

## Energy Community Bonus Credit Amounts or Rates Annual Statistical Area Category Update and Coal Closure Category Update

Notice 2023-47

### SECTION 1. PURPOSE

This notice publishes lists of information that taxpayers may use to determine whether they meet certain requirements under the Statistical Area Category or the Coal Closure Category as described in sections 3.03 and 3.04 of Notice 2023-29<sup>1</sup> for purposes of qualifying for energy community bonus credit amounts or rates under §§ 45, 45Y, 48, and 48E of the Internal Revenue Code (Code).<sup>2</sup> These lists are provided in Appendix 1, Appendix 2, and Appendix 3 of this notice. Appendices 1 and 2 of this notice pertain to the Statistical Area Category, and Appendix 3 of this notice pertains to the Coal Closure Category. This notice does not include information that pertains to the Brownfield Category as described in section 3.02 of Notice 2023-29. Appendices A, B, and C of Notice 2023-29 and Appendices 1, 2, and 3 of this notice may not be used for purposes of the qualifying advanced energy project credit determined under § 48C.

### SECTION 2. BACKGROUND

Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), amended §§ 45 and 48 to provide increased

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<sup>1</sup> Notice 2023-29, 2023-29 I.R.B. [REDACTED] (July 17, 2023), Clarified by Notice 2023-45, 2023-29 I.R.B. [REDACTED] (July 17, 2023).

<sup>2</sup> Unless otherwise specified, all “section” or “§” references are to sections of the Code.

credit amounts or rates if certain requirements pertaining to energy communities are satisfied, and added new §§ 45Y and 48E, which provide increased credit amounts or rates for certain qualified facilities, energy projects, or energy storage technologies that satisfy similar requirements and that are placed in service after December 31, 2024.

Notice 2023-29 describes certain rules that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to include in forthcoming proposed regulations for determining what constitutes an energy community, as defined in § 45(b)(11)(B) and as adopted by §§ 45Y(g)(7), 48(a)(14), and 48E(a)(3)(A), and for determining whether a qualified facility, an energy project, or an energy storage technology is located in an energy community. Notice 2023-29 provides that the Treasury Department and the IRS intend to propose that the regulations will apply to taxable years ending after April 4, 2023, and that until the issuance of the regulations, taxpayers may rely on the rules described in sections 3 through 6 of such notice.

Sections 45(b)(11), 48(a)(14), 45Y(g)(7), and 48E(a)(3)(A) provide the requirements that taxpayers must satisfy to qualify EC Projects for increased energy community bonus credit amounts or rates under those provisions of the Code.

Section 2 of Notice 2023-29 provides that the term “EC Project” refers to: (1) a qualified facility eligible for a credit determined under § 45 (§ 45 credit) or determined under § 45Y (§ 45Y credit) that is located in an energy community; (2) an energy project eligible for a credit determined under § 48 (§ 48 credit), which may include qualified property for which a taxpayer has made a valid irrevocable election under § 48(a)(5) to treat such qualified property as energy property under § 48, that is placed in service

within an energy community; or (3) a qualified investment with respect to a qualified facility or an energy storage technology eligible for a credit determined under § 48E (§ 48E credit) that is placed in service within an energy community.

Section 45(b)(11)(A) provides that in the case of a qualified facility located in an energy community, the § 45 credit (determined after the application of § 45(b)(1) through (10), without the application of § 45(b)(9) (domestic content bonus credit amount)) is increased by 10 percent. Section 45Y(g)(7) provides a similar rule with respect to a qualified facility that is eligible for a § 45Y credit.

Section 48(a)(14) provides that in the case of an energy project placed in service within an energy community, the energy percentage used to determine the rate of the § 48 credit is increased by 2 percentage points. Section 48E(a)(3)(A) provides a similar rule for qualified investments with respect to a qualified facility or energy storage technology eligible for a § 48E credit that is placed in service within an energy community. In the case of a taxpayer also satisfying the prevailing wage and apprenticeship requirements (described in §§ 48(a)(10) and (11) and 48E(d)(3) and (4)) or meeting one of the other project requirements (described in §§ 48(a)(9)(B) and 48E(a)(2)(A)(ii) and (2)(B)(ii)), the rate of the § 48 credit or § 48E credit, as applicable, is increased by 10 percentage points.<sup>3</sup>

Section 45(b)(11)(B) identifies three location-based categories of energy communities for purposes of §§ 45, 45Y, 48, and 48E, described in Notice 2023-29 as the Brownfield Category, the Statistical Area Category, and the Coal Closure Category.

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<sup>3</sup> Notice 2022-61 (published in 87 FR 73580 (November 30, 2022) as corrected in 87 FR 75141 (December 7, 2022), 2022-52 I.R.B. 560 (December 27, 2022)) provides guidance with respect to the prevailing wage and apprenticeship requirements.

