



TaxNewsFlash

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KPMG report: Observations from Notice 2023-18 (guidance on qualifying advanced energy project credit under section 48C)

General background and purpose

The advanced energy project credit under section 48C is intended to incentivize investments in U.S. manufacturing facilities that will produce clean energy technologies and reduce greenhouse gas emissions.

A unique feature of section 48C is that to qualify for the credit, taxpayers must apply and be awarded an allocation. Pub. L. No. 117-169 (commonly called the “Inflation Reduction Act” (IRA)) provided that not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Secretary of Energy, would establish a program to consider applications and award allocations of credits. Accordingly, the IRS and the Treasury department issued [Notice 2023-18](#) [PDF 271 KB], on February 13, 2023, to provide initial program guidance for the section 48C program. Read [TaxNewsFlash](#)

Although the notice provides some direction for taxpayers who are interested in participating in the section 48C program, it did not initiate the beginning of the application process and left many issues to be clarified in later guidance. As such, the notice states that the Treasury Department and IRS intend to issue a supplemental notice and appendices (additional section 48C program guidance) by May 31, 2023, which the notice also identifies as the date on which the application period will open.

Credit specifics

Qualified advanced energy project credits were first enacted as part of the American Recovery and Reinvestment Act of 2009, and \$2.3 billion in qualified advanced energy project credits were originally

authorized. All of the credits were allocated by Treasury in two separate allocation rounds. The IRA allowed for an additional allocation of \$10 billion in credits, with \$4 billion of the allocation dedicated to projects in certain energy communities.

The qualified advanced energy project credit is an investment tax credit and, similar to other credits in the IRA, follows a two-tier credit structure based on the satisfaction of the prevailing wage and apprenticeship requirements. In order for a project to be eligible for the 30% credit rate, taxpayers must satisfy the prevailing wage and apprenticeship requirements as introduced in the IRA. A 6% credit is available to projects which do not meet the requirements. [Notice 2022-61](#) [PDF 237 KB] addresses how to satisfy the prevailing wage and apprenticeship requirements.

The IRA expands the definition of qualified advanced energy projects to include the following:

- Re-equipping, expanding, or establishing an industrial or manufacturing facility for the production or recycling of clean energy technologies (e.g., wind, solar, carbon capture, electric grid, EVs and components)
- Projects to re-equip an industrial facility to reduced emissions by at least 20% via carbon capture or other technology
- Projects to re-equip, expand, or establish industrial facilities for processing, refining, or recycling critical minerals

Under new tax credit monetization provisions enacted in the IRA, taxpayers can elect to transfer the credit to an unrelated taxpayer. In addition, certain tax-exempt or governmental entities may elect for the credit to be considered a direct payment of tax and essentially refundable.

Section 48C(f) provides that a credit is not allowed under section 48C for any qualified investment for which a credit is allowed under section 48, 48A, 48B, 48E, 45Q, 45V or 45X.

Lastly, the basis of such property is reduced by the amount of the credit.

Key notice highlights

The Treasury Department and IRS anticipate providing at least two allocation rounds under the section 48C program to allocate the \$10 billion available under this program. For the first allocation round (Round 1) of the section 48C program, which will begin on May 31, 2023, the Treasury Department and IRS anticipate allocating \$4 billion of section 48C credits with approximately \$1.6 billion (40%) to be allocated to projects located in certain energy communities. An applicant will be able to determine whether its project is located in a section 48C Energy Communities Census Tract using a mapping tool that will be referenced in the forthcoming guidance.

The IRS will consider a project under the section 48C only if the Department of Energy (DOE) provides a recommendation and ranking for the project (DOE recommendation) to the IRS. DOE will provide a recommendation and ranking only if it determines that the project has a reasonable expectation of commercial viability and merits a recommendation based on the criteria provided in the additional section 48C program guidance.

Generally, the section 48C program will include the following steps:

- 1 A taxpayer submits a **concept paper** to DOE through the eXCHANGE portal, an online application portal used by DOE available at <https://infrastructure-exchange.energy.gov/> (eXCHANGE portal).
- 2 DOE reviews the concept paper and sends the taxpayer a letter encouraging or discouraging the submission of a **section 48C application**. After receiving a letter of encouragement or discouragement from DOE, the taxpayer determines whether to submit a section 48C application. All taxpayers who submit concept papers are eligible to submit a section 48C application, regardless of DOE's response to its concept paper.
- 3 In order to be eligible for the 30% credit rate, a taxpayer must certify its intent to comply with the prevailing wage and apprenticeship requirement in its application, as well as confirm compliance when the project is placed in service.

