

Client Alert

June 2015

Section 1603 Grants: File Suit Now for 2009 and 2010 Applications

Applicants under the Section 1603 grant program whose awards have been reduced or disallowed by Treasury are entitled to file suit in the US Court of Federal Claims under the Tucker Act, 28 U.S.C. § 1491. See *ARRA Energy Co. v. United States*, 97 Fed. Cl. 12 (2011). Roughly 20 cases have been filed since the Court of Federal Claims “opened its doors” to such suits in 2011. Affected applicants who believe their grants have erroneously been reduced and have not filed suit can still do so. However, they need to be aware of the time limit under the statute of limitations for filing such suits.

While the Tucker Act provides a generous six-year statute of limitations, applicants need to consider when this statute of limitations begins. A suit must be filed within six years after the claim first accrues. 28 U.S.C. § 2501. A claim first accrues when all the events have occurred that fix the alleged liability of the government and entitle the claimant to institute an action. See *Ingrum v. United States*, 560 F.3d 1311 (Fed. Cir. 2009). While the Treasury award date may be the most logical point of accrual in most cases, the Court of Federal Claims has not had occasion to decide when a Section 1603 claim first accrues.

It is important that affected applicants carefully consider the statute of limitations issue and not “foot fault” by waiting too long to file suit in the Court of Federal Claims. We are fast approaching the six-year anniversary of the Section 1603 grant program—Treasury started accepting applications on July 31, 2009. Thus, applicants who received a reduced or disallowed award in the 2009-2010 timeframe that they believe was erroneous should be considering filing suit in short order.

The tax controversy team at Hunton & Williams LLP consists of a cross-practice group with significant experience in energy tax credits and Section 1603 Treasury Grants, tax controversy and litigation. The tax controversy team handled the first Section 1603 Treasury Grant case to go to a full trial in the Court of Federal Claims, resulting in a decision in favor of the applicant, and currently is handling other Treasury Grant cases in the Court of Federal Claims. Hunton & Williams LLP is well positioned to assist Treasury Grant applicants in resolving disputes with Treasury. Please contact us if you require assistance with Treasury’s denial or reduction of Section 1603 grant amounts.

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