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Energy Tax Update

*By Amish Shah, Brad M. Seltzer, Nicole M. Elliott, Joshua David Odintz, Roger David Aksamit, Kenneth W. Parsons, Daniel Graham Strickland, Bryan Marcelino, Mary Kate Nicholson, Eli Brander and Rachel T. Provencher**

In this article, the authors provide highlights of important recent energy tax developments.

The first quarter of 2024 saw continued developments as a result of the enactment of the Inflation Reduction Act of 2022 (IRA), as well as developments in significant court cases and announcements from federal agencies. This article summarizes the updates from the quarter.

IRS RULINGS AND GUIDANCE

- The U.S. Department of the Treasury and IRS released Notice 2024-20,¹ stating their intent to issue proposed regulations regarding the Alternative Fuel Vehicle Refueling Property Credit under Section 30C of the Internal Revenue Code (IRC) and providing guidance on the requirement that property be located in an eligible census tract. The eligible census tracts were later updated in Appendix A and Appendix B to include additional census tracts. The date the refueling property is placed in service dictates which appendix should be used.
- Following significant industry engagement, the Treasury Department and IRS released a correction² to the Section 48 Proposed Regulations regarding the new Investment Tax Credit (ITC) for qualified biogas property. The correction generally expanded the previous announced position and provides that gas upgrading equipment may be considered an integral part of energy property and, thus, is eligible for the ITC. The correction also reopened the comment period during which numerous comments were filed regarding the remaining critical issues for qualified biogas property, namely the separate ownership issue and the 80/20 Rule, which allows a previously placed-in-service facility to be considered a “new” facility for purposes of Section 48, where the fair

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¹ <https://www.irs.gov/pub/irs-drop/n-24-20.pdf>.

² <https://www.irs.gov/pub/irs-drop/reg-132569-17-correction.pdf>.

market value (FMV) of the existing components of the “old” facility make up no more than 20 percent of the FMV of the “new facility.”

- The Treasury Department and IRS released final regulations³ regarding the direct payment of tax credits under Section 6417 of the IRC. The IRS also updated the elective payment FAQ based on the final regulations.⁴ The IRS also issued Notice 2024-27,⁵ which requests comments on situations in which a direct pay election could be made for a credit transferred under Section 6418, a process referred to as “chaining.”
- In conjunction with the release of the final regulations discussed above, the Treasury Department and IRS issued proposed regulations⁶ regarding elections by certain unincorporated organizations such as partnerships (and limited liability companies (LLCs) treated as partnerships) that are owned by one or more applicable entities to be excluded from the application of the partnership tax rules.
- Following the release of the proposed regulations under the Section 45V Clean Hydrogen Production Credit, the IRS released an updated draft of Form 7210 for 2023, as well as instructions⁷ for taxpayers looking to claim the credit for 2023. Taxpayers looking to claim Section 45V for 2023 must also attach the required verification report.
- The IRS released Proc. 2024-5,⁸ which provides a safe harbor regarding the incremental cost of certain qualified commercial clean vehicles placed in service in 2024 for purposes of the Section 45W Qualified Commercial Clean Vehicle Credit. The guidance also requests comments regarding additional types or classes of vehicles that should be included in the safe harbor in the future.
- The IRS released Proc. 2024-12 regarding the Section 30D New Clean Vehicle Credit and Section 25E Used Clean Vehicle Credit.⁹ The guidance provides sellers of new and used clean vehicles additional time

³ <https://www.federalregister.gov/documents/2024/03/11/2024-04604/elective-payment-of-applicable-credits-elective-payment-of-advanced-manufacturing-investment-credit>.

⁴ <https://www.irs.gov/credits-deductions/elective-pay-and-transferability-frequently-asked-questions>.

⁵ <https://www.irs.gov/pub/irs-drop/n-24-27.pdf>.

⁶ <https://public-inspection.federalregister.gov/2024-04606.pdf>.

⁷ <https://www.irs.gov/pub/irs-pdf/i7210.pdf>.

⁸ <https://www.irs.gov/pub/irs-drop/n-24-05.pdf>.

⁹ <https://www.irs.gov/pub/irs-drop/rp-24-12.pdf>.

to submit sales information reports to the IRS and buyer of the vehicle.

- The IRS released additional guidance regarding the energy community bonus credit in Notice 2024-30.¹⁰ The notice provides guidance regarding the qualification of offshore wind projects for the energy community bonus and includes additional areas to the “Statistical Area Category” of the energy communities list.
- Following the conclusion of the 2023 allocations of the low-income community bonus credits, the IRS released Proc. 2024-19,¹¹ which provided the process under Section 48(e) to apply for an allocation of the low-income communities bonus credit for 2024.

The IRS also provided guidance regarding securitization transactions of regulated utilities, releasing Rev. Proc. 2024-15,¹² which updates and modifies Rev. Proc. 2005-62 to reflect the evolution of securitization transactions undertaken by regulated public utilities. Rev. Proc. 2024-15 addresses both issues and allows state-created agencies not owned by utilities to issue the qualified debt instruments and for repayments to be made at least annually.

KEY CASE

A U.S. Tax Court decision entered in *23rd Chelsea Associates LLC v. Commissioner* on Feb. 20, 2024, held that bond issuance and related financing costs incurred in connection with the development of a low-income housing tax credit project are includible in eligible basis, regardless of whether the bonds are taxable or tax-exempt. The decision is important for taxpayers claiming the Section 48 ITC, which, like the low-income housing tax credit, is based on the qualifying basis of the eligible energy property.

¹⁰ <https://www.irs.gov/pub/irs-drop/n-24-30.pdf>.

¹¹ <https://www.irs.gov/pub/irs-drop/rp-24-19.pdf>.

¹² <https://www.irs.gov/pub/irs-drop/rp-24-15.pdf>.