

Part III - Administrative, Procedural, and Miscellaneous

Guidance Regarding the 2024 Allocation Round of Qualifying Advanced Energy Project Credit Program under Section 48C(e)

Notice 2024-36

SECTION 1. PURPOSE

.01 This notice provides additional guidance to clarify and amplify the procedures for the allocation of credits under § 48C of the Internal Revenue Code (Code)¹ (§ 48C credits) pursuant to the qualifying advanced energy project credit program under § 48C(e) (§ 48C(e) program) and announces the 2024 allocation round of the § 48C(e) program (Round 2). Notices 2023-18, 2023-10 I.R.B. 508, and 2023-44, 2023-25 I.R.B. 924, established the § 48C(e) program to allocate \$10 billion of § 48C credits (\$4 billion of which may be allocated only to projects located in § 48C(e) Energy Communities Census Tracts²) for qualified investments in eligible qualifying advanced energy projects and provided guidance for the first allocation round of the § 48C(e) program (Round 1).

¹ Unless otherwise specified, all “section” or “§” references are to sections of the Code.

² The term “§ 48C(e) Energy Communities Census Tracts” is defined in section 5.06 of Notice 2023-18 and such tracts are listed in Appendix C of this notice.

Except as specifically provided in this notice, Round 2 will be conducted in the same manner and under the same procedures as provided under Notice 2023-18 and Notice 2023-44.³

.02 For purposes of Round 2, Appendices A, B, and C of this notice supersede Appendices A, B, and C of Notice 2023-44.

.03 As stated in section 1.03 of Notice 2023-18, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) anticipate providing at least two allocation rounds under the § 48C(e) program. During Round 1, the Treasury Department and IRS allocated approximately \$4 billion of § 48C credits, with approximately \$1.5 billion in § 48C credits allocated to projects located in § 48C(e) Energy Communities Census Tracts (as defined in section 5.06 of Notice 2023-18). For Round 2, the Treasury Department and the IRS anticipate allocating approximately \$6 billion of § 48C credits, with approximately \$2.5 billion in § 48C credits to be allocated to projects located in § 48C(e) Energy Communities Census Tracts. Although the Treasury Department and the IRS intend to allocate a total of \$10 billion of § 48C credits over the duration of the § 48C(e) program, with not less than \$4 billion of § 48C credits allocated to projects located in § 48C(e) Energy Communities Census Tracts, depending upon applications received, the Treasury Department and the IRS may not allocate in Round 2 all of the approximately \$2.5 billion of § 48C credits that must be allocated to § 48C(e) Energy Communities Census Tracts. The Treasury Department and the IRS will evaluate if any § 48C credits remain unallocated at the close of Round 2 and determine if another allocation round is needed.

³ Prior Notices and other relevant information about the § 48C(e) program can be found at <https://www.irs.gov/credits-deductions/businesses/advanced-energy-project-credit>.

.04 To be considered for an allocation of § 48C credits in Round 2, taxpayers must first submit concept papers to the IRS through the Qualified Advanced Energy Project Credit Program Applicant Portal (48C Portal), accessible at <https://eco.energy.gov/48C/>, maintained by the Department of Energy (DOE). Following submission of a concept paper, DOE will provide a letter encouraging or discouraging the taxpayer's submission of a joint application for DOE recommendation and for IRS § 48C(e) certification (§ 48C(e) application). DOE begins the acceptance period for a taxpayer's § 48C(e) application on the date of the letter of encouragement or discouragement. To be considered for the § 48C(e) program, a taxpayer's § 48C(e) application must be submitted no later than 50 calendar days after DOE begins the acceptance period for the taxpayer's § 48C(e) application. The IRS will make all Round 2 allocation decisions no later than January 15, 2025.

SECTION 2. BACKGROUND

.01 For purposes of the § 38 general business credit, § 46 provides that the amount of the investment credit for any taxable year is the sum of the credits listed in § 46. That list includes the § 48C credit, which was originally enacted by § 1302(b) of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, Division B, Title I, Subtitle D, 123 Stat. 115, 345 (February 17, 2009), to provide an allocated credit for qualified investments in qualifying advanced energy projects.

