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## **Energy-Related Tax Provisions Extended by the 2012 Taxpayer Relief Act**

On January 1, 2013, Congress passed the American Taxpayer Relief Act of 2012 (2012 Taxpayer Relief Act), which the President signed into law on January 2, 2013. The 2012 Taxpayer Relief Act will prevent many of the tax hikes which were scheduled to go into effect this year and retains many favorable tax breaks which were scheduled to expire, but will also increase income taxes for some high-income individuals and slightly increase transfer tax rates from 2012 levels. Further, it extends a host of expired and expiring tax breaks for businesses and individuals.

This Hot Topic describes the energy-related tax provisions which are extended in the 2012 Taxpayer Relief Act.

For a Hot Topic covering key individual tax breaks in the 2012 Taxpayer Relief Act, including a continuation of the Bush-era tax rates for most taxpayers and a permanent AMT "patch," see [http://www.facpa.com/documents/Web\\_0113C.pdf](http://www.facpa.com/documents/Web_0113C.pdf).

For a Hot Topic which explains the individual income tax provisions which were extended, added, and/or modified by the 2012 Taxpayer Relief Act, see [http://www.facpa.com/documents/Web\\_0113B.pdf](http://www.facpa.com/documents/Web_0113B.pdf).

For a Hot Topic which explains key business tax breaks in the 2012 Taxpayer Relief Act, see [http://www.facpa.com/documents/Web\\_0113A.pdf](http://www.facpa.com/documents/Web_0113A.pdf).

For a Hot Topic on the transfer tax (i.e., the estate, gift and generation-skipping transfer) provisions in the 2012 Taxpayer Relief Act, see [http://www.facpa.com/documents/Web\\_0113E.pdf](http://www.facpa.com/documents/Web_0113E.pdf).

The 2012 Taxpayer Relief Act extends, and, in some cases, modifies various energy credits. These include:

- **Nonbusiness Energy Property Credit Reinstated and Extended**

For qualified energy property placed in service during 2011, a taxpayer could claim a 10% credit up to a \$500 lifetime limit (with no more than \$200 from windows and skylights) over the aggregate of the credits allowed to the taxpayer for all earlier tax years ending after December 31, 2005. The credit equaled the sum of: (1) 10% of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements installed during the tax year, and (2) the amount of the residential energy property expenditures paid or incurred by the taxpayer during the tax year. The credit for residential energy property expenditures couldn't exceed: (i) \$50 for an advanced main circulating fan; (ii) \$150 for any qualified natural gas, propane, or hot water boiler; and (iii) \$300 for any item of energy-efficient property. (A more generous version of the credit applied for property placed in service during 2009 and 2010.)

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Under pre-Act law, the credit wasn't available for property placed in service after December 31, 2011.

**New law.** The 2012 Taxpayer Relief Act retroactively extends the nonbusiness energy property credit (with pre-American Recovery and Reinvestment Act (ARRA) limitations) for two years, to apply to property placed in service after December 31, 2011, and before January 1, 2014. Thus, taxpayer can claim a 10% credit on the cost of: (1) qualified energy efficiency improvements, and (2) residential energy property expenditures, with a lifetime credit limit of \$500 (\$200 for windows and skylights) through 2013.

■ **New Energy Efficient Home Credit Reinstated and Extended**

An eligible contractor can claim a credit of \$2,000 or \$1,000 for each qualified new energy efficient home either constructed by the contractor or acquired by a person from the contractor for use as a residence during the tax year.

Under pre-Act law, the new energy efficient home credit didn't apply to homes acquired after December 31, 2011.

**New law.** The 2012 Taxpayer Relief Act retroactively restores and extends the credit for energy-efficient new homes for two years to apply to homes acquired before January 1, 2014. Certain construction standards (used in determining whether a dwelling unit meets the energy savings requirements) are modified.

■ **Qualified Alternative Fuel Vehicle Refueling Property Credit Reinstated and Extended**

A taxpayer may claim a 30% credit for the cost of installing qualified alternative vehicle refueling property for use in the taxpayer's trade or business (up to \$30,000 maximum per year per location) or installed at the taxpayer's principal residence (up to \$1,000 per year per location).

Under pre-Act law, this provision didn't apply to property placed in service after December 31, 2011.

**New law.** The 2012 Taxpayer Relief Act retroactively extends the alternative fuel vehicle refueling property credit for two years, to apply to property placed in service after December 31, 2011, and before January 1, 2014. Thus, a taxpayer can claim a 30% credit for qualified alternative fuel vehicle refueling property, subject to the \$30,000 and \$1,000 thresholds.

■ **Credit for 2- or 3-Wheeled Plug-In Electric Vehicles Modified, Reinstated, and Extended**

For vehicles bought after February 17, 2009, and before January 1, 2012, a taxpayer can claim a 10% credit on the purchase of certain electric powered 2-, 3-, and 4-wheeled vehicles manufactured primarily for use on public streets, roads and

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highways. The maximum credit for these vehicles is \$2,500. To qualify, a vehicle must be either a 4-wheeled low-speed vehicle which is propelled to a significant extent by a rechargeable battery with a capacity of at least 4 kilowatt hours or be a 2-wheeled (e.g., motor scooter) or 3-wheeled vehicle which is propelled to a significant extent by a rechargeable battery with a capacity of at least 2.5 kilowatt hours.

