



June 17, 2013

Technical Director
File Reference No. EITF-13B
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

Dear Technical Director,

On behalf of the members of the Renewable Energy Tax Credit (“RETC”) Working Group, we submit our responses below to the questions for respondents in regards to the Proposed Accounting Standards Update, *Investments – Equity Method and Joint Ventures (Topic 323): Accounting for Investments in Qualified Affordable Housing Projects* (the “Update”). We wish to respond specifically to questions 4 and 5 as they relate to RETCs. The members of the RETC Working Group are comprised of various professionals in the RETC industry who work together to discuss and provide recommendations in an effort to resolve technical business and tax issues and to help make the current RETC tax incentives even more efficient in facilitating the investment in and development of clean, renewable energy resources throughout the country. Our group generally includes developers, consultants, lenders, investors, accountants and lawyers that specialize in the development and financing of renewable energy projects. We believe the conditions in the proposed Update are applicable and the effective yield method of accounting should be extended to RETC investments.

Two of the most important incentives available for renewable energy are contained within Internal Revenue Code (“IRC”) Sections 45 and 48. IRC Section 45 provides owners or operators of certain electricity generating facilities a production tax credit (“PTC”) over a 10 year period based on the production of electricity from “qualified energy sources” that include wind, biomass, geothermal, solar, irrigation, solid waste and hydropower. The PTC rate currently in effect is 2.3 cents per kilowatt hour for certain technologies (i.e. wind and closed loop biomass) and half of that rate for other technologies (i.e. open-loop biomass, small irrigation, etc). IRC Section 48 provides an investment tax credit (“ITC”) equal to 30 percent of the eligible basis of certain energy property that includes solar (photovoltaic) and other renewable energy property. IRC Section 48 also provides a 10 percent ITC for geothermal, combined heat and power, microturbine equipment and other renewable energy property. An election currently exists to claim an ITC in lieu of the PTC for renewable energy property that qualifies under IRC Section 45.

Example - ITC: The following example summarizes how a typical renewable energy project monetizes the value of the ITC. Assume the total cost to develop a project is \$11,000,000 which includes \$1,000,000 of costs that are ineligible for the ITC (i.e. land costs, intangible assets and reserves) resulting in ITC eligible basis of \$10,000,000 (i.e. major components, labor and related soft costs). Further assume the technology utilized in this project qualifies for the 30% ITC, meaning the owner(s) of the project is able to claim \$3,000,000 of ITCs. As an owner of the project, the tax credit investor earns the majority of its return on investment when it claims the ITC on its tax return.

Tax credit investors typically either purchase the projects outright or contribute equity to a special purpose entity partnership in exchange for an ownership interest in the project's profits, losses, tax credits and cash flows. The tax credit investor usually derives most of its return on investment from the value of the ITC. As such most tax credit equity investors typically size their investment to an amount comparable to the amount of ITC it can claim.

