

March 9, 2006

Deadline to Apply For The Clean Renewable Energy Bond Allocation Is Fast Approaching

The Clean Renewable Energy Bond (CREB) Program, created by the Energy Policy Act of 2005, provides for the issuance of up to \$800 million in tax-credit bonds to finance renewable energy projects. Although governmental bodies may borrow up to \$500 million of the available \$800 million for such projects, most governmental bodies are unaware of the program or the April 26, 2006 application deadline.

The purpose of the tax-credit bonds is to provide interest-free financing for specified renewable energy projects. The various “qualified projects” include financing for wind, bio-mass, geothermal, solar, small irrigation power, landfill gas, trash combustion, refined coal production, and qualified hydro power facilities. Tax credit bonds are issued by qualified issuers, including government bodies. Tax-credit bonds pay the bond holders by providing a credit against their federal income tax.

The U. S. Internal Revenue Service (IRS) has issued Notice 2005-98 relating to the CREB program. The Notice solicits applications for allocations of the CREB limitation amount described above. A “Clean Renewable Energy Bond” is defined as any bond issued as part of an issue if:

- 1) The bond is issued by a qualified issuer pursuant to an allocation by the Secretary to the issuer of a portion of the national clean renewable energy bond limitation;
- 2) Ninety-five percent or more of the proceeds of the issue are to be used for capital expenditures incurred by qualified borrowers for one or more qualified projects;
- 3) The qualified issuer designates the bond for purposes of Section 54 and the bond is in registered form; and
- 4) The issuer meets certain requirements with respect to expenditures of bond proceeds, including a requirement that the issuer reasonably expects, as of the issue date, that at least 95% of the net proceeds will be expended within five years.

The projects will be allocated the full amount of the CREB limitation requested beginning with the project(s) for which the smallest dollar amount of the CREB limitation has been requested and continuing with the project(s) for which the next smallest dollar amount has been requested until the total amount of the CREB limitation has been exhausted.

Notice 2005-98 also describes in detail requirements for applications for an allocation of the CREB limitation. The application must identify the qualified borrower (including any governmental body), describe the project in detail in order to demonstrate that the project will be a "qualified project," and describe a plan to obtain all the necessary federal, state and local regulatory approvals for the project. The application must also describe the plan of financing for the project. The application must be received by the IRS on or before April 26, 2006.

Seyfarth Shaw clients who might be eligible under the CREB program need to identify potential renewable energy projects as soon as possible and apply to the IRS for allocation by April 26, 2006.

If you need assistance identifying potential renewable energy projects or completing the application, please contact Eric Boyd at eboyd@seyfarth.com or any Environmental, Safety & Toxic Tort attorney on our website at www.seyfarth.com.



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