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The Knight Watch

Alta Wind and the Anatomy of a Tax Refund Case: Lessons in Evidence, Valuation, and Controversy Strategy

By James P. Dawson and Leif Anderson

I. Introduction

The U.S. Court of Federal Claims has issued a post-remand trial order in *Alta Wind I Owner Lessor C*,[1] a case involving a more than decade-long dispute over the value of wind energy facilities. The decision dealt with fundamental questions about how to properly value such energy property and the evidentiary burdens facing taxpayers who sought cash grants under Section 1603 of the American Recovery and Reinvestment Act ("ARRA") of 2009 ("Section 1603"). For tax controversy practitioners, the case is a tale about the importance of developing the factual record in valuation disputes.

The central issue in *Alta Wind* was the proper valuation of a group of wind energy facilities purchased by the taxpayers for purposes of claiming Section 1603 grants, a temporary cash grant program established in 2009 that incentivized investment in renewable energy property and was available in lieu of federal energy tax credits. After the Court of Federal Claims initially decided the case in favor of the plaintiffs, the U.S. Court of Appeals for the Federal Circuit vacated that decision, holding that the trial court erred by not applying the residual method of Code Sec. 1060[2] and not adequately segregating tangible assets eligible for the Section 1603 grants from intangible assets ineligible for the grants.[3] The Federal Circuit remanded the case to the Court of Federal Claims to determine the proper allocation of the purchase price among various tangible and intangible asset classes set forth in Reg. §1.338-6.[4]

The Court of Federal Claims conducted an 11-day retrial, in which plaintiffs supported their valuation of the grant-eligible tangible assets through presentation of a discounted cash flow ("DCF") analysis.[5] The Court of Federal Claims' July 8, 2026, order ultimately applied a cost approach to valuing the assets, determining, in relevant part, that it "more appropriated reflect[ed] the fair market value of the eligible assets" and "distinguishe[d] assets between the Code Sec. 1060 classes."[6] Importantly, the court's trial order noted that the use of a DCF method for Code Sec. 1060 purposes "is not inherently defective," but rather pointed out that plaintiffs did not produce sufficient evidence to show that its use of the

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DCF method properly valued the grant-eligible tangible assets.[7] Namely, the order was careful to state that plaintiffs "did not adduce sufficient evidence to establish the fair market value ... includes ninety-eight percent of the value of the [anticipated] cash grant," as plaintiffs' DCF analysis showed.[8] Therefore, the court left open the possibility that a DCF method in some circumstances is an appropriate way to value energy property.

The significance of the Court of Federal Claims' order extends well beyond the wind energy facilities at issue. For purposes of future renewable energy valuation controversies, the order offers valuable insights into asset allocations under Code Sec. 1060, the Uniform Capitalization Rules ("UNICAP"), the evidentiary weight accorded to cost-segregation studies and expert witnesses, and the burdens of proof facing taxpayers. These issues arise in virtually every tax controversy where taxpayers must distinguish between tangible assets eligible for depreciation, grants, or credits, and intangible assets that may not qualify for the same favorable treatment. Notably, for purposes of this article, the Court of Federal Claims' order is a reminder to tax practitioners that persuasive valuations are backed by proper factual evidence supporting their conclusions.

II. The *Alta Wind* Decision

A. The ARRA Section 1603 Cash Grants

Although potentially applicable to a wide array of tax valuation disputes, the *Alta Wind* decision focused on the value of cash grants awarded to plaintiffs that purchased wind energy facilities under ARRA Section 1603. Congress enacted ARRA Section 1603 as an incentive for renewable energy investment following the 2008 financial crisis.[9] It provided a cash grant equal to 30% of the basis of various types of energy property, including certain wind facilities.[10] The statute defined property eligible for the grants by reference to Code Secs. 45(d) and 48(a)(5)(D),[11] limiting the grant to tangible property (and consequently excluding intangible property not properly capitalized into the cost of tangible property), thus setting up for the key dispute in the *Alta Wind* remand: the proper allocation of purchase price between tangible and intangible property classes.

