

Year-End Planning STS-Business Incentives & Tax Credits

I. Credit for Increasing Research Activities: Proposed Changes to Form 6765

The IRS announced the release of a revised draft of Form 6765, Credit for Increasing Research Activities, on June 21, 2024, that reflects feedback from external stakeholders. This follows the IRS's efforts to tighten documentation requirements for claiming the research credit. In September 2023, the IRS previewed proposed changes to Form 6765, adding new sections for detailed business component information and reordering existing fields. These changes aimed to improve information consistency and quality for tax administration but were criticized as overly burdensome.

The updated draft retains Section E from the previous version but requires additional taxpayer information. The "Business Component Detail" section, now Section G, is optional for Qualified Small Business (QSB) taxpayers and those with total qualified research expenditures (QREs) of \$1.5 million or less and gross receipts of \$50 million or less. Additionally, the IRS reduced the number of business components to be reported in Section G, requiring 80% of total QREs in descending order by amount, capped at 50 business components. Special instructions will be provided for taxpayers using the ASC 730 directive. The revised Section G will be optional for all filers for tax year 2024 to allow taxpayers time to transition to the new format. As outlined by the IRS, Section G will be effective for tax year 2025.

Examination Environment

Currently, the IRS receives a significant number of returns claiming the research credit, which requires substantial examination resources from both taxpayers and the IRS. To ensure effective tax administration for this issue, the IRS aims to clarify the requirements for claiming the research credit by considering all feedback received from stakeholders before finalizing any changes to Form 6765.

In response to ongoing concerns of improper claims of the research credit, the IRS has intensified its focus on reviewing these claims for nonconformities, including conducting more audits. Navigating the complexities of the research credit can be challenging, especially with the increased scrutiny, recent case law, and the newly implemented IRS compliance measures in place.

Planning Considerations

It is important for taxpayers to accurately determine eligibility, validate and properly record contemporaneous documentation to support research credit claims, and defend against examinations. Taxpayers should partner with a trusted tax advisor to ensure compliance with IRS regulations and proper eligibility for the research credit.

II. Tax Credit Monetization

General IRA Overview

The signing of the Inflation Reduction Act (IRA) on August 16, 2022, marked the largest-ever U.S. investment committed to combat climate change, allocating significant funds to energy security and clean energy programs over the next 10 years, including provisions incentivizing the manufacturing of clean energy equipment and the development of renewable energy generation.

Overall, the act modifies many of the current energy-related tax credits and introduces significant new credits and structures intended to facilitate long-term investment in the renewables industry.



Capital investments in renewable energy or energy storage; manufacturing of solar, wind, and battery components; and the production and sale or use of renewable energy are activities that could benefit from the over 20 new or expanded IRA tax credits. The IRA also introduced new ways to monetize tax credits and additional bonus credit amounts for projects that meet prevailing wage and apprenticeship, energy community, and domestic content requirements.

45X - Advanced Manufacturing Production Tax Credit

The 45X advanced manufacturing production credit continues to be a valuable production tax credit meant to encourage the production and sale of energy components in the U.S., specifically related to solar, wind, batteries, and critical mineral components. To be eligible for the credit, components must be produced in the U.S. or U.S. possessions and be sold by the manufacturer to unrelated parties. The Department of Energy has released a full list of eligible components as defined in the IRA, with specific credit amounts that vary according to the component. Manufacturers can also monetize 45X credits through a direct payment from the IRS for the first five years under Internal Revenue Code Section 6417. They may also transfer a portion or all the credit to another taxpayer through the direct transfer system Section 6418 election. The 45X credit is a statutory credit with no limit on the amount of funding available; however, the credit will begin to phase out beginning in 2030 and will be completely phased out after 2033. Manufacturers cannot claim 45X credits for any facility that has claimed a 48C credit.

48E and 45Y Clean Electricity Investment and Production Credits

For energy property and qualified facilities placed in service after December 31, 2024, Sections 48E and 45Y will replace the longstanding investment tax credit and production tax credit under Sections 48 and 45. The new provisions adopt a technology-neutral approach, whereby qualification for the credits will generally not be based on specific technologies identified in the IRC, but rather on the ability to generate electricity without greenhouse gas emissions. This represents a significant departure from historical practices and is expected to expand the range of technologies eligible for tax credits. Other relevant provisions of the IRA, such as bonus credit additions and monetization options, will still apply to the new Sections 48E and 45Y.

