

COURT OF FEDERAL CLAIMS ISSUES DECISION IN ALTA WIND

COST APPROACH USED TO DETERMINE ELIGIBLE BASIS FOR RENEWABLE ENERGY TAX CREDITS

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EXECUTIVE SUMMARY

On 8 July 2026, the United States Court of Federal Claims issued its long-awaited post-trial decision in *Alta Wind / Owner Lessor C v. United States* (Alta Wind), the latest chapter in a 13-year saga over the calculation of eligible basis for cash grants under Section 1603 of the American Recovery and Reinvestment Act of 2009 (ARRA). The court rejected the taxpayers' use of a discounted cash flow (DCF) approach under the specific facts of the case and adopted the government's cost approach to determining the fair market value of the project for purposes of determining eligible basis, holding that, in the case at hand, the fair market value of the grant-eligible tangible assets must be measured by reproduction costs, rather than projected income streams. Because the rules for determining tax basis under the Section 1603 grant program are the same rules that govern the investment tax credit (ITC) under Section 48 and 48E of the Internal Revenue Code (IRC), this decision has direct and significant implications for current renewable energy transactions, particularly those structured as purchases of operating or near-completion projects.

BACKGROUND

The Alta Wind litigation dates to 2013, when the owners of six California wind farms sued the Treasury Department for underpayment of Section 1603 cash grants. Terra-Gen Power LLC, which developed and constructed the Alta facilities, had sold the completed facilities to grant-eligible buyers between 2010 and 2012. Terra-Gen's sale prices substantially exceeded its own out-of-pocket construction costs, in part because the prices reflected the anticipated value of the cash grants that the buyers would be entitled to claim. The buyers applied for over US\$703 million in Section 1603 grants using the full unallocated purchase price as eligible basis. Treasury awarded approximately US\$495 million, allocating a portion of the purchase price to intangible assets ineligible for the grant, and the taxpayers filed suit in 2013 seeking over US\$206 million in additional grants, the difference between the grants they received and the grants they believed they were owed.

After the Court of Federal Claims initially ruled for the taxpayers in 2016, the Federal Circuit reversed in 2018, holding that a specific purchase price allocation methodology applied to the determination of eligible basis, requiring the purchase price to be allocated among several categories of assets. The Federal Circuit remanded

for a factual determination of how to distinguish eligible tangible assets, such as turbines, transformers, wiring, and other physical project components (including the premium paid for a completed, operational facility, known as turn-key value), from ineligible intangible assets (such as goodwill and going concern value), and the Court of Federal Claims issued its updated ruling on 8 July 2026.

KEY HOLDINGS

The Anticipated Value of the Cash Grant Cannot Be Included in Eligible Basis

The court's most consequential holding is that the anticipated value of Section 1603 cash grants is not allocable to eligible tangible assets and therefore cannot inflate eligible basis. The taxpayers argued that, because the cash grant is a cash flow generated by ownership of the eligible assets, it should increase the fair market value of those assets under a DCF methodology. The court rejected this argument on multiple grounds.

First, the court found that the taxpayers failed to present market evidence that the introduction of the cash grant program actually increased the market price of grant-eligible tangible assets. Second, the court determined that including the anticipated grant in the basis used to calculate that same grant is circular and contrary to the plain meaning of Section 1603. Third, the taxpayers' own California change-of-ownership filings described the amount paid for the cash grant as "a discrete sum paid for revenue unrelated to the operations" of the wind facilities, which the court viewed as an implicit acknowledgement that the grant did not relate to eligible assets. Fourth, the court noted that a cash grant, as a "right granted by a governmental unit," constitutes an ineligible intangible asset, not an eligible tangible asset.

The Cost Approach Governs; Although DCF Is Not Inherently Prohibited

The court selected the government's cost approach over the taxpayers' DCF methodology to determine the fair market value of eligible property, but it carefully limited its holding, noting that the DCF approach is not categorically prohibited under the applicable purchase price allocation rules. The problem with the use of the DCF approach in this case, the court found, was that the taxpayers' DCF model was premised on including the cash grant as a revenue stream attributable to the eligible assets, an approach that the court rejected. Without the cash grant in the model, the taxpayers' own analysis showed their DCF valuations would be significantly lower, undermining the strength of the DCF approach on these facts. The court found the government's proposed cost approach more reliable in this case, because it directly valued the reproducible tangible assets rather than projecting integrated business cash flows. However, in doing so, the court modified the government's proposed cost approach to include US\$48.1 million of interest during construction and a US\$100.5 million development fee incurred in the development and construction of the Alta facilities.

