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Monetizing Clean Energy Tax Credits from the Inflation Reduction Act

MDGFOA
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The Inflation Reduction Act

IRA Snapshot

Created and modified a number of renewable energy credits as well as financing programs

Created new monetization options for tax-exempt and taxable entities

Section 6417 provides an elective pay option (i.e., cash refund) for:

- Tax-exempt organizations
- State and local governments (all levels)
- Tribal governments
- Rural electric cooperatives

Section 6418 provides a transferability option for for-profit organizations

- Taxpayers can buy and sell credits for cash

First filing season is behind us (and was surprisingly smooth!) → refunds are processing

Future of the IRA?

Opportunities for Govt Entities

- New building construction and renovations
- Fleet electrification and charging infrastructure
- HVAC improvements
- Solar panel installations
- Pricing leverage for Section 179D allocations
- Capital project forecasting

Refundable/Transferable Credits

§30C Alternative fuel vehicle refueling property credit
§45 Electricity produced from certain renewable resources, etc.
§45Q Credit for carbon oxide sequestration
§45U Zero-emission nuclear power production credit
§45V Credit for production of clean hydrogen
§45W Credit for qualified commercial clean vehicles (elective pay only)
§45X Advanced manufacturing production credit
§45Y Clean electricity production credit
§45Z Clean fuel production credit
§48 Energy credit
§48C Advanced energy project credit
§48E Clean electricity investment credit

Know Your Dates

- IRA is effective for assets PIS on or after Jan. 1, 2023
- Credits may be claimed once property is placed in service
- Construction start date is important under the IRA
  - Construction generally starts when:
    - 5% or more of the cost of the property is incurred, or
    - Physical work of a significant nature begins
- Fiscal year end will determine period in which property is placed in service and tax return due dates (discussed later)

Specific Credit Opportunities

Investment Tax Credit (ITC) – Sections 48 and 48E

Tax credit based on a percentage of the cost of qualified property

6% base credit

30% base credit if:

- Prevailing wage and apprenticeship (PWA) is met,
- Construction started prior to Jan. 29, 2023, or
- System is less than 1 megawatt (does not apply to all ITC property)

Examples of ITC Eligible Property

- Solar (rooftop, car port, ground-mounted)
- Geothermal HVAC
- Wind
- Biogas
- Battery energy storage systems
- Combined heat and power systems
- Hydropower

Section 30C Alternative Fuel Refueling Credit

6% of the cost of any single item of qualified property not meeting PWA, up to $100,000

30% of the cost of qualified property if PWA is met, up to $100,000

Qualified property must be installed in locations that meet one of the following census tract requirements:

- The census tract is not an urban area,
- A population census tract where the poverty rate is at least 20%, or
- Metropolitan and non-metropolitan area census tract where the median family income is does not exceed 80% of the state median family income level

Section 45W Clean Vehicle Credit

Applies to clean commercial vehicles and mobile machinery acquired or leased after 2022 and before 2033

Credit equals the lesser of:

- 15% of the vehicle's basis (30% if fully electric) or

- Incremental cost of the vehicle

Max credit is:

- $7,500 for vehicles less than 14,000 GVWR, and

- $40,000 for all others

Bonus Credits

Prevailing Wage And Apprenticeship (PWA)

- Increases base credit by 5X (from 6% to 30%) – if project meets 1-MW or construction date exceptions, PWA is not needed
- Requires that all laborers and mechanics employed on an energy construction project are paid at least the prevailing wage rates for the type of work performed in the geographic area of the facility as determined by the Department of Labor in accordance with the Davis-Bacon Act
- Must maintain strict recordkeeping of each laborer or mechanic's hourly rates, hours worked, deductions from wages, and actual wages paid, among other records.

PWA Cont'd

- A taxpayer and its contractors and subcontractors who employ four or more workers on an energy construction project (including repair work) must hire at least one qualified apprentice
- For construction beginning in 2023, at least 12.5% of the total labor hours on a construction project (including repair work) must be performed by a qualified apprentice from a registered apprenticeship program
    - This percentage increases to 15% for projects beginning in 2024 or after
- Good faith exception for apprenticeship requirements if qualified apprentices have been requested from a registered apprenticeship program and either (i) the request was denied for reasons other than the taxpayer, contractor, or subcontractor's refusal to comply with the program's standards and requirements, or (ii) the program failed to respond within five business days of receiving a request

