



TaxNewsFlash

United States



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Notice 2024-9: Transitional procedures for applicable entities to claim statutory exceptions to phaseouts for clean energy credits if domestic content requirements not met

The IRS today released [Notice 2024-9](#) [PDF 128 KB] providing transitional procedures for “applicable entities” to claim the statutory exceptions to the application of the phaseouts for credits determined under sections 45 (renewable electricity production), 45Y (clean electricity production), 48 (energy), and 48E (clean electricity investment) for “elective payment projects” that begin construction during calendar year 2024 that fail to satisfy the “domestic content” requirement.

As explained in the related IRS release—[IR-2023-252](#) (December 28, 2023)—applicable entities are generally tax-exempt organizations, state and local governments, Indian tribal governments, Alaska Native Corporations, the Tennessee Valley Authority or rural electric cooperatives. Generally, unless a statutory exception applies, the phaseouts for elective payment projects (i.e., those projects subject to an elective payment election under section 6417) apply to projects that produce 1 or more megawatts of electricity and that fail to satisfy the domestic content requirement. Domestic content is generally defined as steel, iron or manufactured products that are manufactured or produced in the United States.

Request for comments

Notice 2024-9 also requests comments, which will help develop future proposed regulations, regarding the process by which the statutory exceptions to the phaseouts will be provided for projects that begin construction on or after January 1, 2025.

In addition to general comments, comments are specifically requested with respect to various issues, including the number of qualified facilities that are expected to be affected by the phaseouts for elective payment, factors in defining overall costs of construction, and documentation and substantiation requirements.

Comments are due by February 26, 2024.

Background

Pub. L. No. 117-169 (commonly called the “Inflation Reduction Act of 2022” (IRA)) amended sections 45 and 48 to provide rules that taxpayers must satisfy to receive bonus credit amounts for satisfying domestic content requirements with respect to qualified facilities and energy projects placed in service after December 31, 2022. The IRA also added new sections 45Y and 48E, which provide similar rules for domestic content bonus credit amounts with respect to qualified facilities, and qualified investments in qualified facilities or energy storage technologies, placed in service after December 31, 2024.

The IRS released Notice 2023-38 in May 2023 describing certain rules that the Treasury Department and IRS intend to include in forthcoming proposed regulations regarding the domestic content bonus credit requirements under sections 45, 45Y, 48, and 48E. Read [TaxNewsFlash](#)

Section 45(b)(10), as amended by the IRA, provides the phaseouts for credits determined under section 45 for elective payment projects. Section 45(b)(10)(D)(i) provides for exceptions to the requirements under section 45(b)(10) if: (1) the inclusion of steel, iron, or manufactured products that are produced in the United States increases the overall costs of construction of qualified facilities by more than 25%, or (2) relevant steel, iron, or manufactured products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality. Section 48(a)(13), as amended by the IRA, and sections 45Y(g)(12) and 48E(d)(5), as added by the IRA, provide for similar rules for credits determined under those Code sections.

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