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Renewable Energy Tax Credit Alert

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Alta Wind trial order: What it means for eligible basis under Sections 48 and 48E

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The Court of Federal Claims selected a cost-based framework for allocating purchase price to eligible tangible property in acquired wind facilities under the 1603 Grant Program. It remains to be seen whether and how investors and insurance companies will apply its reasoning to determining eligible basis of facilities for tax credits under Sections 48 and 48E.



What's the impact?

- The Court of Federal Claims adopted a cost approach over the plaintiffs' discounted cash flow model for allocating purchase price to grant-eligible Class V tangible property under Section 1060.
- The plaintiffs cannot treat the anticipated cash grant as Class V tangible property after they failed to prove that it increased fair market value of the tangible assets rather than reflect separate intangible or residual value.
- Interest during construction and a \$100.5 million development fee both can be included in eligible basis, over the government's objection.
- Developer profit came from market appraisals, not a finance model. The court determined such profits to be 15% for Alta I and 20% for Alta II through VI.

Background

Readers who already know the procedural history can skip ahead to the court's reasoning on valuation.

On July 8, 2026, the Court of Federal Claims issued its Trial Order in *Alta Wind I Owner Lessor C, et al. v. United States*. It closes out a thirteen-year fight over how to value six wind facilities in California's Tehachapi region for a Section 1603 cash grant. Section 1603 shares its basis definition with the energy investment tax credits under Section 48 (ITCs), so this case, although about a grant program that no longer exists, likely will be cited in ITC and Section 48E basis disputes for years.

Section 1603 grants were a stimulus era substitute for the ITC at the time the tax equity markets were frozen. A taxpayer that placed specified energy property in service could get a cash payment from Treasury equal to 30% of the property's basis, calculated the same way basis is calculated for the ITC. Terra-Gen developed the Alta facilities but couldn't claim the grant itself because it had nonprofit equity holders, so it sold six of the facilities to the plaintiffs between 2010 and 2012. The plaintiffs placed each facility in service within weeks of buying it and applied for over \$703 million in grants.

Treasury awarded about \$495 million in grants, well short of the ask, and the plaintiffs sued for the shortfall. A 2016 trial before a different judge sided with the plaintiffs and awarded them roughly an additional \$207 million in grants. That trial court found that all the value above construction cost belonged to the tangible assets, with nothing left over for goodwill or going concern, so it saw no need to run a Section 1060 allocation at all.

The government appealed, and in 2018 the Federal Circuit vacated that judgment and sent the case back for retrial. The appellate court did not require proof that actual goodwill existed. Three things were enough to trigger Section 1060's residual method regardless of what the final numbers turned out to be: intangible assets in the deal, a purchase price above the assets' book value, and related agreements like leases and licenses. All three were present here, so the excess purchase price had to be allocated across Section 1060's asset classes rather than assumed to belong entirely to tangible property.

The case was reassigned to a new judge in 2019. In 2022, plaintiffs moved for partial summary judgment, arguing the anticipated cash grant's value had to be included in tangible basis as a matter of law. The court denied that motion in 2023, calling the plaintiffs' theory that the grant gets folded back into the basis used to calculate the grant illogical on its own terms. That ruling did not decide which valuation method controlled, only that the plaintiffs could not win the cash grant question without a trial. Heading into this retrial, plaintiffs asked for another \$191 million to \$206 million, and the government countered that Treasury had actually overpaid by about \$58.9 million.

The Order should be read in light of the Federal Circuit's remand. The court was not asked to determine the enterprise value of the Alta projects generally or whether a DCF model is an appropriate way to price a renewable energy business. The question was narrower: under Section 1060's residual method, how much of the purchase price was allocable to Class V tangible property eligible for the Section 1603 grant, including any turn-key value, and how much was allocable to Class VI intangibles or Class VII goodwill and going concern value.

The court did not hold that DCF is categorically unavailable in a Section 1060 allocation. To the contrary, it allowed the plaintiffs to present DCF evidence and stated that discounted cash flow is not inherently defective for Section 1060 valuations. DCF used in this context must isolate the fair market value of eligible tangible assets from the value of PPAs, transmission rights, development

rights, tax benefits, goodwill, and other intangibles. In this case, the court found that plaintiffs' DCF analysis did not do that.

Why the income approach failed

The court didn't hold that DCF is off limits for Section 1060 valuations generally. It rejected this DCF, on this record, and the record problem centered on how the plaintiffs treated the anticipated cash grant. Two failures did the damage: the plaintiffs didn't establish that the cash grant qualifies as tangible property rather than an intangible right and they couldn't establish that the anticipated grant actually increased the fair market value of the tangible property. If the grant isn't tangible property and doesn't increase the value of the tangible property, there's no basis for treating it as part of that property's eligible basis.