B. The Alta Wind Facilities

The *Alta Wind* case involved six wind energy facilities located in California. Terra-Gen Power LLC ("Terra-Gen") acquired the U.S. wind energy business of a third-party developer in 2008.[12] Thereafter, Terra-Gen completed construction of the facilities and secured power purchase agreements ("PPAs") with a local utility company.[13] Because Terra-Gen had tax-exempt owners, it was ineligible for Section 1603 grants.[14] Therefore, Terra-Gen sold the facilities to the plaintiffs between 2010 and 2012.[15]

After purchasing the wind energy facilities from Terra-Gen, plaintiffs applied for approximately $703 million in Section 1603 cash grants using an "unallocated" basis method, essentially arguing that the value of the properties was the full price for which they paid Terra-Gen as well as the value of the anticipated cash grants.[16] Treasury rejected that methodology and awarded a grant of approximately $495 million based on grant-eligible construction and development costs reflected in cost segregation reports prepared for the projects.[17] Plaintiffs sued the federal government in 2013 seeking a refund for the difference between the value of the grants the plaintiffs applied for and the value of the grants awarded by Treasury.[18] The government counterclaimed for an alleged overpayment of approximately $58.9 million.[19]

C. Tangible or Intangible

1. Why Characterization Mattered

The practical stakes of the tangible-*versus*-intangible characterization in *Alta Wind* were substantial given the size of the Section 1603 grants at issue. Every dollar assigned to tangible assets increased the value of the Section 1603 grants by thirty cents. Plaintiffs contended that virtually the entire purchase prices of the wind facilities were allocable to a certain class of tangible property. The government argued that a substantial portion of the purchase price reflected intangibles, particularly development rights and the going-concern premium of an operating business with contractual revenue streams.

The characterization of value as tangible or intangible also impacted the proper amount of depreciation. Tangible property placed in service for use in a trade or business is generally depreciable under Code Sec. 168.[20] And wind energy property, specifically, qualifies for accelerated cost recovery and, in some cases, bonus depreciation.[21] By contrast, intangible assets classified as Code Sec. 197 intangibles must generally be amortized ratably over 15 years.[22] The characterization dispute thus affected the overall economics of the transactions at issue.

2. The Seven-Class Residual Method Applied by the Court

For purposes of determining the basis of certain assets acquired for use in a trade or business, Code Sec. 1060 requires allocating the purchase price among seven classes of assets using the residual method.[23] The Federal Circuit's 2018 remand decision established that this framework governed the transactions at issue in *Alta Wind*; therefore,

the purchase prices of the Alta Wind facilities were subject to allocation among the classes for purposes of determining the value of their cash grants. Of the seven classes set forth in Reg. §1.338-6, only three classes were at issue in *Alta Wind*: one class of tangible property and two classes of intangibles.[24]

3. Turn-Key Value: Tangible, Not Intangible

The distinction between turn-key value and goodwill was legally and economically significant in *Alta Wind*. A critical part of the Federal Circuit's 2018 decision was that "turn-key value," which it defined as the incremental value attributable to individual tangible assets that are "assembled, installed, integrated, tested, coordinated, and in operating order," is "part of the tangible assets in a transaction."[25] The Federal Circuit instructed the trial court on remand to "distinguish between turn-key value and goodwill and other intangibles" to arrive at the proper amount of cash grants.[26]

4. Code Sec. 263A: Direct and Indirect Costs

The proper classification and capitalization of costs under UNICAP also became a central issue in *Alta Wind* as plaintiffs relied on it to support that certain amounts should be allocated to tangible assets.

