



EQUIPMENT LEASING AND FINANCE ASSOCIATION

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**Kenneth E. Bentsen, Jr.**  
President

August 5, 2009

Mr. Michael F. Mundaca  
Acting Assistant Secretary (Tax Policy)  
Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20005

Dear Mr. Mundaca,

The ELFA congratulates the Treasury Department and the Department of Energy for its timely and comprehensive release of guidance (the "Guidance") relating to Payments for Specified Energy Property in Lieu of Tax Credits (the "Grants") under the American Recovery and Reinvestment Act (ARRA) of 2009 (P.L. 111-5).

In evaluating various investment opportunities and structures that could potentially utilize a grant, our members have identified a number of key issues. Accordingly, the ELFA has developed the attached series of supplemental questions and suggested answers relating to substantive aspects of the Guidance.

Thank you very much for your consideration.

With kindest personal regards,

Sincerely,

A handwritten signature in black ink, appearing to be 'K. Bentsen, Jr.', written in a cursive style.

Kenneth E. Bentsen, Jr.  
President

Attachment

cc:

Mr. Joshua Odintz  
Tax Legislative Counsel  
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1500 Pennsylvania Avenue, N.W.  
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Mr. Eric San Juan  
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**Supplemental Questions and Suggested Answers Relating to Payments for Specified Energy Property in Lieu of Tax Credits**

- Q1. When must the election be made for a lessor to pass-through the Grant to a lessee (“Lessee Pass-Thru Election”)?
- A1. The Lessee Pass-Thru Election must be made within three months of the date that the specified energy property is first placed in service.
- Q2. Must the lessee be the person who originally placed in-service the specified energy property in order for the Lessee Pass-Thru Election to be made?
- A2. No. If the specified energy property is first placed in-service by the lessor, it may make the Lessee Pass-Thru Election within three months of such date.
- Q3. Must a lease be in place between a qualified lessor and a qualified lessee at the time the specified energy property is first placed in-service in order for a Lessee Pass-Thru Election to be made?
- A3. No. A Lessee Pass-Thru Election may be made within three months of the original placed in-service date of the specified energy property if the lease is in place by the date of the election.
- Q4. If an eligible person originally places in-service specified energy property and within three months of such date enters into a sale-leaseback transaction with an eligible lessor, may either the lessee or the lessor claim the Grant?
- A4. Yes. Under such circumstances the lessee may chose to retain the Grant or may permit the lessor to claim the Grant. If the lessee chooses to retain the Grant, the Lessee Pass-Through agreement and election described in the Guidance paragraph VI, must be entered into between lessor and lessee.
- Q5. Is the Grant recaptured if a sale-leaseback is entered into more than three months after specified energy property is originally placed in-service by an eligible lessee?

- A5. No. A sale-leaseback later than three months from the original in-service date to a lessor that would have been eligible to claim the Grant will not result in recapture, provided the lessor and lessee enter into a joint liability agreement described in Guidance paragraph VII.
- Q6. Will the sale of some or all of the shares in a taxable corporation that has claimed the Grant to a tax-exempt entity or other disqualified person result in recapture of the Grant?
- A6. No. Since a taxable corporation that is owned by disqualified persons may claim the Grant or own an interest in a pass-thru entity that claims the Grant, the transfer of shares in such entity to a disqualified person will not result in recapture.
- Q7. Will an investment in major standby spare parts that are acquired at or before the date that specified energy property is first placed in-service in order to prevent operational outages in the generation of electricity by such specified energy property qualify for the Grant?
- A7. Yes. Major standby spare parts that are acquired at or before the in-service date of specified energy property in order to prevent operational outages are depreciable, considered placed in-service when the specified energy facility they support is placed in-service and considered integral to such facility and therefore qualify for the Grant. See Rev. Rul. 81-185, 1981-2 C.B. 59.
- Q8. Will the Grant be available for an expansion of property qualifying under Section 45 even though production tax credits are being claimed for the existing facility?
- A8. Yes. The Grant will be available for an expansion that satisfies the requirements of the statute and the Guidance, even if production tax credits have been, and will be claimed, with respect to the existing facility.