

# DIRECT PAY TAX CREDITS: A GUIDE FOR TRIBAL NATIONS



April 2025

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## HOW TO USE THIS GUIDE

In 2022, Congress passed major changes to the U.S. tax code that allow, for the first time, Tribal Nations and other tax-exempt entities to use tax credits to fund clean energy projects. Tribal Nations can also take advantage of tax incentives for making energy efficiency improvements to commercial buildings they own. This is a historic development that greatly increases the ability of Tribal Nations to own, control, and fund clean energy projects on Tribal lands.

This Guide provides an overview of these tax incentives, some details on how they can be applied, and discusses key factors that should be considered in preparing to make the tax credit elections. As tax-exempt entities, Tribes and Tribal organizations may not be familiar with working with the IRS and filing tax returns. This Guide provides information on how to set up an organizational account in the IRS system, register your qualified projects, and make your direct pay election for tax credits.

Throughout, we advise that if you decide to pursue the tax credits and incentives described in this Guide, you should consult with a qualified professional to ensure success.



The Oceti Sakowin Power Authority (OSPA; pr. O-CHET-ee Sha-KO-wee) is a Tribally owned energy development corporation. OSPA was founded in 2015 by seven Sioux Tribes that share territory with South and North Dakota, and these Tribes own OSPA 100%. OSPA is a nonprofit, federally chartered "Section 17" Corporation, and its mandate is to develop utility- and community-scale renewable energy projects on the reservations of its member Tribes.

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**Disclaimer:** You should consult a qualified professional to pursue the tax credits and other incentives described in this Guide. As this Guide illustrates, the tax law is complicated, and you will need more than this Guide to maximize the value of the available tax credits and successfully file for them. This Guide contains general information, and by publishing it, OSPA is not providing accounting, financial, legal, tax, or other professional advice or services. Before making any decision that affects your Tribe, Tribal finances or your business, you should consult a qualified professional advisor. OSPA will not be liable for any loss sustained by any person who relies on this Guide. In addition, it should be noted that this Guide is based on the U.S. Internal Revenue Code and regulations, proposed regulations, and guidance issued by the U.S. Department of Treasury and the Internal Revenue Service as of April 2025. Please review current regulations and guidance at [Credits and Deductions under the Inflation Reduction Act of 2022 | Internal Revenue Services](#).

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## Part 1: Introduction to Elective Pay and Energy Tax Incentives

### Overview

In August 2022, Congress enacted major changes to the U.S. tax laws administered by the Internal Revenue Service (“IRS”). Now, for the first time, Tribes, nonprofits, and other organizations that are exempt from federal income taxes may receive the benefits of certain tax credits aimed at clean energy power generation and investment, energy efficiency investments, and clean vehicles. Certain entities that otherwise have no tax liability may now claim a cash payment equal to the full value of certain tax credits by making a “direct pay” or “elective pay” election. This allows Tribal Nations and other tax-exempt entities to bypass traditional tax equity investors and receive or monetize certain tax credits directly, reducing project costs and supporting the development and ownership of

renewable energy projects directly by the tax-exempt entities.

The tax law changes also created new incentives or enhanced existing ones that can now be claimed by Tribal Nations and other tax-exempt entities to fund ongoing sustainability projects using the direct payment election. A brief description of these incentives is provided below.

### Who is eligible to make a direct pay election?

Only “applicable entities” are eligible to make a direct pay election for the tax credits. Applicable entities include:

- Indian Tribal governments and their subdivisions
- Alaska Native Corporations
- Rural electric cooperatives
- Tax exempt organizations

- States and political subdivisions such as local governments
- The Tennessee Valley Authority

The term “**Indian Tribal government**” means the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the most recent [list published by the Department of the Interior](#) in the Federal Register under the Federally Recognized Indian Tribe List Act of 1994. The Indian Tribal government must be recognized in this list before making an election for direct pay. Subdivisions, agencies, or instrumentalities of the Indian Tribal government also qualify as an applicable entity.

| Incentive Name   | Incentive Description  |
|--|--|
| <b>Section 48E:</b> <sup>1</sup> Clean Electricity Investment Tax Credit (“ITC”) | Provides a tax credit ranging from 6% to 30% of the upfront cost of a “qualifying energy property / facility” such as solar and wind electricity generation or battery storage projects.   |
| <b>Section 45Y:</b> Clean Electricity Production Tax Credit (“PTC”)              | Provides a 10-year tax credit ranging from 0.6 cents to 3.0 cents per kWh for electricity generated by renewable energy resources and sold or utilized after a qualifying facility is placed in service.   |
| <b>Section 45W:</b> Qualified Commercial Clean Vehicle Credit                    | Provides a tax credit for up to either \$7,500 or \$40,000 per vehicle for new purchases of commercial clean vehicles, depending on vehicle weight and type.   |
| <b>Section 30C:</b> Alternative Fuel Vehicle Refueling Property Credit           | Provides a tax credit for 6% or 30% of the cost of electric, hydrogen, and biodiesel refueling and charging stations in eligible locations. Credit is capped at \$100,000 per “single item” of property.   |
| <b>Section 179D:</b> Energy Efficient Commercial Buildings Deduction             | Provides a tax deduction for energy efficiency improvements to qualifying commercial buildings; must be part of (i) interior lighting systems, (ii) heating, cooling, ventilation, and/or hot water property, or (iii) the building envelope. <sup>2</sup> |

<sup>1</sup> Unless otherwise specified, all “section” references are to the Internal Revenue Code of 1986 (the “IRC”), and the Treasury regulations (“Treas. Reg. §”) promulgated there under, both as amended as of the date of this Guide.

<sup>2</sup> Section 179D is a tax deduction, not a tax credit eligible for the direct pay election. See [Part 2](#) below.

An “**Alaska Native Corporation**” is defined by reference to the Alaska Native Claims Settlement Act as a corporation organized under the laws of the state of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of members of (1) a Native village (Alaska Native Village Corporation); (2) members of an urban community of Natives (Alaska Native Urban Corporation); (3) members of a Native group (Alaska Native Group Corporation); or an Alaska Native Regional Corporation established under the laws of the State of Alaska.<sup>3</sup>

**Tribally owned, tax exempt organizations** are also eligible to elect direct pay to claim tax credits. In October 2024, the IRS issued proposed regulations confirming that both Tribally chartered entities and federally chartered Tribal corporations are generally not recognized as separate entities from the Tribes that own them for U.S. federal income tax purposes. Tribally

chartered entities are organized or incorporated under Tribal law. Federally chartered Tribal corporations include both “Section 17 Corporations” – Tribal entities formed pursuant to the Indian Reorganization Act of 1934 – and “Section 3 Corporations” – Tribal entities established under the Oklahoma Indian Welfare Act.

Federally chartered Tribal corporations and Tribally chartered entities generally are not taxed separately from the Tribe that owns these Tribal corporations/entities for other U.S. federal income tax purposes. However, the IRS recognized that it would be burdensome for the Tribe to be tasked with the responsibility for making the direct pay election on behalf of these entities, particularly when owned by multiple Tribes. As such, the IRS confirmed that federally chartered Tribal corporations and Tribally chartered entities are instrumentalities of Indian Tribal governments that may, on their own, make a direct pay election.<sup>4</sup>

Tribes and tax-exempt Tribal corporations that co-own a qualified energy project or facility with other entities, including for-profit developers and other tax-exempt entities, may also be eligible to elect direct pay of tax credits for their share of the project if certain conditions are met. As per guidance issued by Treasury, if a co-ownership arrangement involving one or more direct pay-eligible entities “elects out” of partnership tax status (meaning, elects to be excluded from subchapter K of the Internal Revenue Code “IRC”), the applicable entities can claim direct pay on tax credits earned for their share of the project. On its own, the joint venture would not be an entity that is eligible to make a direct pay election. and the credit may otherwise be limited based on tax-exempt use rules.<sup>5</sup> Below is an illustrative example of how tax credits may be accessed by a Tribe and a for-profit developer jointly building a geothermal project.

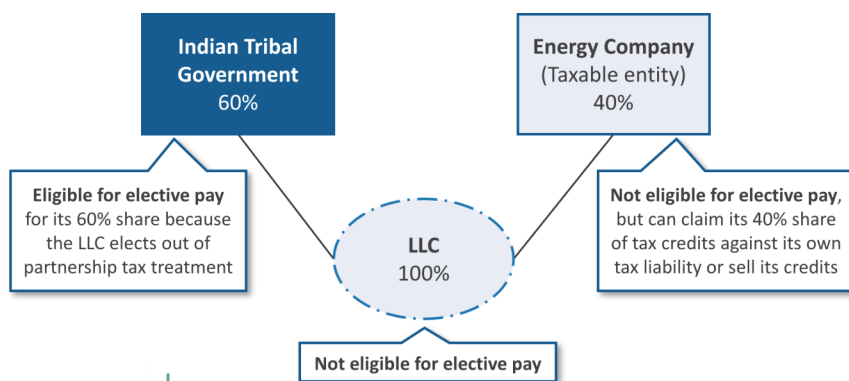


## Example

A Tribe and an energy company form a limited liability company (LLC) and enter into a joint operating agreement to build a geothermal facility expected to generate section 45Y PTCs.

### Situation

- Under the terms of their joint operating agreement, the Tribal government owns 60% of the interest in the LLC and is entitled to 60% of the electricity produced, with the energy company entitled to the remaining 40%.
- The LLC makes a valid election to be excluded from subchapter K so that it is not considered a partnership for Federal tax purposes.



*Assuming all requirements are met, the Tribal government will be entitled to 60% of the section 45Y Production Tax Credits generated by the geothermal facility and will be able to make an elective payment election for those credits.*

<sup>3</sup> PUBLIC LAW 92-203, section 3.

<sup>4</sup> REG-113628-21

<sup>5</sup> Section 50(b)(3)



## Consider Partnership Tax Status versus Elective Pay Eligibility

### Why might a co-owned project prefer partnership tax status instead of electing out?

1. Tax partnerships may offer more flexibility to structure the economic relationship between co-owners.
2. Tax partnerships can use [transferability](#) for eligible clean energy credits (including PTC and ITC under sections 45, 45Y, 48, and 48E). Through transferability, partnerships can potentially monetize credits sooner than they can be paid via direct pay under the IRC.
3. There may be practical reasons, or additional tax benefits such as depreciation, that might make organizing through a tax partnership advantageous.



**Key Takeaway:** Before entering into a tax partnership, direct pay eligible entities should know whether the partnership will be opting out of partnership tax status, how the benefits are structured, and what the organization's tax filing obligations will be. A tax advisor may be an important resource to make those determinations.

### What kind of projects may qualify?

The tax credits discussed in this Guide present powerful incentives that can help Tribal Nations meet their goals related to energy sovereignty and self-sufficiency by reducing energy costs, increasing the resilience of Tribal energy

infrastructure, and fostering economic development. [Part 2](#) discusses each of the tax credits that are eligible for the direct pay election, as well as the section 179D deduction for energy efficient buildings which can be monetized in other ways by tax-exempt entities. Below are examples of the types of projects that may be eligible for these incentives.

There are no restrictions on how many projects a Tribe or Tribal organization may complete, or electric vehicles that they may purchase, and claim a credit for in any given taxable year. See below to learn more about two Tribal organizations planning to utilize tax credits through direct pay and why it is important to them.

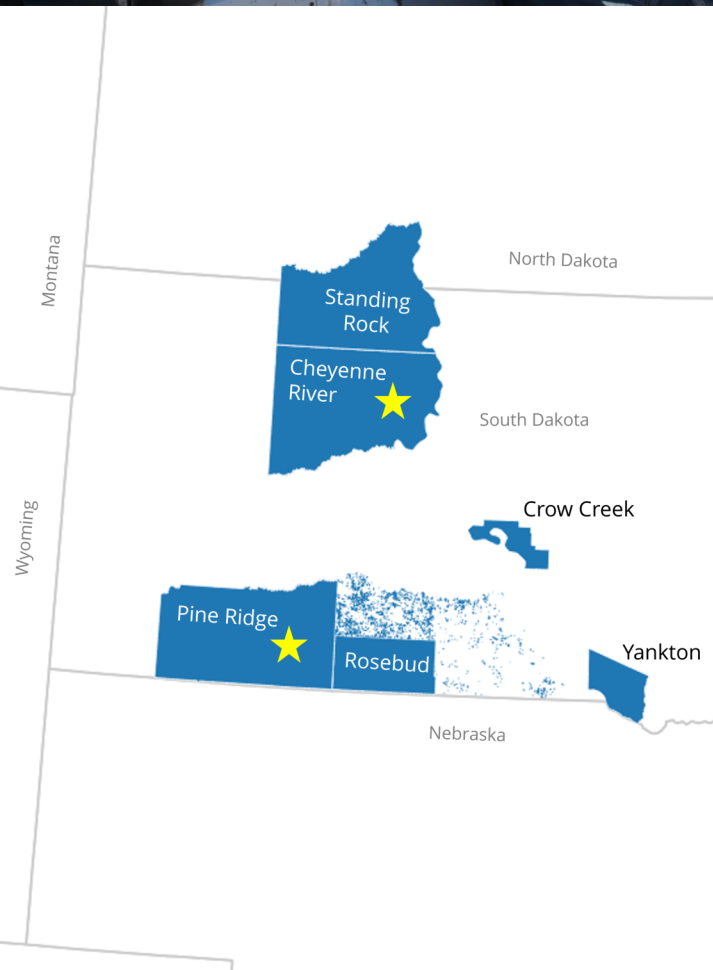
| Clean Energy and Energy Efficiency Tax Incentives - Potentially Eligible Projects   |  |   |
|---|--|---|
| Clean Energy Projects<br>(Section 48E and 45Y)  | Clean Vehicles<br>(Section 45W and section 30C)  | Energy-Efficient Buildings<br>(Section 179D)  |
| <ul style="list-style-type: none"> <li>• Utility-scale or community-scale renewable energy projects (e.g., wind, solar, geothermal, biofuel, storage)</li> <li>• Microgrid projects for Tribal infrastructure such as community centers, colleges, and administrative buildings</li> <li>• Combined heat and power systems for Tribal casinos and health centers</li> </ul> | <ul style="list-style-type: none"> <li>• Fleet electrification projects, such as acquisition of electric buses, trucks, or cars</li> <li>• Alternative fueling stations (e.g., hydrogen, electric vehicle charging)</li> </ul> | <ul style="list-style-type: none"> <li>• Retrofitting a Tribal casino, nursing home, or administrative building with energy-efficient lighting, HVAC or hot water system</li> <li>• Building a new energy-efficient warehouse for the Tribal food distribution program, Tribal college or school building, or other administrative/commercial building</li> </ul> |



Oceti Sakowin Power Authority (OSPA) is developing **two utility-scale wind farms** on the Cheyenne River and Pine Ridge Reservations, and planning more wind and solar power projects on the other reservations.

**Production Tax Credits** were always going to be used to finance the projects, which is why OSPA has long advocated that Tribes should be able to directly benefit from the credits.

With Elective Pay, OSPA and its member Tribes now have the opportunity to **maintain ownership and control** throughout the life of the projects.







Colusa Indian Energy (CIE) installed **two dual port fast chargers** and plans to install a turnkey **855.36 kWDC ground mount solar PV system** this year.

CIE will be claiming the **Alternative Fuel Vehicle Refueling Property Credit (30C)** for the chargers and the **Clean Electricity Investment Tax Credit (48E)** for the solar project. Both projects qualify for the **Low-Income Communities Bonus Credit**.

Not only do elective pay tax credits make these projects **financially viable**, they also provide the Colusa Indian Community with **increased sovereignty and control over their own infrastructure**.

## How can tax credits help pay for a project?

Historically, Tribes and tax-exempt Tribal corporations have been unable to directly access federal income tax credits as they generally have no tax liability to offset. As a result, project economics often required Tribes or other tax-exempt developers to involve an investor who could utilize the tax credits. This meant that significant value and ownership of the project went to the investor. The introduction of the direct pay election allows applicable tax-exempt entities to bypass traditional tax equity investors by converting tax credits into a cash refund that can help to finance a project. The direct monetization of these tax credits reduces project costs, increases the value of the project to the Tribe, and allows the Tribal Nation the opportunity to retain ownership of the project.

