



Office of Audit

**Treasury
Inspector
General for Tax
Administration**



Recovery Act

**ASSESSMENT OF THE INTERNAL REVENUE
SERVICE'S INTERPRETATION OF SECTION
1302 OF THE RECOVERY ACT: QUALIFYING
ADVANCED ENERGY PROJECT CREDIT**

Issued on March 21, 2013

Highlights

Highlights of Report Number: 2013-40-029 to the Internal Revenue Service Commissioner for the Large Business and International Division.

IMPACT ON TAXPAYERS

Section 1302 of the American Recovery and Reinvestment Act of 2009 (the Recovery Act) established the Qualifying Advanced Energy Project Credit (Advanced Energy Credit). The Advanced Energy Credit was intended to encourage development of a manufacturing base to support renewable energy industries. The Recovery Act provided for \$2.3 billion in Advanced Energy Credits to be allocated to manufacturers for qualified projects.

WHY TIGTA DID THE AUDIT

This audit was initiated at the request of the Chairman, U.S. House of Representatives, Committee on Science, Space, and Technology, Subcommittee on Investigations and Oversight. The Subcommittee expressed concerns with the IRS's interpretation of Section 1302 of the Recovery Act and its program guidance, which set forth the criteria and process for considering and selecting companies to receive the Advanced Energy Credit.

WHAT TIGTA FOUND

Inconsistencies exist between issued guidance and the law. The inconsistencies between IRS Notice 2009-72 and Internal Revenue Code Section 48C criteria resulted from the IRS's efforts to: 1) simplify program guidance so it would be more easily understood by manufacturers and 2) ensure that the Credits were disbursed equitably among qualified applicants. However, the inconsistencies did not affect the IRS's compliance with the Code requirements when awarding the Advanced Energy Credit.

In addition, the IRS cited rule-making authority and the general language of the law as its basis to use additional selection criteria. Based on the lack of clarity in the law,

the IRS used its authority under Title 5 of the United States Code to interpret the law to mean the IRS must consider all of the criteria contained in the law but could include additional criteria as it deemed appropriate. The IRS, in conjunction with the Department of Energy, determined that the application of Program Policy Factors was appropriate and set forth the rules in IRS Notice 2009-72.

The Department of Energy noted that the Program Policy Factors were used to ensure that the \$2.3 billion in allocated Credits was disbursed across a range of project types, sizes, and locations among qualified applicants. The use of the Program Policy Factors affected which qualified projects the Department of Energy recommended to the IRS.

All Advanced Energy Credit awards made by the IRS were consistent with Department of Energy rankings and recommendations. The IRS's involvement in the ranking and review process was limited to verifying that manufacturers timely filed a complete application for certification with the IRS for each recommended energy project.

WHAT TIGTA RECOMMENDED

TIGTA made no recommendations.

READ THE FULL REPORT

To view the report, including the scope and methodology, go to:

<http://www.treas.gov/tigta/auditreports/2013reports/201340029fr.pdf>.