

"Fiscal Cliff" Bill Reinstates and Extends Business and Personal Tax Credits for Energy Efficient Residential Properties

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On January 1, 2013, the U.S. Congress passed last minute legislation known as the American Taxpayer Relief Act of 2012 to avoid automatic increases in income taxes for millions of Americans, as well as draconian cuts to the budget of the federal government, that many feared would plunge the nation's economy back into recession.

Also included in this eleventh-hour legislative compromise were reinstatements of two business and personal tax credits applicable to energy efficient residences and appliances that had expired on December 31, 2011. The Act extended the tax credits through December 31, 2013, and made them retroactive to December 31, 2011, meaning ***the credits are now available for both 2012 and 2013 projects.***

26 U.S.C. § 45L Business Tax Credit for New and Renovated Energy Efficient Residences

The Act reinstated and extended the 26 U.S.C. § 45L business tax credit of up to \$2,000 for contractors or developers that construct or significantly renovate "dwelling units" (apartments, condos or single-family homes) that meet certain energy efficiency standards.

Importantly, the credit is calculated based on the "dwelling unit," not the building. IRS guidance on the credit defines "dwelling unit" as "a single unit providing complete independent living facilities for one or more persons, including

permanent provisions for living, sleeping, eating, cooking, and sanitation, ***within a building that is not more than three stories above grade in height.***" Therefore, contractors and developers of low-rise multifamily properties can claim a credit for each individual unit, and attached townhomes each qualify for an independent credit.

In addition, the credit had previously applied only to residences acquired before December 31, 2011. The credit is now available for homes built and acquired from December 31, 2011 through December 31, 2013.

In addition to extending the credit, the Act changed the baseline of energy efficiency required to qualify. Previously, § 45L required a 50 percent reduction in energy usage as compared to the 2003 edition of the International Energy Conservation Code (IECC). The Act amended the baseline energy standard to reference the 2006 edition.

The 2006 edition of the IECC contains several structural changes to make the code easier to apply, and adjusted some of the technical requirements. However, as determined by the Oak Ridge National Laboratory, the revisions did not change significantly the level of energy efficiency from the 2003 edition. Therefore, although it is important to be aware of the technical changes, properties that would have qualified for the prior version of the § 45L credit will likely meet the energy efficiency requirements of the new standard.

The Act also freezes the credit to the standard “in effect on January 1, 2006,” the 2006 edition of the IECC. Updating the baseline energy efficiency standard to more current editions of the IECC, which are up to 30 percent more energy efficient than the 2006 edition, will require further legislative amendment, and is therefore unlikely to occur in the near future.

26 U.S.C. § 25C Individual Tax Credit for Energy Efficient Residential Improvements and Appliances

The Act also reinstated the 26 U.S.C. § 25C individual tax credit of 10 percent (up to \$500) of the cost of certain energy efficient existing property improvements, like insulation, windows and door, and energy efficient heating, cooling and water heating appliances.

As with the §45L credit, the Act extended the availability of the § 25C credit to improvements placed in service between December 31, 2011 and December 31, 2013.

If you are a contractor or developer of residential properties, please contact us. Cozen O'Connor's tax attorneys and real estate attorneys can help guide you through the process of obtaining the maximum available incentives for energy efficient residential real estate projects. For more information or assistance, please contact Shari Shapiro (856.910.5050) or Howard Grossman (215.665.4176).

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