III. The Court's Key Decisions

A. Burden of Proof Applied by the Court of Federal Claims

The court applied the *de novo* standard governing tax refund suits, with plaintiffs bearing the burden of proof on each element of their claim by a preponderance of evidence.[27] Namely, to establish their basis in the wind facilities for purposes of determining the value of the cash grants, the court required that plaintiffs demonstrate value "to a reasonable degree of certainty" and present evidence for a "reasonable or rational approximation."[28] The court emphasized that it had "no discretion to make a finding of the value of an asset where there is no evidence to support it."[29]

B. Allocation of Purchase Price to Tangible and Intangible Assets

As previously explained, the key issue of the remanded trial was determining the portion of the purchase price allocable to tangible property. Plaintiffs presented a DCF methodology to support their allocation of nearly all of the purchase price to tangible assets (which would entitle them to cash grants). The DCF methodology advanced by plaintiffs' expert treated the Section 1603 cash grant as a cash inflow in valuing the tangible assets.[30] The expert applied a "development-stage" discount rate and an "eligibility ratio" derived from cost segregation reports that were in the record.[31] The DCF allocated nearly all of the anticipated cash grant's value to Class V tangible assets.[32] Plaintiffs argued this approach was supported by precedent for incorporating tax benefits into DCF valuations.[33]

The government advanced a reproduction cost methodology, using the cost segregation reports as the starting point for determining the cost of the wind facilities.[34] The government argued that the market prices for equipment do not rise merely because a buyer anticipates income or tax benefits, absent evidence of actual market-wide price effects.[35] Further, the government argued that plaintiffs' methodology was circular—*i.e.*, using the anticipated value of the cash grant to determine the value of that same grant impermissibly inflates the cash grants.[36]

The Court of Federal Claims ultimately applied a more generous cost approach than advanced by the government, including interest during construction and development fees among the costs allocable to tangible assets (and therefore grant eligible).[37] These two cost categories, and development rights which the court excluded from grant eligibility, generated the most significant dispute during remand.

1. Development Rights: The Costs that Fell Short

The single largest contested category of costs on remand was approximately $157 million in development rights spread across the six wind facilities. Plaintiffs argued that these so-called development rights included generally three categories of costs: wind data, permitting work, and other development milestone achievements.[38]

Plaintiffs supported their position that the development rights were grant-eligible with case law holding that preconstruction expenditures are capitalizable into tangible assets under UNICAP and, therefore, should be allocated to tangible assets for Section 1603 grant purposes.[39] For example, plaintiffs also pointed to *Corbin West*, a Tax Court memorandum opinion holding that certain environmental report costs were capitalized as incident to the production of real property.[40]

The court held that plaintiffs failed to carry their burden of proof regarding development rights. Specifically, the court determined that plaintiffs had not produced sufficient evidence to establish that all costs included in development rights would be capitalizable under UNICAP.[41] The court also stated that permitting work and development milestone achievements, which were costs articulated by plaintiffs as comprising part of development rights, were "too vague," preventing the court from

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determining what such costs related to.[42] Finally, the court explained that plaintiffs failed to explain what portion of the approximately $157 million in development rights were attributable to each of wind data, permitting work, and development milestone achievements.[43]

Therefore, it is apparent from the court's conclusion that the primary problem facing plaintiffs was a lack of sufficient factual support that development rights costs were allocable to tangible assets.

2. Interest During Construction: A Return to the Lender

Interest during construction ("IDC") of $48.1 million presented a conceptually cleaner dispute. The government's expert excluded IDC from a reproduction-cost model on the theory that it constituted a form of "developer profit."[44] The court rejected the government's characterization of IDC, holding that IDC was a cost properly allocable to tangible assets. The court pointed to evidence in the record that IDC was allocable to tangible assets and explained that UNICAP's rules for capitalizing interest (found at Code Sec. 263A(f)) corroborated the factual findings.[45]

3. Development Fees: A Contractual Cost, Not Profit

The other disputed category discussed in this case is approximately $100 of development fees that the court ultimately allowed.

Likely key to plaintiffs' success on this issue, the court found that plaintiffs "adduced extensive evidence and testimony to describe the precise assets and rights" acquired with the development fee.[46] It also found that the fee was sufficiently allocated to "eligible and ineligible asset."[47] The court also disagreed with the government's characterization of the fees as developer profits, finding instead that they represented actual, out-of-pocket contractual costs tied to specific development milestones.[48] As a result, the court included the development fee in Class V tangible assets, therefore making it grant eligible.