- 4 If the section 48C application complies with all eligibility and threshold requirements, DOE conducts a technical review of the application to form a DOE recommendation.
- 5 DOE provides a recommendation to the IRS regarding the acceptance or rejection of each section 48C application and a ranking of the applications.
- 6 The IRS makes a decision regarding the acceptance or rejection of each application based on DOE's recommendation and ranking and notifies each taxpayer that submitted an application of the outcome by sending a letter allocating section 48C credits in the case of an acceptance (Allocation Letter) or letter denying the requested allocation in the case of a rejection (Denial Letter).
- 7 Within two years of receiving an Allocation Letter, a taxpayer must notify DOE that the certification requirements have been met.
- 8 The IRS certifies the project by sending a letter (Certification Letter), and within two years of receiving the Certification Letter, the taxpayer notifies DOE that the project has been placed in service.
- 9 If the taxpayer has placed the project in service within the required two-year period and has notified DOE, the taxpayer claims the section 48C credit on its income tax return for the tax year in which the project was placed in service.

Upon request, DOE will offer a debriefing to an applicant that submitted a section 48C application (after submitting a concept paper and being encouraged to submit such section 48C application) and subsequently, was not allocated a credit in Round 1 of the section 48C program. Debriefings will not be available to applicants that receive a letter of discouragement.

KPMG observations

What we know

Although the notice does not provide much definitive guidance, it does include helpful clarity on some topics. As most expected, IRS and the Treasury department did not reinvent the wheel for this allocation round and the program has maintained a number of the same application procedures as prior rounds. Future guidance is likely to contain a majority of the differences when compared to prior allocation rounds, as it will address information requested of the taxpayer related to the new, expanded eligibility criteria.

It does not appear that there are any benefits to filing a concept paper earlier than other applicants prior to the concept paper due date. Concept papers will be evaluated against criteria that may include eligibility requirements, definitions for qualifying advanced energy projects, reasonable expectation of commercial viability, and other factors described in the forthcoming section 48C program guidance, as long as they are submitted on time.

Taxpayers will have to wait until future guidance is issued to clarify whether an investment is located in an energy community or a census tract. However, the notice states that future guidance will reference a mapping tool that will assist in this determination. This is welcome news and will provide taxpayers with more certainty prior to submitting concept papers, as well provide information necessary to evaluate other tax credits for which energy community locations are relevant.

The IRA also included new section 45X which is a production-based tax credit for certain clean energy and EV components. Section 45X includes a prohibition on claiming both section 45X and section 48C by stating that a section 45X eligible component "shall not include any property which is produced at a facility if the basis of any property which is part of such facility is taken into account for purposes of the credit allowed under section 48C..." The notice states that the additional guidance will address the overlap of these credits in more detail but there is wording in the notice that suggests that co-located manufacturing operations (e.g., co-located battery manufacturing and EV assembly lines) would be eligible to claim the section 45X credit for production from one and the section 48C credit for the investment in the other.

What remains unclear

There are still a number of questions around the type of information that will be requested of the applicants in the concept paper and application for the section 48C program.

With respect to the prevailing wage and apprenticeship requirements, the notice does not address a few very material questions. First, the notice does not address whether the requirements apply to work performed prior to 2023. Second, the notice does not address the question of whether the prevailing wage and apprenticeship requirements apply to the construction, alteration and repair of the entire manufacturing facility, or just to the eligible equipment, the investment in which is the basis on which the credit is calculated.

In addition, the notice does not address whether there will be any recourse or protection for a taxpayer who satisfies the prevailing wage and apprenticeship requirements solely to achieve the 30% bonus credit rate, but then ultimately does not receive an allocation of credit. Further, the notice touches on the prevailing wage and apprenticeship curing process, but it does not address how or whether penalties for intentional disregard apply if the taxpayer goes through the curing process.

Sections 48C(e)(3)(B) and 48C(e)(3)(C) generally require that taxpayers must place a project in service within four-years of receiving an allocation of credit. Many taxpayers are still in the process of planning and designing qualified advanced energy projects, potentially making it hard to achieve this timeline for the allocation beginning May 31, 2023. However, the notice does not address the timeline for the allocation of the remaining credit amounts or how much of an anticipated lag there will be between allocations rounds. Some taxpayers may have to consider their project status and whether applying during the first allocation round is feasible, or whether their project needs more time in order to realistically be able to meet the timing requirements.

Conclusion

Although the notice provides some guidance with respect to the general application process, forthcoming additional guidance on these requirements will hopefully offer needed clarity on the program.

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