In general, an applicable entity can make a direct pay election with respect to twelve different tax credits, if it meets the underlying requirements to qualify for the credit. These credits include:

- Clean Electricity ITC (section 48/48E)\*

- Clean Electricity PTC (section 45/45Y)\*
- Qualified Commercial Clean Vehicle Credit (section 45W)\*
- Alternative Fuel Vehicle Refueling Property Credit (section 30C)\*
- Zero-Emission Nuclear Power Production Credit (section 45U)
- Advanced Manufacturing Production Credit (section 45X)
- Clean Hydrogen Production Credit (section 45V)
- Clean Fuel Production Credit (section 45Z)
- Carbon Oxide Sequestration Credit (section 45Q)
- Qualifying Advanced Energy Project Credit (section 48C)

\* Each of these incentives are discussed in greater detail below.

Additionally, the IRS expanded the section 179D Energy Efficient Commercial Buildings Deduction to give tax-exempt entities the ability to monetize this deduction.

Many of these tax credits now have a two-tiered structure that includes a standard “base” amount which is increased by five times if specified prevailing wage and apprenticeship (“PWA”) requirements

are satisfied. PWA compliant projects ensure that laborers and mechanics are paid no less than applicable prevailing wage rates and employ apprentices from registered apprenticeship programs for a certain number of hours. Certain other provisions offer additional bonus amounts if the project (i) meets domestic content requirements with respect to steel, iron, and manufactured products (up to a 10% bonus credit), (ii) is located in an energy community (up to a 10% bonus credit), and/or (iii) benefits a low-income community (up to a 20% bonus credit). Starting in 2024 for entities making a direct payment election, the domestic content requirement can also result in a reduction of the applicable credit amount if it is not met. These additional requirements and bonus credit opportunities are discussed in further detail in [Part 3](#) below.

Eligibility for these incentives often hinges on the timing that construction began on the energy property or facility or the date the project is placed in service. These concepts are discussed in [Part 4](#) below.



## Part 2: Deep Dive into the Renewable Energy Incentives

### Clean Electricity Investment Tax Credit (Section 48E)

Renewable energy can reduce dependency on traditional power sources, dramatically increasing the resilience of Tribal power facilities while lowering costs during peak usage times and cutting emissions. The section 48E ITC can help Tribal Nations reduce their energy procurement costs. This credit ranges from 6 to 70 percent (assuming all bonus credit requirements are met) of the upfront cost of a “qualifying facility,” such as solar and wind electricity generation or battery storage projects.

The section 48E ITC covers projects placed in service after 2024. It replaces the original ITC under section 48 (the “48 ITC”) which is generally available for energy property that began construction by the end of 2024. Therefore, it is possible that a specific property may qualify for both the original section 48 ITC and the section 48E ITC (for example, a project which began construction in 2024 but is placed in service in 2025). In this case, taxpayers must choose either the section 48 ITC or the section 48E ITC. Geothermal heat pump equipment is a special case – it falls under the original section 48 ITC for facilities that begin construction by the end of 2034. See [Part 4](#) below for details regarding determination of the placed in-service date and beginning of construction.

#### **What facilities are eligible for the Section 48E/48 ITC?**

Broadly speaking, the section 48E ITC covers electricity-generating facilities with a greenhouse gas “GHG” emissions rate not greater than zero and qualified energy storage technologies. Unlike the original section 48 ITC, which provided a credit for certain specifically detailed technologies, the section 48E ITC is “tech-neutral,” meaning that any

| Clean Electricity Investment Tax Credit (48E) |   |                                  |                                      |
|---|---|----------------------------------|--------------------------------------|
| Entities and Usage                            | Businesses and tax-exempt entities that make an investment in a qualified facility or energy storage technology within the U.S.   |                                  |                                      |
| Credit Amount                                 | 6% of qualified investment, 30% if PWA requirements are met   |                                  |                                      |
| Period of Availability                        | <p>Property placed in service after December 31, 2024 that begins construction by the later of:</p> <ul style="list-style-type: none"><li>• 2032, or</li><li>• the year after annual GHG emissions from U.S. electricity production are less than or equal to 25% of the 2022 emission rate.</li></ul> <p>Once the date above is reached, the credit phases out in 3 years.</p> |                                  |                                      |
| Eligible for...                               |   |                                  |                                      |
| Direct Pay?                                   | Domestic Content Bonus Credit?  | Energy Communities Bonus Credit? | Low-Income Communities Bonus Credit? |
| Yes   | Yes, 2 or 10%   | Yes, 2 or 10%                    | Yes, 10 or 20%                       |

electricity-generating technology may be used in the property, so long as the GHG emissions rate is not greater than zero. Wind, hydropower, solar, marine and hydrokinetic, geothermal, and nuclear fission or fusion energy facilities are all designated facilities with a GHG emission rate of less than zero. However, please note that there are certain technologies (e.g., biogas, combined heat and power) that may be eligible for section 48 but not section 48E due to the GHG emission limitation. More information is provided in the Clean Electricity PTC discussion below on determining the GHG emissions rate.

Eligible energy storage property includes (i) property that “receives, stores, and delivers energy for conversion to electricity (or, in the case of hydrogen, which stores energy) and has a nameplate capacity of at least 5 kilowatt hours, and (ii) thermal energy storage property. Thermal energy storage property

must (i) be directly connected to an HVAC system, (ii) remove heat from (or add heat to) a storage medium for later use, and (iii) provide energy for the heating or cooling of the interior of a residential or commercial building.

A qualified facility includes all the components of the property that are dependent on each other and operate together to perform the intended function (“functionally interdependent”) and components that are an integral part. Components are an integral part if owned by the same party and used directly in the intended function of the qualified facility and essential to the completeness of the intended function (for example, power and conditioning equipment such as transformers, inverters, and converters).

Multiple qualified facilities, even if owned by different taxpayers, can



share property considered integral to each facility. For example, a co-located solar energy facility and an energy storage system may share transfer equipment that is considered integral to each property. The section 48E ITC can be claimed for the solar energy facility and for the energy storage system, however, the cost of the shared transfer equipment must be properly allocated among the facilities and the allocations cannot exceed 100% of its actual cost.

#### **What types of costs are eligible for the section 48E ITC?**

Qualified property costs, tangible personal property costs, and direct costs (e.g., labor and installation costs) are eligible costs for the section 48E credit. Tangible personal property includes all property (other than structural components) that is contained in or attached to a building, and all property in the nature of machinery, even if located outside a building.

Certain tangible property that is an integral part of the qualified facility may also be eligible, including, for example, power conditioning equipment such as transformers,

inverters, and converters, as well as transfer equipment like wires, cables, and combiner boxes. Any maintenance costs or costs incurred outside the U.S. would not be eligible.

#### **Expansions, Restarts and Retrofits of Existing Projects**

Generally, if a facility is already placed in service, it would not be eligible for the section 48E ITC. However, there are special rules that will allow capacity expansions, restarts or retrofits of an existing facility to qualify for the credit assuming all requirements are met. An example of a project that may qualify as a restart or retrofit is the repowering of an existing wind farm. Wind turbine technology has advanced dramatically since the first wind farms were installed. The towers also typically outlast the turbine technology. Thus, many owners of older wind farms are replacing the turbine technology on the existing towers and using tax credits to finance these projects.

When an existing facility is expanded or its capacity is increased, the Incremental Production Rule treats the new unit or added capacity

as a separate qualified facility eligible for the section 48E ITC if placed in service after December 31, 2024. This rule only applies to the increased electricity production resulting from the new unit or capacity addition. There is no minimum capital expenditure required to satisfy the Incremental Production Rule. The section 48E ITC regulations also provide a special rule for restarted facilities. If a facility has been decommissioned or is in the process of decommissioning and restarts, it can be considered to have increased capacity from a base of zero if certain conditions are met.<sup>6</sup> Only the project costs directly resulting in the increased capacity of a facility by reason of a new unit or addition of capacity are considered a qualified investment for purposes of claiming the section 48E ITC. Efficiency improvements that also increase the capacity of the facility, can meet the requirements of the Incremental Production Rule. This ensures that only substantive enhancements that contribute to increased capacity are eligible for the Clean Electricity ITC.

Finally, a facility may also qualify as originally placed in service even



## Case Study

A tax-exempt organization is looking to implement a **renewable energy project** that will begin construction in 2024.

### Situation

The organization makes a **\$6 million** qualified investment in **geothermal heat pumps** and is able to make an election for the **section 48E Investment Tax Credit (ITC)**

### Base Credit

- 6% of costs related to geothermal equipment

Direct payment amount:  
**\$360,000**

### Meeting PWA requirements, but not meeting domestic content

- 30% of costs related to geothermal equipment

Direct payment amount:  
**\$1,620,000\***

### Meeting PWA and domestic content requirements

- 40% of costs related to geothermal equipment

Direct payment amount:  
**\$2,400,000**

*\* Because construction started in 2024, any direct payment amounts are reduced by a 10% haircut (i.e., \$1,800,000 (30% of costs) less \$180,000 (10%)) if domestic content requirements are not met (assuming project is > 1MW).*



**The organization can receive a total of \$2,400,000 in tax credits back for a geothermal energy project that costs \$6 million. Bonus credits are available that can increase the direct payment amount to up to 70% of eligible costs (\$4,200,000).**

<sup>6</sup> These conditions include the facility having ceased operations, a shutdown period of at least one calendar year during which it was not authorized to operate by its federal regulatory authority, eligibility to restart based on an operating license issued by the federal regulatory authority, and the facility not having ceased operations for the purpose of qualifying for the special rule for restarted facilities.

though it contains some used property, depending on the fair market value of the used components and new capital expenditures. Specifically, if the fair market value (“FMV”) of the used property (i.e., the retained components) is not more than 20% of the facility’s total value (i.e., the retained components plus the new capital costs), the facility may qualify as originally placed in service as of the date the additional or upgraded equipment is placed in service. This is known as the 80/20

**Example:**

If the new costs associated with the Unit of Property were \$9 million and the FMV of the Retained Components were \$1 million, the facility would pass the 80/20 Rule at 10% and would be considered newly placed in service for credit purposes.

$$\frac{\$1 \text{ M}}{\$1 \text{ M} + \$9 \text{ M}} = 10\% < 20\%$$

rule.

**What is the section 48E ITC amount?**

The section 48E ITC amount is equal to a percentage of the qualified investment. The base percentage for the section 48E ITC is 6%. This increases by 5x to 30% if either the PWA requirements or one of its exceptions are met. The credit amount can be further increased if a project is eligible for any of the bonus credits. Lastly, starting in 2024 for entities making a direct payment election, projects which do not meet domestic content requirements or qualify for an exemption are subject to a phaseout of the credit amount. All of these requirements and bonus credits are described in more detail in [Part 3](#).

**Case Study of a Section 48E ITC Claim**

The case study above illustrates how the Clean Electricity ITC would be calculated. Additionally, note that it is possible to meet domestic content

requirements but not PWA requirements, in which case the base credit is increased by 2 percentage points instead of 10 percentage points.

**How does an applicable entity claim the section 48E ITC?**

The section 48E ITC may be claimed by filing IRS Form 3468, Investment Credit. This form is used to calculate and claim the ITC and the tax filer must provide detailed information about the qualifying property including the type, placed-in-service date, and cost basis (i.e., the total cost of the equipment and installation). Additionally, if the project meets PWA requirements or qualifies for any bonus credits, additional documentation is required. See [Part 3](#) below for further details. The Form 3468 is then attached to the tax return for the taxable year in which the tax filer reports the credit.

See [Part 4](#) below for further details about how a Tribe or a Tribally owned entity can file a tax return to

make a direct payment election and claim the section 48E ITC.

**Clean Electricity Production Tax Credit (Section 45Y)**

The section 45Y Clean Electricity Production Credit (the “section 45Y PTC”) can benefit two types of renewable power generation projects now being developed by Tribes: (1) power being generated for sale to a utility or corporate buyer not related to the Tribe, or (2) a microgrid or other facility being developed to provide power to Tribal buildings (i.e., casinos, hospitals, schools), to reduce or eliminate their energy costs, provided that the facility is equipped with a metering device that is owned and operated by an unrelated person. The section 45Y PTC provides a 10-year tax credit ranging from 0.6 cents to 3 cents per kilowatt-hour (“kWh”) of electricity generated after a facility is placed in service.

The section 45Y PTC covers projects placed in service after 2024. It replaces the original section 45 PTC which is generally available for energy

| Clean Electricity Production Tax Credit (45Y) |   |                                  |                                      |
|---|---|----------------------------------|--------------------------------------|
| Entities and Usage                            | Businesses and tax-exempt entities that produce electricity at a qualified facility within the U.S.   |                                  |                                      |
| Credit Amount                                 | 0.6 cents per kWh generated, 3 cents per kWh if PWA requirements are met. The per kWh credit rates are for 2025 and adjust annually for inflation.  |                                  |                                      |
| Period of Availability                        | <p>Property placed in service after December 31, 2024 that begins construction by the later of:</p> <ul style="list-style-type: none"><li>• 2032, or</li><li>• the year after annual GHG emissions from U.S. electricity production are less than or equal to 25% of the 2022 emission rate.</li></ul> <p>Once the date above is reached, the credit phases out in 3 years.</p> |                                  |                                      |
| Eligible for...                               |   |                                  |                                      |
| Direct Pay?                                   | Domestic Content Bonus Credit?  | Energy Communities Bonus Credit? | Low-Income Communities Bonus Credit? |
| Yes   | Yes, 10%  | Yes, 10%                         | No                                   |



## Consider Production Tax Credits vs Investment Tax Credits

### Situation

Many renewable projects will qualify for both the PTC and the ITC. What factors should a tax-exempt organization consider when deciding which tax credit to claim?

### Why choose the PTC over the ITC?

1. The PTC is based on production during the facility's first ten years of operation, spreading the monetization of the credit over the production period. This can provide a more stable and consistent realization of the credits but also introduces performance risk.
2. If planned production levels are high compared to the initial capital investment and project financing costs, the PTC may provide a larger benefit.
3. A facility that qualifies for the section 45Y PTC remains a qualified facility during the 10-year period beginning on the date it was originally placed in service. Therefore, the section 45Y PTC is not subject to recapture.

### Why choose the ITC over the PTC?

1. The ITC is claimed based on the cost investment in the facility at the time it is placed in service. This allows for a one-time monetization of the credit at the outset of operations to more quickly offset initial investment costs.
2. If the initial capital investment or project financing costs are high compared to planned project production levels, the ITC may be advantageous.
3. Changes in tax policy or administrations could affect the future realization of tax credits and so an organization may prefer the certainty of claiming the ITC.



**Key Takeaway:** In general, the same facility cannot claim both an investment tax credit (section 48/48E) and any of the various production tax credits (section 45/45Y or 45J, 45Q, 45U). The same project may qualify for multiple tax credits, so Tribal Nations should carefully model out the tax benefits to determine the most advantageous credit to claim.

property that began construction by the end of 2024. Therefore, it is possible that a specific property may qualify for both the original section 45 PTC and the section 45Y PTC (for example, a project which began construction in 2024 but is placed in service in 2025). In this case, taxpayers must choose either the section 45 PTC or the section 45Y PTC. See [Part 4](#) below for details regarding determination of the placed in-service date and beginning of construction.

### Which technologies are eligible for the PTC?

Common electricity generation facilities that qualify for the 45Y PTC include wind, solar, hydropower and geothermal. Specifically, the section 45Y PTC provides a credit for the domestic production of electricity at a facility owned by the Tribe or Tribally owned entity that is used for the generation of electricity, placed in service after December 31, 2024, and has a GHG emissions rate of not greater than zero. A facility remains a qualified facility during the 10-year period beginning on the date it was originally placed in service, provided

that its GHG emissions rate stays at zero or below. See [Part 4](#) below for details regarding determination of the placed in-service date.