There is a circularity problem underneath that too. The 1603 grant equals 30% of the tangible property's basis, so using the anticipated grant to help set that basis produces a bigger basis, which produces a bigger grant, which raises the basis again. The plaintiffs built ninety-eight percent of their anticipated grant into the assets their model was supposed to be valuing, and the court was not willing to let that circular logic stand in for proof of what those assets were actually worth.

The evidence didn't help them either. Falling turbine prices during the relevant period cut against any argument that the grant program was pushing up equipment value. The plaintiffs' own California change-in-ownership filings had described the cash grant as a separate sum tied to revenue unrelated to project operations, which undercut their trial position. And they never separately quantified turn-key value in their model, so they couldn't show the grant was part of turn-key value even if it should have counted for something. The court also looked at the discount rate they used to try to strip intangible value out of the model. It didn't say that technique is legally impossible. It found the cash grant problem fatal regardless.

Cost approach adopted, with important modifications

The government's expert used a cost approach based on the cost to reproduce the grant-eligible assets, plus developer profit. The court found this more suitable for four reasons: (i) it better reflected the fair market value of reproducible tangible assets like turbines, (ii) it separated tangible assets from intangibles more cleanly under Section 1060, (iii) it avoided the unsupported cash-grant feedback loop baked into the plaintiffs' DCF, and (iv) it lined up with what the Federal Circuit had ordered on remand.

The court didn't take the government's version wholesale. It modified it twice, both times in the plaintiffs' favor.

Interest during construction: the government wanted it excluded as a form of developer return. The court rejected that outright and treated it as a genuine construction cost, one that KPMG had already sorted in its cost segregation study, the kind of study that separates costs like turbine equipment, generally eligible, from costs like site clearing and perimeter fencing, generally not.

The fee traces back to a joint development company Oak Creek had formed with Allco years before Terra-Gen entered the picture. When Terra-Gen acquired Allco's stake in 2008 and decided to develop the Alta facilities itself rather than continue the joint venture, it inherited the obligation to pay Oak Creek's share of the fee and treated that payment as part of its own transaction costs.

The Oak Creek Development Fee, worth \$100.5 million, had the same objection from the government and the same result. The court's reasoning rests on three findings: the Fee is a cost related to development and construction of the Alta facilities, KPMG allocated it across eligible and ineligible assets, and it doesn't comprise developer profit. On that basis, the court held the Fee "should be included in calculating the fair market value of the Class V assets."

KPMG's allocation was not a round number. Depending on the facility's specific cost segregation report, it ranged from about 96% to 97% of the fee going into eligible basis. That precision may have helped its credibility. This court showed little patience elsewhere in the Order for figures that landed suspiciously close to 100%.

Development Rights didn't fare as well. The plaintiffs wanted that category capitalized into tangible basis too, but they failed to prove what all Development Rights consisted of or how or why this should be allocated to eligible property. The court excluded the whole category.

Developer profit

The government's expert calculated developer profit with a capital asset pricing model (CAPM) and landed on 9%. The court disagreed, finding that the expert "effectively calculated a discount rate but ineffectively calculated developer profits." The government's expert did not survey actual developers or perform any market analysis, and he previously testified in deposition that he wasn't aware of anyone using CAPM for this purpose, only to contradict himself at trial.

The court turned instead to appraisals from DAI, a third-party appraiser Terra-Gen had retained, which had studied actual wind farm transactions. In the court's words, "because DAI calculated developer profit ranges which reflected the windfarm market and Citibank agreed were indicative of fair market value, the Court finds DAI's developer profit values more persuasive than [the government expert]'s CAPM model."

The numbers split by facility: DAI found a range of 15% to 30% for Alta II through V and a flat 20% for Alta VI. The plaintiffs had asked for 20% across the board, and that number sits inside DAI's

range for Alta II through V, so the court set developer profit at 20% for Alta II through VI. Alta I was different. DAI's range there was only 10% to 15%, below what the plaintiffs wanted, so the court held that "the Alta I DAI Appraisal supports developer profits of fifteen percent for Alta I," taking the top of DAI's range instead of the plaintiffs' number. If your appraisal doesn't tie developer profit to actual transactions for the facility type and vintage at issue, expect the same challenge on audit.

Turn-key premium rejected

Turn-key value is a term of art. It is the incremental amount a buyer will pay for the assurance that plant and equipment will work together without costly delays or coordination problems, on top of what the individual pieces cost separately.