.02 In addition to certain amendments made by the Tax Increase Prevention Act of 2014, Public Law 113-295, 128 Stat. 4010 (December 19, 2014), § 48C was amended most recently by § 13501 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). Section 13501(a)

of the IRA added § 48C(e) to the Code to extend the § 48C credit and to provide an additional credit allocation of \$10 billion. Section 13501(b) of the IRA modified the definition of a “qualifying advanced energy project” contained in § 48C(c)(1)(A). Section 13501(c) and (d) of the IRA made conforming amendments to § 48C(c)(2)(A) and (f). The amendments made by § 13501 of the IRA became effective on January 1, 2023. See § 13501(e) of the IRA.

.03 Notice 2023-18 established the § 48C(e) program and provided initial program guidance. Section 3 of Notice 2023-18 provided certain definitions for purposes of the § 48C(e) program, section 4 of Notice 2023-18 described how the prevailing wage and apprenticeship requirements under § 48C(e)(5) and (6) impact the rate of § 48C credits allocated under the § 48C(e) program, section 5 of Notice 2023-18 provided a general description of the § 48C(e) program, and section 6 of Notice 2023-18 provided initial information regarding the procedures for concept papers and § 48C(e) applications.

.04 Section 5 of Notice 2023-18 states that the IRS will consider a project under the § 48C(e) program only if DOE provides a recommendation and ranking to the IRS. As stated in section 5 of Notice 2023-18, DOE will provide a recommendation only if it determines that the project has a reasonable expectation of commercial viability and merits a recommendation based on the criteria provided in additional § 48C(e) program guidance later provided in Notice 2023-44.

.05 Section 4 of Notice 2023-44 states that eligible property that is part of a § 48C eligible project placed in service prior to being awarded an allocation of § 48C credits under the § 48C(e) program is not eligible to receive such an allocation.

SECTION 3. ROUND 2 OF SECTION 48C(e) PROGRAM

.01 In General. For each project for which a taxpayer seeks an allocation of § 48C credits in Round 2, the taxpayer must use the 48C Portal to submit to the IRS (1) a concept paper for DOE consideration and (2) a joint application for DOE recommendation and for IRS § 48C(e) certification (§ 48C(e) application). If a § 48C(e) application does not (1) propose a qualifying advanced energy project (as described in Appendix A) or (2) include all of the information required in Appendix B, DOE may decline to consider the § 48C(e) application or request that the applicant resubmit its § 48C(e) application with the missing information. If DOE does not provide a recommendation to the IRS on the § 48C(e) application, the IRS will not consider the § 48C(e) application. Failure to receive an allocation in Round 1 does not preclude an applicant from applying in Round 2.

.02 Taxpayer submissions. Taxpayers must submit their concept papers and § 48C(e) applications through the 48C Portal. See Appendix B for additional information regarding the application process.

.03 Program Timeline. Generally, Round 2 will proceed as follows:

(1) A taxpayer submits a concept paper through the 48C Portal. The 48C Portal will open to accept concept paper submissions no later than Tuesday, May 28, 2024. Taxpayers must submit concept papers prior to 5:00 PM Eastern Time, within 30 calendar days after the 48C Portal opens.

(2) DOE reviews the concept paper and sends the taxpayer a letter encouraging or discouraging the submission of a § 48C(e) application. After receiving a letter of encouragement or discouragement from DOE, the taxpayer determines whether to

submit a § 48C(e) application. Any taxpayer who submits a concept paper through the 48C Portal is eligible to submit a § 48C(e) application, regardless of DOE's response to the taxpayer's concept paper.

(3) Taxpayers submit § 48C(e) applications through the 48C Portal. See Appendix B for additional information.

(4) DOE reviews each § 48C(e) application for compliance with eligibility and other threshold requirements.

(5) If the § 48C(e) application complies with all eligibility and threshold requirements, DOE conducts a technical review of the application based on the technical review criteria described in Appendix B.

(6) DOE provides a recommendation to the IRS regarding the acceptance or rejection of each § 48C(e) application and a ranking of all § 48C(e) applications.

(7) The IRS makes a decision regarding the acceptance or rejection of each § 48C(e) application based on DOE's recommendation and ranking. The IRS notifies each taxpayer who submitted a § 48C(e) application of the outcome by sending a letter allocating § 48C credits in the case of an acceptance (Allocation Letter) or a letter denying the requested allocation in the case of a rejection (Denial Letter). The IRS will make all Round 2 allocation decisions no later than January 15, 2025. In the case of an acceptance, the amount of § 48C credits allocated to a project will be based on the taxpayer's qualified investment in the qualifying advanced energy project and whether the taxpayer intends to apply for and receive an allocation of § 48C credits calculated at the 30 percent credit rate (see section 5.07 of Notice 2023-18). In the case of a denial, a taxpayer may request a debriefing with DOE regarding DOE's review of the taxpayer's

§ 48C(e) application. The Denial Letter will include instructions for requesting a DOE debriefing.

