Q&A: IRA Tax Credit Webinar

Answers to questions asked during the Local Infrastructure Hub's IRA Tax Credit webinar on July 18, 2023. The following responses provide an overview of certain Inflation Reduction Act tax provisions for general information purposes only and is not itself tax guidance. Further guidance from the IRS on these tax provisions is forthcoming, and could potentially result in changes that are not reflected in this document.

Q: **48C: When must a project be designed by, constructed by, and in service by in order to be eligible for Round 1 submittal?**

A: The tax credit for Qualifying Advanced Energy Projects, found under Internal Revenue Code Section 48C is an allocated tax credit. To receive an allocation under Section 48C taxpayers have to be selected; Concept Papers for Round 1 allocations were due August 3. There will be subsequent rounds of allocations. Once an allocation is received, the taxpayer has up to two years to certify (that is notify DOE you have all permits etc.) then another two years to place the project in service.

Q: **I've heard that the EP incentive is reduced if a city finances a project through a tax-free bond. True?**

A: For purpose of this answer, we will assume that you are referring generally to federal tax incentives for energy projects. The Inflation Reduction Act (IRA) contained many tax incentives, including many tax credits for the investment in projects that produce energy from renewable sources. There are special rules that come into play when the project is financed with tax exempt bonds. However, the rules post-IRA are much more generous than prior rules. That said there is a reduction—generally the IRA provides that for facilities financed with tax-exempt bonds, credit amounts are reduced by the lesser of (1) 15%; or (2) the fraction of the proceeds of a tax-exempt obligation used to finance the project over the aggregate amount of the project's financing costs.

Q: **Are up front design costs also eligible, or just capital/construction costs?**

A: Different tax credits have different rules on how to calculate the value of the credit. For example the Production Tax Credit, found under Section 45 of the Internal Revenue Code is based on how much energy is produced; the cost of the facility producing does not matter. The tax credit for carbon sequestration is based on how much carbon is captured.

Q: **Has Treasury released the list or definition of eligible low-income communities for the Alternative Fuel Vehicle Refueling Property Credit? Does it follow NMTC areas?**

A: The Alternative Fuel Vehicle Refueling Property is found at Internal Revenue Code Section 30C as modified by the IRA it is a very valuable credit but is ONLY available for refueling property placed in service in certain locations. The U.S. Department of Treasury and Internal Revenue Service have not yet have guidance /maps, but based on statute the credit can only be claimed for property placed in low-income communities and non-urban areas. Guidance/maps is expected soon. soon.

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Q: **How can projects apply for grants and include anticipated tax credits in budget calculations to reduce the total requested amount, without having certainty of obtaining those credits especially given challenging procurement conditions, potentially? Will programs encourage targeted credits to be factored in?**

A: Generally speaking, nothing in the tax code prevents a taxpayer from obtaining tax credits in addition to federal grants or loans or other state incentives.

That said, in certain instances the federal government may factor in other funding sources when determining whether to make an award of a Section 48C tax credit for Qualifying Advanced Energy Projects, grants or loans. (Note: Section 48C tax credit is generally the only allocated tax credit; other tax credits like the Investment Tax Credit are not allocated through an award.)

For example, in the context of Section 48C, the U.S. Department of Energy, who determines which projects receive a Section 48C allocation, has stated, "DOE may consider giving priority to qualifying advanced energy projects not eligible for support from other DOE financial assistance programs … In some cases, benefits towards the program's goals may be enhanced if a project receiving a credit under § 48C also receives complementary assistance from other programs."
As another example, those seeking grants through the U.S. Department of Commerce for semiconductor facilities are required to make a statement as to the potential applicability of a tax credit also designed to incentivize semiconductor facilities found at Section 48D.

Q: **I heard that entities cannot take advantage of direct pay for projects that are completed through partnerships, even if all parties are eligible entities. Does that referring to two partners jointly buying one eligible bus (for example) and/or does it refer to two partners each purchasing a bus but doing it through a group purchasing partnership?**

A: Applicable entities are eligible for direct payment of many of the Inflation Reduction Act tax credits. "Applicable entities" include tax-exempt organizations, states, political subdivisions such as local governments, Indian tribal governments, Alaska Native Corporations (ANCs), the Tennessee Valley Authority (TVA), rural electric cooperatives and U.S. territories. Agencies and instrumentalities of state, local, tribal and U.S. territorial governments also are applicable entities.

The U.S. Department of Treasury and Internal Revenue Service recently issue proposed rules regarding direct payment. Under the proposed rules a partnership comprised of two applicable entities cannot elect direct payment. These proposed rules were subject to public comment and have not been finalized.

Q: **48C: when are we expecting to see Round 2?**

A: The tax credit for Qualifying Advanced Energy Projects, found under Internal Revenue Code Section 48C is an allocated tax credit. To receive an allocation under Section 48C taxpayers have to be selected. The federal government has announce there will be at least two rounds

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of allocations. The Concept Papers for Round 1 were due August 3rd. The federal government has not announced when Round 2 Concept Papers will due and has not provided any other specific details on Round 2.

