



- Responding to the nation's energy crunch, Congress enacted tax incentives to lower energy consumption.
- Not only does the Federal Government provide for incentives to purchase and install property many states have their own programs encouraging persons to make use of renewable energy. For Example, San Diego County will waive the fee for the building permit and plan check for a photovoltaic system.

The Credit for Residential Alternative Energy Expenditures

Introduction

More good news for individual taxpayers! Not only is there the Residential Energy Property Credit (see our previous advisory), there is also the Credit for Residential Alternative Energy Expenditures. It has been decades since alternative energy tax credits benefiting individual taxpayers have been in place; the last having expired in 1985. Responding to the nation's energy crunch, Congress enacted a series of tax incentives to lower energy consumption both by businesses and consumers. The result is good and needed news for the taxpayer.

Explanation

A tax credit is available for individual

taxpayers to help pay for alternative energy equipment. The residential alternative energy equipment is divided into three categories and includes: 1) eligible solar water heaters, 2) solar electric equipment (photovoltaic), and 3) qualified fuel cell property. Taxpayers will be credited 30% of their eligible costs for up to \$2000 for each category of solar equipment (see below Solar Water Heating Equipment and Photovoltaic Property) and \$500 for each half kilowatt of capacity of qualified fuel cell property per tax year!! The eligible equipment must be placed into service in 2006 or 2007, as this credit expires January 1, 2008. This credit is nonrefundable, but unused portions of the credit can be carried forward to the 2007 tax year.

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A CASE STUDY

Non-Competition Agreement

The Tax Court has ruled that income derived from a non competition agreement does not change its character because the beneficiary tries to change it. The taxpayer in question negotiated a non-competition agreement with a

company. The company properly amortized the agreement over 15 years as that is what is required by the Internal Revenue Code and not the length of the agreement. The taxpayer on the other hand properly took his first payment as compensation. However, in a move of desperation, the taxpayer

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Not only does the Federal Government provide for incentives to purchase and install property such as this, many states have their own programs encouraging persons to make use of renewable energy. A website is maintained by the Database of State Incentives for Renewable Energy (DSIRE) at www.dsireusa.org which tracks state incentive programs. These state incentive programs can add up to substantially more than the federal incentive. However, be aware that expenditures paid for under these programs subtract from the incentives offered by the federal programs.

Solar Water Heating Property

This category includes equipment used in a dwelling unit to heat water. The equipment must be approved for use by the Solar Rating and Certification Company and half the energy used to heat the water must come from the sun (go to www.solar-rating.org for more details). These appliances will be labeled "OG 300 Certified".) At the site, there is a listing of the names and addresses of participating suppliers. Homemade systems are not eligible for the credit and the unit must be used in the principal residence.

Photovoltaic Property

The second category of solar equipment, photovoltaic, means electricity from light. Currently, the most common photovoltaic equipment used is modular solar panels. These panels are typically installed on roofs and blend in with shingles, not altering the appearance of the roof. Users of photovoltaics typically can harness 50 to 300 watts of power per module. When the modules are installed together, the entire system will supply 2000-2500 watts of power. Used wisely, these systems are capable of supplying power to an entire house or substantially supplement a house's energy needs.



Qualified Fuel Cell Property

A fuel cell is a battery type device which derives energy from a chemical reaction involving hydrogen and oxygen. Fuel cells are eligible for the credit if it produces .5 kilowatts (500 watts) of electricity and has "an electric only generation efficiency of 30% or greater". The property must be used and installed in a principal residence. Portable property does not appear to qualify for the credit. Though the property is difficult to locate, manufacturers of this equipment operate and the government is hoping proliferation of this alternative energy will become widespread. The credit for the fuel cell equipment is 30% of the cost of the property for a credit equal to \$500 for each .5 kilowatts of capacity purchased by the homeowner per year (2006 and 2007).

Conclusion

If you have ever been interested in purchasing energy efficient equipment or alternative energy property, tax incentives offered in 2006 and 2007 provide useful incentives to buy and install the property. The new tax incentives are available for individuals and businesses and are worth investigating. If you have any questions, please contact Marcus Renwick at The Center for Financial, Legal, and Tax Planning, Inc.

The Bradway Group—Palm Beach
824 US Highway 1, Suite 270
North Palm Beach, FL 33408

The Center For Financial, Legal & Tax Planning, Inc.
4501 W. DeYoung St., Suite 200
Marion, Illinois 62959

Attempted to change the character of the payment so it resembled a capital gain. The IRS saw the attempt and held the second payment and all payments thereafter as ordinary income.

Editor's Comment:

There are many ways of structuring a deal to reduce or plan away ordinary gains in a sale of a business. Often covenants not to compete are used for different reasons. As such, generally once the character of a transaction is determined, it is difficult of impossible to undo. Had the taxpayer in this situation allocated more of the sale to goodwill, his tax burden probably would have been less.

When structuring deals, be sure to be fully informed of the tax ramifications and plan them as accurately as possible. Unwinding or modifying a transaction once it is executed is difficult or impossible depending on the facts. With that said, be sure to employ competent tax advisors early on in the transaction.



**Avoiding Common Mistakes in M&A –
Waiting too long**

Selling a business you've spent most of your working life to build is one of the most important personal and financial decisions most business owners will ever make, and for that reason, it's important not to wait too long.

The best time to sell any business is when you don't need to – not when the owner's health, or other personal circumstances, or business pressures demand it. When the business is doing well, and has a string of successful years immediately behind it, with the promise of doing as well or better in the coming years, it will attract the most qualified buyers and bring the best price and terms. When it appears that the business is no longer growing and may be headed for a period of declining sales and profits, its selling price will be much lower.

From experience, we recommend that our selling clients begin the process 2-3 years before they believe they will really need to sell the business. While some businesses have sold in as short as six months, the average tends to be closer to a year, with some businesses requiring 2-3 years before finding the right buyer and the right deal. In addition, some business may benefit from making a few changes/improvements to their business to command the best price and terms and it may take from a few months to a year or more to implement those changes.

If you know of a business owner who's thinking of selling and who might benefit from a free consultation with us, have them contact me or any of the M&A professionals at www.bradwaygroup.com

Mike Ertel, CBI, M&AMI
The Bradway Group
813.299.7862 Direct

The Bradway Group—Tampa
1101 Channelside Drive, Suite 290
Tampa, FL 33602-3611

The Center for Financial, Legal & Tax Planning, Inc.
4501 W. DeYoung St., Suite 200
Marion, Illinois 62959

The Bradway Group—Palm Beach
824 US Highway 1, Suite 270
North Palm Beach, FL 33408
Phone: 561-776-8085
Fax: 561-776-1844

The Bradway Group—Tampa
1101 Channelside Drive, Suite 290
Tampa, FL 33602-3611
Phone: 813-864-6600
Fax: 813-864-6601

The Center for Financial, Legal & Tax Planning, Inc.
4501 W. DeYoung St., Suite 200
Marion, Illinois 62959
Phone: 618-997-3436
Fax: 618-997-8370

Satellite Office:
Longboat Key, FL 34228
Phone and Fax: 941-383-3338



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Frequently asked questions:



Q. What is my business worth?

A. Business owners frequently inquire as to whether a multiple, a percentage, or some magic formula exists in order to value their business. The fact is business values vary and a formula or multiple will not reveal an accurate value. When selling, it is best to have an expert appraisal done. Such an appraisal will take many tangible and intangible factors into account that a multiple or formula simply will not.

Q. I'm interested in selling my business. Are there any advantages to seller financing?

A. Yes, on average sellers receive more money for their business, earn interest, and can spread the income over a period of years to reduce taxes.

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