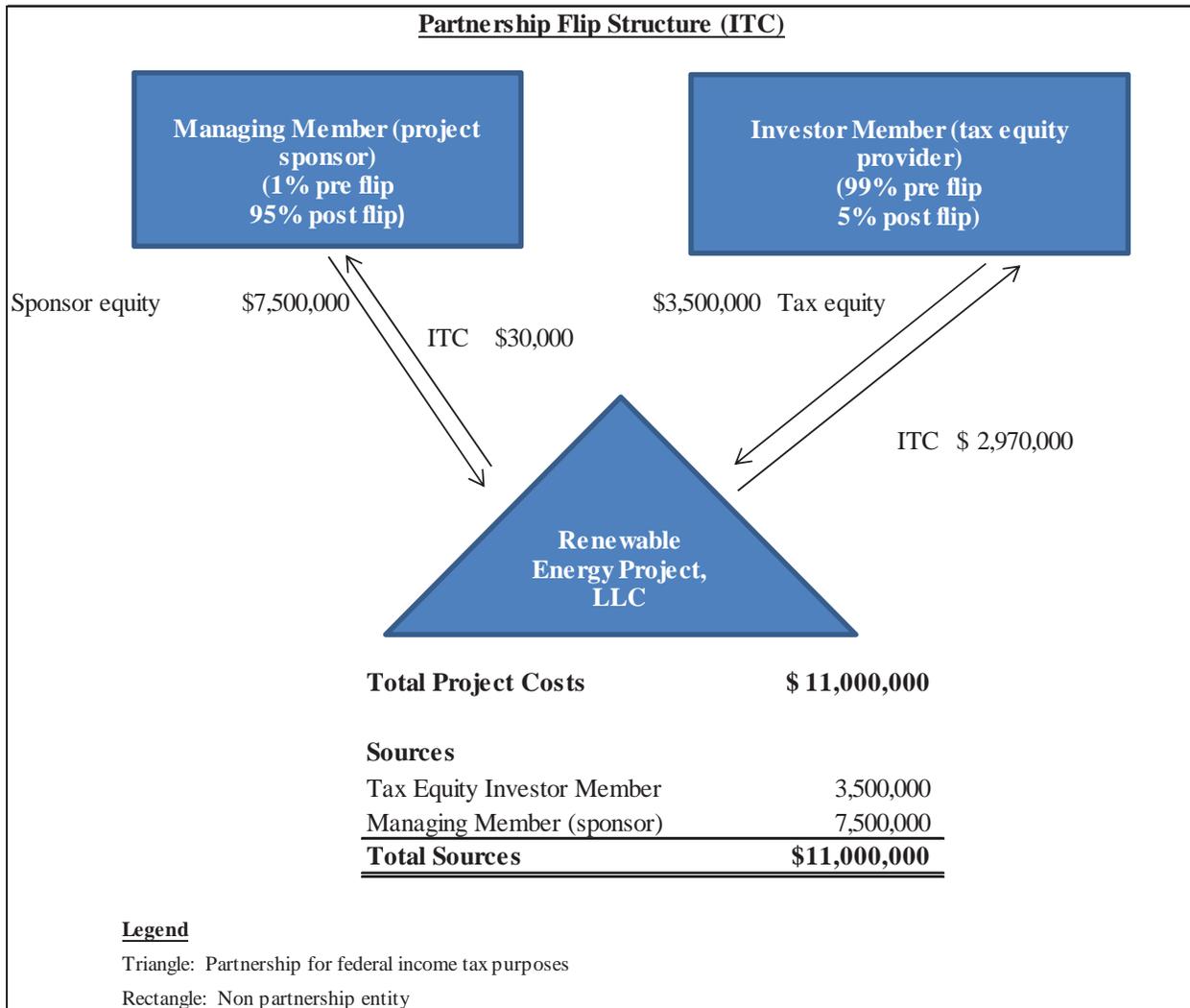
The value of the ITC is diminished, however, by the requirement that the taxpayer's basis in the investment must be reduced by 50% of the amount of the ITC. The ITCs claimed are also subject to a five year recapture period if certain conditions are not satisfied over a 5-year compliance period.

Example - PTC: Assume the same facts from the previous example except that the project qualifies for the PTC of 2.3 cents per kilowatt hour of energy produced and sold over a 10 year period. PTC investors often contribute a substantial portion of their total commitment in the year the project commences operations with the balance contributed annually over a negotiated 5 to 10 year period as the project produces and allocates PTCs to its investors.

Question 4: Do other types of investments made primarily for the purpose of receiving tax credits meet the conditions in this proposed Update for an entity to elect to account for the investments using the effective yield method? If so, please describe them.

Yes, RETC investment structures meet the conditions in the proposed Update. RETCs were created to provide an incentive for private capital to be invested in alternative energy projects to make it more financially feasible to develop them. This has always been part of a continuing effort to promote the development of renewable energy and make our nation more energy independent. Tax credit investors either make their investments directly in business entities that will develop, own and operate a renewable energy facility, or they may make an equity investment in a holding company that may hold an interest in several facilities.

While an investor may make its investment in the project directly to qualify for RETCs, it is very common that it invests its equity in a special purpose entity partnership that is a pass-through entity for tax purposes. One such ownership structure is commonly referred to as the partnership flip structure provided for in Revenue Procedure 2007-65 and illustrated below (the illustration below is specific to an ITC generating investment, however the structure diagram is fundamentally the same for PTC qualifying investments):



In the partnership flip structure, an investor contributes equity to a partnership (the “RETC Company”) that is used to fund the development of a renewable energy facility. In the partnership flip structure the investor receives its return on investment through the allocation of ITCs, depreciation benefits and through distributions of a de minimis amount of the Project’s operating cash flow. The sponsor of the project typically retains a majority interest in the project’s operating cash flow benefits and a de minimis amount of tax credits and depreciation benefits.