No Independent Turn-Key Premium; Developer Profit Percentages of 15–20%

In addition, the court declined to allow the taxpayers to include in eligible basis an independent turn-key premium above the costs in the cost segregation report, finding that agreements with contractors already reflected turn-key value, because the contractors bore the turn-key risks, not the developer. Specifically, the relevant contracts required the contractors to deliver fully integrated and operational facilities, backed up with performance warranties and liquidated damages provisions that were on the higher end of industry standard. Turn-key risk, therefore, attached to the contractor and not the developer, because the contractors' contractual assumption of

the turn-key risk had economic substance. Practitioners should note this is a highly fact-specific finding: in other cases where a developer economically bears residual turn-key risk, they may still be entitled to an independent turn-key premium.

On developer profit, the court rejected the government's approach of using the Capital Asset Pricing Model (CAPM), a model that derives the value of an asset by valuing future income streams, as a proxy for developer profit, finding the methodology unsupported by market evidence. The court instead adopted the developer profit percentages from a consultant's contemporaneous appraisal reports, which were based on seven comparable wind transactions from 2008–2010, directing: (i) 15% developer profit for Alta I; and (ii) 20% developer profit for Alta II through VI.

Development Rights Excluded for Lack of Evidentiary Support

Finally, the court excluded US\$157 million in “development rights” from eligible basis, even though these rights could in principle be capitalized into eligible tangible property under IRC Section 263A. Including these rights in basis requires a rigorous, component-by-component analysis showing that each constituent cost was an indirect cost properly allocable to eligible tangible construction, and the court found that the taxpayers never did a satisfactory analysis, instead offering only vague categorical descriptions (wind data, permitting work, and other development milestone achievements) without identifying or separately valuing each component. This lack of precision made it impossible for the court to conduct the required Section 263A analysis. In other words, not only was the taxpayers' documentation inadequate, they failed to perform the substantive analytical work that Section 263A demands.

MARKET IMPACT AND PRACTICAL IMPLICATIONS

This decision will reverberate across the market for purchased renewable energy projects, and market participants should be aware of three practical implications.

First, in ITC project acquisitions with a substantial step-up over developer costs, cost segregation analyses are likely to face heightened scrutiny and the allocation of purchase price between eligible tangible assets and ineligible intangible assets will become a more contentious issue. Tax credit insurers have been scrutinizing these step-ups in a manner that suggests a developer fee or other premium of approximately 20–25% over hard costs is generally defensible, and the court's ruling indicates that this should be viewed as within an acceptable range. Purchasers of ITC projects and tax credits need to document the components of any step-up with the same rigor the court applied here: general categories are insufficient, and constituent costs must be identified and individually analyzed under the applicable basis capitalization rules.

Second, the DCF approach to valuing ITC eligible property, although not dead, is likely to be significantly constrained going forward. The court was careful to frame its rejection of the taxpayers' DCF as specific to their model, which increased the value of the project based on anticipated cash grants, and could not survive scrutiny without that input. A well-constructed valuation model that does not take into account cash flows attributable to a cash grant or credit in the basis calculation remains theoretically available, but practitioners should be prepared for IRS pushback where the valuation model produces values materially above reproduction costs. The evidentiary burden to support any such valuation will be high, and the model must be able to withstand scrutiny when cash flows attributable to the credit are removed.

Third, and relatedly, developers who seek to use project-level cash flows to reflect the full fair market value of the eligible assets will likely face more scrutiny in light of *Alta Wind*. The court indicated that project cash flows attributable to the entire integrated enterprise, including intangibles like PPAs, transmission rights, and regulatory approvals, cannot be cleanly attributed to eligible tangible assets without robust empirical evidence that such cash flows actually increased the market price of those specific tangible assets, rather than the project as a whole. That evidence did not exist in *Alta Wind* (in fact, turbine prices declined during the relevant period), and it will be difficult to provide this type of robust evidence in most transactions.

LOOKING AHEAD

While *Alta Wind* represents a major victory for the IRS, a Federal Circuit appeal remains possible, which could once again reframe the rules. In the meantime, taxpayers and their advisors can take the following steps to limit their risk of the type of IRS challenge faced by the taxpayer in *Alta Wind*:

- Review existing cost segregation analyses for purchased projects to assess how the purchase price step-up has been allocated between eligible tangible assets and ineligible intangible assets, and whether that allocation is supported by adequate documentation.
- For transactions in progress, ensure that the ITC basis analysis does not rely on the ITC itself as a revenue driver supporting a higher eligible basis, and that any DCF approach valuation can be defended independently of the credit.
- Document development cost components with specificity, not just with aggregate categories like “development rights” or “developer fee,” so that each component can be analyzed individually under Section 263A for potential inclusion in eligible basis.
- Be prepared for the IRS to seek to extend the *Alta Wind* framework to Section 48 and 48E ITC basis disputes through the audit process.

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