Under pre-Act law, this credit didn't apply to vehicles purchased after December 31, 2011.

**New law.** The 2012 Taxpayer Relief Act adds a new subsection to the Code which retroactively extends the credit for two years in respect to 2- or 3-wheeled plug-in electric vehicles. The same 10%/\$2,500 limits apply. The credit thus applies for vehicles acquired after December 31, 2011, and before January 1, 2014.

**Observation:** In effect, by only extending the credit for 2- and 3-wheeled vehicles, the 2012 Taxpayer Relief Act repealed the credit for 4-wheeled electric vehicles.

#### ■ **Energy Efficient Appliance Credits Reinstated and Extended**

A manufacturer could qualify for a credit for certain energy efficient appliances (dishwashers; clothes washers; and refrigerators) produced in the U.S. during the calendar year ending with or within the tax year.

Under pre-Act law, this provision didn't apply to appliances which were manufactured after December 31, 2011.

**New law.** The 2012 Taxpayer Relief Act retroactively restores and extends, for two years, the energy-efficient appliance credit for appliances produced after December 31, 2011, and before January 1, 2014. Certain specified appliances are excepted from the extension.

#### ■ **Cellulosic Biofuel Producer Credit Modified and Extended**

A producer of qualified biofuel produced after December 31, 2008, can claim a credit, as part of the alcohol fuel credit, for each gallon of "qualified cellulosic biofuel production." The credit is equal to the "applicable amount" (\$1.01) for each gallon of qualified cellulosic biofuel production.

Under pre-Act law, this credit didn't apply to cellulosic biofuel produced after December 31, 2012.

**New law.** The 2012 Taxpayer Relief Act extends the cellulosic biofuel producer credit for one year, to apply to production after December 31, 2008, and before January 1, 2014.

The 2012 Taxpayer Relief Act also provides a new rule to treat algae as qualified

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feedstock, effectively rendering algae-based fuel eligible for the credit. This new rule applies to fuels sold or used after January 2, 2013.

■ **Bonus Depreciation for Cellulosic Biofuels Property Modified and Extended**

Qualified cellulosic biofuel plant property qualified for first-year 50% bonus depreciation and an exemption from the alternative minimum depreciation adjustment. Qualified cellulosic biofuel plant property is depreciable property which was used in the U.S. solely to produce cellulosic biofuel, the original use of which commenced with the taxpayer, which was acquired by the taxpayer by purchase, and which was placed in service by the taxpayer before January 1, 2013. Cellulosic biofuel is defined as any liquid fuel which is produced from any lignocellulosic or hemicellulosic matter which is available on a renewable or recurring basis.

Under pre-Act law, this provision didn't apply to depreciable property placed in service by the taxpayer after December 31, 2012.

**New law.** The 2012 Taxpayer Relief Act modifies and extends for one year the allowance for biofuel plant property, to apply to property placed in service before January 1, 2014. References to "cellulosic biofuel" are replaced with references to "second generation biofuel" (which includes cellulosic biofuel). Under the Code (see above), second generation biofuel generally is liquid fuel which is derived by or from any qualified feedstock (including algae) and meets EPA registration requirements. Rules treating algae as qualified feedstock for purposes of biofuel plant property bonus depreciation apply to property placed in service after January 2, 2013.

■ **Biodiesel Tax Credits Reinstated and Extended**

The biodiesel fuels credit was allowed as a component of the general business income tax credit for biodiesels sold or used in the U.S. The credit amounts were \$1.00 per gallon production credit for biodiesel, 10¢ per gallon small agri-biodiesel producer credit, and \$1.00 per gallon production credit for diesel fuel created from biomass.

In addition, an excise tax credit was allowed against a taxpayer's removal-at-terminal excise tax liability. The credit equaled \$1.00 per gallon of biodiesel used by the taxpayer in producing a biodiesel mixture for sale or use in the taxpayer's trade or business. If the biodiesel mixture excise tax credit exceeded the taxpayer's liability, the taxpayer, subject to certain limitations, was allowed an excise tax refund equal to the amount of that excess credit.

Under pre-Act law, these credits weren't available for fuels sold or used after December 31, 2011.

**New law.** The 2012 Taxpayer Relief Act retroactively extends the \$1.00 per gallon

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production credit for biodiesel, the 10¢ per gallon small agri-biodiesel producer credit, and the \$1.00 per gallon production credit for diesel fuel created from biomass for two years so that they apply to sales or use of biodiesels before January 1, 2014.

The 2012 Taxpayer Relief Act also retroactively extends the excise tax credit and refund provisions for two years, to apply for sales or uses before January 1, 2014.

