

Legislation to Watch: S. 2401 – “Alternative Energy Extender Act”

[Senator Chuck Grassley](#) (R-IA) introduced [S. 2401](#), the "Alternative Energy Extender Act," on March 13, 2006. It was referred to the [Committee on Finance](#) where no further action has been scheduled. [Senator Max Baucus](#) (D-MT) is an original cosponsor. As Sen. Grassley is the Chairman of the committee, and Sen. Baucus is the Ranking Member, the likelihood that the bill will eventually receive a vote in the Senate is high. The following are descriptions of the tax incentives and credits the bill seeks to extend.

Extension of the Production Tax Credit. S. 2401 extends the Production Tax Credit (“PTC”) for all eligible facilities under 26 U.S.C. § 45(d). It amends § 45(d) by replacing "2008" with "2011". Section 45(a) establishes the PTC as an amount equal to 1.5 cents multiplied by the kilowatt hours of electricity produced by the taxpayer from *qualified energy resources* at a *qualified facility*, during the 10-year period beginning on the date the facility was originally placed in service if that electricity is sold to an unrelated person to during the taxable year. Section 45(d) defines the term *qualified facilities* to include wind, closed- and open-loop biomass, geothermal, solar, small irrigation power, landfill gas, trash combustion, refined coal production, certain hydropower, and Indian coal production facilities. In most cases, to be a *qualified facility* requires the facility to be placed in service before January 1, 2008. S. 2401 replaces “2008” with “2011” each place it appears in the subsection, thereby allowing additional facilities to qualify for the PTC.

Clean Renewable Energy Bonds. Facilities qualifying for the PTC will also indirectly benefit from the bill’s extension of the date by which Clean Renewable Energy bonds can be issued to construct such facilities. Created in the Energy Policy Act of 2005 (“EPACT”), CREBs operate as a tax credit associated with the ownership of bonds used to finance facilities qualifying for the PTC. Instead of tax-free interest that characterizes traditional private activity bonds issued by governments, bondholders receive a tax credit to offset their other income on a quarterly basis. Under the EPACT, these bonds have to be issued by Dec. 31, 2007. S. 2401 would extend this date to Dec. 31, 2010. Furthermore, the bill substantially increases the dollar volume cap on the bonds issued under the program. Under the EPACT, the volume cap is \$800 million total. S. 2401 would increase this cap in years 2008-2010 to \$800 million *per year*.

Biodiesel Fuels Credit. S. 2401 also seeks to extend the biodiesel fuels credit under 26 U.S.C. § 45A. The Biodiesel fuels credit is an amount equal to the biodiesel mixture credit, plus the biodiesel credit, plus, in the case of an eligible small agri-biodiesel producer, the small agribiodiesel producer credit. This credit for the sale or use of such fuels will expire on December 31, 2008, but S. 2401 seeks to extend this date to December 31, 2010.

Alternative Fuels Credit and Alternative Fuel Vehicle Refueling Property Credit. S. 2401 seeks to extend the date on which the alternative fuels credit is to expire from September 30, 2009 to December 31, 2010. The alternative fuel credit established by 26 U.S.C. § 6426(d) is equal to 50 cents multiplied by the number of gallons of an alternative fuel (or gasoline gallon equivalent of a nonliquid alternative fuel) sold by the taxpayer for use as a fuel in a motor vehicle or motorboat, or so used by the taxpayer. *Alternative fuel* for purposes of the credit include liquefied petroleum gas, P Series Fuels, compressed or liquefied natural gas, liquefied hydrogen, any liquid fuel derived from coal through the Fischer-Tropsch process, and liquid hydrocarbons derived from biomass. The term does not include ethanol, methanol, or biodiesel. S. 2401 also seeks to extend the alternative fuel vehicle refueling property credit, which is set to expire for qualifying property (except property relating to hydrogen) on December 31, 2009, to qualifying property placed in service prior to December 31, 2010.

Ethanol Tariff Schedules. The bill extends the effectiveness of headings 9901.00.50 and 9901.00.52 of the Harmonized Tariff Schedule from October 1, 2007 to January 1, 2011. For instance, heading

9901.00.50 refers to a tariff-rate quota on ethyl alcohol. This type of quota permits a certain quantity of ethyl alcohol to enter at a reduced rate of Customs duty during the quota period, but quantities entering in excess of the quota are subject to a substantially higher duty. Extension of this quota generally benefits U.S. producers.

Other Provisions. Other provisions of S. 2401 expand and extend the credit for qualifying advanced coal projects under 26 U.S.C. §48A(d) and qualifying gasification projects under 26 U.S.C. § 48B. The energy efficient commercial buildings deduction under 26 U.S.C. § 179D(h), which is set to expire in 2007 would be extended until 2010, as would the credit for business installation of qualified fuel cells and stationary microturbine power plants under 26 U.S.C. § 48(c). The business solar investment tax credit under 26 U.S.C. 48(a)(2) is also extended from 2008 to 2011.

If you have any other questions about this update or if you would like our assistance in connection with this matter, please contact your Stoel Rives lawyer or one of the following lawyers:

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