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Inflation Reduction Act – Renewable Energy Components

Insight — 08/16/2022

Today, the President signed the Inflation Reduction Act (the “Act”), a broad bill that targets health care costs, taxes for large companies, overall deficit reduction, and climate change, into law. The law includes many provisions that extend or create nearly \$280 billion in clean energy tax incentives.

The Act is noteworthy in the following respects:

- Extends the current production tax credit (the “PTC”) for production of electricity from many types of facilities, including wind, biomass, geothermal, and hydropower, the construction of which begins prior to January 1, 2025. Extends the PTC to solar projects beginning construction before 2025 (where the PTC has not been available for solar since 2006).
- Extends the current investment tax credit (the “ITC”) for qualifying facilities, including wind, solar, fiber-optic, thermal, and others, the construction of which begins before 2025. Expands the definition of ITC eligible property to include standalone storage with a capacity of 5 kWh or higher.
- Supplements the current PTC/ITC regime beginning in 2025 with additional clean energy credits (the clean energy production credit and clean energy investment credit), which apply to zero-emission energy production and storage.
- Enhances tax incentives for wind and solar projects developed within low-income communities, for projects that meet “prevailing wage” and “apprenticeship” requirements, or if certain amounts of steel, iron, or other manufactured materials used in the project are produced in the United States.
- Creates an Advanced Manufacturing Production Credit for certain equipment such as PV cells, solar modules, wind energy components, and batteries that are produced and sold in the United States from 2023 to 2032.
- Introduces and expands additional tax credits, including the Clean Hydrogen Credit, Nuclear Power Production Credit, Clean Fuel Production Credit, Renewable Fuels Credit, and EV and Charging Infrastructure Credits.
- Provides a “direct pay” option by which eligible entities can treat certain tax credits generated by renewable energy projects as equivalent to a payment of tax on a filed return.
- For taxpayers not eligible for direct pay, provides for the transfer of certain credits to an unrelated party. Any consideration must be in

cash, is not included in the transferor's gross income and is not deductible by the transferee.

The PTC and ITC are established at 20% of existing pre-phase-out levels, subject to a 5x multiplier (i.e., to get the PTC and ITC back to current pre-phase-out levels) if “prevailing wage” and “apprenticeship” requirements are met. These requirements generally do not have to be met for small (i.e., 1 MW or smaller) systems or before the 60th day after the IRS and Treasury Department issues guidance on these requirements. Once that guidance has been issued (and 60 days have passed), these requirements must be met to obtain the higher credit amounts.

The “prevailing wage” requirement ties to the wage rates that are determined under the Davis-Bacon Act. These wages can be found at sam.gov. If the requirement is not met, except for cases of intentional disregard (which increases the penalty 10-fold), the wage difference can be paid to the service provider and a penalty paid to the IRS (or the lower credit can be taken).

The “apprenticeship” requirement mandates that a certain number of hours of work be performed by apprentices from a registered apprenticeship program. If the requirement is not met, a penalty is payable to the IRS (which is increased 10-fold for intentional disregard) or the lower credit can be taken.

Once the base credit has been established, the PTC and ITC can be increased by “bonus” credits. One bonus credit is available if the project is located in an “energy community” (i.e., at a brownfield site, in or adjacent to a census tract with a recently closed coal mine or retired coal-fired electric generating unit, or in an area with concentrated oil and gas employment). Another bonus credit is available if the project meets a “domestic content” requirement (where the percentage of steel, iron and manufactured products from the United States varies over time). Each bonus will increase the credit by, in the case of the PTC, 10 percent and, in the case of the ITC, 10 percentage points.

The Act provides a direct pay election for certain entities, including tax-exempt organizations, that is determined by multiplying the available credit by an applicable percentage. The applicable percentage is based on when the project begins construction and if the domestic content requirements are satisfied.

For those taxpayers not eligible for the direct pay election, the Act includes a provision allowing transfers of available credits to unrelated parties for cash payments that are not taxable to the transferor. Under the direct transfer provisions, credits can only be transferred once.

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