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The sun will come out tomorrow - ARRA tax provisions recharge solar projects

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For many property owners, installing a solar photovoltaic (PV) system is still desirable due to the environmental, social, and financial benefits. Federal financial incentives for solar installations include tax credits, depreciation deductions, and loans. The State of Connecticut offers a property tax exemption for certain solar installations, and through the Connecticut Clean Energy Fund, has provided financial incentives for PV projects. Unfortunately, interest in developing solar projects has declined as the benefits of financial incentives are deflated by the economic downturn.

Fortunately, the American Recovery and Reinvestment Act of 2009 (ARRA) increases the range of options to maximize return on investment for renewable energy technologies. In addition to \$43 billion provided through grants and loans for energy and energy-related investments, the bill also provides for \$20 billion in tax incentives. The ARRA expanded the Energy Tax Credit (referred to herein as an "investment tax credit" (ITC)) allowing new solar facilities (and other qualifying renewable energy technologies) to claim an ITC for 30% of facility costs, with no maximum credit. Certain stipulations apply: The ITC must be taken in the year the facility is placed in service; the system must be constructed by the taxpayer or the original use of the equipment must begin with the taxpayer; and the equipment must meet any performance and quality standards in effect when the equipment is acquired. The sale of electricity is not required in order to claim the ITC and facility costs can include development fees. Eligible solar facilities must generate any of the following: electricity, heating, cooling, hot water, or provide fiber-optic lighting.

In addition, under the Modified Accelerated Cost-Recovery System (MACRS), businesses may recover investments in solar electric and thermal property through depreciation deductions. MACRS allows depreciation in the first five years from when the renewable energy facility was placed in service. The Economic Stimulus Act of 2008 included a 50% bonus depreciation provision for eligible solar systems acquired and placed in service in 2008. This provision was extended (retroactively to the entire 2009 tax year) under the same terms by the ARRA. If a facility meets certain requirements, the owner can deduct 50% of the adjusted basis of the property in 2009. To qualify for bonus depreciation, a project must satisfy the following criteria: the property must have a recovery period of 20 years or less (under normal federal tax depreciation rules); the original use of the property must commence with the taxpayer claiming the deduction; the property must have been acquired and placed in service during 2008 or 2009.

For new solar installations, the ARRA allows taxpayers eligible for the ITC to either take the credit, or receive a dollar-for-dollar renewable energy grant from the U.S. Treasury Department, instead of taking the ITC. Solar facilities are eligible for a grant equal to 30% of the cost of solar property. Grants are available for eligible property placed in service in 2009 or 2010, or if construction began in 2009 or 2010, placed in service by the specified credit termination date. Applications for grant

funding must be submitted to the Treasury Department by October 1, 2011.

These provisions and others made by the ARRA result in changes to the way renewable energy transactions are structured. Commonly, renewable energy projects are structured so that the benefits of both the tax credit and depreciation deductions are realized by the tax investor until the terms of the contract are met. Then the income and loss is shifted to the developer who gets an option to acquire full ownership. Unfortunately, the economic slowdown has impacted tax investor's appetites to participate in projects and provide the capital needed to get projects off the ground. The stimulus bill allows transactions to be structured such that the depreciation can be allocated to a party with some tax appetite, and the renewable energy grant can be passed to a party that does not. As a result of the ability to separate depreciation from the tax credit, the ability to maximize the return on investment into projects has increased, making renewable energy development a worthwhile investment.

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