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ALERT

Treasury Requests Comments for Upcoming Guidance on Energy Tax Benefits in the Inflation Reduction Act

October 13, 2022

The U.S. Treasury Department (Treasury) and the Internal Revenue Service (IRS) published six notices on October 5, 2022, requesting comments on various provisions in the Internal Revenue Code (Code) related to energy tax benefits that were amended or added by the Inflation Reduction Act (IRA). Comments received will help the agency develop guidance regarding these provisions. Treasury and the IRS request comments on IRA provisions that will significantly impact many industries, including the solar energy, wind power, electric vehicle, battery, aluminum, and steel industries.

Comments are due Friday, November 4, 2022 (comments submitted after that date will be considered if it will not delay the issuance of guidance). For all six notices, Treasury and the IRS request general comments arising from the additions or amendments made by the IRA that should be addressed in guidance as well as comments on specific issues outlined in each notice. Commenters are encouraged to specify both the issues on which guidance is needed most quickly and the most important issues on which guidance is needed.

Each notice and the covered tax benefits are briefly described below.

Energy Security Tax Credits for Manufacturing Under Sections 48C and 45X: Treasury and the IRS plan to issue guidance and seek comment regarding the Advanced Manufacturing Production Credit and the Qualifying Advanced Energy Project Credit, as added and amended by the IRA. Eligible components for the Advanced Manufacturing Production Credit include solar energy components, wind energy components, certain inverters, qualifying battery

Authors

Alan H. Price
Partner
202.719.3375
aprice@wiley.law

Timothy C. Brightbill
Partner
202.719.3138
tbrightbill@wiley.law

Robert E. DeFrancesco, III
Partner
202.719.7473
rdefrancesco@wiley.law

Laura El-Sabaawi
Partner
202.719.7042
lel-sabaawi@wiley.law

Elizabeth S. Lee
Partner
202.719.3569
elee@wiley.law

Practice Areas

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components, and applicable critical minerals. The Qualifying Advanced Energy Project Credit provides an allocated credit for certain investments in qualifying advanced energy projects, such as projects to reduce greenhouse gas emissions from industrial facilities. In addition to other topics, this notice seeks comment on the process for determining a project's eligibility for the credit.

Certain Energy Generation Incentives: Treasury and the IRS plan to issue guidance regarding provisions of the Code related to energy generation initiatives, as amended or added by the IRA. The IRA made amendments to the Renewable Electricity Production Credit (allowing a credit for electricity produced from qualified energy resources at a qualified facility and sold to an unrelated person) and the Energy Investment Credit. The IRA added a new Zero-Emission Nuclear Power Production Credit (to provide an income tax credit for electricity produced at a qualified nuclear power facility and sold to an unrelated person); Clean Electricity Production Credit (to provide a tax credit for certain electricity produced at a qualified facility); and Clean Electricity Investment Credit (to provide an investment tax credit for a qualified property). Lastly, the IRA also added special programs for certain solar and wind facilities placed in service in connection with low-income communities.

Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements: Treasury and the IRS plan to issue guidance regarding the sections of the Code, as amended or added by the IRA, that provide that taxpayers may qualify for increased credit or deduction amounts if certain prevailing wage and apprenticeship requirements are satisfied, bonus credit amounts if certain domestic content requirements (including the use of U.S.-produced steel, iron, and manufactured products) are satisfied, or increased credit amounts for investment in energy communities. The notice seeks guidance, among other issues, regarding how to determine whether projects use a sufficient quantity of manufactured products produced in the United States to qualify for the domestic content bonus credit.

Elective Payment of Applicable Credits and Transfer of Certain Credits: Treasury and the IRS anticipate issuing guidance to implement the elective payment and the elective credit transfer provisions of the Code, as added by the IRA. The elective payment of applicable credits provision allows certain taxpayers to elect to treat certain credits as a direct payment rather than a credit against their federal income tax liabilities. Applicable credits relate to the credits for alternative fuel vehicle refueling property, renewable electricity production, carbon oxide sequestration, zero-emission nuclear power production, production of clean hydrogen, qualified commercial vehicles, advanced manufacturing production, clean electricity production, clean fuel production, energy credit, qualifying advanced energy project, and clean electricity investment.

The elective credit transfer provisions permit eligible credits to be transferred from eligible taxpayers to an unrelated taxpayer. The eligible credits relate to the credits for alternative fuel vehicle refueling property, renewable electricity production credit, carbon oxide sequestration, zero-emission nuclear power production, clean hydrogen production, advanced manufacturing production, clean electricity production, clean fuel production, energy credit, qualifying advanced energy project, and clean electricity investment.

Credits for Clean Vehicles: Treasury and the IRS plan to issue guidance regarding the Clean Vehicle Credit and a program for previously owned clean vehicles, as amended and added by the IRA. The Clean Vehicle Credit provides a credit for purchasing and placing in service qualifying "new clean vehicles." The IRA also added a new section that provides an income tax credit for a qualified buyer who places in service a "previously-owned clean vehicle."

Incentive Provisions for Improving the Energy Efficiency of Residential and Commercial Buildings: Treasury and the IRS plan to issue guidance regarding provisions of the Code amended by the IRA related to incentive provisions for improving the energy efficiency of residential and commercial buildings. The Energy Efficient Home Improvement Credit provides a credit to individual taxpayers for qualified energy efficiency improvements and residential energy property expenditures. The Residential Clean Energy Credit allows a credit for qualified expenditures to improve the energy efficiency of taxpayers' residential property. The New Energy Efficient Home Credit provides a credit for the construction of "new energy efficient homes." The Energy Efficient Commercial Buildings Deduction provides a deduction for the cost of "energy efficient commercial building property."

Wiley has a robust International Trade practice, with extensive experience in energy industries. For more information about these issues or questions about how you can participate in the comment process, please contact one of the attorneys listed on this alert.