its assigned function, which for a wind energy system is the production of electricity. This taxpayer could show that he or she placed this wind turbine in service with documents that show sales of electricity to a utility.

3) Is the production tax credit available to a taxpayer for electricity used in his or her own business?

A taxpayer may not claim the production tax credit for electricity that his or her own business uses. However, a taxpayer may take the energy investment tax credit for property that produces electricity for use in his or her business.

4) Is another incentive available for wind energy systems?

As a result of the American Recovery and Reinvestment Act of 2009, the law provides a third type of incentive for wind energy systems. Instead of claiming either the production tax credit or the energy investment tax credit, a taxpayer may apply for and receive from the Department of Treasury a cash payment for 30 percent of the cost of a qualifying wind energy system. To apply for this cash payment a taxpayer should submit an application to the Department of Treasury website, <http://www.treas.gov/recovery>.

5) Is Form 5695 the correct way to claim the credit when filing a tax return?

No, the Form 5695 is not the correct form to claim either of these credits. To receive either the production tax credit or the energy investment tax credit, a taxpayer must claim the credit on his or her tax return for the year he or she places the wind energy system in service and attach a Form 3800. In addition, to receive the production tax credit, a taxpayer may need to include a Form 8835 with the return or, to receive the energy investment tax credit, a taxpayer may need to include a Form 3468 with the return. Please see the instructions for each form to determine whether it is applicable.

I hope this information is helpful. If you have any questions, please contact me or
at for further assistance.

Sincerely,

Charles B. Ramsey
Chief, Branch 6
Office of Associate Chief Counsel
(Passthroughs and Special Industries)