45Z Clean Fuel Production Credit

The clean fuel production credit under Section 45Z will become effective for transportation fuel produced at a qualified facility after December 31, 2024. On May 31, 2024, the IRS issued Notice 2024-49, providing guidance on the necessary registration requirements to claim the credit. Fuel that meets additional criteria to qualify as sustainable aviation fuel (SAF) will be eligible for an increased credit amount. As in the case of other renewable credits, the emissions rate is crucial for purposes of the 45Z credit, because the emissions factor for the fuel will directly impact the credit amount. Additionally, prevailing wage and apprenticeship rules will apply to Section 45Z qualified facilities, with certain exceptions.

Planning Considerations

With the passage of Section 6418 as part of the IRA, certain renewable energy tax credits can now be transferred by companies that generate eligible credits to any qualified buyer seeking to purchase tax credits. Through credit transfers, taxpayers have the option to sell all or a portion of their credits in exchange for cash as part of their overall renewable energy goals if they are not able to fully utilize the benefit. Companies with a high amount of taxable income and therefore a larger appetite for tax credits are able to purchase these credits at a discount, with the sale proceeds improving the economics of clean energy development.



The market rate for the sale of credits will be highly dependent on the type of credit being transferred, as well as the substantiation and documentation related to the seller's eligibility for the credit taken and any bonus credit amounts claimed. The current rate seen in the market for transferring credits is around \$0.93 to \$0.96 per \$1 of credit, but these amounts are subject to change based on specific fact patterns for each individual transaction and the overall market trend.

Taxpayers considering buying or selling tax credits that are transferable under the IRA should be looking ahead and forecasting their potential tax liability and resulting appetite for buying and selling credits. These credits can be transferred and utilized against estimated quarterly payments as soon as transfer agreements are finalized. This expedited reduction in cash outlay for the buyer and monetization of credits for the seller is a consideration that should be taken into account for taxpayers interested in entering the market of transferring credits.

III. Bonus Credits

The Inflation Reduction Act not only introduced new and expanded credits for the investment in and production of renewable energy and its related components but also included provisions for bonus credit amounts subject to specific requirements.

The prevailing wage and apprenticeship (PWA) requirement is a 5x multiplier for certain credits that can bring the credit rate from 6% up to 30% by paying prevailing wages to all labor related to the construction, installation, alteration, and repair of eligible property. Additionally, taxpayers must ensure that a specific percentage of these labor hours is performed by qualified apprentices.

The IRS and the Treasury Department issued final regulations on the PWA requirements in June 2024, and projects starting in 2025 and after will be unable to utilize the beginning of construction exemption. Other common credit additions available for taxpayers meeting energy community and domestic content requirements provide a 10% addition to the base rate of the credit. Taxpayer documentation will be required to substantiate the claim of these bonus credit amounts and will need to be presented to a buyer in the event that these credits are transferred under Section 6418.

Planning Considerations

Taxpayers that have current or proposed investments or activities for which they plan to utilize the PWA multiplier should be formulating a documentation strategy and procedure. In the event of an IRS audit or transfer of these credits, taxpayers will be required to substantiate the wages paid to laborers, as well as the number of hours performed by registered apprentices. Depending on the size and amount of labor involved in qualified investments or production, documentation for PWA purposes, as well as for the domestic content requirements, will likely be a highly burdensome task if not planned for at the outset of a project.

IV. NMTC

The federal New Markets Tax Credit (NMTC) program was established in 2000 to subsidize capital investments in eligible low-income census tracts. The subsidy provides upfront cash in the form of NMTC-subsidized loans at below-market interest rates (3%-3.5%). The loan principal is generally forgiven after a seven-year term, resulting in a permanent cash benefit. Funding for these subsidized loans is highly competitive and expected to be depleted quickly.

The U.S. Treasury's Community Development Financial Institutions (CDFI) Fund recently announced that, for 2025 only, it will double its annual allocation of NMTC funds.



Planning Considerations

Taxpayers across multiple industries may be good candidates for the NMTC.

Applying for the NMTC program involves several steps that help ensure the funding is allocated to projects that will have a meaningful impact on low-income communities. Applicants for the credit are evaluated based on the community impact derived from the investments (such as job creation, community services provided, etc.). In a program as highly competitive as the NMTC, applying early can make the difference between securing a portion of the limited funds available or missing out on funding opportunities. Early applicants are often better positioned to take advantage of available opportunities, and additional benefits may be possible for those who act swiftly.

The following initial questions will help determine if a project is viable for NMTC:

- Address of the proposed project
- High-level project description (a few sentences)
 - Status of construction/timeline of capital expenditures (midstream projects are permitted)
 - Estimated number of direct jobs to be created by the project

Taxpayers with ongoing or planned capital investments for later in 2024 or 2025 that are eligible to receive NMTC financing should begin reaching out to CDEs. Early outreach provides QALICBs a strong advantage in securing this financing due to the competitive nature and limited funds of the program.

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