### How is the GHG emissions rate determined?

In general, the GHG emissions rate means the amount of greenhouse gases emitted into the atmosphere by a facility in the production of electricity, expressed as grams of CO<sub>2</sub>e per kWh. To be eligible for the section 45Y PTC, the facility generating electricity must have a GHG emissions rate of not greater than zero. Wind, hydropower, solar, marine and hydrokinetic, geothermal, and nuclear fission or fusion energy facilities are all designated facilities with a GHG emission rate of less than zero. Separate rules apply to determine the GHG emissions rate for facilities that produce electricity through combustion or gasification ("C&G facilities") and those that do not. With respect to C&G facilities, the GHG emissions rate must be determined by a lifecycle analysis of the net rate of greenhouse gases both directly and indirectly emitted into

the atmosphere by such facility, including emissions at all stages of fuel and feedstock production and distribution. With respect to non-C&G facilities, the emissions rate must be determined through a technical and engineering assessment.

The IRS is required to annually publish a table setting forth the GHG emissions rate for types or categories of facilities which must be used for purposes of section 45Y. If a facility is of a type or category for which an emissions rate has not been established, the tax filer may file a petition for the determination of the provisional emissions rate. The tax filer must maintain documentation regarding the design, operation, and, if applicable, feedstock or fuel source that establishes that the facility had a GHG emissions rate that is not greater than zero.

Please note, GHG emission rates are determined in a similar manner for the section 48E ITC.

### Combined Heat and Power Property

"Combined heat and power" (CHP) systems are technically

sophisticated systems that capture and reuse heat generated by power-producing systems. Mechanical systems that generate power – whether a car engine, a wind farm, or a natural gas generator – all generate heat when they produce power. Mostly, that heat is wasted – it just dissipates into the air. But CHP systems capture that heat and put it to productive use. We include a discussion of CHP systems because they are increasingly being implemented by Tribes and determining their GHG emission rates is more complex. A Tribal casino that includes a natural gas turbine for electricity, a heat recovery unit for heating and hot water, and an absorption chiller for cooling is one common example of a CHP system. This system would utilize waste heat for heating and cooling, reduce overall energy consumption, and provide cost savings, reliable energy, and environmental benefits, contributing to the community's sustainability goals and energy independence.

CHP property comprises a system that uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of

steam or other forms of useful thermal energy (including for heating and cooling applications), and does not include property for transporting the energy source to a generating facility or to distribute energy produced by the facility.

The GHG emissions rate for CHP property is not only based off the kWh of electricity produced, but the thermal energy produced by any CHP system property within the facility is also included in the calculation (as opposed to other technologies, which only use kWh of electricity produced for the GHG emissions rate).

At least 20% of the CHP system's total useful energy must be in the form of useful thermal energy that is not used to produce electrical or mechanical power and at least 20% must be in the form of electrical or mechanical power. In the aggregate, more than 60% of the energy input into the system must be converted into useful energy.

#### What is the section 45Y PTC amount?

The section 45Y PTC amount is equal to the current credit rate multiplied by the amount of electricity produced at the facility and sold (measured in kWh) to an unrelated person during the taxable year. The 45Y PTC credit rate is annually

adjusted for inflation, by a factor which the Treasury Department publishes by April 1 of each calendar year. For 2025, the section 45Y PTC rate is 0.6 cents (\$0.006) per kWh, or 3.0 cents (\$0.030) if the PWA requirements or one of the exceptions are satisfied.

If the electricity is not sold to a third party and the facility is equipped with a metering device that is owned and operated by an unrelated person, the credit rate is multiplied instead by the amount of electricity produced at the facility and sold, consumed, or stored by the tax filer during the taxable year (e.g., a microgrid for a Tribal casino that is connected to the power grid and sells excess power to the local utility).

#### Case Study of a Section 45Y PTC Claim

The case study below illustrates how the Clean Electricity PTC would be calculated in the first year of a project's life. Assuming all conditions continue to be met, the tax filer could continue to claim the PTC for electricity generated annually for ten (10) years. Thus, the total value of expected tax credits that could be claimed for a qualified project that continues to produce electricity at a similar level will generally be ten (10)



## Case Study

A tax-exempt organization is looking to implement a **renewable energy project** that began construction in 2024 and will be placed in service in 2025.\*

| Situation  | Base Credit   | Meeting PWA requirements, but not meeting domestic content   | Meeting PWA and domestic content requirements  |
|--|---|--|--|
| The organization implements a <b>wind farm</b> , which produces <b>600 million kWh</b> per year and is able to make an election for the <b>section 45Y Production Tax Credit (PTC)</b>                   | 0.6 cents (\$0.006) per kWh of electricity generated by wind farm and sold to third party<br><br><b>Year 1 direct payment amount: \$3,600,000</b> | 3 cents (\$0.03) per kWh of electricity generated by wind farm and sold to third party<br><br><b>Year 1 direct payment amount: \$18,000,000*</b> | 3.3 cents (\$0.033) per kWh of electricity generated by wind farm and sold to third party<br><br><b>Year 1 direct payment amount: \$19,800,000</b> |
| * Because construction began in 2024, any direct payment amounts are reduced by a 10% haircut (i.e., \$18,000,000 (\$0.03 per kWh) less \$1,800,000 (10%)) if domestic content requirements are not met. |   |  |  |



**The organization can receive a total of \$19,800,000 in tax credits for the first filing year for a wind farm project that generates 600 million kWh of electricity in a year. The organization could continue to claim a section 45Y PTC for the following 9 years. Additional bonus credits are available that can lead to a maximum rate of 3.6 cents (\$0.036) per kWh (\$21,600,000) in the first filing year.**



times the amount in the case study, plus adjustments for inflation.

### How does an applicable entity claim the section 45Y PTC?

The section 45Y PTC is claimed by annually filing IRS Form 8835, Renewable Electricity Production Credit. This form is used to calculate and claim the PTC, and the filer must provide detailed information about the qualifying property including the type, placed in service date, nameplate capacity, usage of any tax-exempt financing, and various other details. Additionally, if the project meets PWA requirements or qualifies for any bonus credits, additional documentation is required. See [Part 3](#) below for further details. The Form 8835 is then attached to the tax return for the first taxable year in which the tax filer reports the credit.

Unlike the 48E ITC for which the full credit amount is claimed in a single year, the 45Y PTC is claimed over multiple years. Thus, an annual tax return will need to be filed in subsequent years until the full value of the 45Y PTC is claimed for the first 10 years of energy production from the qualifying property. See [Part 4](#) below for further details about how a Tribe or a Tribally owned entity can file a tax return to make a direct payment election and claim the section 45Y PTC.

### Qualified Commercial Clean Vehicle Credit (Section 45W)

Tribal Nations that rely on vehicle fleets (e.g., public transportation, cars or trucks for Tribal employees to perform duties) can effectively reduce the total purchase cost of clean vehicles by using section 45W Qualified Commercial Clean Vehicle Credit (the “section 45W Credit”). Section 45W provides a tax

| Qualified Commercial Clean Vehicle Credit (45W) |   |                                  |                                      |
|---|---|----------------------------------|--------------------------------------|
| Entities and Usage                              | Businesses and tax-exempt entities that purchase qualified commercial clean vehicles that are primarily used in the U.S.  |                                  |                                      |
| Credit Amount                                   | Lesser of 15% of the vehicle’s cost (or 30% for vehicles without internal combustion engines) or the incremental cost of the vehicle.<br><br>Maximum credit of \$40,000 per vehicle (\$7,500 for vehicles under 14,000 pounds). |                                  |                                      |
| Period of Availability                          | January 1, 2023 – December 31, 2032   |                                  |                                      |
| Eligible for...                                 |   |                                  |                                      |
| Direct Pay?                                     | Domestic Content Bonus Credit?  | Energy Communities Bonus Credit? | Low-Income Communities Bonus Credit? |
| Yes   | No  | No                               | No                                   |

credit of up to \$40,000 per vehicle (\$7,500 for vehicles under 14,000 pounds) for new purchases of plug-in hybrid or battery electric and fuel cell (hydrogen) vehicles that meet certain requirements based on vehicle type and weight. There is no limit to the number of vehicles for which a credit may be claimed.

### Which types of vehicles are eligible for the section 45W Credit?

The section 45W Credit applies to a specific set of clean vehicles that are used for commercial purposes. Qualifying vehicles include passenger vehicles, buses, ambulances, delivery trucks, and certain other vehicles<sup>7</sup> for use on public streets, roads, and highways that are propelled to a significant extent by either (1) a rechargeable electric motor<sup>8</sup> or (2) a qualifying hydrogen fuel cell.

Furthermore, the vehicle must be manufactured by a [qualified](#)

[manufacturer listed on the IRS website](#), be used in business and not for resale, be primarily operated in the United States, and not have previously been allowed a credit under sections 30D or 45W.

The Tribe or tax-exempt entity must buy the vehicle, as opposed to leasing it, to claim the tax credit. If the vehicle is leased, the company providing the lease typically claims the credit, though benefits may be passed to the tax-exempt entity through reduced lease payments.

### What is the section 45W credit amount?

The amount of the section 45W Credit is the lesser of 15% of the vehicle’s cost to the buyer (or 30% for vehicles without internal combustion engines i.e., a fully electric car versus a hybrid) or the incremental cost of the vehicle (i.e., the excess of the purchase price for such vehicle over

<sup>7</sup> Regulations identify mobile machinery as qualifying commercial vehicles, however, there are outstanding questions as to what specific vehicles would qualify, particularly with respect to off-road mobile machinery used in construction (e.g. bulldozers, excavators), agriculture (e.g., sprayers, combine harvesters) and other outdoor applications (e.g., asphalt pavers, forklifts). The [Treasury and IRS requested comments on this matter](#) in January 2025.

<sup>8</sup> Must have a battery capacity of at least 7 kWh if the gross vehicle weight rating is under 14,000 pounds, or 15 kWh if the if over 14,000 pounds.



## Case Study

A tax-exempt organization would like to replace its fleet of transport vehicles with a **new fleet of electric vehicles (EV)**. It plans on bringing in a **fully electric mixture of shuttle buses and cars**.

| Situation   | Car (6,000 lbs.)   | Shuttle Bus (15,000 lbs.)   |
|---|--|---|
| The organization can utilize the <b>section 45W Qualified Commercial Clean Vehicle Credit</b> to receive a credit of the lesser of: | <b>Lesser of:</b><br>(a) 30% of total cost of EV: \$55,000<br>(b) Incremental cost relative to a comparable vehicle of \$40,000<br><br><b>Credit:</b><br>(a) \$16,500<br>(b) \$15,000<br><br><b>Capped at \$7,500 per vehicle that has a gross vehicle weight rating of less than 14,000 lbs.</b><br><br><b>Final refundable credit after weight limitation: \$7,500</b> | <b>Lesser of:</b><br>(a) 30% of total cost of EV: \$200,000<br>(b) Incremental cost relative to a comparable vehicle of \$155,000<br><br><b>Credit:</b><br>(a) \$60,000<br>(b) \$45,000<br><br><b>Capped at \$40,000 for vehicles with a gross vehicle weight rating over 14,000 lbs.</b><br><br><b>Final refundable credit after weight limitation: \$40,000</b> |

*The organization can receive a \$7,500 credit per car and \$40,000 per shuttle bus, which reduces the cost of fleet electrification, enabling the organization to decrease their GHG emissions and contribute to cleaner streets for the local community.*

the price of a comparable vehicle that is fully gas or diesel powered). The IRS provides guidance annually to determine the incremental cost for a vehicle and allows organizations to rely on the [incremental costs published by the Department of Energy](#) ("DOE"). The section 45W Credit is capped at \$7,500 for vehicles under 14,000 pounds and \$40,000 for all other clean vehicles.

### How does an applicable entity claim the 45W Credit?

The section 45W Credit is claimed by filing IRS Form 8936, Qualified Plug-in Electric Drive Motor Vehicle Credit, and attaching it to the tax return for the year in which the vehicle was placed in service. This form requires information about the vehicle, such as the make, model, and VIN, as well as the date it was placed in service and the amount of the section 45W Credit being claimed.

See [Part 4](#) below for further details about how a Tribe or a Tribally owned entity can file a tax return to make a direct payment election and claim the section 45W Credit.

### Alternative Fuel Vehicle Refueling Property Credit (Section 30C)

Alternative fuel vehicle refueling properties, such as electric vehicle charging stations, can help Tribal

Nations cut costs by reducing the amount spent on traditional gasoline or diesel fuels. The shift toward alternative fuels and improving access to alternative fuel refueling stations for community members can also lower greenhouse gas emissions, which may result in long-term cost savings and a cleaner environment for the local community. Section 30C provides a tax credit for the installation of refueling and charging stations in eligible locations for alternative fuels such as electricity, hydrogen, and biodiesel.

### Which types of refueling properties are eligible for section 30C?

To be eligible for the alternative fuel vehicle refueling properties credit, businesses or tax-exempt entities need to ensure the refueling property is:

- For the recharging of motor vehicles propelled by electricity, or
- For the storage or dispensing of a clean-burning fuel into the fuel tank of a motor vehicle propelled

| Alternative Fuel Vehicle Refueling Property Credit (30C) |  |                                  |                                      |
|--|--|----------------------------------|--------------------------------------|
| Entities and Usage                                       | Businesses and tax-exempt entities that install a qualified refueling property in certain low-income communities and non-urban areas. Qualified fuels include electricity, ethanol, natural gas, hydrogen and biofuel. |                                  |                                      |
| Credit Amount  | 6% of qualified investment, 30% if PWA requirements are met  |                                  |                                      |
| Period of Availability                                   | January 1, 2023 – December 31, 2032  |                                  |                                      |
| Eligible for...  |  |                                  |                                      |
| Direct Pay?  | Domestic Content Bonus Credit?   | Energy Communities Bonus Credit? | Low-Income Communities Bonus Credit? |
| Yes  | No   | No                               | No                                   |

by such fuel. Clean burning fuels include ethanol, natural gas, hydrogen, and biodiesel.

### Where does the refueling property need to be located to be eligible for section 30C?

Qualified locations include census tracts that are considered “Low-Income Communities” (“LICs”) based on New Markets Tax Credit (“NMTC”) census data, OR the location is in a non-urban area according to the DOE. To determine if a project is eligible, the address can be mapped using the section 30C Tax Credit Eligibility Locator map by Argonne National Laboratory ([30C Tax Credit Eligibility Locator \(arcgis.com\)](#)), which includes the following eligible tracts:

- 2011-2015 NMTC Tracts
- 2016-2020 NMTC Tracts
- 2020 Non-urban Tracts

If the alternative refueling properties are placed into service after December 31, 2022 and before January 1, 2025, businesses or tax-exempt entities may utilize either 2011-2015 census tracts or 2016-2020 census tracts for purposes of section 30C credit qualification. If the

alternative refueling properties are placed into service after January 1, 2025, and before January 1, 2033, **only** the 2016-2020 NMTC Tracts are relevant for purposes of claiming the 30C credit. These census tract boundaries are subject to change with future census data releases.

### What is the section 30C credit amount?

The base credit amount for section 30C is 6% of eligible project costs and can be claimed on alternative refueling property placed in service from January 1, 2023, through December 31, 2032. See [Part 4](#) below for details regarding establishing the placed-in-service date.

Additionally, the alternative refueling property credit amount increases 5x to 30% if either the PWA requirements or one of the exceptions described in more detail in [Part 3](#) are met.

### What types of costs are eligible for the section 30C Credit?

Charger, material, and labor installation costs are eligible for the section 30C Credit. Under proposed regulations, each charging port or

each fuel dispenser for refueling property, or each storage property is considered a separate item of section 30C property. For recharging ports, pedestals and foundations, electrical panels, and conduit/wiring installed with a charging port are each considered an integral part of the property and thus, are eligible costs for the credit.<sup>9</sup> If any of these components are shared across multiple charging ports, the costs must be proportionally allocated to each charging port when claiming the credit. For example, if a Tribe installs 2 charging ports to recharge its new electric school buses, each charging port would be a separate eligible property for which the Tribe can claim the section 30C Credit, and half of the costs of the shared pedestal for mounting the chargers, the dedicated electric panel and wiring, and the smart charge management system would be allocated to each charging port.

