

Available Federal Tax Incentive Qualifying Technology	30% CREDIT Energy Investment Tax Credit: Immediate credit for 30% of costs for property placed in service before January 1, 2017 with basis reduction equal to 50% of credit. §48. Facilities where construction starts by 2011 and are placed in service by January 1, 2017 are eligible for a dollar-for-dollar grant in lieu of the credit.	10% CREDIT Energy Investment Tax Credit: Immediate credit for 10% of costs for property placed in service before January 1, 2017 with basis reduction equal to 50% of credit. §48. Facilities where construction starts by 2011 and are placed in service by January 1, 2017 are eligible for a dollar-for-dollar grant in lieu of the credit.	2.2 CENT CREDIT Production Credit: Base rate 1.5 cent per Kwh credit for renewable energy sold to third parties. Rate based on 2002 year and subject to inflation adjustment (2.2 cent as of April 30, 2010). §45. Taxpayers may elect to have certain qualified §45 eligible facilities take the 30% immediate credit instead of the 2.2 cent per Kwh credit. If a taxpayer elects the 30% credit, and construction is started by 2011 and the facility is placed in service by January 1, 2014 (January 1, 2013 for wind property), the project is eligible for a dollar-for-dollar grant in lieu of the credit.	FIVE-YEAR DEPRECIATION Accelerated Depreciation: Five-year accelerated depreciable life on cost basis for energy equipment. §168(c). If the energy equipment is placed in service (i) after September 8, 2010 and before January 1, 2012, 100% bonus depreciation is available in year one and (ii) before or on September 8, 2010 or on or after January 1, 2012 and before January 1, 2013, 50% bonus depreciation will be available in year one with the remaining balance of the depreciation taken over the five-year depreciable life. §168(k).	ENERGY-EFFICIENCY BONUS DEPRECIATION Bonus Depreciation: Deduction for the cost of energy efficient property capped at \$1.80 per sq. ft if building energy efficiency exceeds 50% or more than the ASHRAE 90.1-2001 standard (\$0.60 per sq. ft if meets lesser standard). The equipment must be installed as part of interior lighting, heating, cooling, ventilation, or hot water systems, or the building envelope. §179D.
SOLAR (Photovoltaic, passive hot water heat, solar tubing)	Yes	No	Yes , but only for solar energy facilities placed in service before January 1, 2006	Yes	Yes
WIND	Yes , for small wind or certain other wind if §48 credit elected instead of §45 credit	No	Yes , for wind property placed in service before January 1, 2013	Yes	No
GEOHERMAL	Yes , if §48 credit elected instead of §45 credit for electricity, not for cooling and heating (geothermal that meets the definitions of qualified property in both §45 and §48 is allowed either the 30% credit or the 10% credit but not both)	Yes , for electricity and cooling and heating (geothermal that meets the definitions of qualified property in both §45 and §48 is allowed either the 30% credit or the 10% credit but not both)	Yes , for electricity produced from geothermal energy for facilities placed in service before January 1, 2014	Yes	Yes
BIOMASS (for electricity)	Yes , if §48 credit elected instead of §45 credit	No	Yes , open loop biomass facilities placed in service before January 1, 2014 are eligible for reduced credit equal to 1.1 cents as of May 22, 2008	Yes	Yes
FUEL CELL/MICROTURBINE (for electricity)	Yes , for fuel cell (the maximum amount of the payment may not exceed an amount equal to \$1,500 for each 0.5 kilowatt of capacity)	Yes , for microturbines (the maximum amount of the payment may not exceed an amount equal to \$200 for each kilowatt of capacity)	No	Yes	Yes
COMBINED HEAT AND POWER (cogeneration)	No	Yes	No	Yes	Yes
OTHER TECHNOLOGIES Water Management (rain barrel), LED (Light Emitting Diodes)	No	No	No	No	Yes

*This chart and the included narrative are an overview only, and the tax incentives include significant transition rules, limitations and exceptions beyond those listed in this chart. This overview should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult a lawyer concerning your situation and any specific legal questions you may have.

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Overview of Green Building Federal Tax Incentives

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The federal green incentives take the form of both tax credits and accelerated depreciation. A taxpayer can receive an energy investment tax credit or grant at the time of the energy property investment equal to either 30% or 10% of the eligible costs of the investment, depending on the technology, or the taxpayer can receive a 2.2 cent per kilowatt-hour (Kwh) energy production tax credit when selling green energy to third parties.¹ Taxpayers are also entitled to varying degrees of accelerated depreciation for green technologies, including a general five-year depreciation life, 100% bonus depreciation or 50% bonus depreciation depending upon when the property is placed in service, and an immediate deduction for certain commercial building energy efficiency expenses, capped at either \$1.80 or \$0.60 per square foot, depending on the total efficiency level achieved. Goulston & Storrs has been closely monitoring the available Green Building Federal tax incentives. Click [here](#) to view a chart which summarizes these incentives to date.

