Tax Credits for Energy Production, Investment, Storage, and Manufacturing
Renewable Energy
Investment and Production Tax Credits

• **Investment tax credit (ITC)** – Credit based on tax basis of energy property
  • Solar; fuel cells; waste energy recovery; biogas; energy storage; geothermal

• **Production tax credit (PTC)** – Credit based on electricity produced and sold from qualified facility during 10-year period from placement in service
  • Wind; biomass; hydropower
  • Can elect to claim ITC in lieu of PTC for certain qualified facilities
IRA Changes to ITC and PTC

• **Extended full ITC and PTC** for projects construction of which begins before 2025

• **PTC** re-expanded to geothermal and solar

• **ITC** expansion to energy storage technology
Prevailing Wage and Apprenticeship Requirements

• IRA reduced ITC and PTC (and other credits) to $\frac{1}{5}$ of prior amount, but added a 5-times multiplier if prevailing wage and apprenticeship requirements met

• Requirements do not apply to projects that are less than 1 MW$_{AC}$ or construction of which began before January 29, 2023

• Preliminary guidance issued, but more expected

• Good faith effort exception to apprenticeship requirement
New Tax Credit “Adders”

- IRA provides increase to ITC and PTC credit amounts for projects that satisfy certain requirements
- **Domestic Content** – All steel and iron and (generally) 40% of manufactured products included in project manufactured or produced in United States
- **Energy Communities** – Projects placed in service in certain areas
- **Low-income Communities** – Projects placed in service in certain areas or that serve low-income communities
Additional Changes

• Extended and modified other business tax credits and individual tax credits
  • Carbon oxide sequestration
  • Zero-emission nuclear power production
  • Biodiesel, renewable diesel, and alternative fuels
  • Clean hydrogen production
  • Alternative refueling property
  • Energy efficient home improvement
  • Residential clean energy credit

• Added “tech-neutral” replacements to ITC and PTC for projects placed in service after 2024
  • Generally work similarly to existing ITC and PTC
  • Does not list specific technologies that qualify
  • IRS will publish guidance identifying types of projects that have greenhouse emissions rate of 0
U.S. Manufacturing

• Many changes to investment and production credits (and direct pay) based on satisfying U.S. sourcing requirements

• **Existing qualifying advanced energy project credit** – Based on tax basis in manufacturing facility in U.S.
  • Requires application for and allocation of credit from IRS

• **New advanced manufacturing production credit** – Based on actual production of certain eligible components produced in U.S.
  • Solar panel components; wind components; battery components

• Must choose one or the other
Tax Credit
Monetization
Pre-IRA Paradigm

• **Partnership Flip Structure** – Investors with tax liability investing in renewable energy projects that generate tax credits and other tax benefits (bonus and accelerated depreciation) through a partnership with sponsor
  • Based on complicated partnership tax rules
  • Require significant structuring and cost

• **Lease-Passthrough (ITC)** – Typically in conjunction with partnership flip structure
  • Sponsor entity leases project to (partnership flip) lessee
  • Tax election to treat lessee as owner of project for purposes of ITC

• **Sale-Leaseback (ITC)** – Simpler in many ways than a partnership flip
  • Sponsor sells project to investor and investor leases-back to sponsor
  • Other issues, like prepaid rent and economic substance
IRA Monetization

• “Direct Pay”
  • Generally available only to tax-exempt, government, and other specified entities
    • “Normal” taxpayers can make an election for clean hydrogen production, carbon oxide sequestration, and advanced manufacturing production credits
  • Credits generally non-refundable – Election to treat as payment
  • Opens significant new opportunities – Previously many of these entities were kept out of tax benefits associated with renewable energy
  • Must satisfy certain domestic content requirements beginning in 2024 for some credits

• Tax Credit Transfer
  • For everyone else that cannot elect Direct Pay
  • Sell tax credits for cash (only)
  • Issues: Election, filing, and pre-filing; ITC recapture; excessive credit transfer (and penalty); passive activity rules; pass-through entity transferors and transferees

• Proposed Regulations issued on June 14, 2023
  • Cannot transfer credit to Direct Pay-eligible person and have them elect Direct Pay
  • Lease-passthrough structure generally not eligible for either election