We believe that the investments made by the tax credit investor under this structure will generally meet the four conditions included in the proposed Update for an entity to elect to account for their investments using the effective yield method as follows:

1. *It is probable that the tax credits allocable to the investor will be available.*

We believe it is probable that the tax credits allocable to the investor will be available. Construction completion risk is minimal. Once an RETC project makes it through the permitting process it is very uncommon for that project to fail. Furthermore, a very significant amount of due diligence and asset management takes place before the investment is made to provide the tax credit equity investors the necessary assurance that they will be able to claim the RETCs as projected.

The ITC is claimed on the date on which the facility is placed in service. Recapture of the credits is triggered if, at any time during the first 5 years after the placed in service date: 1) the facility ceases to be a qualified energy facility, or 2) the facility, or an interest therein, is disposed of. Transaction due diligence is performed during structuring, and asset management review services are performed by the general partner throughout the 5-year compliance period to ensure compliance requirements are satisfied. This is done at a level that makes it probable that investors receive the intended benefits and, to date, we are unaware of any recorded instances of RETC recapture.

The PTC is claimed over a 10-year period as energy is produced and sold to a third party. Although there is no recapture period for the PTC, energy production is very closely monitored and asset management services are diligently performed to ensure that the project earns the expected amount of tax credits throughout the term of the investment, making it probable that the investors receive the intended benefits.

2. *The investor retains no operational influence over the investment other than protective rights, and substantially all of the projected benefits are from tax credits and other tax benefits (for example, tax benefits generated from the operating losses of the investment.)*

Similar to affordable housing investments, the RETC investor's role in the RETC Company is usually that of an investor member with no management rights and no meaningful control over the day-to-day operations of the company. Substantially all of the RETC investment benefits are derived from the value of the tax credits and tax losses of the project. However, the RETC investment is subject to an economic substance test. Typically, the investor does receive an annual priority return of cash on its investment, typically between 1% and 3%. However, these cash benefits are not viewed as the primary motivation for the investor's investment in the RETC Company.

3. *The investor's projected yield based solely on the cash flows from the tax credits and other tax benefits is positive.*

In RETC transactions the investor's projected yield is based solely on the cash flows from RETCs and other tax benefits and is generally positive. The RETC investment structures allow tax credit equity investors to achieve their required return primarily from tax credits. The investor determines the amount of equity it is willing to invest based upon a discount that allows it to achieve a reasonable, positive rate of return.

4. *The investor is a limited liability investor in the affordable housing project for both legal and tax purposes, and the investor's liability is limited to its capital investment.*

RETCs share similar attributes to affordable housing tax credit investments. In the RETC investment structure, the RETC investor is a member of a limited liability entity. Since the RETC investor is investing primarily for tax credit benefits, its liability is limited to its capital investment. Similar to how affordable housing tax credit investments are structured, the investor does not typically have any influence over the operations of the RETC facility.

Question 5: Should the guidance in this proposed Update extend the effective yield method of accounting to other types of investments for which the economic benefits are realized primarily as a result of tax credits and other tax benefits? Please explain.

Yes, at a minimum, the effective yield method of accounting should be extended to RETC investments. The RETC Working Group's members generally account for their investments in RETCs using the equity method, separating the tax benefits of such investments from the cost of those benefits and presenting them in different locations on the income statement. The result is that the RETC investments are reported in a manner that we believe distorts the financial statements of the investor. This treatment should be available for other tax credit programs with similar attributes meeting the proposed conditions and that are "analogous" to affordable housing tax credit investments.

However, we support a model that requires a proportionate amount of the cost of the investment to be amortized against the related tax credits and reported as a component of the tax credit investor's income tax provision. We believe these changes would more accurately measure and report the performance of the investments than the current equity method.

Conclusion

We appreciate the opportunity to submit our suggestions in response to your invitation to comment on this exposure draft. We believe that extending the effective yield method currently contemplated for affordable housing investments, or a proportional amortization method, is essential to improve the financial reporting of RETC investors. This would open the door for many new investors who have been too concerned about GAAP accounting issues, to make RETC investments. We are excited about the positive impact that the RETC Program is having on the nation's development of new clean, renewable sources of energy and the potential for future success. However, we believe that the program could become less efficient and deliver less clean energy benefits to the end users without the clarification we have requested above. We commend the FASB for its efforts to update this accounting standard and consider its applicability to RETC investments. Thank you in advance for your time and consideration. Please do not hesitate to contact us if you have any questions regarding our comments or if we can be of further assistance.

Yours very truly,
NOVOGRADAC & COMPANY LLP

by 
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