Notice 2023-29 contains three appendices (Appendix A, Appendix B, and Appendix C) that set forth certain metropolitan statistical areas (MSAs) or non-metropolitan statistical areas (non-MSAs) relevant to the Statistical Area Category and certain census tracts within the Coal Closure Category.

### SECTION 3. ENERGY COMMUNITY APPENDICES

In accordance with sections 3.03(2) and (3) and 3.04 of Notice 2023-29, this notice provides new Appendices 1, 2, and 3.

(1) Appendix 1. Appendix B to Notice 2023-29 provided the list of MSAs and non-MSAs that meet the Fossil Fuel Employment threshold described in § 45(b)(11)(B)(ii)(I) and section 3.03(2) of Notice 2023-29. That list was based on calculations using the annual County Files of the County Business Patterns (CBP) published by the Census Bureau for years 2010 through 2020.<sup>4</sup> Since the release of Notice 2023-29 on April 4, 2023, the Census Bureau released the 2021 CBP on April 27, 2023. Appendix 1 is a list of additional MSAs and non-MSAs that meet the Fossil Fuel Employment threshold described in Notice 2023-29 when using the 2021 CBP data. Appendix 1 to this notice should be combined with Appendix B to Notice 2023-29 to provide the full list of MSAs and non-MSAs that meet the Fossil Fuel Employment threshold applicable to the period beginning on January 1, 2023, and continuing until the Treasury Department and the IRS issue an updated list based on 2022 CBP data. In 2024 and later years, guidance identifying additional MSAs and non-MSAs that meet the Fossil Fuel Employment threshold generally will be issued in May of each year based on the Census Bureau's release of the latest available CBP data for a prior year.

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<sup>4</sup> Available at [CBP Datasets \(https://www.census.gov/programs-surveys/cbp/data/datasets.html\)](https://www.census.gov/programs-surveys/cbp/data/datasets.html).

(2) Appendix 2. Appendix 2 is a list of MSAs and non-MSAs that qualify as energy communities because they meet the Fossil Fuel Employment threshold and have an unemployment rate at or above the national average unemployment rate for calendar year 2022 as described in § 45(b)(11)(B)(ii)(II) and section 3.03(3) of Notice 2023-29. Appendix 2 uses the annual County Files of the CBP for years 2010 through 2021, and 2022 calendar year county unemployment rates released on April 21, 2023, by the Local Area Unemployment Statistics (LAUS) program of the Bureau of Labor Statistics (BLS).<sup>5</sup> This LAUS data was not available at the time of the April 4, 2023, release of the Notice 2023-29, so Notice 2023-29 did not identify MSAs and non-MSAs that qualified as energy communities. As provided in section 3.03(3) of Notice 2023-29, the energy community status for the MSAs and non-MSAs listed in Appendix 2 is effective as of January 1, 2023, and that status will continue until the list is updated based on unemployment rates for calendar year 2023. In 2024 and later years, guidance identifying the MSAs and non-MSAs that qualify as energy communities generally will be issued in May of each year based on the Census Bureau's release of the latest available CBP data for the prior year and the release of the latest available LAUS data for the prior year.

(3) Appendix 3. Appendix C to Notice 2023-29 provided the list of census tracts in which a coal mine has closed after December 31, 1999, or in which a coal-fired electric generating unit has been retired after December 31, 2009, and census tracts that directly adjoin the census tracts with such coal closures. Since the release of

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<sup>5</sup> BLS Local Area Unemployment Statistics (LAUS) data for counties is available at <https://www.bls.gov/lau>. The LAUS data does not include the U.S. Virgin Islands. The unemployment rate for the U.S. Virgin Islands for 2022 was found at <https://www.vidol.gov/labor-statistics/>.

Notice 2023-29 on April 4, 2023, additional coal closure data has become available. Appendix 3 lists the newly identified census tracts with either a coal mine closure or a coal-fired electric generating unit retirement, and census tracts that directly adjoin the census tracts with coal closures, using the Mine Safety and Health Administration's (MSHA) Mine Data Retrieval System data and the U.S. Energy Information Administration's EIA Form 860 and EIA Form 860M data as of May 1, 2023. Appendix 3 also utilizes historical extracts from the MSHA's Mine Data Retrieval System that enumerates each status change for a mine. Appendix 3 to this notice should be combined with Appendix C to Notice 2023-29 to provide the full list of coal closure census tracts. In 2024 and later years, guidance listing additional census tracts with coal closures generally will be issued in May of each year based on the latest available MSHA Mine Data Retrieval System data and U.S. Energy Information Administration's EIA Form 860 and EIA Form 860M data.

#### SECTION 4. DRAFTING INFORMATION

The principal author of this notice is the Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, call the energy security guidance contact number at (202) 317-5254 (not a toll-free call).