Domestic Content Bonus

- Projects are eligible for an additional bonus credit of 10% (2% if 5X multiplier not met) if the following conditions are met:
  - 100% of any steel or iron that is a component of the facility is manufactured in the United States
  - Not less than the applicable percentage of the manufactured components of the facility are manufactured in the United States:
    - 40% in 2024
    - 45% in 2025
    - 50% in 2026
    - 55% in 2027

100% of steel and iron

Applicable percentage of manufactured products

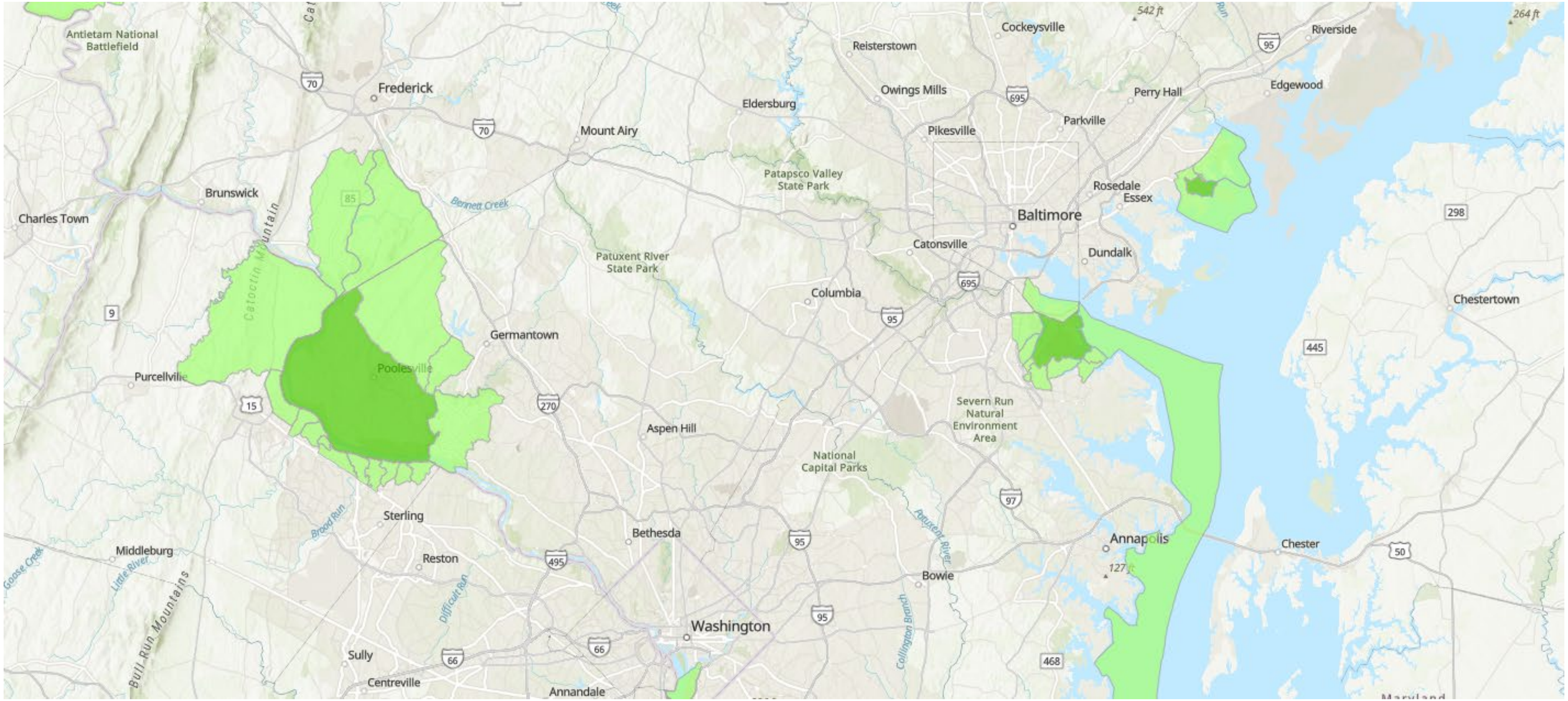
Domestic Content Cont'd

- Credits are reduced beginning in 2024 if DC isn't met (unless exception applies)
  - 90% of base amount in 2024
  - 85% of base amount in 2025, and
  - 0% for projects that begin construction after Dec. 31, 2025
- Exceptions to domestic content claw-back
  - Projects less than 1 MW
  - Increased cost exception (increases overall project cost by more than 25%)
  - Non-availability exception
- IRS notices provide elective safe harbor for solar, land-based wind, and battery energy storage systems
  - Use assigned cost percentages for applicable projects
  - If elected, must use in its entirety for that project