Eligible recharging property includes property only if it is located at the point where the motor vehicles are recharged. Any maintenance costs or costs incurred outside the United States would not be eligible. The maximum credit amount for each



## Case Study

A tax-exempt organization would like to install **electric vehicle (EV) charging ports in 10 different locations, 5 ports per location**, for its new EV fleet, with a cost of \$10,000 per charging port.

### Situation

The organization installs 50 electric vehicle charging ports across 10 locations in **low-income communities or non-urban areas** and is able to make an election for the **section 30C Alternative Fuel Vehicle Refueling Property Credit**

### Base Credit

- 6% of each charging port = \$600 per port
- Direct payment amount per location: \$3,000

Total refundable credit: **\$30,000**

Note: The credit is limited to \$100,000 per charging port.

### Meeting PWA requirements for installation and maintenance

- 30% of each charging port = \$3,000 per port
- Direct payment amount per location: \$15,000

Total refundable credit: **\$150,000**



**The organization can receive a maximum of \$15,000 per location for a total direct payment amount of \$150,000. This can significantly reduce the financial burden of the organization, freeing up resources that could better support other strategic goals.**

<sup>9</sup> The proposed regulations also provide examples of eligible property for a qualifying compressed natural gas fueling station, including the gas line from the utility connection, dryer, filter, gas compressor, buffer storage, temperature compensation unit, and fuel dispensers. Also, hydrogen energy storage property may include a hydrogen compressor and associated storage tank.



single item of property (for each charging port, fuel dispenser, or storage property) is \$100,000.

**How does an eligible entity claim the section 30C credit?**

IRS Form 8911, Alternative Fuel Vehicle Refueling Property Credit, will need to be filed to claim the section 30C credit, which requires detailed records of expenditures and confirmation of property eligibility for that year. Attached to Form 8911, for each property, tax filers must include a separate form or schedule that includes a description of the property and the geographic identifier for the population census tract. Additionally, if the project meets PWA requirements, additional documentation is required. See [Part 3](#) below for further details.

See [Part 4](#) below for further details about how a Tribe or Tribally owned entity can file a tax return to make a direct payment election and claim the section 30C Credit.

**Energy Efficient Commercial Buildings Deduction (section 179D)**

While not a tax credit (and therefore ineligible for the benefits of a direct pay election), the section 179D Energy Efficient Commercial Buildings Deduction (the “section 179D deduction”) can help organizations seeking to improve the energy efficiency of existing commercial buildings, as well as new construction projects. These energy efficiency improvements can be made to interior lighting systems; heating, cooling, ventilation, and/or hot water; or the building “envelope” — that is, anything that separates the internal building from the external environment, including the roof, doors, windows, floors, and exterior walls.

| Energy Efficient Commercial Buildings Deduction (179D) |  |                                  |                                      |
|--|--|----------------------------------|--------------------------------------|
| Entities and Usage                                     | Businesses that place in service energy efficient commercial building property or energy efficient commercial building retrofit property. Tax-exempt entities may not claim the section 179D deduction but can allocate it to designers of the energy efficient features or retrofits of the property.   |                                  |                                      |
| Credit Amount  | <p>Lesser of (i) the cost of the installed property or (ii) \$0.58 to \$1.16 / sq. ft. depending on the level of energy savings, \$2.90 to \$5.81 / sq. ft. if PWA requirements are met.</p> <p>Every percentage increase in energy savings above 25% adds \$0.02 / sq. ft. to the deduction amount, \$0.12 / sq. ft. if PWA requirements are met.</p> <p>The credit rates are for 2025 and adjust annually for inflation.</p> |                                  |                                      |
| Period of Availability                                 | Permanent  |                                  |                                      |
| Eligible for...  |  |                                  |                                      |
| Direct Pay?  | Domestic Content Bonus Credit?   | Energy Communities Bonus Credit? | Low-Income Communities Bonus Credit? |
| No   | No   | No                               | No                                   |

Specifically, section 179D provides a tax deduction for investments in energy efficient commercial building property during the taxable year. The energy efficiency investments must lead to a 25% or more savings in energy costs for the commercial building property.<sup>10</sup> The deduction is equal to the lesser of (i) the cost of the installed property or (ii) applicable rate multiplied by the building’s square footage. The applicable rate is determined on a sliding scale based on the energy savings of the project and adjusted annually for inflation. For projects completed in 2025, the applicable rate is \$0.58 per sq. ft. for a

building with 25 percent energy savings, plus \$0.02 per sq. ft. for each percentage point of energy savings above 25 percent, up to a maximum of \$1.16 per sq. ft. for a building with 50% energy savings. This applicable rate increases by an additional 5x if PWA requirements are met. See [Part 3](#) below for further details. Please note, the applicable deduction rates will be increased by tax inflation adjustments in future years.

Additionally, recent changes in the tax law have made it easier for retrofits to be eligible. Specifically, energy efficient retrofits in buildings owned by Tribes or Tribally owned

<sup>10</sup> The calculation of savings can be performed through two different avenues. The traditional (modeling) pathway can be used with new construction and building upgrade projects and utilizes building energy simulation tools to determine savings. The second alternative (measurement) pathway compares energy consumption before and after the project and may be applied to buildings placed in service at least five years before the project’s qualified retrofit plan. See <https://www.energy.gov/eere/buildings/179d-energy-efficient-commercial-buildings-tax-deduction#compliance> for further details regarding measuring the reduction in energy costs.

entities that are part of a qualified retrofit plan on a building that is at least 5 years old may also qualify for the section 179D deduction if the requirements described above are met. The deduction would be equal to the cost of the upgrades, limited by a certain amount per square foot, which is determined by how much energy the building uses.

### What is the main difference between a tax deduction and a tax credit?

Unlike the tax credits described above, section 179D provides a tax deduction, which lowers taxable income and indirectly reduces tax liability based on the taxpayer's marginal tax rate. In contrast, the tax credits directly reduce a taxpayer's tax liability dollar-for-dollar; or, in the case of tax-exempt entities making a direct pay election, provide a payment to the entity for the amount of the credit.

### What steps need to be undertaken to verify a project qualifies a section 179D deduction?

First, confirm that the property qualifies as a government-owned or commercial building and that the energy-efficient upgrades meet the required energy standards. Next, hire a qualified third-party certifier, such

as a licensed professional engineer, to assess the property's energy efficiency and generate a report validating at least a 25% decrease in energy usage. The amount of the section 179D deduction is based on the building's square footage and energy savings and is reported on the federal income tax return for the year the property is placed in service by the building owner or entity to which the deduction is allocated.

### How can a tax-exempt entity monetize a section 179D deduction?

Tax-exempt entities cannot directly claim the section 179D deduction but may allocate it to one or multiple designers who create the technical specifications for the property (including an architect, engineer, contractor, environmental consultant or energy service provider). Tax-exempt entities can benefit from the value of this allocation if they are proactive and negotiate with architects, engineers or other contractors, for this benefit during contracting for projects that may qualify.

A written allocation letter is required that includes the building owner's name, property address, the section 179D deduction amount, and

a signature from an authorized representative. Both the tax-exempt entity and the designer must retain records, including the allocation letter and certification, for compliance purposes. Additionally, the IRS mandates specific procedures for certifying buildings under section 179D, including inspections and testing by qualified individuals to ensure compliance with energy-saving plans. These procedures must align with the Mortgage Industry National Accreditation Procedures for Home Energy Rating Systems and must account for differences between commercial and residential buildings. Certifications must explain the building's energy efficiency features and projected annual energy costs, calculated using qualified software. Qualified individuals must be IRS-recognized and unrelated to the taxpayer. Taxpayers must retain certifications in their records, which must include detailed information about the qualified individual, building, energy efficiency statements, inspection confirmations, and software used.

The Tribe or Tribally owned entity would not be required to file a tax return or any information with the IRS. The designer would be solely



## Case Study

A tax-exempt organization is installing an energy-efficient HVAC system, energy-efficient lighting, and enhanced insulation to enhance the energy efficiency of a 200,000 sq. ft. community building.

| Situation  | Began Construction | Assumed Placed in Service | Square Footage | Meets PWA Requirements? | Estimated Deduction Rate | Estimated §179D Deduction | Estimated Net Tax Benefit* |
|--|--------------------|---------------------------|----------------|-------------------------|--------------------------|---------------------------|----------------------------|
| The organization's investment qualifies for the <b>§179D Energy Efficient Commercial Buildings Deduction</b> for a facility with a 200,000 sq. ft. building envelope | 03/01/2025         | 2025                      | 200,000        | No                      | \$0.58 / sq. ft.         | \$116,000                 | \$24,360                   |
|  |                    |                           |                | No                      | \$1.16 / sq. ft.         | \$232,000                 | \$48,720                   |
|  |                    |                           |                | Yes                     | \$2.90                   | \$580,000                 | \$121,800                  |
|  |                    |                           |                |                         | \$5.81                   | \$1,162,000               | \$244,020                  |

\*Assumes a 21% corporate tax rate.



As a tax-exempt entity, the organization cannot claim the section 179D deduction directly. Instead, the organization can allocate the deduction of between \$116,000 and \$1,162,000 (depending on the energy savings and whether PWA requirements are met) to the designer or architect of the project. This translates to an estimated tax benefit of between \$24,360 and \$244,020 to the designer or architect (assuming a 21% corporate tax rate) and the organization can negotiate for payment from the allocated party for delivering this benefit.



## Consider Best Practices for Monetizing Section 179D Allocations

**What contractual considerations should a tax-exempt organization be mindful of when negotiating to allocate the section 179D deduction?**

- Clearly articulate who is responsible in the event the IRS determines the section 179D deduction is improper or overstated. The party receiving the allocation may try to seek contractual indemnification from the tax-exempt organization.
- Consider including contractual language that specifies the responsibility for filing the tax return falls on the party receiving the allocation, mitigating the risk of noncompliance to the Tribal National or Tribal organization.



***Key Takeaway: Tribal Nations should work closely with legal counsel to protect their interests when negotiating and contracting to allocate the section 179D deduction.***

## Part 3: Additional Provisions and Bonus Credits

### Prevailing Wage and Apprenticeship Requirements

By meeting certain PWA requirements, Tribal Nations can increase the credit amount of the section 48E, 45Y, and 30C tax credits, as well as the section 179D tax deduction, described above by 5x. To qualify for this increased credit or deduction amount, an entity generally needs to pay laborers and mechanics employed by the entity or any contractor and subcontractor no less than applicable prevailing wage rates (the “prevailing wage requirement”) and employ apprentices from registered apprenticeship programs for a certain number of hours (the “apprenticeship requirement”). Alternatively, an entity may otherwise qualify for one of the two exceptions outlined below.

Tax filers meeting the PWA requirements must include a statement with their return that describes the facility and how the PWA requirements are satisfied, declaring under penalties of perjury that all facts and support are true.

#### **Prevailing Wage Requirement**

To meet the prevailing wage requirement, laborers and mechanics<sup>11</sup> employed by the project owner, or any contractor and subcontractor, must be paid prevailing wage rates based on the location of the facility or project. Depending on the credit, this requirement continues for any alteration or repair<sup>12</sup> during the five-year recapture period (ITC) or the ten-year credit period (PTC) after the

facility is placed in service.

Prevailing wage rates by geographic area and worker classification are published by the Department of Labor (“DOL”) at [www.sam.gov](http://www.sam.gov). The project owner should maintain sufficient records to (1) show the applicable wage determinations and any additional classifications and rates received from the DOL, (2) identify all laborers and mechanics who performed construction work on the facility, and (3) reflect the correct classifications of work they performed, their hours worked in each classification, and the prevailing wage rates paid for the work, including any bona fide fringe benefits.

Wage rates published by a Tribal Employment Rights Office (“TERO”) are not a substitute for the rates published by the DOL. The TERO, however, can be critical in assuring compliance with the PWA requirements. The weekly hiring and payroll reports typically required by a TERO from contractors doing work on the reservation could be used to create and maintain the records required to demonstrate compliance with PWA requirements during construction.

A taxpayer may correct its failure to pay prevailing wages by (1) making payments to such laborer or mechanic in an amount equal to the difference between the amount required to be paid and the amount actually paid, plus interest and (2) paying a penalty in the amount of \$5,000 per laborer and mechanic who were paid wages below the prevailing wages for any

period during the year to the IRS. Such corrective payments must be made no later than thirty days after the end of the quarter. If the taxpayer’s failure to pay prevailing wages is due to intentional disregard, the corrective payment is increased to 300% and the penalty amount is increased to \$10,000.

Any employee of an Indian Tribal government is exempted from PWA requirements; however, any contractors or subcontractors still must meet PWA requirements in order for a project to claim the bonus credit. For example, if a Tribe or Tribally owned entity only used its own employees for construction on a project, then the PWA requirements will be automatically met. Should an outside contractor or subcontractor be brought in, then they would also be subject to the requirements stated in the previous paragraph.

Tribal lands are sovereign territories that may encompass or overlap with numerous geographic areas rather than a single geographic area for which the DOL has made an applicable wage determination. As a result, a special rule applies to Indian Tribal governments that perform construction, alteration, or repair of a facility on Indian land.<sup>13</sup> Specifically, if there are multiple DOL prevailing wage rate schedules applicable to different areas within the reservation (e.g., different counties), the Tribe can choose which one to apply for any project on the reservation but cannot mix and match rates from different schedules for the same project. The Tribe should maintain records of

<sup>11</sup> Laborers and mechanics include only those individuals whose duties are manual or physical in nature, as well as working forepersons who devote more than 20% of their time during a workweek to laborers and mechanics duties.

<sup>12</sup> “Construction, alteration, or repair” includes work that improves a facility, adapts it for a different use, or restores functionality as a result of inoperability but does not include work that is ordinary and regular in nature that is designed to maintain and preserve existing functionalities of a facility after it is placed in service.

<sup>13</sup> This generally includes land owned by the Tribe, individual members of the Tribe, or land within reservation boundaries (including private land owned by non-Tribal members within the reservation boundary).

which DOL prevailing wage rate schedule it used, in addition to the standard documentation for each laborer, contractor, or subcontractor. This rule also applies to a qualified facility that is subject to joint ownership arrangements that involve a Tribe or Tribally owned entity.<sup>14</sup>

### **Apprenticeship Requirement**

The apprenticeship requirement is met by satisfying the following two criteria and maintaining sufficient records:

1. **Labor Hours Requirement:** A certain minimum percentage of the total project labor hours for construction, alteration or repair work (including work performed by any contractor or subcontractor) must be performed by qualified apprentices. This percentage is:
  - 10% for facilities which begin construction before 2023; 12.5% for facilities which began construction during 2023; and 15% for facilities which began construction after 2023. See [Part 4](#) for further details on establishing the beginning of construction.
  - Subject to the applicable apprentice-to-journeyworker ratio (Ratio Requirement), which must also be met on a daily basis.
2. **Participation Requirement:** Each project owner, contractor, or subcontractor that employs four or more laborer/mechanics must employ one or more qualified apprentices to perform such work.

A project owner may correct its failure to meet the apprenticeship requirement by either meeting the “Good Faith Effort” exception or paying a penalty to the IRS in amount equal to \$50 multiplied by the number of total labor hours for which

the taxpayer did not satisfy the apprenticeship requirements. If the failure to meet the apprenticeship requirement is due to intentional disregard, this penalty is increased to \$500. The Good Faith Effort exception applies if (1) a project owner makes a written request for qualified apprentices from at least one registered apprenticeship program at least 45 days before the work date for that apprentice and (2) the request was either denied or no response was received within 5 business days. Additionally, the Good Faith Effort exception is satisfied if there is no registered apprenticeship program within the geographic area of operation that includes the location of the facility. The Good Faith Effort exception is valid for 365 days.

### **Exceptions**

If construction begins prior to January 29, 2023, a qualified facility or energy project is exempt from the PWA requirements. See [Part 4](#) for details regarding establishing the beginning of construction.

