

Bond Case Briefs

Municipal Finance Law Since 1971

Energy Grant Program Participants May Not Claim Tax Credits for Payments Reduced by Sequestration.

Treasury Assistant Secretary for Legislative Affairs Alastair Fitzpayne informed lawmakers that participants in an American Recovery and Reinvestment Act grant program may not claim any amount of investment or production tax credit for property for which they have received program payments even if the payments were reduced by sequestration.

February 18, 2014

The Honorable Juan Vargas

U.S. House of Representatives

Washington, DC 20515

Dear Representative Vargas:

Thank you for your letter regarding section 1603 of the American Recovery and Reinvestment Tax Act of 2009 (Section 1603 Program) and sequestration. You requested that we consider providing participants of the Section 1603 Program the option of claiming an investment tax credit (ITC) under section 48 of the Internal Revenue Code (IRC) for the amount by which sequestration will reduce any payment they receive under the Section 1603 Program.

As you know, the Section 1603 Program allows a person that places a specified energy property in service to receive a cash payment in lieu of the ITC or the production tax credit (PTC) under section 45 of the IRC. The amount of the tax credit and the amount of the payment are equal to 10 or 30 percent of the basis of the property, depending on the type of property. Payments made under the Section 1603 Program are subject to sequestration, and thus were reduced by 8.7 percent in Fiscal Year 2013 and are being reduced by 7.2 percent in Fiscal Year 2014. Section 48(d) provides that any property for which a Section 1603 payment has already been made will not also receive an ITC or PTC. Thus, Section 1603 Program participants may not claim any amount of ITC or PTC for property for which they have received payments under the Section 1603 Program, regardless of whether the payment amount has been reduced by sequestration. If a Section 1603 Program participant has not yet received a payment — for example, if the participant has not yet placed its property in service — the participant may choose to instead claim the ITC or PTC for the property.

If you have additional questions on this topic, please feel free to contact me or have your staff contact the Office of Legislative Affairs at (202) 622-1900.

Sincerely,

Alastair M. Fitzpayne

Assistant Secretary for Legislative

Affairs

Identical letter sent to:

The Honorable Paul Cook

The Honorable Susan Davis

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February 18, 2014

The Honorable Paul Cook

U.S. House of Representatives

Washington, DC 20515

Dear Representative Cook:

Thank you for your letter regarding section 1603 of the American Recovery and Reinvestment Tax Act of 2009 (Section 1603 Program) and sequestration. You requested that we consider providing participants of the Section 1603 Program the option of claiming an investment tax credit (ITC) under section 48 of the Internal Revenue Code (IRC) for the amount by which sequestration will reduce any payment they receive under the Section 1603 Program.

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Sincerely,

Alastair M. Fitzpayne

Assistant Secretary for Legislative

Affairs

Identical letter sent to:

The Honorable Juan Vargas

The Honorable Susan Davis

* * * * *

February 18, 2014

The Honorable Susan Davis

U.S. House of Representatives

Washington, DC 20515

Dear Representative Davis:

Thank you for your letter regarding section 1603 of the American Recovery and Reinvestment Tax Act of 2009 (Section 1603 Program) and sequestration. You requested that we consider providing participants of the Section 1603 Program the option of claiming an investment tax credit (ITC) under section 48 of the Internal Revenue Code (IRC) for the amount by which sequestration will reduce any payment they receive under the Section 1603 Program.

As you know, the Section 1603 Program allows a person that places a specified energy property in service to receive a cash payment in lieu of the ITC or the production tax credit (PTC) under section 45 of the IRC. The amount of the tax credit and the amount of the payment are equal to 10 or 30 percent of the basis of the property, depending on the type of property. Payments made under the Section 1603 Program are subject to sequestration, and thus were reduced by 8.7 percent in Fiscal Year 2013 and are being reduced by 7.2 percent in Fiscal Year 2014. Section 48(d) provides that any property for which a Section 1603 payment has already been made will not also receive an ITC or PTC. Thus, Section 1603 Program participants may not claim any amount of ITC or PTC for property for which they have received payments under the Section 1603 Program, regardless of whether the payment amount has been reduced by sequestration. If a Section 1603 Program participant has not yet received a payment — for example, if the participant has not yet placed its property in service — the participant may choose to instead claim the ITC or PTC for the property.

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Sincerely,

Alastair M. Fitzpayne

Assistant Secretary for Legislative

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The Honorable Juan Vargas

The Honorable Paul Cook