



Federal Fuel Cell Tax Incentives; *An investment in clean and efficient technologies*

On October 3rd, 2008, Congress passed and President Bush signed into law a highly anticipated eight-year extension of the Investment Tax Credit (ITC) for fuel cell technology. The tax credit extension was included in the Emergency Economic Stabilization Act of 2008. A long-term extension of the ITC has been a top priority for the industry, as it is expected to accelerate full-scale commercialization of fuel cell technology.

The ITCs for residential and business fuel cells include the following:

BUSINESS PROPERTY OWNER (Section 103)

- Credit of 30% of the cost up to \$3,000 per kW
- Minimum 0.5 kW capacity
- Valid until December 31st, 2016
- Electricity-only efficiency of more than 30%
- Eligibility extended to all utilities and telecommunications firms
- Allowance of credit is permissible against Alternative Minimum Tax. This allows persons subject to AMT to take the credit against that portion of their tax liability

NON-BUSINESS PROPERTY OWNER (Section 106)

- Credit of 30% of the cost up to \$1,000 per kW
- Minimum 0.5 kW capacity
- Valid until December 31st, 2016
- Electricity-only efficiency of more than 30%
- Allowance of Credit is permissible against Alternative Minimum Tax. This allows persons subject to AMT to take the credit against that portion of their tax liability

Impact of the ITCs

The ITC entitles the taxpayer to subtract the amount of the credit (dollar-for-dollar) from total federal tax liability. A tax credit is different from a tax deduction – which subtracts money from gross income before tax liability is calculated.

More Information

For more information, consult the Internal Revenue Service bulletin, "Energy Credit for Qualified Fuel Cell Property and Qualified Microturbine Property," Notice 2008-68 or your tax advisor. For information about fuel cells, their fuels, and the US Fuel Cell Council, visit www.usfcc.com

Questions and Answers about the revised ITC*

Q: Will a business customer be able to take advantage of the 30% credit with a cap of \$3000 per kW before January 1, 2009?

A: *Yes, fuel cells purchased and placed in service after October 3rd, 2008 can take advantage of the revised credit structure.*

Q: Is the credit available upon completion of installation of the power plant, or at the time of invoicing of the power plant?

A: *The Statute reads "placed in service". The date that the fuel cell is placed in service (that is, begins operating) determines when a taxpayer can take advantage of the revised credit. For a detailed explanation of "placed in service" principles, see § 1.46-3(d) of the US Tax Code.*

Q: How do the 30% incentive and dollar-per-kilowatt cap work?

A: The magnitude of the credit is determined by the size and cost of the fuel cell. To determine the credit for business property, multiply the cost of the unit by 30%. Next, multiply the rated output in kilowatts, by \$3000. Your credit is the smaller of the two amounts. For a residential installation, multiply the cost of the unit by 30%. Next, multiply the rated output in kilowatts, by \$1000. Your credit is the smaller of the two amounts. Two simple examples are listed below.

Q: Do all fuel cells qualify?

A: Fuel cells must achieve a 30% electricity-only generation. According to the IRS Bulletin, "the electricity-only generation efficiency of a fuel cell power plant may be determined in accordance with the standards of ANSI/ASME PTC 50-2002 Fuel Cell Power Systems Performance or equivalent testing procedures under normal operating conditions using the lower heating value of the primary fuel." ASME PTC-50 has been used since 2002 to measure efficiency and is the industry standard at this time.

Q: Can a non-tax paying entity transfer or trade the ITC?

A: No, but third party financing options may help non-tax paying entities install fuel cells.

Q: How do I claim the ITC credit?

A: Taxpayers must use IRS Form 3468. Certain entities may need to also submit IRS Form 3800, the General Business Credit document. Form 3800 includes, but is not limited to, "carry back" or "carry forward" credits.

Q: Can leased fuel cell equipment qualify for the credit?

A: The fuel cell credit is allowed to the lessor of qualified fuel cell energy property if depreciation (or amortization in lieu of depreciation) is allowable to the lessor with respect to the property. The lessee of qualified fuel cell property generally may not claim the fuel cell credit for such property.

Q: Are fuel cells for forklifts and other industrial equipment eligible for the credit?

A: Yes. According to the IRS Bulletin 2008-34, Section 5.02, the fuel cell credit is allowed with respect to a taxpayer's mobile fuel cell power plant if the plant satisfies the size, efficiency and output conditions.

Examples of Incentive Calculation

The ITC provides a 30% incentive, capped at \$3,000 per kW for businesses (30% incentive, capped at \$1,000 per kW for residences). Here are some examples of the incentive level based on different fuel cell systems and their price:

For business installations:

1. Assume a price of \$100,000 for a 50 kW fuel cell system.
 - 30% of system price (\$10,000) = \$30,000
or
 - 50 kW X \$3,000 = \$150,000**Incentive = \$30,000**
2. Assume a price of \$600,000 for a 50 kW fuel cell system
 - 30% of system price (\$600,000) = \$180,000
or
 - 50kW X \$3,000 = \$150,000**Incentive = \$150,000**

For residential installations:

1. Assume a price of \$15,000 for a 5 kW fuel cell system.
 - 30% of system price (\$15,000) = \$4,500
or
 - 5 kW X \$1,000 = \$5,000**Incentive = \$4,500**
2. Assume a price of \$60,000 for a 5 kW fuel cell system
 - 30% of system price (\$60,000) = \$18,000
or
 - 5 kW X \$1,000 = \$5,000**Incentive = \$5,000**

* Information contained in this brief was fashioned by the US Fuel Cell Council and is for general information only. Fuel cell manufacturers and purchasers should first consult a qualified tax attorney for additional information.