IV. Evidentiary Lessons and Practitioner Takeaways

The *Alta Wind* decision is an important lesson in the importance of developing a strong evidentiary record in valuation disputes. Those costs that were adequately supported with evidence were generally permitted, while those that lacked support were not. And notably, the Court of Federal Claims made sure to note that a DCF methodology was "not inherently defective," leaving open the possibility that it is a viable option for valuing energy priority if adequately supported by evidentiary support.[49]

Practitioners can learn the following lessons from *Alta Wind*.

Itemize and quantify cost categories. As previously explained, plaintiffs sought to capitalize approximately $157 million in development rights. The court determined those development rights should be excluded from grant eligibility in part because they were not sufficiently allocated across the specific cost categories articulated by plaintiffs: wind data, permitting work, and development milestone achievements.

Practitioners advising clients on capital-intensive projects should request detailed, itemized cost-tracking systems from the earliest stages of development, before any dispute arises. Presenting a single aggregate figure may not carry a taxpayer's burden to establish proper value without more detailed evidence of what those costs are for.

Finalize third-party reports. The principal documentary support for capitalizing development rights was a draft memorandum. A draft document is a weaker foundation for meeting a preponderance-of-the-evidence standard, particularly when large dollar amounts are at stake. Practitioners should seek to ensure that all reports, memoranda, and analyses supporting significant tax positions are finalized, free of unsupportable qualifying assumptions, and are signed by the preparing professional.

Methodologies must be based on empirical evidence. Plaintiffs' DCF model allocated over 98% of the anticipated Section 1603 cash grant value to Class V tangible assets. The court found this approach unsupported by the record. Practitioners selecting valuation methodologies should seek to ensure that their chosen approach is supported by evidence, which may include market transactions, comparable sales, and price-effect studies that a court can rely upon to make findings of fact, not solely theoretical financial modeling.

Present multiple valuation methodologies. The *Alta Wind* court adopted its own modified cost approach to valuation. Courts in complex valuation disputes frequently chart a middle course between the parties' selected valuation methods. Practitioners who over-rely on a single methodology risk having it rejected entirely, leaving the opposing party's framework as the starting point. A prudent approach presents corroborating evidence from multiple methodologies while identifying a primary approach.

Support developer profit and turn-key value with market data. Markups for developer profit and turn-key value should be grounded in observable market data, not just financial models. A weighted average cost of capital is a discount rate, not a developer-profit margin; the two

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concepts serve different purposes and should not be conflated. Practitioners presenting cost-approach valuations should consider supporting their developer-profit assumptions with evidence of what the market actually pays for development services, such as comparable transactions, industry surveys, or contemporaneous fee agreements.

Importance of cost segregation studies. A cost-segregation study is a detailed engineering-based analysis that identifies and reclassifies the component costs of real property into their proper asset classifications for federal tax purposes. Originally developed as depreciation analyses, cost-segregation studies have become indispensable tools in valuation disputes involving energy property as they offer compelling evidence of the costs of a project.

The Court of Federal Claims in *Alta Wind* frequently referenced the cost segregation study, thus providing evidence of its importance to a valuation dispute. Practitioners should remember the importance of a cost segregation study that can be relied upon at trial. Practitioners may also wish to review Internal Revenue Service ("IRS") guidance on the standards expected of cost-segregation studies for purposes of preparing for future valuation disputes (namely the IRS's Cost Segregation Audit Technique Guide).[50]

V. Conclusion

For tax controversy practitioners, *Alta Wind* stands is a tale about the importance of developing the factual record in valuation disputes. The decision demonstrates that even in technically complex litigation, the fundamental principles remain unchanged: the taxpayer bears the burden of proof, evidence must be specific and quantified, and courts will not extrapolate findings of value where the evidentiary foundation is lacking.

For practitioners advising clients in renewable energy, real estate, manufacturing, and other capital-intensive sectors, a few things are clear: invest time and money gathering contemporaneous cost documentation from the inception of a project; ensure that cost-segregation studies and valuation reports are finalized, detailed, and internally consistent; quantify each cost category independently; and ensure valuation methodologies are backed by evidence.

Finally, the decision reaffirms a truth familiar to experienced tax litigators: courts in valuation disputes rarely adopt either party's position in full. The practitioner who prepares for this reality will position the client for the best achievable outcome.

