

FORVIS

Investment & Production Tax Credits in the Inflation Reduction Act of 2022

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Your Presenters



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A Few Thoughts to Consider...

- Focus of this webcast: business credits, non-utilities
- Many credits and changes will require regulations or explanations
- Foreseen challenges with implementation
- Within this presentation, especially impacted:
 - Not-for-profits
 - Architects/Contractors
 - Syndicators
 - Energy facilities

A Few Thoughts to Consider...

- General framework: “base” with “bonus”, given requirements met
 - Wage requirement: not less than the prevailing rates
 - During construction and 5-year period beginning when placed in service (“PIS”)
 - Recapture possible if requirement not met
 - Apprenticeship requirement: % of work done by qualified apprentices
 - % depends on year, can range from 10-15%
 - Applies: employ 4 or more individuals for construction
 - Registered apprenticeship program
- Domestic Content Bonus Credit
 - Credit increased by 10%
 - Required to be produced in the US

Agenda

- Section 6418- Transfer of Certain Credits
- Section 6417- Elective Payment of Applicable Credits (“Direct Pay Election”)
- Section 179D- Energy efficient commercial buildings deduction
- Section 48- Energy Investment Tax Credit (ITC)
- Section 45L- New energy efficient home credit (business credit for contractors)
- Section 45X- Advanced Manufacturing Production Credit
- Section 48E- Clean Electricity Investment Credit

Section 6418- Transfer of Certain Credits

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FORVIS is a trademark of FORVIS, LLP, registration of which is pending with the U.S. Patent and Trademark Office.

Requirements of Transferability

- Credits “transferable” so that transferee gets the benefit
 - All or any portion of the credit may be transferred
- Transferee can’t be related to the Transferor
- Irrevocable election
- Election made by due date (including extensions) of tax return
- Credit required to be taken in the taxable year in which the credit is determined
 - Or taken in the following year
 - Ex. Carbon Credit generated in 2022 – transferee can take in 2022 or 2023
- Transferee cannot transfer the credits again
- Credit only transferable at the level where the eligible property held

Requirements of Transferability

- If consideration paid for the credit, must be:
 - In cash
 - Not income to transferor (if partnership/S Corp, considered tax-exempt (“TE”) income)
 - Not deductible to transferee
- Basis of property is reduced by the amount of the credit
- Recapture can apply – Transferee responsibility
- 20% penalty if credit found to be excessive. Exceptions for reasonable cause.
- Energy Credits carryforward and carryback changed
 - Carryback – 3 years
 - Carryforward – 22 years
 - Must be used in the earliest year able
 - Applies to taxable years beginning after 2022

Eligible Credits

- Section 48- Energy credit
- Section 48E- Clean electricity investment credit
- 45X(a)- Advanced manufacturing production credit
- 45(a)- Renewable electricity production credit
- 45Q(a)- Credit for carbon oxide sequestration
- 30C- Certain Alternative fuel vehicle refueling property
- Section 45U(a)- Zero-emission nuclear power production credit
- Section 45V(a)- Clean hydrogen production credit
- 45Y(a)- Clean electricity production credit
- 45Z(a)- Clean fuel production credit
- 48C- Qualifying advanced energy project credit

Eligible Taxpayer- All Except:

Aligns with Section 6417(d)(1)(A)

- Tax-exempt organizations
- State or political subdivision thereof
- Corporation operating on a cooperative basis which is engaged in furnishing electric energy to persons in rural areas
- Tennessee Valley Authority
- Indian tribal government
- Alaska Native Corporation

Section 6417- Elective Payment of Applicable Credits

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Elective Payments- In General

- Cash payment available instead of credit
 - Amount equal to credit
- Benefit:
 - tax-exempt entities
 - tax years with low income
- Similar list of eligible credits and applicable entities to Section 6418 transfers
- Timing- election available through 12/31/32
- Election made by due date of tax return (including extensions)
- Irrevocable election for the year

Elective Payments- In General

- For partnerships and S Corporations, treated as TE income
 - Payment treatment: same as a refund due from a credit
- Basis reduction for amount of payment
- Special exceptions for certain credits, for example:
 - 45X- Advanced Manufacturing Production Credit: Additional taxpayer types able to receive elective payments
 - Election would apply for each of 4 succeeding years
 - Would negate availability of transfer under 6418(a)
- Excessive payments- 20% penalty unless reasonable cause

Section 179D- Energy efficient commercial buildings deduction

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179D Credit- Introduction

According to Section 179D(c):

- Retrofits-- Installation of:
 - “Interior lighting systems
 - The heating, cooling, ventilation, and hot water systems, or
 - The building envelope”
- “Must be part of a plan designed to reduce the total annual energy and power costs with respect [to this property]”
- Reference point for % energy cost reduction: Building meeting minimum requirements of “ASHREA”

Eligibility & Cap

- Eligibility– Greatly broadened, newly including designers of buildings owned by (among others):
 - Not-For-Profit Organizations
 - Private Foundations
 - Hospitals
- Shift from lifetime cap to credit eligible:
 - Every 3 years if privately owned
 - Every 4 years if credit to a party other than the taxpayer
- ASHREA– comparison point 4 yr. versus 2 yr. before construction completion