Energy Investment Tax Credit – Section 48

The primary federal tax incentive for energy producing property is the energy investment tax credit, which provides either (i) a credit equal to 30% of the eligible basis of solar, small wind, and fuel cell equipment;² or (ii) a credit equal to 10% of the eligible basis of geothermal equipment that creates electricity or uses ground water for heating or cooling, microturbine equipment, and combined heat and power (cogeneration) system equipment up to a certain size. There are numerous limitations, such as: (a) the equipment must be placed in service before January 1, 2017; (b) taxpayers must reduce their basis in the underlying property by 50% of the amount of the credit; (c) the

credit cannot be used in combination with the energy production tax credit described below; (d) there is a pro-rated five-year recapture period; and (e) the credit may be limited by the passive loss and at-risk rules. In general, the energy investment tax credit is not subject to a cap, may be used to offset the alternative minimum tax, may be carried back one year and forward 20 years, and may be combined with the low-income housing tax credit. Finally, state energy investment tax credits and grants may also be available for equipment, and whether such grants are includible in federal taxable income may affect whether such amounts create eligible basis for the federal credit. For more information regarding state green tax incentives, we recommend that you refer to www.dsireusa.org.

Energy Production Tax Credit – Section 45

The energy production tax credit is currently equal to 2.2 cents per Kwh produced (reduced to 1.1 cents for certain technologies). The duration of the credit is generally the first ten years of energy production. To qualify, the facility generally must be placed in service by January 1, 2014, however, wind facilities must be placed in service before January 1, 2013, and solar energy facilities must have been placed in service prior to January 1, 2006. Further, in order to receive the credit the energy produced must be sold to third parties. Like the energy investment tax credit, there is no cap on the credit and the credit may be carried back one year and forward 20 years. However, the ability to use the credit against the alternative minimum tax is limited to the first four years from the placed-in-service date. Taxpayers may elect to take the 30% investment credit instead of the energy production tax credit for any qualified wind facility placed in service

¹The rate is determined by inflation adjusting a 2002 base rate of 1.5 cents. See Notice 2011-30.

²This credit also applies to non-small wind, closed- or open-loop biomass, and geothermal if the taxpayer elects the investment tax credit in lieu of the energy production tax credit.

between 2009 and 2012 and for any closed- or open-loop biomass or geothermal placed in service between 2009 and 2013. The procedure for making this election is set forth in Notice 2009-52.

Election for Cash Instead of Tax Credit

Taxpayers may elect to take a grant in lieu of the energy investment tax credit for energy property placed in service in 2009, 2010 or 2011 (or later for certain technologies where construction starts by 2011 and is completed by certain specified dates).³ Taxpayers that elect to take a grant in lieu of tax credits are subject to the same restrictions that apply to tax credit property, such as recapture and a basis reduction equal to 50% of the credit. These grants are not includable in gross income. To obtain a grant in lieu of the energy investment tax credit, taxpayers must file an application with Treasury. The procedure and application for making this election is set forth on the IRS website at <http://www.treas.gov/recovery/1603.shtml>. For an applicant to be eligible to receive a grant it must be the owner or lessee of the property and must have originally placed the property in service. Lessees are eligible to apply for the grant only if the both the lessor and lessee are eligible to receive the grant in lieu of the energy investment tax credit and the lessee provides its written consent (details are included in the IRS alternative energy grant guidance found through the website link above).

Accelerated Depreciation

The following depreciation benefits are potentially available to energy property:

- I. Certain energy equipment qualifies for five-year accelerated depreciation including solar, wind, geothermal, fuel cell, microturbines, combined heat and power systems and biomass.
- II. If property that qualifies for accelerated depreciation is placed in service after September 8, 2010 and before January 1, 2012, the project will be eligible to take 100% bonus depreciation in year one and if the project is placed in service on or before September 8, 2010 or

between January 1, 2012 and before January 1, 2013, the project will be eligible to take 50% bonus depreciation in year one.

- III. Commercial buildings placed in service before January 1, 2014, may qualify for a deduction for the costs of energy-efficiency expenditures, capped at \$1.80 per square foot. To qualify, the future energy and power costs with respect to interior lighting systems, heating, cooling, ventilation and hot water systems must be 50% more efficient than an otherwise comparable building based on the ASHRAE 90.1-2001 standard. A deduction capped at \$0.60 per square foot is available for measures that meet a lesser standard (16 2/3% more efficient than the benchmark comparable building).

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³This election is also available if a taxpayer elects the energy investment tax credit in lieu of the energy production tax credit.