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ENDNOTES

1 Nos. 13-402, FedCl, 2026-2 USTC ¶50,203, 2026 WL 1994448.
2 All references made to "section" are to the Internal Revenue Code, except those to Section 1603.
3 *Alta Wind I Owner Lessor C*, CA-FC, 2018-2 USTC ¶50,357, 897 F3d 1365, 1376.
4 *Id.*
5 *Alta Wind I Owner Lessor C*, FedCl, 2026-2 USTC ¶50,203, 2026 WL 1994448, at *4–*5.
6 *Id.* at *2.
7 *Id.*
8 *Id.*
9 U.S. DEP'T OF TREAS., 1603 PROGRAM: PAYMENTS FOR SPECIFIED ENERGY PROPERTY IN LIEU OF TAX CREDITS, *home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/1603-program-payments-for-specified-energy-property-in-lieu-of-tax-credits* (last visited Aug. 28, 2026).
10 American Recovery and Reinvestment Act of 2009 ("ARRA"), Pub. L. No. 111-5, div. B, §1603(b), 123 Stat. 115, 364.
11 ARRA §1603(d)(1).
12 *Alta Wind I Owner Lessor C*, FedCl, 2026-2 USTC ¶50,203, 2026 WL 1994448, at *2.
13 *Id.*
14 *See* ARRA §1603(g) (providing that certain non-taxpayers are not eligible for cash grants).
15 *Alta Wind I Owner Lessor C*, FedCl, 2026-2 USTC ¶50,203, 2026 WL 1994448, at *2.
16 *See id.* at *2–*3.
17 *Id.* at *2. For those unfamiliar with the Section 1603 grant program, Treasury, not the IRS, was responsible for administering it.
18 *Alta Wind I Owner Lessor C*, FedCl, 2026-2 USTC ¶50,203, 2026 WL 1994448, at *2.
19 *Id.*
20 *See* Code Sec. 168(a).
21 Code Sec. 168(3)(B); *see also Alta Wind I Owner Lessor C*, FedCl, 2026-2 USTC ¶50,203, 2026 WL 1994448, at *33 n.24.
22 Code Sec. 197(a).
23 Code Sec. 1060(a).
24 *Alta Wind I Owner Lessor C*, CA-FC, 2018-2 USTC ¶50,357, 897 F3d 1365, 1376.
25 *Id.* at 1377.
26 *Id.*
27 *Alta Wind I Owner Lessor Cs*, FedCl, 2026-2 USTC ¶50,203, 2026 WL 1994448 at *30.
28 *Id.* (citing *Washington Mut.*, FedCl, 2017-1 USTC ¶50,161, 130 FedCl 653, 686, *aff'd*, CA-FC, 2018-1 USTC ¶50,272, 891 F3d 1016).
29 *Id.* (quoting *Krapf*, CA-FC, 977 F2d 1454, 1463 (Fed. Cir. 1992)).
30 *See id.* at *13.
31 *Id.* at *33, *37.
32 *Id.* at *17–*18, *48–*49.
33 *Id.* at *14–*15.
34 *Id.* at *19–*20.
35 *Id.* at *20–*22, *51.
36 *Id.* at *17–*18, *48–*49.
37 *Id.* at *49 n.25.
38 *Id.* at *47.
39 *Id.* at *73–*74.
40 77 TCM 1202, Dec. 53,210(M), TC Memo. 1999-7.
41 *Alta Wind I Owner Lessor C*, FedCl, 2026-2 USTC ¶50,203, 2026 WL 1994448, at *49.
42 *Id.* at *50.
43 *Id.*
44 *Id.* at *30.
45 *Id.* at *53.
46 *Id.* at *55.
47 *Alta Wind I Owner Lessor C*, FedCl, 2026-2 USTC ¶50,203, 2026 WL 1994448, at *56.
48 *Id.* at *56.
49 *Id.* at *2.
50 IRS Pub. 5653, Cost Segregation Audit Technique Guide, *www.irs.gov/pub/irs-pdf/p5653.pdf* (last visited Aug. 29, 2026).

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