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Energy Tax Update

*By Amish Shah, Nicole M. Elliott, Brad M. Seltzer, Elizabeth Crouse, Roger David Aksamit, Joshua David Odintz, Lee S. Meyercord, Ryan Phelps, Kenneth W. Parsons, Daniel Graham Strickland, Bryan Marcelino, Mary Kate Nicholson, Alexander Scott Lewis, Sanaa Ghanim and Rachel T. Provencher**

In this article, the authors discuss recent energy tax developments of note.

There recently have been new energy tax developments, including as a result of the enactment of the Inflation Reduction Act of 2022 (IRA), as discussed below.

IRS RULINGS AND GUIDANCE

- The U.S. Department of the Treasury and IRS on June 25, 2024, finalized regulations¹ regarding the increased credit or deduction amounts for which taxpayers can qualify by meeting prevailing wage and registered apprenticeship requirements.
- The Treasury Department and IRS on June 3, 2024, issued a notice of proposed rulemaking (NPRM)² regarding the clean electricity production credit determined under Section 45Y and the clean electricity investment credit determined under Section 48E of the Internal Revenue Code.
- The Treasury Department and IRS on May 6, 2024, released final regulations³ on the clean vehicle credits under Sections 25E and 30D, as well as Proc. 2024-26⁴ updating the procedures for qualified manufacturers to submit information regarding new clean vehicles to ensure the vehicles satisfy the requirements of the applicable credits. The IRS also released updated FAQs⁵ related to the new, previously owned and qualified commercial clean vehicle credits.
- The Treasury Department and IRS on April 10, 2024, issued a

* The authors are attorneys with Holland & Knight LLP.

¹ <https://www.federalregister.gov/documents/2024/06/25/2024-13331/increased-amounts-of-credit-or-deduction-for-satisfying-certain-prevailing-wage-and-registered>.

² <https://www.federalregister.gov/documents/2024/06/03/2024-11719/section-45y-clean-electricity-production-credit-and-section-48e-clean-electricity-investment-credit>.

³ <https://www.federalregister.gov/documents/2024/05/06/2024-09094/clean-vehicle-credits-under-sections-25e-and-30d-transfer-of-credits-critical-minerals-and-battery>.

⁴ <https://www.irs.gov/pub/irs-drop/rp-24-26.pdf>.

⁵ <https://www.irs.gov/pub/taxpros/fs-2024-26.pdf>.

supplemental NPRM⁶ under the Section 45V regarding the clean hydrogen production tax credit. The supplemental NPRM provides additional information on the provisional emissions rate (PER) process and requests comments on the same. The supplemental NPRM follows the initial NPRM under Section 45V, issued on December 26, 2023.

- The IRS released Notice 2024-49⁷ on May 31, 2024, regarding the registration requirement and certain other limited guidance under the Section 45Z clean fuel production tax credit. In July 2024, the IRS issued FAQs regarding the registration requirement.⁸
- The IRS released additional guidance on June 7, 2024, in the form of Notice 2024-48 (Notice)⁹ regarding the energy community bonus credit under Sections 45, 48, 45Y and 48E. The Notice follows prior guidance issued in Notices 2023-29 (clarified by Notice 2023-45), 2023-47 and 2024-30 and provides two new appendices, Appendix 1¹⁰ and Appendix 2.¹¹
- In Notice 2024-45,¹² the IRS released the inflation adjustment factors and applicable amounts for the Section 45V clean hydrogen credit for 2023 and 2024.
- Following initial guidance released in 2023, the IRS on May 16, 2024, released Notice 2024-41,¹³ which modifies the existing domestic content safe harbor in Notice 2023-38 and provides a new elective safe harbor for determining the domestic content bonus credit percentages under Sections 45, 45Y, 48 and 48E.
- The IRS on April 30, 2024, released Notice 2024-37¹⁴ regarding the Sustainable Aviation Fuel (SAF) Tax Credit under Section 40B as an income tax credit and as an excise tax credit under Sections 6426 and 6427. In conjunction with the guidance, the U.S. Department of

⁶ <https://www.federalregister.gov/documents/2024/04/11/2024-07644/section-45v-credit-for-production-of-clean-hydrogen-section-48a15-election-to-treat-clean-hydrogen>.

⁷ <https://www.irs.gov/pub/irs-drop/n-24-49.pdf>.

⁸ <https://www.irs.gov/newsroom/frequently-asked-questions-about-applying-for-registration-for-the-clean-fuel-production-credit-under-ss-45z>.

⁹ <https://www.irs.gov/pub/irs-drop/n-24-48.pdf>.

¹⁰ <https://www.irs.gov/pub/irs-drop/n-24-48-appendix-1.pdf>.

¹¹ <https://www.irs.gov/pub/irs-drop/n-24-48-appendix-2.pdf>.

¹² https://www.irs.gov/irb/2024-26_IRB#NOT-2024-45.

¹³ <https://www.irs.gov/pub/irs-drop/n-24-41.pdf>.

¹⁴ <https://www.irs.gov/pub/irs-drop/n-24-37.pdf>.

Energy (DOE) released a 40BSAF-GREET model.¹⁵

- The IRS issued Announcement 2024-24¹⁶ updating the applicable Reference Standard 90.1 required for the deduction under Section 179D for energy-efficient commercial building property.
- The IRS issued Announcement 2024-19¹⁷ addressing the federal income tax treatment of rebates paid for the purchase of energy-efficient property and improvements under DOE programs and the coordination of the rebates with the energy-efficient home improvement credit under Section 25C. The IRS also updated FAQs regarding the credit under Section 25C.

KEY CASE

- In *Valero Marketing and Supply Co. v. United States*,¹⁸ Valero Marketing and Supply Co. filed a complaint on April 24, 2024, claiming approximately \$76 million in alternative fuel mixture credits under Section 6426.

¹⁵ <https://www.energy.gov/media/322677>.

¹⁶ <https://www.irs.gov/pub/irs-drop/a-24-24.pdf>.

¹⁷ <https://www.irs.gov/pub/irs-drop/a-24-19.pdf>.

¹⁸ *Valero Marketing and Supply Co. v. United States*, No. 5:24-cv-00431 (W.D. Texas 2024).