Credit Calculation

- New law applies to property PIS after 12/31/22
- Deduction does not exceed the product of:
 - Square footage of the building and
 - “applicable dollar value”
- Structure of new credit: “base” and “bonus” deduction
 - Base- Max \$1/sq ft., based on % energy reduction
 - Bonus- Max \$5/sq ft.
 - Wage & apprenticeship requirements, based on % energy reduction
 - % energy reduction starting point: 25%, max met at 50%
 - Overall– potential increase from \$1.88 (old law) to \$5 (new law)

Section 48- Investment Tax Credit (ITC)

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Credit Background

- Types of property:
 - Qualified fuel cell property
 - Qualified small wind energy property
 - Waste energy recovery property
 - Other energy property (lower credit available)
- Credit= energy percentage of the basis of energy property PIS each year
 - Energy % x basis= credit
- Phaseout applies
- Reduced basis if financed by subsidized energy financing or from private activity bonds
- Can't "double dip" with property claiming Section 45 or Section 42 credit

Credit Amount

- Credit amount altered:
 - Base lowered to 1/5 (from 30% to 6%, and 10% to 2% based on property type)
 - x5 for “energy projects”
 - Max net output of less than 1 megawatt energy
 - Wage/Apprenticeship requirements apply– increase % x 5
 - Direct pay and domestic content bonus credit apply

Credit base phaseout:

Dates	Energy %
Construction begins before: 1.1.33 PIS after: 12.31.21	6%
Construction begins after: 12.31.32 Construction begins before: 1.1.34	5.2%
Construction begins after: 12.31.33 Construction begins before: 1.1.35	4.4%

Property Type & Timing Shift

- Energy property definition expanded:
 - Energy storage technology
 - Qualified biogas property
 - Microgrid controllers
- Timing:
 - Construction:
 - Property beginning construction before 1/1/2025
 - For ground or ground water source of thermal energy, beginning construction before 1/1/2035
 - Applies to property PIS after 2021
 - New Property types: applies property PIS after 2022

Section 45L- New Energy Efficient Home Credit

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Background to Section 45L Credit

- Available to eligible contractors
 - Constructing qualified new energy efficient homes
 - Homes acquired by a person for use as a residence in the year (Section 45L(a)(1))
- Date extension: Applies to qualified homes acquired through 12/31/32
 - For units acquired after 12/31/21
- Increase in credit amount:
 - \$2,500 or \$5,000 (based on requirements)
 - Energy Star Residential New Construction Program or
 - Energy Star Manufactured New Homes program
 - \$500 or \$1,000 (based on requirements)
 - Energy Star Multifamily New Construction Program

Background to Section 45L Credit

- Requirements met if:
 - Certified as a zero-energy ready home, or
 - If meet requirements depending on home type:
 - Single-family homes
 - Multi-Family homes
- Prevailing wage requirement apply
- The resulting basis adjustment does not affect the basis for the purposes of the low-income housing credit
- Dates:
 - Generally, applies to dwelling units acquired after 12/31/22

Section 45X- Advanced Manufacturing Production Credit

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Background to Section 45X Credit

- Production credit for eligible components produced by taxpayer and sold to an unrelated person
- Must be within a trade or business of the taxpayer
- Amount depends on type of component produced, including:
 - Photovoltaic cell or a crystalline photovoltaic cell
 - Solar module
 - Wind energy component
 - Inverter
 - Battery cell
 - Critical mineral

Background to Section 45X Credit

- Phase out: uses credit amount in Section x phaseout percentage

Year Sold During	% Phaseout
2030	75%
2031	50%
2032	25%
After 2032	0%

- Only qualified if production in the US or possession of the US
- Passthrough to estates and trusts and beneficiaries based on allocation of income
- Date: changes apply to components produced and sold after 12/31/22

Section 48E- Clean Electricity Investment Credit

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General- Section 48E Credit

- New credit
- Amount of credit= qualified investment x applicable percentage
 - Investment in: Qualified facility or energy storage technology
 - Base rate: 6%
 - Alternative rate: up to 30% if
 - max output less than 1 megawatt and
 - construction meets certain requirements
 - Qualified investment=
 - basis of qualified property PIS during taxable year +
 - expenditures paid/incurred for qualified interconnection property
 - Qualified facility:
 - Used for generation of electricity
 - PIS after 12/31/24
 - Greenhouse gas emissions rate not greater than zero

General- Section 48E Credit

- Wage and apprenticeship requirements apply
- Increase in credit rate:
 - Domestic Content
 - Energy communities: % increased by 2% for base rate property, 10% for qualified facility or energy storage technology
 - In connection with low-income communities– 10% or 20% depending on facility type
 - Residential rental building in covered housing program
 - Less than 200% of poverty line or less than 80% of area median gross income
- Phaseout:

Construction begins “x” year following applicable year	%
First	100%
Second	75%
Third	50%
Fourth and after	0%

Other Similar Credits

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Other Business Energy Credits

- Section 45- Renewable Electricity Production Tax Credit (PTC)
- Section 168(e)(3)(B)- Cost Recovery for Qualified Facilities, Qualified Property, and Energy Storage Technology
- Section 48(e)- Energy credit for Solar and Wind Facilities Placed in Service in Connection with Low-Income Communities
- Section 48C- Extension of the Advanced Energy Project Credit

Thank you!

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