With respect to the section 48E ITC and section 45Y PTC, a qualified facility or an energy project is exempt from PWA requirements if it has a maximum net output (or capacity in the case of energy storage technology) of less than 1 megawatt.

### **Domestic Content Requirements and Bonus Credit**

Clean Electricity ITC and PTC projects are both eligible for a credit bonus and subject to a possible credit phase-down based on whether they meet certain requirements for using domestically manufactured products. The Domestic Content Bonus Credit increases the Clean Electricity ITC or PTC credit amount for taxpayers that certify their qualified facility, energy project, or energy storage technology was built with 100% U.S.-sourced structural steel and iron, and that a

certain percentage of manufactured products were mined, produced or manufactured in the United States. This bonus credit increases the Clean Electricity PTC credit rate by 10 percent, and the Clean Electricity ITC by 10 percentage points (or 2 percentage points if PWA requirements are not met).

Additionally, for projects with a maximum net output exceeding 1 megawatt that begin construction after 2023, failure to meet these same domestic content requirements results in a reduction of the credit amount for purposes of the direct pay election, as follows:

| Construction Began In | Phase Down if Domestic Content is not Satisfied |
|-----------------------|---|
| 2024                  | 90%   |
| 2025                  | 85%   |
| After 2025            | 0%  |

However, applicable entities may be excepted from the phaseouts 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 percent, 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.

See [Part 4](#) for details regarding establishing the beginning of construction.

To satisfy the domestic content requirements, an applicable project is first broken down into (1) its steel or iron components and (2) manufactured product components, both of which must meet domestic content

<sup>14</sup> RIN 1545-BQ62 page 57.



requirements, as shown in the example below.

(1) The steel or iron requirement requires that all construction materials made primarily of steel or iron that are structural in function be manufactured in the United States. This requirement does not apply to manufactured project components or subcomponents that are not structural (i.e., nuts, bolts, screws, etc.).

(2) The manufactured products requirement requires all manufactured products be produced in or “deemed to be produced” in the United States. Manufactured products will be deemed to have been produced in the United States if a specified percentage of costs is attributed to products which are mined, produced or manufactured in the U.S. (the domestic cost percentage). The domestic cost percentage compares the cost of U.S. manufactured products and product components within a project to the total cost of all manufactured products used.

at 40%, and for section 45Y, the applicable percentage is based on the date that construction begins on the project.

| Construction Began In | Applicable Percentage |
|-----------------------|-----------------------|
| Before 2025           | 40%                   |
| 2025                  | 45%                   |
| 2026                  | 50%                   |
| 2027                  | 55%                   |
| After 2027            | 55%                   |

A tax filer must submit a Domestic Content Certification Statement to the IRS for each qualifying energy project for which the tax filer is claiming the Domestic Content Bonus Credit, as well as to avoid the phase down of the sections 48E ITC or 45Y PTC credit amounts. The statement must be filed with the tax return in which the bonus credit is claimed. For the section 45Y PTC, a

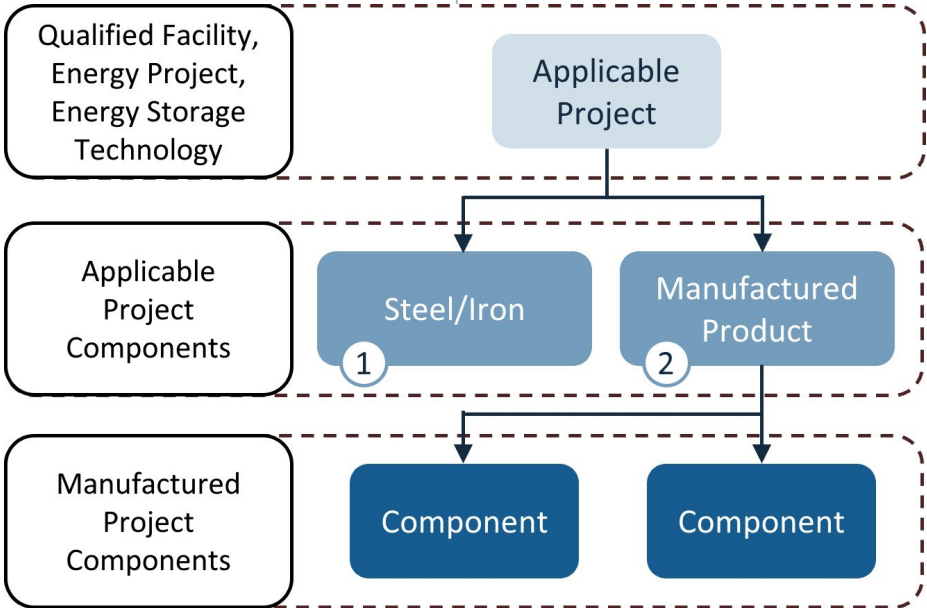
**The Safe Harbor and the New Elective Safe Harbor**

In 2023, the IRS created a safe harbor that automatically categorizes project components in utility-scale photovoltaic systems, wind facilities, and battery energy storage technologies as either steel/iron (requiring 100% domestic content) or manufactured products (needing an adjusted domestic production percentage). Since that initial categorization, the IRS introduced a new elective safe harbor (the “New Elective Safe Harbor”), which allows taxpayers to classify components and calculate domestic cost percentages using assigned cost percentages instead of actual costs, addressing challenges in obtaining and verifying direct cost information. The New Elective Safe Harbor applies to both the Steel or Iron Requirement and the Manufactured Products Requirement, enabling easier compliance without needing sensitive commercial information from third parties. In January 2025, the IRS released the First Updated Elective Safe Harbor, which provided updated percentages and definitions from the New Elective Safe Harbor.

Taxpayers electing this safe harbor must use the specific classifications and cost percentages provided, even if their projects do not contain every item listed or include additional unlisted items. This safe harbor can be relied upon for projects starting construction within 90 days of the publication of proposed regulations or any future changes to the safe harbor, and taxpayers using it need not calculate the Domestic Cost Percentage under prior notices but must follow the new classifications and cost percentages exclusively.

**Exemptions and Attestations**

However, a tax-exempt entity may still be able to avoid a phaseout of a direct pay amount if at least one of the following conditions is met: (1) the inclusion of steel, iron, or manufactured products that are



If this calculated percentage exceeds the applicable percentage, the energy project satisfies the manufactured product requirement. In the case of section 48E, the applicable percentage remains static

copy of the original Certification Statement must be included with the tax filer’s annual return in each tax year until the full value of the credits is claimed.

produced in the United States increases the overall costs of construction of qualified facilities by more than 25% ("increased cost exception"), 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 ("non-availability exception"). The tax-exempt entity would have to attest to its good faith determination that one or both of these exceptions were met under the penalty of perjury. These exceptions are available if construction begins before the later of (i) January 1, 2027 or (ii) further guidance is issued by Treasury or IRS.

### Energy Communities Bonus Credit

The Energy Communities Bonus Credit increases the value of the Clean Electricity ITC or PTC for projects

which are located in an eligible "energy community." This bonus credit increases the Clean Electricity PTC credit rate by 10 percent, and the Clean Electricity ITC by 10 percentage points (or 2 percentage points if PWA requirements are not met).

Three types of Energy Communities are eligible for this bonus credit:

1. Projects located on Brownfield sites. A brownfield site is property where the development is complicated by the presence or potential presence of a qualifying hazardous substance, pollutant, or contaminant, or is on mine-scarred land.

Potential brownfield site lists may be found under the category of Brownfields Properties on the EPA's [Cleanups in My Community](#) webpage or on similar webpages maintained by

states, territories, or for federally recognized Indian Tribes. In addition, a site is considered a brownfield site if an ASTM E 1903 Phase II Environmental Site Assessment (or Phase I assessment for projects > 5 MW) confirms the presence on the site of a qualifying hazardous substance.<sup>15</sup>

2. Areas with significant employment or local tax revenues from fossil fuels and higher than average unemployment. These are statistical areas which (1) have (or had at any time since 2010) 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 and (2) have an unemployment rate above the national average unemployment rate for the previous year.

#### Facts:

- Manufactured Product 1 is manufactured in the U.S. and has two components (1A & 1B). Both components are produced in the U.S.
- Manufactured Product 2 is manufactured in the U.S. and has three components. Two components are manufactured in the U.S. (2A & 2B) and the third is outside the U.S. (2C).
- Construction on the Project began in 2024.

|                      | Manufactured Product 1 |       |                 | Manufactured Product 2 |       |                 |
|----------------------|------------------------|-------|-----------------|------------------------|-------|-----------------|
|                      | Asset                  | Cost  | Manufactured In | Asset                  | Cost  | Manufactured In |
| Component            | 1A                     | \$30  | U.S.            | 2A                     | \$30  | U.S.            |
| Component            | 1B                     | \$45  | U.S.            | 2B                     | \$50  | U.S.            |
| Component            |                        |       |                 | 2C                     | \$100 | Non-U.S.        |
| Manufactured Product | 1                      | \$100 | U.S.            | 2                      | \$200 | U.S.            |

Manufactured Product 1 is a U.S. Manufactured Product.

Manufactured Product 2 is a non-U.S. Manufactured Product.

Domestic Cost Percentage:  $(\$100 + \$30 + \$50) / (\$100 + \$200) = 60\%$

Because construction of the Project began in 2024, the applicable percentage is 40%. Since the domestic cost percentage is 60%, all manufactured products are deemed to be produced in the U.S.

<sup>15</sup> Petroleum contamination alone is not a qualifying contaminant for purposes of Energy Communities Bonus Credit eligibility.



The IRS publishes a list of statistical areas that meet the 0.17% direct employment threshold<sup>16</sup> and is continuing to work on determining the list of statistical areas that have 25% or greater local tax from fossil fuels. The unemployment rate is determined by using the Local Area Unemployment Statistics annual data for counties from the U.S. Bureau of Labor Statistics and the comparison is made using the unemployment rate for the previous calendar year. An interactive map highlighting the areas that are eligible within this category can be found at: [IRA Energy Community Tax Credit Bonus](#).

- 3. Areas with closed coal mines or coal-fired power plants: A census tract or adjoining census tract in which a coal mine has closed after December 31, 1999, or a coal-fired electric generating unit has been retired after December 31, 2009.

Treasury and the IRS continue to update the list of census tracts which qualify for the coal closure category as an energy community.<sup>17</sup> Annual Statistical Area Category and Coal Closure Category Updates generally will be released by the IRS in approximately May of each year. An interactive map highlighting the areas that are eligible within this category can be found at: [IRA Energy Community Tax Credit Bonus](#).

**Low-Income Communities Bonus Credit**

The Low-Income Communities Bonus Credit can increase the value of the section 48E ITC by 10 or 20 percentage points for projects with a maximum net output of less than 5 megawatts. The Low-Income Communities Bonus Credit amount is 10 percentage points if the project is:

- 1. Located in a low-income community, or

- 2. Located on Indian land, and 20 percentage points if the project is:
- 3. Part of a qualified low-income residential building project (installed on certain federal housing projects) or
- 4. Part of a qualified low-income economic benefit project (serving low-income households).

Unlike the Domestic Content and Energy Communities Bonus Credits, the Low-Income Communities Bonus Credit program is subject to a capacity limitation (2.8 gigawatts for 2025) which is divided across these four eligibility categories. Entities that wish to claim this bonus credit must complete a separate application process through the IRS to receive an allocation of capacity.

Applicants must submit information related to the category,



**Example** Bonus credit potential of a \$10 million solar panel project

| Category   | Requirements Met | Credit Percentage         |
|--|------------------|---------------------------|
| Base Credit  | ✓                | 6%                        |
| Apprenticeship and Wage Requirements                       | ✓                | +24% (5 times multiplier) |
| Domestic Content   | ✓                | +10%                      |
| Energy Communities   | ✓                | +10%                      |
| Small Solar Project within Specified Low-Income Community* | ✓                | +10%-20%                  |
| Total  |                  | Up to 70%                 |

Total credit amount could be equal up to \$7M based on 70% of total project cost of \$10M, and this amount further eligible for direct payment for the taxable year that the qualified property is placed in service by the applicable entity (Year 1).

|                 |
|-----------------|
| Year 1 – Credit |
| \$7,000,000     |

\*Subject to the receipt of a capacity allocation under the Low-income Communities Bonus Credit Program.

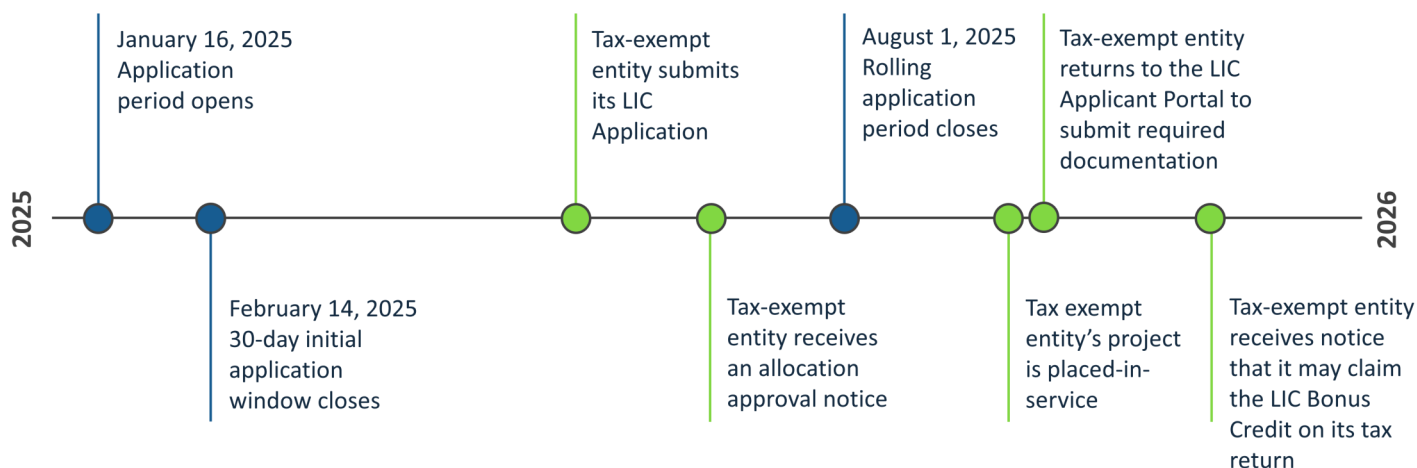
<sup>16</sup> See Notice 2023-47 at Appendix 2; Notice 2024-30 at Appendix 2; and Notice 2024-48 at Appendix 1.  
<sup>17</sup> See Notice 2023-29 at Appendix C; Notice 2023-47 at Appendix 3; and Notice 2024-48 at Appendix 2.

ownership, location, facility size/ capacity and complete a series of attestations. Additionally, applicants must submit documentation demonstrating the project's eligibility, such as proof of location in a qualified community and evidence of economic benefits to the community and must include this information on Form 3468, which is filed with the tax filer's

return. Applications for the 2025 program year opened on January 16, 2025, and will close on August 1, 2025. Applications submitted in the first thirty days of each annual application window will be treated as submitted at the same time. After that thirty-day period (February 14, 2025), applications will be considered on a rolling basis.

Below is an example of a hypothetical timeline for submitting an application for the Low-Income Communities Bonus Credit program. The dates included in the timeline are dependent on the pace of the DOE and IRS review process.

### Low-Income Communities Bonus Credit — Hypothetical Timeline



## Part 4: Monetizing the Tax Credits

### Project Funding and Financing

The tax credits discussed in this Guide become available only after a project has been built and put into commercial service, or after a vehicle has been purchased. That means that all the preliminary stages of project development – finding contractors and advisors, planning and designing the project, negotiating and executing contracts, purchasing the necessary equipment and supplies, and construction – all have to be paid for, without the aid of the tax credits. Most projects, even smaller community-scale projects, require a mix of funding (cash from grants or other sources), debt financing (loans and bonds, paid back in cash over time), and/or equity financing (investment that buys a percentage of the project). Finance professionals call this mix of funding and financing the “capital stack” that provides all the capital needed to complete the project. Once a project is placed in service, or the qualified vehicles are purchased, tax credits are used to pay down the debt or buy out the equity that has been incurred, which reduces the overall cost of the project. This section discusses some of the most common types of financing and funding used to support energy projects.

