



TaxNewsFlash

United States



No. 2023-120
April 4, 2023

Notice 2023-29: Guidance on requirements for energy community production and investment tax credits under IRA

The IRS today released an advance version of [Notice 2023-29](#) [PDF 170 KB] describing certain rules that the IRS intends to include in forthcoming proposed regulations for determining what constitutes an energy community for the production and investment tax credits.

As described in a related IRS release—[IR-2023-69](#) (April 4, 2023)—H.R. 5376 (commonly called the “Inflation Reduction Act of 2022” (IRA)) allows for increased credit amounts if certain requirements pertaining to energy communities are satisfied. Energy communities include: (1) brownfield sites, (2) certain metropolitan and non-metropolitan statistical areas with high fossil fuel industry employment or high fossil fuel industry tax revenue but higher than average unemployment rates (MSA/non-MSA), and (3) census tracts on or near areas with a closed coal mine or coal-fired powerplant.

The increased credit amount available for meeting the requirements of the energy community provisions is generally 10% for the production tax credit (PTC) and 2% for meeting the requirements for the investment tax credit (ITC) (10% if prevailing wage and apprenticeship requirements or certain other requirements are also met).

A related [Treasury release](#) explains that:

- The energy community bonus for the PTC and ITC is available to developers for locating projects in historical energy communities, including areas with closed coal mines or coal-fired power plants. A census tract or directly adjoining census tract where a coal mine closed after 1999, or where a coal-fired electric generating unit was retired after 2009 qualifies as an energy community.
- The bonus is also available to areas that have significant employment or local tax revenues from fossil fuels and higher than average unemployment. To qualify for the bonus, a metropolitan statistical area or non-metropolitan statistical area must have or have recently had at least 0.17% direct employment, or at least 25% local tax revenues related to the extraction, processing,

transport, or storage of coal, oil, or natural gas, as well as an unemployment rate at or above the national average unemployment rate for the previous year.

- The text of the IRA specifies that brownfields, which are properties contaminated by hazardous materials or other pollutants, also qualify as energy communities.
- Treasury and IRS have partnered with the Interagency Working Group on Energy Communities to provide a [searchable mapping tool](#) that helps identify areas that may be eligible for the energy communities bonus.

The notice includes three appendices:

- [Appendix A](#) containing the delineations of MSAs and non-MSAs that are used for all purposes of the notice
- [Appendix B](#) setting out the list of MSAs and non-MSAs (by county) that have (or had any time after December 31, 2009) 0.17% or greater direct employment related to the extraction, processing, transportation, or storage of coal, oil, or natural gas
- [Appendix C](#) listing the census tracts in the Coal Closure Category

The notice states that the proposed regulations will apply to tax years ending after April 4, 2023, and until the issuance of the forthcoming proposed regulations, taxpayers may rely on the rules described in sections 3 through 6 of the notice.

The IRS requests comments addressing the possible data sources, revenue categories, and procedures to determine whether an MSA or non-MSA qualifies under the Statistical Area Category based on Fossil Fuel Tax Revenue (as described in section 3.03(4) of the notice) by May 4, 2023.

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