



TaxNewsFlash

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Proposed regulations: Guidance on energy credit under section 48 as amended by “Inflation Reduction Act”

The U.S. Treasury Department and IRS today released for publication in the Federal Register proposed regulations (REG-132569-17) that would amend existing regulations under section 48—reflecting amendments under H.R. 5376 (commonly called the “Inflation Reduction Act of 2022” (IRA)) as well as previous legislative changes to section 48, incorporating other administrative guidance, and providing general clarifications and updates—relating to the energy credit.

The [proposed regulations](#) [PDF 263 KB] (36 pages as published in the Federal Register on November 22, 2023) also withdraw and repropose, for additional clarity, portions of proposed regulations previously issued in August 2023 regarding the increased energy credit amount available if prevailing wage and registered apprenticeship (PWA) requirements are met. Read [TaxNewsFlash](#)

The proposed regulations also include additional proposed regulations regarding recapture of increased credit amounts under the PWA requirements in the case of transfers of credits under section 6418, supplementing proposed regulations issued in June 2023. Read [TaxNewsFlash](#)

In connection with the IRA, the proposed regulations would:

- Update the types of energy property eligible for the energy credit, including additional types of energy property added by that law
- Clarify the application of new credit transfer rules to the energy credit recapture rules applicable to failures to satisfy the PWA requirements, including notification requirements for eligible taxpayers
- Eligibility of power conditioning and transfer equipment like subsea export cables used in offshore wind projects, as well as certain power conditioning equipment located in onshore substations
- Provide guidance on qualified interconnection costs includable in the basis of some lower-output energy properties
- Provide additional requirements and rules generally applicable to energy property, such as rules regarding:
 - Functionally interdependent components
 - Property that is an integral part of an energy property

- Application of an “80/20 Rule” to retrofitted energy property
- Dual use property
- Separate ownership of components of an energy property
- Property that could be eligible for multiple Federal income tax credits
- The election to treat qualified facilities eligible for the renewable electricity production credit instead as property eligible for the energy credit

In an associated [Treasury release](#), there is additional description and commentary on the proposed regulations from Treasury and White House officials.

Comments on the proposed regulations, as well as requests to speak and outlines of topics to be discussed at the public hearing (scheduled for February 20, 2024, at 10:00 AM ET), are due by January 22, 2024. If no outlines are received by that date, the public hearing will be cancelled.

The purpose of this report is to provide text of the proposed regulations. KPMG LLP will provide analysis and observations in the coming weeks.

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