The court also refused to layer a separate turn-key value premium on top of the cost-plus-developer-profit number. Turn-key value, it found, was already reflected in the costs paid under the turbine supply and balance-of-plant contracts. Terra-Gen had contracted for completed, integrated, operational facilities, and its contractors bore real turn-key risk through testing, commissioning, warranty, and liquidated damages provisions. If you want to argue for turn-key value beyond that, you need evidence the premium isn't already sitting inside those contract costs.

The court was direct about double counting too. A contractor and a sponsor cannot both add a turn-key premium for the same risk. If a construction contract already prices in commissioning and integration risk, a second markup for the same thing later in the deal will not survive scrutiny.

What happens next

The court didn't set a final dollar figure. It ordered a joint status report by July 31, 2026, applying six steps: start with the KPMG cost segregation reports, exclude development rights, include interest during construction and the Oak Creek development fee, apply the KPMG grant eligibility ratios, skip any independent turn-key premium, and apply 15% developer profit for Alta I and 20% for the rest. Judgment follows after that report is filed. Alta Wind VIII, a related case which stayed pending this trial, now has 30 days from entry of judgment here to file its own status report.

None of this is final. The parties still have to agree on the dollar figure the formula produces, and either side can appeal again once judgment enters. Eight years passed between the Federal Circuit's 2018 remand alone and this Order, longer than some of the wind turbines at issue have been spinning. Indemnities and insurance payouts tied to grant shortfalls often do not pay out until appeals are exhausted, so parties still carrying Alta Wind exposure on their books may be waiting a while longer. Extended timelines like this are not unique to renewable energy tax

disputes, and it is fair to ask whether the risk of a decade-plus resolution is being priced into tax equity deals at all.

Why this matters for current deals

Section 1603 basis and ITC basis are closely linked, which is why this Order may matter for Section 48 and Section 48E transactions. Note, however, that the Court of Federal Claims was applying Section 1060 to allocate purchase price in an applicable asset acquisition, and the Order should not be read as the establishment of a universal rule that cost approach always controls, or that DCF can never be used.

When a taxpayer relies on purchase price or project-level economics to support eligible basis, it must prove that value is properly allocable to eligible tangible property. Even though the credit's or grant's value may be real, and it may affect what a buyer is willing to pay, the court made clear that impact alone does not automatically make the value eligible basis for the credit.

DCF is not dead after this Order, but it needs a second step most models skip. An appraiser can build a DCF that captures overall project value, then must show separately that the value above construction cost belongs to the tangible assets rather than to PPAs, transmission rights, or other intangibles. We have asked appraisers to show that PPA revenue and other intangible income streams are priced at market. This Order asks for the mirror image of that analysis on the tangible side, and that second step is the one plaintiffs here skipped.

Expect the fight over development fees versus developer profit to continue. After the Federal Circuit's 2020 decision in *California Ridge Wind Energy LLC v. United States*, which rejected a \$50 million related-party development fee as unsubstantiated, the market leaned toward profit percentages tied to actual transaction data instead of bespoke development fee agreements. This Order reinforces that shift by crediting DAI's market-based appraisals over a model-derived discount rate. California Ridge came out of the same court of appeals that would hear an Alta Wind appeal, so an unsubstantiated related-party development fee still carries real risk, while a profit percentage tied to comparable transactions has now cleared that court twice.

This court did its homework. Beyond weighing competing experts, it went back through years of California property tax filings and cost segregation studies looking for inconsistencies and found them. A statement made years earlier for an entirely different purpose can resurface at trial, so basis positions need to be consistent across every filing a project makes, not just the ones prepared for the credit or grant application.

The court's treatment of interest during construction should reassure taxpayers, though it comes as the IRS has been pushing back on construction period interest in other tax equity disputes. The authority for including it in basis is well established, and this Order adds to it. Insurance underwriters are taking an increasingly active role in these deals, and it remains to be seen

whether they extend any deference to the 15% and 20% developer profit figures approved here or insist on their own diligence regardless of what this court decided.

Read as a whole, this Order is friendlier to taxpayers than the headline holding against the plaintiffs' DCF model suggests. The court preserved developer profit of 15% to 20%, the full \$100.5 million development fee, and a cost segregation study that put 96% to 97% of costs into eligible basis, all over the government's objection. It did not reject DCF either, just this DCF, on this record. Whether investors and insurers treat any of this as a template or wait for the joint status report before adjusting how they underwrite these deals should become clearer over the next several months.

Nixon Peabody's Renewable Energy Finance Team helps clients navigate renewable energy tax credit transactions, eligible basis issues, and evolving guidance under Sections 48 and 48E. We bring practical deal experience and tax credit insight to help structure, diligence, and defend clean energy investments.

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