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Federal Circuit: Basis of assets for calculating “Section 1603 grants”

The U.S. Court of Appeals for the Federal Circuit today vacated and remanded a decision of the U.S. Court of Federal Claims concerning the taxpayers' applications for grants under Section 1603 of the “American Recovery and Reinvestment Act of 2009” (ARRA)—“Section 1603 grants.”

The Federal Circuit found that the lower court erred in not applying the residual method under Code section 1060 (under which the overall purchase price is allocated on a “waterfall basis” among several categories of assets—some being Section 1603 grant-eligible and some not), and that this may result “in a lower basis in eligible property” for calculating the Section 1603 grants.

The case is: *Alta Wind v. United States*, No. 2017-1410 et seq. (Fed. Cir. July 27, 2018). Read the Federal Circuit's [decision](#) [PDF 198 KB]

Summary

Section 1603 of the ARRA provided a cash grant for entities that placed in service certain renewable energy facilities, and the amount of the grant was determined using the basis of tangible personal property of the facility.

The taxpayers owned windfarms that were placed in service and applied for approximately \$703 million in Section 1603 grants. The government only granted approximately \$495 million, and the taxpayers filed suit in the U.S. Court of Federal Claims seeking about \$206 million in additional grant payments. The government counterclaimed, asserting it had overpaid \$59 million in grant funds.

The U.S. Court of Federal Claims found for the taxpayers, and approved their method of basis calculation and rejected the government's claim that basis must be calculated

using the residual method of section 1060 (the method that applies in an acquisition of a trade or business).

The Federal Circuit today vacated and remanded to the lower court, finding error in not applying the residual method and in excluding the testimony of a government expert witness as to the appropriate basis calculation. The Federal Circuit noted that goodwill and going concern value must be assessed in determining the taxpayers' assets eligible for Section 1603 grants, and that this may result in a lower basis in property eligible for the grants than as claimed by the taxpayers.

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