#### Equity Capital

Most energy projects raise a substantial part of their early capital in the form of equity – having equity in place is often a precondition to raising debt capital. Equity structuring can take many forms. The most common is through a tax equity partnership, in which the equity investor contributes up front capital in return for the allocation of the tax benefits over a specified period. Tax equity partnerships that include tax credit transfers to external parties (“hybrid” mechanisms) are also common. Infrastructure funds often invest in construction projects, but

these funds typically have a lower tax appetite and therefore require a long-term yield as opposed to a short-term return. Additionally, preferred equity structures are also an option, although much more consideration must be given as to how the tax attributes would be allocated. Many of these types of equity investment were in use long before the elective pay option became available, and would not be used in a direct-pay scenario.

#### Debt Capital: Construction Loans

Broadly speaking, the customary method used to finance project construction takes the form of equipment financing arrangements, wherein cash is borrowed during the construction period and either repaid or converted into “permanent” or long-term debt. In most cases, the project must have equity in place (usually 10% for commercial projects) as a precondition. During this period, interest is typically not actually paid but rather capitalized into the basis of the assets being financed.

A classic construction loan generally will not cover all of the construction costs. As such, the next tranche is usually a bridge loan facility, which is similar to the standard construction loan except for the fact that these are typically secured against expected or anticipated capital injections to be made in the future, including the receipt of tax credits after construction is completed. Variants include “Tax Equity Bridge Loans” or “Transferability Bridge Loans,” which are usually secured at higher interest rates than that of the standard construction loan, but these loans are repaid when tax equity capital infusions or cash from transferred credits are received. The interest paid on these loans is typically includible in the asset basis when calculating the tax credit, and for capitalization purposes are treated the same as

traditional construction loans. So, while the tax credits are not available until the project is completed and placed in service, use of the Tax Equity or Transferability Bridge Loans allow developers to borrow against those tax credits, and effectively monetize some of the value of the tax credits during the construction phase of the project.

#### Debt Capital: Traditional Debt Financing

Traditional debt financing is often tied directly to the construction loan described above, wherein the loan is “repaid” by term loan draws. The common practice is to tie the term of the debt to the timing of cash flows—for example, a 15-year loan would be paired with a 15-year power purchase agreement. Lenders will have project-specific considerations in their diligence process. They may consider factors such as the offtakers’ credit ratings, the developer/sponsor’s credit ratings, among other factors. This is typically a commercial negotiation, but the resulting process is the ability for the developer to raise capital at a cheaper rate than would typically be required by equity sources of capital.

#### Tax-Exempt Grants/Income

Tax-exempt income, like grants or forgivable loans to nonprofits, may be used to buy or build property that qualifies for a tax credit through direct pay. However, in the case of the ITC, the IRS restricts the amount of the credit received when tax-exempt income was used to acquire the property, under certain circumstances. If an organization uses tax-exempt income to acquire the property, it may generally include that income in the calculation for the tax credit. However, if the entity receives tax-exempt income specifically to buy or build this type of property (called a “restricted tax-exempt amount”), and the total of these amounts plus the tax credit is more than the cost of the

property, the tax credit will be reduced by the excess. This rule—named the “no excess benefit rule”—ensures that an organization does not receive more funding in tax credits and tax-exempt income than what the property actually costs. The decision about whether the grant or loan is specifically for buying or building the property is made when the organization receives the grant or when the loan is approved.

If the tax-exempt income is not specifically for buying or building the property, the excess benefit rule does not apply. For example, if the money comes from the organization's general funds, or can be used for various purposes (like buying an electric vehicle or making a building more energy-efficient), the excess benefit rule does not apply. The example below illustrates how the use and amount of different grant types would impact an organization's direct payment amount for the section 48E ITC.

#### **Tax-Exempt Bond Financing**

Tax-exempt bond financing is a popular method for funding large-scale infrastructure projects, due to the lower interest rates and favorable

terms offered. However, for the Clean Electricity ITCs and PTCs, the use of tax-exempt bond financing generally results in a reduction of the credit amount. This reduction mechanism ensures that the project owners do not receive a double benefit from both the favorable financing terms of tax-exempt bonds and the full value of the investment tax credit. Specifically, the available credit is reduced by a pro rata percentage of tax-exempt funding used, capped at a maximum of 15 percent. For example, if 100 percent of the project was funded through tax-exempt bonds, the credit would be reduced by 15 percent, and if only 10 percent of the project was funded through tax-exempt bonds, the credit would be reduced by 10 percent.

While tax-exempt bond financing can provide significant financial advantages for clean energy projects, taxpayers must strategically plan to optimize the combined benefits of tax-exempt bonds and clean energy tax credits.

#### **Other Tax Credit Programs**

Outside of the tax credits described herein, there are a number of other incentives that Tribal Nations

should consider as potential project financing mechanisms. One such program is the New Markets Tax Credit (“NMT”) program that incentivizes community development and economic growth in low-income communities through providing investors with a federal tax credit. Another incentive, the Qualified Opportunity Zone (“QOZ”) incentive, allows taxpayers to defer and particularly reduce capital gains tax on the disposition of property where gains are reinvested in a QOZ through a Qualified Opportunity Fund. A QOZ is a low-income population census tract that has been designated as a QOZ by the state and certified by the IRS. Many QOZs spread throughout the United States overlap with Tribal lands, providing an additional tax incentive for investment in these communities.

In addition to these federal incentives, many state and local governments offer tax credits and incentives to encourage investment in the state. These credits and incentives can provide additional funding mechanisms to bridge the project financing gap.



## Example

Grant Funding Scenarios for a \$1M Solar Carport and Battery Energy Storage Installation

| Scenarios   | Project Cost | Grant Funding   |                  |               | 48E ITC Eligible? | Potential 48E ITC Amount* | Credit Capped? | Direct Payment Amount |
|---|--------------|-----------------|------------------|---------------|-------------------|---------------------------|----------------|-----------------------|
|   |              | General Purpose | Project Specific | Other Funding |                   |                           |                |                       |
| Tribe partially funds with general-purpose grant  | \$ 1,000,000 | \$ 800,000      | -                | \$ 200,000    | Yes               | \$ 300,000                | No             | \$ 300,000            |
| Tribe partially funds with project-specific grant | \$ 1,000,000 | -               | \$ 800,000       | \$ 200,000    | Yes               | \$ 300,000                | Yes            | \$ 200,000            |
| Tribe wholly funds with project-specific grant    | \$ 1,000,000 | -               | \$ 1,000,000     | -             | Yes               | \$ 300,000                | Yes            | -                     |

\*Assumes project met PWA requirements. Additional bonus credits may be available.

## Project Timing Considerations

### Timing Considerations – In General

There are several key moments in a project lifecycle that impact the timeline for making the direct pay election. The date that a project began construction, as well as the date the project was placed in service, impact which credit a project may be eligible for, as well as the proper year to claim the credit, among other things. Once a project is placed in service, a pre-filing registration process must be completed prior to making the direct pay election on the tax return (see discussion of Pre-Filing Registration below). Next, the tax-exempt entity makes the direct pay election on its annual tax return for the year in which the project was placed in service, in accordance with the procedures described below. Documentation and records should be maintained after the credit is received to support and substantiate eligibility. Lastly, the tax-exempt entity should be aware that certain activities may require recapture of the credit for a number of years after receipt. Each of these steps are discussed in the sections that follow.

### Beginning of Construction

For many of the tax credits, the PWA requirements are deemed satisfied if construction begins prior to January 29, 2023. Additionally, the section 48E ITC and section 45Y PTC apply to property placed in service after 2024, but the original section 48 ITC and section 45 PTC are generally available for property that began construction before January 1, 2025. Certain technologies may be eligible for one credit but not the other, so determining when a project has begun construction is critical.

Establishing the beginning of construction date is crucial for a number of additional reasons:

- **Energy Community Status.** If project construction begins on or after January 1, 2023, in an "energy community," the location retains the status as of the begun construction date, on the placed in service date even if a future update to the eligible areas list excludes the project site.
- **Credit Reduction Post-Applicable Year.** For Clean Electricity ITCs and PTCs, the phaseout of the credits hinges on the date construction begins. If construction begins after the "applicable year" (2032 or when U.S. electricity emissions drop 25% from 2022 levels), the credit amount reduces by between 25%-100%, becoming zero if construction starts three or more years later.
- **GHG Emissions Rate Determination.** Entities can use the IRS' Annual GHG Table effective on the construction start date or the IRS-determined provisional emissions rate for the facility's GHG emissions rate.
- **Domestic Content and Phaseout.** For Clean Electricity ITCs and PTCs, unless domestic content requirements are met or the project is under 1 MW, starting construction in 2024 or later phases down the elective payment by 10%-100%.

To establish the beginning of construction, a project owner must meet both (1) the begun construction requirement and (2) the continuity requirement.

### Begun Construction Requirement

The begun construction requirement is satisfied if the project owner either (1) begins work of a physical nature (the "Physical Work Test") or (2) incurs at least five

percent of the total cost of the project (the "5% Safe Harbor").

The Physical Work Test is met when physical work of a significant nature ("PWSN") begins and is focused on the nature of the work performed, not the amount or cost. Both off-site and on-site physical work may be considered, but preliminary activities do not qualify as physical work of a significant nature. See example below.

Work may be performed either by the project owner or by another person pursuant to a binding written contract.<sup>18</sup> Examples of on-site work for a wind facility may include excavation for the foundation, setting of anchor bolts into the ground, pouring of concrete pads for the foundation, constructing roads that are integral to the facility (roads for equipment to operate and maintain the qualified facility), installing custom machinery or equipment, or building a structure that houses property integral to the activity of the facility. Off-site work for a wind facility may include, for example, physical work on a custom-designed transformer that steps up the voltage of electricity produced at the facility to the voltage needed for transmission.

The 5% Safe Harbor rule is met if the project owner spends at least 5% of the total cost of the facility or energy property. All costs that are part of the energy property count, but the cost of the land or any unrelated property does not count.

The "look-through rule" provides that property that is manufactured, constructed, or produced for the project owner by another person may be deemed incurred or performed by the project owner if performed pursuant to a binding written contract with the project owner. The project owner can effectively step into the

<sup>18</sup> In regards to the binding written contract, a contract is binding only if: (1) the agreement is enforceable under local law; (2) the agreement does not limit damages to less than 5% of the total contract price; (3) the agreement is not an "option" and requires forfeiture of more than a nominal amount (e.g., 5% of the contract price); and (4) the agreement has not been substantially modified.



### Preliminary Activities Examples

- Planning and designing
- Conducting environmental and engineering studies
- Securing financing
- Performing activities to develop a geothermal deposit prior to valid discovery
- Exploring
- Clearing a site
- Researching
- Conducting test drilling to determine soil condition
- Conducting geological mapping and modeling
- Excavating to change the contour of the land
- Obtaining permits and licenses
- Removing existing turbines and towers, solar panels, or any components that will no longer be part of the facility
- Conducting geophysical, gravity, magnetic, seismic, and resistivity surveys

#### Inventory Exclusion:

PWSN does not include work to produce property that is in existing inventory or is normally held in inventory by a vendor

#### Other Excluded Activities:

- Roads primarily for access to the site, or roads used primarily for employee or visitor vehicles, are not integral to the activity performed by the facility
- Fencing
- Buildings not integral to the activity of the facility

shoes of the vendor for purposes of demonstrating when costs are considered incurred or PWSN is performed.

#### Continuity Requirement

Once the begun construction requirement has been met, the project owner must make continuous progress towards completion, from the time construction has begun until the facility or energy property is placed in service. This is achieved by either (1) maintaining continuous efforts to advance towards completion through the placed in-service date (the “Continuous Efforts Test”) or (2) maintaining a continuous program of construction through the placed in service date (the “Continuous Construction Test”). Generally, the continuous construction and continuous efforts tests are deemed satisfied if the energy property is placed in service within four calendar years after the year in which construction began (the “Continuity Safe Harbor”).

#### Placed in Service Considerations

Several of the tax credits described above are determined based on the costs of eligible property placed in service during a particular year. Furthermore, the placed in service date is key in determining the appropriate year in which to claim the tax credit.

Property is generally considered placed in service when it is ready and available to perform its specific function. For example, a property would be considered placed in service when it begins producing or storing power, or fueling or charging vehicles. A clean vehicle or mobile machinery would be considered placed in service when the customer takes possession.

The IRS considers a number of factors to determine when a project is placed in service, focused on when the facility or project is capable of supplying electricity or otherwise performing its intended function on a routine basis. These factors include:

1. When were all necessary permits and licenses for operation obtained?
2. When was critical preoperational testing completed?
3. When did the tax filer take control of the facility?
4. When was the project synchronized with the transmission grid (if applicable)?
5. When did daily or regular operation begin?

#### Phaseout Period

Both the Clean Electricity ITCs and PTCs eventually phase out, encouraging early adoption of clean energy technologies. This “phaseout period” begins with the first calendar year after the “applicable year,” which is the later of either (i) 2032 or (ii) the year in which the annual greenhouse gas emissions from U.S. electricity production are 25% or less than the amount in 2022.<sup>19</sup>

For both credits, the credit amount will be multiplied by a

<sup>19</sup> According to the Rhodium Group, LLC’s assessment of GHG emissions, this date is expected to be well into the 2040s, and likely much later. See Rhodium Group, Taking Stock 2022, US Greenhouse Gas Emissions Outlook in an Uncertain World dated July 14, 2022, <https://rhg.com/research/taking-stock-2022/>.

phaseout percentage as follows:

- Construction begins in the first calendar year following the applicable year: 100%
- Construction begins in the second calendar year following the applicable year: 75%
- Construction begins in the third calendar year following the applicable year: 50%
- Construction begins in the fourth calendar year following the applicable year: 0%

The phaseout schedules provide a clear timeline for Tribal Nations, businesses, and investors to plan their clean energy projects accordingly. To avoid the application of any phaseout, projects must begin construction before January 1, 2034.

## IRS Registration and Direct Pay Election Procedures

### Pre-Filing Registration

Once the qualifying activity or project has been placed in service, the Tribe or Tribally owned entity intending to claim the tax credit must complete a pre-filing registration with the IRS. Applicable entities must first create a Clean Energy Business Account for their organization at [www.irs.gov/eptregister](http://www.irs.gov/eptregister). Only an authorized representative of the entity may register and provide information and this representative's personal identity will be verified during the registration process. This electronic registration requires details about the tax filer, the project, and the tax credit intended to be claimed.

Information required to complete the pre-filing registration includes:

1. General information (name, address, taxpayer identification number, etc.)
2. Any information requested by the

IRS (taxpayer exempt status)

3. Taxpayer's taxable year
4. Type of annual tax return
5. Type of applicable credit
6. Each applicable credit property
7. Further information on the property (location, construction/acquisition documents, beginning of construction date, etc.)
8. Contact information
9. Penalties of perjury statement
10. Any further information for preventing fraud or excessive payments

After submitting the registration package, its status can be monitored in the "Your Registrations" section of the [IRS portal](#). Upon completion, the IRS will provide a registration number for each applicable credit property. This registration number is needed prior to filing a tax return claiming a tax credit on the applicable property and is only valid for the taxable year for which it is obtained. The IRS recommends pre-filing 120 days before the due date for the tax return. Receipt of a registration number does not guarantee credit eligibility.

The IRS has also published a comprehensive [user guide](#) for the pre-filing registration process.

### Making the Direct Pay Election

The direct pay election is made via the filing of an annual tax return by the due date (or extended due date).

If an organization has not previously filed an annual information or income tax return and established a taxable year, they may choose to adopt a calendar year or fiscal year basis for purposes of direct pay. The annual tax return is generally due 4.5 months after the tax year end. Therefore, for most tax-exempt entities (including Indian Tribal

governments), adopting a calendar year basis means the tax return is due on May 15, which may be extended an additional six (6) months.<sup>21</sup> A direct pay election may not be made on an amended return.

