

ATRA Business Tax Extenders Include Changes and Extensions to LIHTC, NMTC and PTC

The American Taxpayer Relief Act of 2012 (ATRA) includes changes and extensions to the Low Income Housing Tax Credit (LIHTC), New Markets Tax Credit (NMTC) and the Production Tax Credit (PTC). The Senate and House have passed ATRA, and President Obama has said that he will sign it into law. ATRA is more than 150 pages long and, along with the headline-grabbing changes to individual tax rates and making the Alternative Minimum Tax patch permanent, provides that:

- The fixed 9% Low Income Housing Tax Credit will apply to low income housing projects that are awarded allocation before January 1, 2014.
- The New Markets Tax Credit is extended by two years, with a limitation of US\$3.5 billion per year.
- The Production Tax Credit for wind facilities has been extended by one year (until January 1, 2014), and, most importantly, the deadline is now satisfied by start of construction, rather than placement in service.

By looking to allocation date instead of placed in service date for the 9% Low Income Housing Tax Credit (Housing Tax Credits), ATRA effectively grants an extension longer than the one year change in dates and also creates greater certainty while planning projects. Section 302 of ATRA provides the 9% fixed credit is based on an allocation prior to January 1, 2014. Originally, Section 3002 of the Housing and Recovery Act of 2008 contemplated that the credit could only be used if units were placed in service before December 31, 2013. Among other amendments relating to benefits of the fixed 9% tax credits, the industry had sought to provide better clarity with respect to the utilization of the credits based upon an event that was more predictable than a project's placed in service date. The provisions in ATRA provide welcome relief to the low income housing community, but especially to investors and developers who were struggling to have units placed in service on or by December 30, 2013 in order to fully capture the value of the fixed 9% credit. ATRA improves the investors' and developers' capacity to plan and manage risk more flexibly provided the allocation of the tax credit to a project occurs prior to January 1, 2014.

We note that forward commitments for allocations of 2014 Housing Tax Credits are not "allocations" and therefore the extension of the 9% applicable percentage rate does not apply to such forward commitments.

The New Markets Tax Credit has been extended for two years with a limitation of US\$3.5 billion per year by Section 305 of ATRA. This amount equals the US\$3.5 billion per year limitation of 2010 and 2011, but is less than the US\$5 billion annual limits provided for in 2008 and 2009 during the economic crisis. The NMTC provision in ATRA provides a welcome extension of a tax credit that has proven effective at bringing private investment to low income communities.

The Production Tax Credit for wind facilities has been extended for one year, and the standard to meet the deadline has been changed to start of construction, rather than placement in service. Presumably, rules concerning qualification for a 1603 grant would apply to determine whether construction has been started. The start of construction standard also applies to other qualified

facilities including biomass (closed-loop and open-loop), landfill gas facilities, trash facilities and qualified hydropower. A facility that satisfies the deadline for a production tax credit is also eligible for an investment tax credit, even if placed in service after the deadline passes.

Contact

Orlando J. Cabrera
T +1 202 626 6211
orlando.cabrera@squiresanders.com

Alexios S. Hadji
T +1 614 365 2705
alexios.hadji@squiresanders.com

Holly H. Heer
T +1 614 365 2716
holly.heer@squiresanders.com

Robert D. Labes
T +1 216 479 8601
robert.labes@squiresanders.com

Steven F. Mount
T +1 614 365 2727
steven.mount@squiresanders.com

Erik J. Rickard
T +1 614 365 2808
erik.rickard@squiresanders.com

Michael D. Saad
T +1 614 365 2735
michael.saad@squiresanders.com

Bryan J. Venesy
T +1 614 365 2708
bryan.venesy@squiresanders.com

Philip P. Westerman
T +1 614 365 2836
philip.westerman@squiresanders.com