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One Minute Memo®

Reintroduced Master Limited Partnerships Parity Act to Spur Investment in Renewable Energy Projects

On April 24, 2013, Senator Chris Coons (D-DE) and Senate co-sponsors Jerry Moran (R-KS), Debbie Stabenow (D-MI) and Lisa Murkowski (R-AK) reintroduced the "Master Limited Partnerships Parity Act" (the "Act") which provides for a simple amendment to the Internal Revenue Code (the "Code") to allow renewable energy projects to qualify as master limited partnerships ("MLPs"). The sponsors of the Act hope that this change will level the playing field between traditional oil and gas development and renewable sources of energy. A companion bill was introduced on the same day in the House of Representatives by a bipartisan group of legislators which included Representative Ted Poe (R-TX) and House co-sponsors Mike Thompson (D-CA), Peter Welch (D-VT), Chris Gibson (R-NY) and Cory Gardner (R-CO).

An MLP is a business entity which combines the benefits of a corporation, limited liability, dividends and ownership interests that are tradable and liquid, without the double taxation of a corporation. To qualify as an MLP, at least 90 percent of an enterprise's income must be "qualified income," which under current law means that it must come from qualified sources such as real estate or natural resources including crude oil, natural gas, petroleum products, coal, timber, and other minerals. Section 613 of the Code specifically states that the qualifying energy resources must be "depletable" resources. As a result, MLPs are available to investors in traditional energy portfolios for oil, natural gas, coal extraction, and pipeline projects, while renewable energy projects have been explicitly prevented from raising capital through MLPs.

Originally introduced on June 7, 2012, the Act has been modified to expand the types of income from renewable energy projects that qualify for MLP treatment. Under the Act as reintroduced, the definition of qualified income would be expanded to include clean energy resources and infrastructure products. Specifically, "qualified income" would include income derived from energy technologies that qualify under Sections 45 and 48 of the Code for the production tax credit and the investment tax credit, respectively, for renewable energy projects including wind, closed and open loop biomass, geothermal, solar, municipal solid waste, hydropower, marine and hydrokinetic, fuel cells, and combined heat and power. The Act also allows for energy-efficient buildings, electricity storage, carbon capture and storage, renewable chemicals and waste-heat-to-power technologies, as well as a range of transportation fuels, including cellulosic, ethanol, biodiesel, and algae-based fuels, to fall under the definition of "qualified income".

The Act's sponsors intend that qualifying renewable energy projects as MLPs will make these projects more attractive to a broad base of potential investors and will provide such projects with greater access to capital at a lower cost as MLPs have done in the traditional oil and gas and real estate sectors. Further, the requirement that MLPs distribute 90% of their income should be attractive to potential investors. The Act's sponsors believe that this requirement is potentially very important to investors in the renewable energy sector who experience a slower rate of return on their investment due to the need to create more infrastructure.

At present, of the estimated $445 billion in MLP capital currently in the market, approximately $400 billion, or 89%, has been invested in qualifying traditional energy and natural resources. Of that, just under 80% has been invested into midstream oil and gas pipeline projects. The renewable energy sector currently relies primarily on tax equity financing for funding. If the Act is adopted, the percentage of MLPs used in the renewable energy sector would substantially increase. Some have projected that the Act could result in an influx of an estimated $6 billion in capital that is currently excluded from renewable energy projects. MLPs could also help realize the potential of the global clean energy market, a market that has an estimated potential value of $2.3 trillion globally over the next 10 years.

While there has previously been little action towards the Act's passage, the reintroduction of the Senate and the House bills offers hope that renewable energy projects may qualify for the funding advantages of MLPs and spur investment in the renewable energy sector.

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