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

On August 8, 2005, President Bush signed into law the highly anticipated Energy Policy Act of 2005. In addition to the research and development, demonstration and market transition programs for fuel cells and hydrogen, the law contains new incentives for the purchase of fuel cells. One of these incentives, the Investment Tax Credit (ITC), has been as a top priority for the industry and is seen as a key step in the commercialization of fuel cell technology. The legislation provides the following ITCs for residential and business fuel cell acquisitions:

### NON-BUSINESS PROPERTY OWNER (Section 1335)

- \$1,000 per kW or 30%, whichever is less
- Minimum of 0.5 kW capacity
- January 1, 2006 - December 31, 2007

### BUSINESS PROPERTY OWNER (Section 1336)

- \$1,000 per kW or 30%, whichever is less
- Minimum of 0.5 kW capacity
- January 1, 2006 - December 31, 2007
- Electricity only efficiency of more than 30%
- Eligibility extended to telecommunications firms

### Impact of the ITCs

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

### Examples of Incentive Calculation

The ITC provides a \$1,000 per kW credit or 30%, whichever is less, for both business as well as non-business (residential) property owners.

Here are some examples of the incentive level based on different fuel cell systems and their price:

1. Assume a price of \$5,000 for a 5 kW fuel cell system.

Number of kW (5) multiplied by \$1,000 = \$5,000

30% of system price (\$5,000) = \$1,500

**Incentive = \$1,500 (lesser of \$5,000 or \$1,500)**

2. Assume a price of \$20,000 for a 5 kW fuel cell system

Number of kW (5) multiplied by \$1,000 = \$5,000

30% of system price (\$20,000) = \$6,000

**Incentive = \$5,000 (lesser of \$5,000 or \$6,000)**

## Questions and Answers

Q - Will customers be able to take advantage of the credit on January 1, 2006?

A - *Although the provisions have been enacted into law, and are effective as of January 1, 2006, the Internal Revenue Service (IRS) has yet to establish guidelines that would clarify the eligibility criteria and spell out procedures for claiming the credit. Therefore, the credit is available but not completely defined.*

Q - How long will it be until the rule making is complete, and when can my customers take advantage of this?

A - *The rule-making is likely to take most of 2006; however, the IRS is supposed to issue guidance within 180 days of passage of the bill (January 29, 2006). This "deadline" may be delayed, as the final decision is based on answers to several technical questions that must be addressed by the Department of Energy (DOE) and the IRS. A number of precedents have already been established that may be relevant for fuel cells since there is an existing investment tax credit for solar and geothermal technologies. The existence of these precedents may help streamline and accelerate the implementation of the fuel cell ITC. Meanwhile, the US Fuel Cell Council and others are working hard to encourage the IRS to act as quickly as possible in implementing the amended ITC provision that now includes fuel cells.*

Q - If precedents are already in place, why would this rule-making take so long?

A - *Although the IRS has experience with other alternative energy technologies, it has not dealt with an ITC involving fuel cell technology. What's more, unlike solar, wind or geothermal technologies, fuel cells have a minimum efficiency standard that must be met in order to qualify for the credit. Details regarding how this will be calculated and verified also need to be addressed during the IRS rulemaking procedure.*

Q - What is the industry doing to help ensure a favorable ruling by the IRS?

A - *The industry is doing a number of things to ensure that qualified fuel cell purchases made between January 1, 2006-December 31, 2007 will be entitled to the credit. First, we are working with Congress to push for speedy implementation by the IRS. Additionally, we are working with the solar and geothermal industries to determine which existing precedents are applicable to fuel cell technology. If existing precedents are not sufficient to address issues specific to fuel cells, a separate fuel cell-only effort will be formed to help complete the rule-making process.*

*The fuel cell industry will work closely with the IRS and DOE to provide appropriate technical information and offer to help the agency in its rule-making process. For example, consensus standards have already been established to test and evaluate fuel cell equipment. We will encourage the IRS to use the ASME Performance Test Code (ASME PTC 50-2002) to determine electrical efficiency and the ANSI/CSA America FC 1 Standard as the basis for meeting safety requirements.*

*In addition, the industry is advocating the broadest interpretation of the ITC provision thus covering all fuel cell applications except light duty fuel cell vehicles which are addressed in Sec. 1341 of the Energy Policy Act of 2005. This would ensure that stationary, portable and back up power applications as well as off-road vehicles, ground support equipment, auxiliary power units, etc. that meet the stated efficiency and size criteria would be eligible.*

Q – The federal government offers a production tax credit (PTC) that would be available for fuel cell units operating with landfill gas as the energy source as well as an ITC. Can the same piece of equipment qualify for both types of credits?

A – No. *The language was written so the customer may take either the ITC or the PTC, but cannot claim both.*

Q - A number of state governments offer a variety of fuel cell incentives. How do these state incentives impact the calculation of the federal credit?

A – *Treatment of the federal ITC may vary on a state-by-state basis. Taxable grants and state income tax credits do not reduce or otherwise impact the federal tax credit. Those grants, purchase incentive, etc. that are NOT taxable reduce the basis for the federal credit. The state credit is subtracted first. For example:*

- *Assume the purchase of a \$10,000 5 kW fuel cell system.*
- *The state of New York provides a \$1,500 credit for units 25 kW or less. Your income has therefore increased by \$1500.*
- *The federal government provides a credit of \$3,000. Since the incentive based on \$1,000 per kW, it would be \$5,000 (5 times \$1,000) and the 30% of price is \$3,000 ( $\$10,000 \times 30\%$ ) the lesser of the two figures (\$3,000) is the actual amount of the federal incentive.*
- *The federal government then taxes the \$1,500 from the state (assume 33%) leaving you \$1,000 of the state incentive.*
- *The total of the tax credits between the state and federal incentives is \$4,000.*

Q – What will the process be for claiming the ITC for fuel cell installations?

A – *While the IRS guidelines have not been established, a likely scenario could include the IRS issuing a revised version of the Investment Credits document - 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 - If a customer purchases used fuel cell equipment, is it eligible for the credit?

A – *No, the statute only covers new fuel cell units. The provision states the “original use” must begin with the customer claiming the credit.*

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

A - *Although further clarification is needed, it is believed that if a tax paying entity purchases the equipment and then leases the equipment to another party, the tax paying entity can claim the credit.*

Q – Who is eligible for the Tax Credit?

A – *Any taxpaying entity except for public utilities, which are excluded by law from taking advantage of the energy-related investment tax credits. As regulated entities they are ineligible; however, many have utilized unregulated subsidiaries to take advantage of other types of credits in this section of the code. Telecommunications companies, which are governed under the same exclusions as utilities in the underlying law, were explicitly INCLUDED as eligible for the fuel cell tax credit available in 2006-2007.*