Leveraging The IRA: Direct Pay Credit Opportunities For Higher Education

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Opportunities for Higher Ed

- New building construction and renovations
- Fleet electrification and charging infrastructure
- HVAC improvements
- Solar panel installations
- Battery storage
- Capital project forecasting

IRA Snapshot

Creates and modifies a number of renewable energy credits as well as financing programs

Creates 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
- Tribal governments
- Rural electric cooperatives

Section 6418 provides a transferability option for for-profit organizations

- Taxpayers can buy and sell credits for cash

IRS portal launched in Dec. 2023 → registration is live

Treasury and IRS have released some guidance, but more to come

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 generally effective January 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

Section 48 Energy Investment Tax Credit

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

6% base credit rate

30% if less than 1 megawatt

- 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)

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Examples Of ITC Eligible Property

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

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 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

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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.
  - Records typically provided by construction contractor

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Prevailing Wage And Apprenticeship (PWA)

- 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

- Credits (not just bonus credits) are reduced beginning in 2024 if DC isn’t met (unless 1-MW 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
- Notice 2024-41 provides elective safe harbor for solar, land-based wind, and battery energy storage systems.
  - Uses assigned cost percentages for appliable projects
  - If elected, must use in its entirety for that project
- In practice, DC has been contentious
  - Manufacturers are reluctant to hand over cost data
  - Safe harbor should simplify things to some extent

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Energy Communities

- Projects are eligible for an additional bonus credit of 2% (10% if 5X multiplier applied) if the facility is located in any of the following:
    - A brownfield site
    - 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, or
        - 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

Low-Income Communities

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

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

Grant Funding

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)

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ITC And Municipal Bonds

- One primary purpose of the IRA is to reduce the costs of renewable power generation assets for private and public higher education institutions
- The ITC is most likely going to be utilized for renewable power generation by higher education institutions more than the Production Tax Credit (PTC)
  - PTC payments must be monetized as a tax credit and are not eligible for the direct cash payment
  - The PTC is obtained over time based on operating production of a given facility – operating risk
- The ITC is monetized at a project's completion after obtaining a Certificate of Completion
  - A bridge loan or cash is frequently utilized to complete a given project & taken-out when the ITC is received

ITC And Municipal Bonds

- If tax-exempt bonds are utilized, the ITC is reduced by the lesser of 15% or the portion of the qualifying project that has been financed with the tax-exempt debt
    - For example, if a there is a total ITC of $10,000,000 to support qualified project costs of $30,000,000 and said entity utilized any amount of tax-exempt bonds, the ITC would be $8,500,000 (10,000,000*(1-0.15)). Put another way, the ITC is reduced from 30% of the eligible project costs to 25.5% (30%*(1.0-.15))
    - Because this is a "Lesser of" test, it allows such projects to be financed with a majority of tax-exempt debt, while only reducing the ITC received by a maximum of 15%

ITC And Municipal Bonds

- Utilizing taxable municipal bonds or a taxable loan does not trigger a reduction of the ITC
  - Analysis should be performed to determine the net present value of utilizing tax-exempt bonds at a lower interest rate with the 15% ITC reduction versus taxable bonds at a higher interest rate with no ITC reduction
- Although tax-exempt entities can elect to receive cash rather than tax credits to sell, the amount of the ITC cash election vests over 5 years – 20% per year
  - Must have same project ownership for the five-year period and must be available for use

ITC And Municipal Bonds

- Congress took deliberate measures in the IRA to protect the direct pay tax credits from sequestration
  - A reduction of the direct payment subsidy like what has happened with Build America Bonds (BABs) is less likely
  - The ITC is obtained in a lump-sum at project completion rather than over time like BAB direct payments which reduces probability of a sequestration or claw back

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Credit Monetization

Claiming Direct Payments

Pre-filing registration

- Must be completed prior to filing the tax return where a direct pay election is made
- IRS is advising a minimum of 120 days to process registrations
- 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

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Thank you!

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