For a Tribe or Tribally owned entity not normally required to file a tax return on an annual basis, Form 990-T, Exempt Organization Business Income Tax Return, should be used. If in a co-ownership arrangement, a Tribe may opt out of subchapter K and elect direct pay for its portion of the project by, jointly with other co-owners, filing a written agreement with the IRS, stating the intention to be excluded from the partnership tax rules under subchapter K. This agreement should be attached to the tax return of each co-owner. Additionally, the Tribe must submit IRS Form 8832, Entity Classification Election, to elect direct pay for its share of the project, ensuring compliance with the specific requirements outlined by the IRS for such elections.

The tax return should also include (1) all completed and attached credit forms noted in the sections above for each type of credit; (2) Form 3800, General Business Credit, which should include the registration number(s) and any required attachments; and (3) any information, including supporting calculations required in the instructions to the relevant forms.

A direct payment election is treated as a payment against the federal income tax imposed during the taxable year. Because tax-exempt entities have no federal income tax liability, the refund will equal the amount of the applicable credit. The direct payment election is irrevocable. The payment of the refund occurs after the tax return is processed. The taxpayer is not entitled to the payment until the due date of the tax

<sup>21</sup> On October 11, 2024, the IRS granted an automatic, paperless sixth month extension with no required filing to tax-exempt entities making the direct pay election for a taxable year ending on any day between December 31, 2023 and November 30, 2024. If the IRS does not grant a similar allowance in future years, a tax-exempt entity will have to file Form 8868 to request a 6-month extension to file its tax return for making the direct pay election.



return, even if the return is filed prior to that date. For a Tribal Nation that chooses to file a return on a calendar year basis, this means, for example, that May 15, 2025 is the earliest date the Tribal Nation is entitled to payment for activities occurring in 2024. This can mean a significant timing lag between when the property is placed in service in 2024 and when payment of the refund occurs. Consider other financing mechanisms (see Project Funding and Financing above) to bridge this funding gap.

## Documentation and Recordkeeping

### Base Credit

Taxpayers must maintain sufficient records to support eligibility for the tax credit for which they are making a direct payment election. For

the section 48E ITC credit, the credit is based on the eligible cost of qualified property. Not all project costs are ITC eligible and so an analysis should be performed to determine how much of the total project costs will qualify for the credit. Both direct costs and allocable indirect costs (including, for example, bidding costs, engineering and design, construction insurance, and permitting costs) must be capitalized to the project. Below is an example of a cost segregation analysis performed for a solar carport and battery energy storage system.

In addition to documenting which project costs are eligible for the credit, taxpayers should also document the activities performed that established the beginning of construction. This includes collecting construction reports that track and record the progress and milestones of a project, inspection reports which

assess progress or completion of construction work, and any internal status reports that demonstrate when physical work of a significant nature or 5% of project spend occurred.

Organizations should also retain records that support when the project was placed in service. This includes, for example:

- Collecting and documenting when all permits and licenses were obtained;
- Retaining records that demonstrate when all critical preoperational testing was complete;
- Documenting when control of the facility passed to the taxpayer such that it had the benefits and burdens of ownership;
- Retaining records to support



## Example

### Cost Segregation Analysis for \$1M Solar Carport and Battery Energy Storage Installation

| Description                     | Project Costs | Sub Contractor |                |             | Total Project Costs | Non-Eligible ITC Costs | Eligible ITC Costs |
|---------------------------------|---------------|----------------|----------------|-------------|---------------------|------------------------|--------------------|
|                                 |               | Direct Costs   | Indirect Costs | Other Costs |                     |                        |                    |
| General Contractor Costs - Base |               |                |                |             |                     |                        |                    |
| Steel and Fabrication           | \$ 300,000    | 300,000        | -              | -           | 300,000             | 60,000                 | 240,000            |
| BESS - Battery Storage System   | 250,000       | 240,000        | 10,000         | -           | 250,000             | -                      | 250,000            |
| Inverters                       | 65,000        | 60,000         | 5,000          | -           | 65,000              | -                      | 65,000             |
| Enclosure                       | 30,000        | 28,000         | 2,000          | -           | 30,000              | -                      | 30,000             |
| Solar Panels                    | 40,000        | 35,000         | 5,000          | -           | 40,000              | -                      | 40,000             |
| Structural Install              | 120,000       | 120,000        | -              | -           | 120,000             | 15,000                 | 105,000            |
| Electrical Contracting          | 80,000        | 75,000         | 5,000          | -           | 80,000              | 10,000                 | 70,000             |
| Structural Engineering Designs  | 30,000        | 30,000         | -              | -           | 30,000              | 2,000                  | 28,000             |
| Electrical Engineering Designs  | 20,000        | 20,000         | -              | -           | 20,000              | 5,000                  | 15,000             |
| Monitoring System               | 45,000        | 45,000         | -              | -           | 45,000              | -                      | 45,000             |
| Steel Structure Shipping        | 20,000        | 20,000         | -              | -           | 20,000              | 2,000                  | 18,000             |
|                                 | \$ 1,000,000  | \$ 973,000     | \$ 27,000      | \$ -        | \$ 1,000,000        | \$ 94,000              | \$ 906,000         |
| Other Costs                     |               |                |                |             |                     |                        |                    |
| Maintenance Agreement           | \$ 15,000     | -              | -              | 15,000      | 15,000              | 15,000                 | -                  |
|                                 | \$ 15,000     | \$ -           | \$ -           | \$ 15,000   | \$ 15,000           | \$ 15,000              | \$ -               |
|                                 | \$ 1,015,000  | \$ 973,000     | \$ 27,000      | \$ 15,000   | \$ 1,015,000        | \$ 109,000             | \$ 906,000         |

10.74% 89.26%

ITC Amount (30% of Eligible Basis) \$ 271,800

when the project was synchronized to the grid; and

- Retaining daily production and sales reports to show when daily or regular operations began.

For vehicle purchases, organizations should retain documents to support when the vehicle was placed in service, such as:

- Purchase agreements;
- Invoices;
- Proof of payment;
- Registration and licensing records;
- Insurance documentation;
- Delivery and inspection records;
- Usage logs; and
- The Manufacturer's Certificate of Origin.

This documentation should be gathered and maintained in real time as a project is progressing to support the credit that the taxpayer intends to claim.

### **Best Practices for Working with Contractors**

Many of the bonus credits require documentation from third-party contractors and subcontractors to substantiate eligibility. This documentation can be difficult to obtain at sufficient levels of detail after the project is complete.

To ensure that the organization can claim the maximum amount of a tax credit, especially when third-party contractors and subcontractors are involved, it is crucial to implement several best practices. These practices focus on thorough documentation, clear communication, and proactive management of all parties involved in the project.

First, during the procurement phase, the Tribe or Tribally owned entity should establish clear expectations and include clauses in their contracting with third-party contractors requiring compliance with all relevant tax credit regulations (including PWA or Domestic Content

requirements, if applicable). Contracts should also require contractors to provide necessary supporting documentation including proof of eligible expenses, certifications, and any other required substantiation. Further, these contracts should require the contract to extend these requirements to any subcontractors.

Once a project has begun, schedule regular meetings with contractors and subcontractors to review project progress and provide training on the specific requirements of the new tax credits, as well as ensure that PWA requirements are being met and documented (if applicable). Organizations should require contractors and subcontractors to provide regular updates and documentation throughout the project, identifying and addressing issues early on rather than waiting until a project is complete. Consider conducting internal audits or hiring a third-party auditor to review the documentation and processes of contractors and subcontractors to ensure requirements are being met. The TERO can play a critical coordination role in ensuring the collection and maintenance of documentation related to PWA compliance during construction.

By implementing these best practices, Tribes and Tribal entities can better manage the involvement of third-party contractors and subcontractors, ensuring that all necessary documentation is properly maintained and that they can claim the maximum amount of any given credit.

### **Recapture Period**

If applicable, the recapture provisions for the clean energy tax credits require repayment of the tax credits to ensure that the benefits are retained only by those who continue to meet the qualifying criteria over a specified period. Examples of non-compliance include selling the property or changing its use, while temporary shutdowns for repairs or

maintenance generally do not lead to recapture. If such an event occurs, a portion of the credit must be repaid to the IRS.

For the section 48E ITC, the recapture rules apply if the property ceases to qualify as a clean energy facility within five years of being placed in service. Tax filers must maintain documentation on the design and operation of the facility to show that it had an anticipated greenhouse gas emissions rate of zero when the credit was determined and an actual rate not greater than 10 grams of CO<sub>2</sub>e per kWh during each year of the five-year recapture period. Verification by an unrelated party can substantiate compliance. The IRS may specify other acceptable documentation for specific facility types. Tax filers must report the facility's emissions rate to the IRS as prescribed in IRS forms or guidance. The amount subject to recapture is calculated based on the percentage of the five-year period during which the property was not in compliance. For example, if the property ceases to qualify in the second year, 80% of the credit may be recaptured. This ensures that the incentive is only fully realized if the property remains in service as a qualifying clean energy facility for the full five-year period.

The section 45Y PTC does not have a traditional recapture provision like the section 48E ITC. Instead, eligibility for the credit is determined on an annual basis, over the 10-year credit period. The tax filer must maintain documentation regarding the design, operation, and, if applicable, feedstock or fuel source used by the facility, which establishes that the facility had a GHG emissions rate not greater than zero for each taxable year. Each year, the tax filer must confirm that the facility meets the criteria for the credit, and if the facility does not meet the criteria in a given year, the tax filer simply cannot claim the credit for that year, rather than having to return previously claimed credits.

The IRS has issued proposed regulations addressing recapture for the section 30C and 45W credits. With respect to section 45W, the credit will be recaptured if the vehicle is not used solely for business use or is sold or is otherwise disposed of within 18 months beginning on the date the vehicle is placed in service. The section 30C credit for EV charging stations and other alternative fuel vehicle refueling properties is subject to recapture if the property is changed so that it no longer qualifies, or if it is sold or disposed of and the new owner will not use it mainly for business purposes, within three years of the property being placed in service. For example, if (i) the taxpayer claiming the alternative fuel vehicle refueling property credit modifies the property so it no longer qualifies as 30C property; (ii) the

property stops being predominantly used in a trade or business; (iii) the property ceases to be used in a trade or business but continues to be used for personal purposes; or (iv) the taxpayer sells or disposes of the property knowing or having reason to know that it will either be modified to no longer qualify as property or cease to be predominantly used in a trade or business, such, it would no longer qualify for the section 30C credit. A change in the identification of census tracts such that the property is no longer in an eligible census tract is not a recapture event for section 30C purposes.

By tying the credit benefits to continued compliance, these provisions help to ensure that the investments in clean energy infrastructure yield sustained

environmental benefits, supporting the broader objectives of promoting a transition to a sustainable and resilient energy system.

### **Conclusion**

These new tax credit opportunities provide meaningful incentives to fund sustainability related endeavors and introduce opportunities for Tribal Nations and other tax-exempt entities who historically have been unable to leverage non-refundable tax credits. The direct pay election for the Clean Electricity ITC and PTC, Qualified Commercial Clean Vehicle Credit, and the Alternative Fuel Vehicle Refueling Property Credit, as well as the Energy Efficient Commercial Buildings Deduction, provide new and powerful funding mechanisms to fund new green infrastructure.

## Part 5: Other Helpful Resources

### List of Acronyms and Abbreviations

|                |   |
|----------------|---|
| <b>BEV</b>     | battery electric vehicle  |
| <b>C&amp;G</b> | combustion and gasification   |
| <b>CHP</b>     | combined heat and power   |
| <b>DOE</b>     | U.S. Department of Energy   |
| <b>DOL</b>     | U.S. Department of Labor  |
| <b>FMV</b>     | fair market value   |
| <b>GHG</b>     | greenhouse gas  |
| <b>GVWR</b>    | gross vehicle weight rating   |
| <b>IRC</b>     | Internal Revenue Code, as organized under U.S. Code Title 26  |
| <b>ITC</b>     | Investment Tax Credit   |
| <b>kWh</b>     | kilowatt-hour, a measure of electrical energy equivalent to a power consumption of 1,000 watts for 1 hour |
| <b>LIC</b>     | low-income community based on NMTC census data.   |
| <b>MSA</b>     | metropolitan statistical area   |
| <b>NMTC</b>    | New Markets Tax Credit  |
| <b>PTC</b>     | Production Tax Credit   |
| <b>PWA</b>     | prevailing wage and apprenticeship requirements   |
| <b>PWSN</b>    | physical work of a significant nature, under the Physical Work Test                                       |
| <b>QOZ</b>     | Qualified Opportunity Zone  |
| <b>TERO</b>    | Tribal Employment Rights Office   |



## Glossary of Terms

As used in this guide, the following terms have the meanings set forth below unless a different meaning is stated expressly or is clearly apparent from the context.

|                                    |   |
|------------------------------------|---|
| <b>Alaska Native Corporation</b>   | A corporation organized under the laws of the state of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of members of (1) a Native village (Alaska Native Village Corporation); (2) members of an urban community of Natives (Alaska Native Urban Corporation); (3) members of a Native group (Alaska Native Group Corporation); or an Alaska Native Regional Corporation established under the laws of the State of Alaska as referenced in the Alaska Native Claims Settlement Act. |
| <b>Disregarded Entity</b>          | A business structure, such as a Section 17 Corporation, that is not taxed separately from its owner for federal income tax purposes.  |
| <b>Functionally interdependent</b> | The components of property that are dependent on each other and operate together to perform the intended function.  |
| <b>Indian Tribal Government</b>    | The recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the most recent list published by the Department of the Interior in the Federal Register under the Federally Recognized Indian Tribe List Act of 1994 prior to the date on which a relevant direct payment election is made.   |
| <b>Monetize</b>                    | To convert an asset into a source of income.  |
| <b>Section 3 Corporation</b>       | A corporation formed by a Tribe pursuant to the Oklahoma Indian Welfare Act.  |
| <b>Section 17 Corporation</b>      | A corporation formed by a Tribe pursuant to the Indian Reorganization Act of 1934.  |
| <b>Subchapter K</b>                | The section of the Internal Revenue Code that defines partnerships and related rules for federal income tax purposes.   |

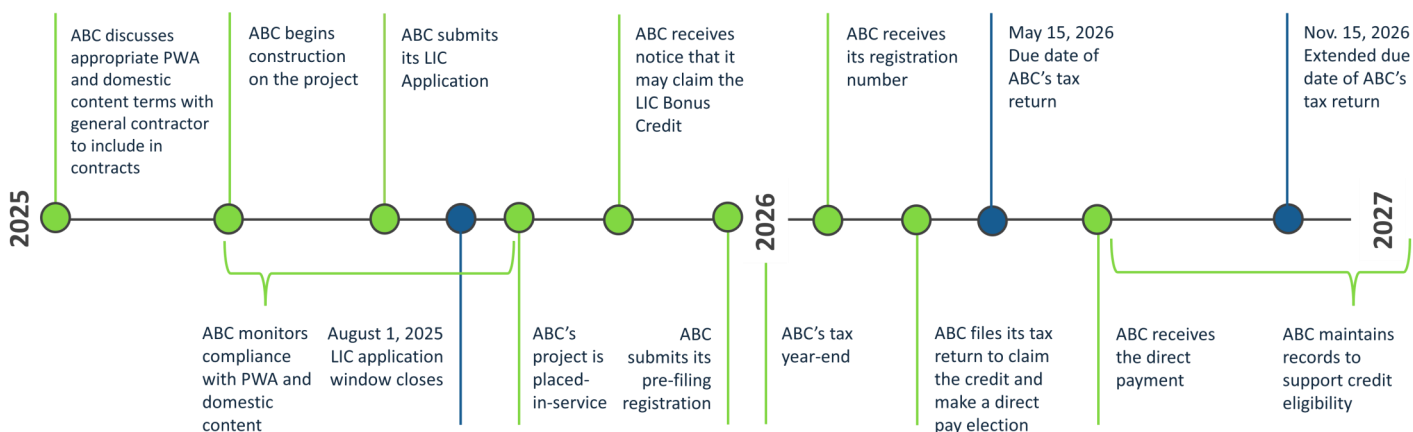
## Project Case Study

What follows is an illustrative guide to examine a hypothetical project and the items that should be considered throughout the (1) initial planning and contracting stage of the project, (2) construction stage, (3) post completion documentation stage, and (4) monetization of the tax credit. A hypothetical timeline of key activities and milestones that will be discussed is included below.