(8) To be eligible to receive a § 48C credit allocated under the § 48C(e) program with respect to a taxpayer's qualified investment in a qualifying advanced energy project (§ 48C Facility), the earliest that the taxpayer may place in service the § 48C Facility is after receiving the Allocation Letter with respect to that § 48C Facility. See section 4 of Notice 2023-44.

(9) Within 2 years of receiving an Allocation Letter, a taxpayer must notify DOE that the certification requirements have been met by submitting the required information through the 48C Portal. See Appendix B for additional information.

(10) DOE reviews information provided by the taxpayer evidencing that the requirements for certification have been met.

(11) DOE notifies the taxpayer and the IRS if the taxpayer satisfies the certification requirements.

(12) The IRS certifies a taxpayer's § 48C Facility by sending a letter (Certification Letter).

(13) Within 2 years of receiving the Certification Letter, the taxpayer notifies DOE that the § 48C Facility has been placed in service by submitting such information through the 48C Portal. See Appendix B for additional information. If the taxpayer has not placed the § 48C Facility in service within the required 2-year period or has not notified DOE that the § 48C Facility has been placed in service within the required 2-year period, then the § 48C credit allocated to the taxpayer's § 48C Facility is forfeited.

(14) DOE notifies the taxpayer and the IRS that it has received the taxpayer's

notification that the § 48C Facility has been placed in service or notification that the taxpayer will not place the § 48C Facility in service within the required 2-year period.

See section 5.09 of Notice 2023-18.

(15) If the taxpayer has placed the § 48C Facility in service within the required 2-year period and has notified DOE, then the taxpayer claims the § 48C credit on its Federal income tax return for the taxable year in which the § 48C Facility was placed in service.

(16) If the taxpayer chooses to withdraw a submission at any phase of the § 48C(e) program (whether at the concept paper phase, the § 48C(e) application phase, the post-Allocation Letter phase, or the post-Certification Letter phase), the taxpayer must provide a formal withdrawal notification through the 48C Portal.

SECTION 4. SECTION 48C ADDITIONAL RULES

.01 Section 48C Energy Communities. A § 48C Facility is determined to be located in a § 48C(e) Energy Community Census Tract at the time that DOE provides recommendations to the IRS. A § 48C Facility is treated as located within a § 48C(e) Energy Community Census Tract if the § 48C Facility satisfies the Footprint Test as provided in section 6.03 of Notice 2023-44. A taxpayer can determine whether its project is located within a § 48C(e) Energy Communities Census Tract by referring to the list of Section 48C(e) Energy Communities Census Tracts provided by Appendix C. Additionally, a map of § 48C(e) Energy Communities Census Tracts has been provided by the DOE and is available at www.energy.gov/infrastructure/48C.

.02 Selection Criteria for all projects seeking an allocation from the § 48C(e) program. Section 48C(d)(3) lists the selection criteria used to determine which

qualifying advanced energy projects merit a DOE recommendation. Section 7 of Notice 2023-44 provides additional detail regarding these criteria, including how the criteria are used to evaluate concept papers and § 48C(e) applications.

SECTION 5. PAPERWORK REDUCTION ACT

Any collection burden associated with this notice is accounted for in OMB Control Number 1545-2151. This notice does not alter any previously accounted for information collection requirements and does not create new collection requirements not already approved by the Office of Management and Budget.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Notice 2023-18 is clarified and modified. Notice 2023-44 is amplified and superseded.

SECTION 7. DRAFTING INFORMATION

.01 The principal author of this notice is Alan W. Tilley of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Mr. Tilley on (202) 317-6853 (not a toll-free call).

.02 Any questions or comments regarding the non-tax aspects of this notice can be submitted to DOE at 48CQuestions@hq.doe.gov. DOE may post questions and answers related to this notice at <https://www.energy.gov/infrastructure/48C>. Any questions or comments received under this notice are subject to public release pursuant to the Freedom of Information Act. DOE is under no obligation to respond to, or acknowledge receipt of, any questions or comments submitted under this notice and any responses provided do not constitute legal advice provided by either DOE or the IRS.