Energy Community Bonus

- Projects are eligible for an additional bonus credit of 10% (2% if 5X multiplier not met) if the facility is located in any of the following:
  - A brownfield site, or
  - An area that:
    - Has (or, at any time during the period beginning after December 31, 2009, had) 0.17% or greater direct employment or 25% or greater local tax revenues related to the extraction, processing, transport, or storage of coal, oil, or natural gas,
    - Has an unemployment rate above the national average for the previous year, or
    - Has a census tract or a census tract that is adjoining a census tract in which a coal mine has closed after 1999 or a coal-fired electric generating unit was retired after 2009

Energy Community Map of Maryland



Low-Income Community Bonus

Project is built in a low-income community as defined by the New Markets Tax Credit or on Indian Land can receive an increased tax credit of 10%

Project associated with a low-income residential building project, or a low-income economic benefit project, can receive an increased tax credit of 20%

Grants and Tax-Exempt Bonds

Grant Funding

- Grant funding **may** reduce otherwise allowable credits
- Excess benefit rule
  - If a grant, forgivable loan, or other exempt income is received for the specific purpose of purchasing or constructing ITC property, and the sum of such amounts plus the applicable credit otherwise determined with respect to that property exceeds the cost of the property, then the amount of the applicable credit is reduced so that the total amount of applicable credit plus the amount of any restricted tax-exempt amounts equals the cost of investment-related credit property

Grant Funding Cont’d

- The determination of whether a tax-exempt grant is made for the specific purpose of purchasing, constructing, reconstructing, erecting, or otherwise acquiring ITC property is made at the time the grant is awarded to the applicable entity
- A tax-exempt grant awarded after the property is purchased, constructed, etc. is generally not a restricted tax-exempt amount unless approval of the grant was perfunctory and the amount of the grant was virtually assured at the time of application
- Examples of tax-exempt amounts that are not restricted tax-exempt amounts are:
    - A tax-exempt amount from the organization’s general funds is not a restricted tax-exempt amount, and
    - A tax-exempt amount’s use that is not restricted to the purpose of purchasing, constructing, reconstructing, erecting, or otherwise acquiring ITC property (such as purchasing an electric vehicle) and could be used for any of several different applicable credit properties (such as purchasing an electric vehicle or purchasing solar panels) or can be put to other purposes (such as purchasing an electric vehicle or making a building more energy efficient)

Tax-Exempt Bonds

- ITC property acquired using proceeds from a tax-exempt bond issuance must be reduced by the lesser of:
  - 15% of the pre-reduction ITC, or
  - The product of the pre-reduction ITC and a fraction
    - The numerator of which is the amount of current and all prior taxable years' tax-exempt bond proceeds used to finance the ITC energy property, and
    - The denominator of which is the aggregate amount of the additions to the capital account for the ITC property for the current taxable year and all prior taxable years
- Tax-exempt bond credit reduction rule applies before the application of Section 6417
- Thus, any tax credit reduction that is required for tax-exempt grants and forgivable loans under the Section 6417 excess benefit rule is computed after application of the tax-exempt bond issuance credit reduction rule discussed above

Credit Monetization

Claiming Direct Payments

Pre-filing registration

- Must be completed prior to filing the tax return where a direct pay election is made
- Must provide certain information about organization, the credits you intend to claim, and details regarding the property giving rise to the credit
- A registration number will be issued that will be required when making the election on tax return
- IRS will issue a separate registration number for each applicable credit property

Making the election on a tax return

- Must be made on a timely filed return (including extensions) → cannot be made on an amended return
- Must be filed on Form 990-T by due date along with:
  - Form 3800 (General Business Credit)
  - Applicable credit form and registration info from above
  - State and local governments that do not file a tax return will need to file a Form 990-T for this limited purpose
  - Govt entities can elect calendar year or different fiscal year

Section 179D Deduction Allocations

Section 179D Energy Efficient Building Deduction

How it works

- Per square foot deduction for the construction or renovation of energy efficient buildings
- Sliding scale up to $5.35 per sq. ft. if prevailing wage/apprenticeship requirements are met
- Based on ASHRAE energy efficiency standards
- Buildings must be modeled and certified by third-party engineer

Opportunity for Governmental Entities

- Deduction can be allocated by SLGs to designers of building systems (often this will be the architect)
- Allocation process is simple (standard letter template)
- Could mean indirect benefit to through pricing negotiations
- Plan for it during bid and proposal phase of projects

Thank you!

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