Q: **Is there any way for someone to take advantage of the tax credits or direct pay if a local government pays to install solar on private property, like low-income housing? In this case, the resident owns the home but the LG is paying to purchase and install the PV system. Ownership of the system would be the resident, not the LG. The resident doesn't spend any money and doesn't have tax liability.**

A: Generally speaking tax benefits flow to the owner of the property placed in service that is eligible for the credit, i.e. the solar panel. The owner of the building is not relevant.

Q: **If we want to break ground on a net zero city building, can we use the IRA yet, or do we need to wait for the IRA rules to be finalized?**

A: The tax provisions of the Inflation Reduction Act (IRA) were generally effective in 2023, and are effective notwithstanding the fact that we are waiting for clarification on some issues by the U.S. Department of Treasury and Internal Revenue Service.

Q: **Can you confirm wastewater treatment facilities are considered industrial facilities under 48C?**

A: There are three types of Qualifying Advanced Energy Projects under Internal Revenue Code Section 48C:

(1) Clean Energy Manufacturing and Recycling Projects. A project in this category re-equips, expands, or establishes an industrial or manufacturing facility for the production or recycling of specified advanced energy property. Specified advanced energy property is further defined to include things like property designed for use in the production of energy from the sun, water, fuel cells, microturbines, or energy storage systems and components, etc. (Note: A full list can be found in IRS Notice 2023-44.)

(2) Greenhouse Gas Emissions Reduction Projects. A project in this category re-equips an industrial or manufacturing facility with equipment designed to reduce GHG emissions by at least 20 percent through the installation of certain property.

(3) Critical Mineral Projects. A project in this category re-quips, expands, or establishes an industrial facility for the processing, refining, or recycling of critical materials. Critical materials include (1) critical minerals as determined by the 2022 U.S. Geological Survey and (2) any critical materials for which final determination has been made by DOE on or before July 31, 2023.

IRS defines industrial facility as a facility that produces, processes, or refines materials or products from raw or manufactured inputs.

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Q: **Will existing district energy system decarbonization be considered as an eligible project?**

A: For purposes of this question, we assume you are asking about Qualifying Advanced Energy Projects under Internal Revenue Code Section 48C. There are three types of Qualifying Advanced Energy Projects under Section 48C one of which is Greenhouse Gas Emissions Reduction Projects. Among other things to claim a Section 48C, an allocation must be awarded; property placed in service prior to being awarded an allocation is not eligible to receive such an allocation.

Q: **I assume only one of the partners could file the claim for any given asset, though?**

A: Tax rules related to partnerships are complex; it is possible that a partnership can be eligible for an Inflation Reduction Act tax credit. A partnership must file an annual information return to report the income, deductions, gains, losses, tax credits etc., from its operations, but it does not pay income tax. Instead, it "passes through" profits or losses to its partners. Each partner reports their share of the partnership's income or loss on their personal tax return.

Q: **How can city governments take advantage of energy efficiency upgrades?**

A: In addition to tax credits included in the Inflation Reduction ACt, tax incentives are also found in the form of tax deductions. Like tax credits, tax deductions are generally not beneficial to those entities that are not subject to federal income tax. However, the tax deduction under Section 179D has been and continues to be under the IRA, available to property owned by state, local governments and political divisions thereof. Specifically, government entities can benefit from Section 179D by allocating the deduction to the person primarily responsible for designing the property (e.g., architect, engineer, contractor, environmental consultant or energy-services provider).

By way of background, Section 179D provides a tax deduction for making efficiency improvements to commercial buildings. Energy-efficient building property that qualifies for the deduction includes improvements to the building envelope, certain heating, ventilation and air conditioning systems and lighting systems. It applies to new construction and the retrofitting of existing buildings. Government entities will want to reconsider the value of the Section 179D, given that the IRA enhances the value of the deduction and lowers the threshold such that deductions will be available for buildings that improve energy efficiency by 25 percent (down from 50 percent).

Q: **For 48C, would upgrade to an existing decarb system be eligible? How might the baseline be established? should it be without system?**

A: There are three types of Qualifying Advanced Energy Projects under Internal Revenue Code Section 48C, Category 2 is for Greenhouse Gas Emissions Reduction Projects. A project in this category re-equips an industrial or manufacturing facility with equipment designed to reduce GHG emissions by at least 20 percent through the installation of certain property. Taxpayers must receive an allocation of 48C, and eligible property includes only that placed in service after receiving an allocation. IRS Notice 2023-44 details how emissions should be calculated.

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Q: **Can the value of loss of land for an energy production project be integrated into the application/credit consideration?**

A: Generally speaking the value of tax credits in the Inflation Reduction Act is based on the basis of property placed in service; it would not include the value lost.

Q: **Will the registration for direct credit on fleet EVs be started at Purchase order or upon payment of invoice?**

A: The tax credits available for electric vehicles (Section 30D and Section 45W) are claimed the year the vehicle is placed in service. The Internal Revenue Service has posted some user-friendly FAQs here.

Q: **Direct Pay Question: Will the rescissions proposed by House Appropriations for IRS and climate programs from PL 117-69 have any impact on the roll out or future of the elective pay program?**

A: The Inflation Reduction Act provided long lead times—many of the tax credits are effective for 10 years. Congress has the authority to change the law. While it is impossible to predict the future, significant investments as a result of the IRA have already been made, making it politically difficult to repeal the law in its entirety.