#### ■ **Production Credit for Indian Coal Facilities Extended**

A producer of "Indian coal" (i.e., coal produced from reserves which, on June 14, 2005, were either owned by an Indian tribe or held in trust by the U.S. for the benefit of a tribe or its member) is entitled to a credit for production at a qualified Indian coal facility. The credit was increased by an amount equal to the "applicable dollar amount" per ton of Indian coal which was, under pre-Act law: (i) produced by the taxpayer at an Indian coal production facilities during the seven-year period beginning on January 1, 2006; and (ii) sold by the taxpayer to an unrelated person during that seven-year period and during that tax year. The applicable dollar amount is \$2.00 for calendar years beginning after 2009, adjusted for inflation. (The credit amount was \$2.267 per ton in 2012.)

Under pre-Act law, the credit for Indian coal production wasn't available for tax years after 2012.

**New law.** The 2012 Taxpayer Relief Act extends the production credit for Indian coal facilities. Thus, the credit applies for coal produced after December 31, 2012, by the taxpayer at an Indian coal production facility during the 8-year period beginning on January 1, 2006, and sold by the taxpayer to an unrelated person during such 8-year period and the tax year.

#### ■ **Renewable Electricity Production Credit Modified and Extended**

A credit can be claimed for electricity produced from certain renewable resources is available for electricity produced from qualified energy resources and refined coal and Indian coal produced at a qualified facility during the ten-year period beginning on the date the facility was originally placed in service. The electricity must be sold by the taxpayer to an unrelated person during the tax year.

Under pre-Act law, a wind facility had to be originally placed in service before January 1, 2013. Wind, closed-loop biomass, open-loop biomass, municipal solid waste (which consisted of landfill gas and trash facilities), hydropower and marine and hydrokinetic facilities had to be placed in service before January 1, 2014.

**New Law.** The Taxpayer Relief Act of 2012 modified and extends the credit with respect to facilities producing energy from certain renewable resources. A facility using wind to produce electricity is a qualified facility if it is placed in service before January 1, 2014 (rather than January 1, 2013). The Act also changes the placed-in-service date to include facilities for which construction begins before January 1,

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2014, for wind, certain closed-loop biomass, certain open-loop biomass, landfill gas, trash, certain qualified hydropower and marine and hydrokinetic renewable energy facilities. For electricity produced and sold after January 2, 2013, in tax years ending after January 2, 2013, the Act also provides that municipal solid waste for purposes of the credit doesn't include paper which is commonly recycled and has been segregated from other solid waste.

■ **Election to Take 30% Energy Credit Instead of Production Tax Credit Clarified**

A 30% business energy credit is allowed for certain energy property placed in service (fuel cell property, solar property, and small wind energy property). A renewable electricity production credit is allowed for the production of electricity from qualified energy resources at qualified facilities. For qualified property which is part of qualified investment credit facilities, taxpayers can make an irrevocable election to take a 30% energy credit instead of the electricity production credit.

**New Law.** The Taxpayer Relief Act of 2012 defines qualified property, for facilities placed in service after December 31, 2008, for purposes of the above election as property which is constructed, reconstructed, erected or acquired by the taxpayer and the original use of which commences with the taxpayer.

■ **Deferral of Gain on Sales of Electric Transmission Property Reinstated and Extended**

A vertically integrated electric utility can elect to defer, over an eight-year period, gain on sales of: (i) property used in the trade or business of providing electric transmission services; or (ii) any stock or partnership interest in an entity whose principal trade or business consists of providing electric transmission services, to Federal Energy Regulatory Commission (FERC)-approved independent transmission companies.

Under pre-Act law, this deferral didn't apply to sales which took place after December 31, 2011.

**New law.** The 2012 Taxpayer Relief Act retroactively restores and extends the gain deferral provisions for two years, for dispositions after December 31, 2011, and before January 1, 2014.

■ **Alternate Fuels & Mixtures Excise Tax Credit Reinstated and Extended**

A 50¢-per-gallon (or gasoline gallon equivalent for non-liquid fuel) excise tax credit is allowed against retail fuel excise tax liability for alternative fuel sold for use or used by a taxpayer. A credit is also allowed against removal at terminal excise tax liability for alternative fuel used to produce an alternative fuel mixture for sale or use in the taxpayer's trade or business. A taxpayer may claim an excise tax refund (or, in some cases, a credit against income tax) to the extent the taxpayer's alternative fuel or mixture excise tax credit exceeds the taxpayer's liability.

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Under pre-Act law, the alternative fuel and alternative fuel mixture excise tax credit, and refund rules generally didn't apply for any sale or use after December 31, 2011, (after September 30, 2014, for all fuels involving liquefied hydrogen).

**New law.** The 2012 Taxpayer Relief Act retroactively restores and extends the alternative fuel excise tax credit and alternative fuel mixture excise tax credits (other than for fuels involving liquefied hydrogen) for two years, through December 31, 2013. The alternative fuels excise tax refund provision (other than for fuels involving liquefied hydrogen), but not the alternative fuel mixture excise tax refund rules, are also retroactively extended for two years through December 31, 2013.

This Hot Topic is an informative publication for our clients and friends of the Firm. It is designed to provide accurate information on the subject matter covered. We recommend you consult with your legal and other advisors to determine if the information is applicable in your specific circumstances.