Tribal Organization, ABC, has sought to transition to renewable energy sources to reduce its carbon footprint and ensure energy independence for future generations. In 2025, ABC initiated the "Sunrise Solar Initiative," a community-based solar energy project aimed at harnessing the abundant sunlight in their region.

The project involves the installation of a **2-megawatt solar farm** on Tribal land, which is expected to generate enough electricity to power approximately 1,000 homes within the community. ABC expects to complete the project during late 2025.

### Project Case Study — Hypothetical Timeline



### Planning and Contracting Stage

#### Determine Which Tax Credit the Project Should Utilize

Now that ABC has determined the feasibility and initial scoping of the project, it must determine which tax credit it should utilize to help finance the project. The solar farm project could qualify for either the Clean Electricity 48E ITC or 45Y PTC. ABC will need to review the total costs and estimated energy output of the project to determine the potential credit amount it could receive for either credit. ABC will also need to factor in its current and future financial needs when selecting the best tax credit option – the section 48E ITC direct payment will be received in a lump sum within approximately a year of completing the project whereas the section 45Y PTC direct payments will be spread over 10 years and may vary in amount based on actual project performance. Finally, ABC should consider the other sources of funding it will be using to finance the project and their potential impact on the available credit amount (e.g., grant funding will reduce the eligible cost basis of the project for the section 48E ITC). Given the importance of this early financial decision in planning for the project, ABC should consider consulting a qualified professional.

To finance the project, ABC has utilized a combination of grants and loans. However, a significant portion of the funding is expected to come from tax credits specifically designed to support clean energy projects for nonprofits and Tribal entities. ABC has determined that the **section 48E ITC is more advantageous** than the section 45Y PTC given the **planned production** from the facility and the **need to monetize the credits as quickly as possible**.

#### Determine Which Bonus Credits the Project Intends to Qualify For

One of the first things that ABC must do is consider which bonus credits it intends to qualify for to increase the section 48E ITC rate for the project. The bonus credits each have documentation requirements to substantiate and support eligibility, so ABC must identify which bonus credits it plans to meet prior to entering into construction contracts.

Because construction of the project did not begin before January 29, 2023, and the electrical output from the project will exceed 1 megawatt, the project **must satisfy the PWA requirements to qualify for the 5x bonus credit** on the ITC amount. Similarly, because the project began construction during 2025 and has a maximum net output exceeding 1 megawatt, it **must satisfy the domestic content requirements, otherwise the ITC will be phased down to 85%.**

The Project is not located in a qualifying energy community location but **meets the requirements to apply for the Low-Income Communities Bonus Credit** program. The Low-Income Communities Bonus Credit program is an application-based program and applications are considered on a rolling basis, so ABC should submit its application as soon as possible prior to the August 1, 2025 deadline in which the application window closes. Because applicants must be awarded an allocation under this program, ABC is not guaranteed an award and should consider that uncertainty when evaluating its funding for the Project.

### Consider Contractual Language to Support Credit Eligibility

Once ABC has identified the bonus credits that it intends to qualify for, it must consider the documentation requirements. Much of the support needed to substantiate eligibility for the section 48E ITC and bonus credits must be provided by the contractors and subcontractors working on the project. These records are much easier to collect in real time as the project progresses rather than months later when the tax return is filed.

Please note that the suggestions provided in this case study are **not exhaustive** and serve only as **examples** of commonly seen language that ABC should consider in its contractual arrangements with contracts and subcontractors to better support its credit claim. **This memorandum does not constitute tax or legal advice**; readers are encouraged to consult their own tax and legal counsel.

### Prevailing Wage and Apprenticeship

To ensure compliance with the PWA requirements, ABC should include language in its contracts requiring the contractor/subcontractor to take steps guaranteeing that PWA requirements are met (i.e., all laborers and mechanics are paid prevailing wages, an adequate number of apprentices from registered apprenticeship programs are employed on the project, etc.), and to comply with recordkeeping requirements.

Some examples of these contractual requirements may include, but are not limited to:

- Requiring the contractor and any sub-contractors to pay laborers and mechanics prevailing wage rates for on-site construction, alteration, or repair;
- Requiring the contractor and any sub-contractors to maintain documentation that evidences the wages and fringe benefits paid to each laborer/mechanic, to be provided to the project owner on a regular basis;
- Requiring all contractors to request qualified apprentices from registered apprenticeship programs at least 45 days prior to needing apprentices on the project; and
- Requiring all contractors to maintain and provide documentation demonstrating compliance with the apprenticeship requirements.

While ABC's contract may include a requirement for a contractor/subcontractor to comply with TERO regulations and reporting requirements, it is important that it also includes provisions specifically related to PWA requirements for the tax credits given the importance of such credits in financing the project.

### Domestic Content

Similarly, to ensure compliance with domestic content requirements (and strengthen its position in the event of damages resulting from non-compliance), ABC should incorporate specific language in its contracts that mandate the use of domestically produced steel, iron, and manufactured products at the project.

Examples of such contractual language may include, but are not limited to:

- Requiring contractors and subcontractors to provide certification or documentation verifying the origin of the materials used, ensuring they meet domestic content standards;
- Obliging contractors to maintain detailed records of all procured materials, including their origin, which can be audited by the project owner at regular intervals; and
- Requiring advance notice if alternative, non-domestic materials are considered, along with justification and potential impact assessments on compliance status (including consideration of the increased cost or non-availability exceptions to the domestic content requirements).

## Begun Construction / Binding Written Contract

To ensure all contracts have the terms necessary to be considered binding written contracts for the purposes of establishing the beginning of construction, ABC should include specific provisions that clearly define the scope of work, timelines, and obligations of each party involved. This includes detailed descriptions of the project deliverables, payment schedules, and conditions for termination or modification of the contract.

To be a binding written contract, each contract must (1) be enforceable under applicable law; (2) not contain damages provisions that limit damages (i.e., liquidated damages) to less than 5% of the total contract price; (3) not be an option contract to acquire or sell property, nor a supply agreement where the amount and design specifications have not been specified; (4) not be substantially modified; and (5) be in writing, entered into prior to the work occurring.

Contractual language to consider might include:

- Explicitly outlining the scope of work, including detailed specifications and milestones to be achieved;
- Establishing clear payment terms, including amounts, schedules, and conditions for payment;
- Including terms that define the start and completion dates of the project, ensuring that all parties are aware of the timeline;
- Providing conditions that address the process for any amendments or modifications to the contract, including the requirement for written consent from all parties involved; and
- Clearly explaining when title passes from any contractors to the owner, when risk of loss transfers from contractors to the owner, and how those provisions impact either party's obligations under the contract.

## Construction Stage

### Monitor Project Construction Status and Timeline

ABC should implement robust monitoring mechanisms throughout the construction phase to ensure construction progress is documented. This involves regular progress reviews, site inspections, and milestone assessments to verify that the construction activities align with the established project schedule and documents the construction progress in real time. It is crucial to closely monitor and document the "beginning of construction" and "placed in service" dates, as these are critical for calculating eligibility and the credit.

Examples of monitoring activities might include:

- Conducting weekly or bi-weekly meetings or site visits to assess the progress of construction and address any on-site challenges;
- Requiring contractors to submit regular progress reports, including updates on completed tasks, upcoming milestones, and any deviations from the original timeline;
- Utilizing project management software to track the status of various construction activities and generate real-time reports; and
- Holding regular meetings with key stakeholders to review progress, discuss any issues, and make necessary adjustments to the project plan.

To help address the requirements surrounding "beginning of construction" and "placed in service" dates, ABC should:

- Clearly document when physical work of a significant nature commenced and when project costs are incurred;
- Maintain detailed records of all activities performed (photographs, daily construction logs, etc.) and expenditures (purchase orders, invoices, etc.) to substantiate when the project began construction;
- Document when the project is ready and available for its intended use;
- Maintain detailed records to support when all necessary inspections, certifications, and approvals are obtained to officially mark the "placed in service" date; and
- Document these key dates in a comprehensive project timeline, supported by relevant evidence and reports.

By maintaining a proactive approach to monitoring the construction status and timeline, and by meticulously recording events and collecting documentation needed to substantiate the beginning of construction and placed in service dates as the project progresses, ABC can ensure that all critical milestones are accurately recorded for credit calculation purposes.

### Monitor Compliance with PWA Requirements

Ensuring compliance with the PWA requirements during the construction phase is critical as substantial penalties can accrue



if ABC has to make corrective payments for a failure to meet the requirements. ABC should establish a comprehensive compliance monitoring system that includes regular audits, documentation reviews, and meetings to verify that all laborers and mechanics are being paid prevailing wages and that apprenticeship requirements are being met. ABC should also coordinate with the TERO prior to construction starting to ensure the TERO is aware of the PWA requirements and determine if the contractor/subcontractor reporting required by the TERO could be used to help monitor and document PWA compliance.

Examples of compliance monitoring activities include:

- Conducting periodic (at least quarterly) audits of payroll records to ensure that all workers are receiving the correct prevailing wage rates and fringe benefits;
- Requiring contractors and subcontractors to submit certified payroll reports on a regular basis, which detail the wages and benefits paid to each laborer and mechanic;
- Performing interviews with workers to verify that they are being paid in accordance with PWA requirements; and
- Ensuring that contractors are employing an adequate number of apprentices from registered apprenticeship programs and are maintaining documentation to demonstrate compliance.

Additionally, it is essential to have mechanisms in place to track any underpayments and ensure that corrective actions are taken promptly. To quickly identify and address any underpayments, ABC should:

- Establish a system for tracking and documenting any identified underpayments, including the amount and the affected workers;
- Require contractors to notify ABC immediately upon discovering any underpayments and to provide a plan for rectifying the issue;
- Ensure that contractors take corrective actions to cure any underpayments, such as issuing back pay to affected workers and updating payroll records accordingly; and
- Conduct follow-up audits to verify that the underpayments have been fully resolved and that preventive measures are in place to avoid future occurrences.

By implementing these and other measures, ABC can effectively monitor and enforce compliance with PWA requirements throughout the construction phase.

### **Monitor Compliance with Domestic Content Requirements**

A failure to meet the domestic content requirements cannot be cured once construction is complete or through payment of a penalty. Therefore, ABC should implement a rigorous monitoring process to ensure that all materials used in the construction project meet the specified domestic content criteria. This involves regular verification of material origins, thorough documentation, and periodic audits.

- Examples of activities to monitor compliance with domestic content requirements (to the extent the New Elective Safe Harbor is not being relied upon) include:
- Requiring contractors and subcontractors to provide certificates of origin or other documentation verifying that materials such as steel, iron, and manufactured products are produced in the United States;
- Maintaining detailed records of all procured materials, including their origin, and conducting regular audits to verify compliance;
- Performing spot checks and inspections of materials delivered to the construction site to ensure they meet domestic content standards; and
- Establishing a clear process for addressing any instances where non-compliant materials are identified, including corrective actions and potential penalties.

### **Post-Completion Steps and Documentation**

#### **Pre-Filing Registration**

As detailed above, once the qualifying activity or project has been placed in service, ABC must complete a pre-filing registration with the IRS to claim the tax credit. This process should be completed at least 120 days before the due date for the tax return to ensure timely processing, as the registration number is necessary in order to make the direct pay election.

ABC's tax return to claim the section 48E ITC, with extension, is due on November 15, 2026, as ABC plans to adopt a calendar year end for tax purposes. Therefore, ABC should submit its pre-filing registration for the project by July 18, 2026. To do so, ABC must first create a Clean Energy Business Account on the IRS website at [www.irs.gov/eptregister](https://www.irs.gov/eptregister). This account creation must be

carried out by an authorized representative of the organization, whose personal identity will be verified during the registration process. ABC is required to submit information about the project and the tax credit intended to be claimed. A separate pre-filing registration must be completed for each qualified facility.

A separate pre-filing registration must be completed for each qualified facility. Because the project is (1) owned by the same taxpayer, (2) placed in service in the same taxable year, and (3) transmits electricity through the same point of interconnection or supports the same end user, ABC has determined that **the project is a single qualified facility requiring only one pre-filing registration.**

After submitting the registration package, ABC can monitor its status through the “Your Registrations” site on the [IRS portal](#). Upon successful completion of the registration process, the IRS will issue a unique registration number for each applicable credit property. This registration number is essential and must be included in the tax return when claiming the tax credit for the applicable property.

This pre-filing registration process is a critical step that must be completed prior to filing the tax return to claim the direct pay election of the credit.

### Cost Segregation Analysis

The section 48E ITC is determined based on the qualifying costs of the project. Therefore, a thorough cost segregation analysis should be conducted by qualified professionals who have expertise in tax law, engineering, and construction and can determine the eligible costs. The process typically involves a comprehensive review of construction documents, invoices, and other relevant records to identify assets that can be included as part of the property’s eligible cost. These assets might include items such as electrical systems and certain finishes that are integral to the property’s operation.

By conducting a cost segregation analysis, ABC can substantiate the amount of the credit claimed by providing detailed documentation and support for the allocation of costs. This documentation is crucial for compliance with IRS requirements and for defending the credit amount in the event of an audit. The analysis should include a detailed report that outlines the methodology used and the assets identified. This report serves as a key piece of evidence to support the credit claimed and to demonstrate that the organization has taken all necessary steps to accurately calculate and substantiate the credit.

In summary, a cost segregation analysis is an invaluable tool for maximizing tax benefits and ensuring the accurate substantiation of the credit claimed. This proactive approach not only optimizes the project's financial outcomes but also ensures compliance with regulatory requirements and minimizes the risk of potential disputes with tax authorities.

### Credit Calculation and Substantiation

The final step in the post-completion process is to conclude and document ABC’s eligibility for the section 48E ITC and calculate the amount of credit for the project. This documentation is often provided by a qualified tax specialist via a range of deliverables, from comprehensive credit eligibility opinions to more concise presentations. The tax specialist reviews and organizes the data and records collected by ABC during the project implementation to reach a conclusion regarding eligibility for the section 48E ITC. This step is crucial for ensuring that ABC receives the full benefit of the credit available and that all claims are thoroughly documented and defensible in the event of an audit.

A full-scale credit eligibility opinion or tax technical memorandum offers an in-depth analysis of the project's eligibility for credits, including detailed calculations and comprehensive documentation of all relevant costs and activities. The deliverable typically includes sections such as an executive summary, project background, detailed cost breakdowns, a thorough explanation of the methodology used to calculate the credit, timing of meeting the beginning of construction and placed in service requirements, and a conclusion regarding ABC’s eligibility for the credit. It also addresses any potential issues or risks associated with the credit claim and provides recommendations for mitigating these risks.

In addition to a full-scale opinion, shorter, more compact deliverables such as a slide deck provide a high-level overview of the credit calculation and substantiation process, making them ideal for presentations to stakeholders or for internal review. The slide decks typically include key highlights from the credit eligibility memo, such as the total credit amount, major cost categories, and a summary of the methodology used. They are designed to be visually engaging and easy to understand, providing a clear and concise summary of the credit calculation process.

Both types of deliverables may be useful for substantiating the credit claimed and ensuring that ABC is fully prepared for any potential audits or reviews by the IRS. By leveraging these deliverables, ABC can ensure that its credit calculation is accurate, well-documented, and fully compliant with regulatory requirements.

### Credit Monetization

Once ABC is comfortable with its eligibility for the section 48E ITC and the amount of credit, it is time to monetize the credit through making the direct pay election.

### Filing the Annual Tax Return

The direct pay election must be made via the filing of an annual tax return by the due date (or extended due date). For entities like ABC that are not normally required to file a tax return on an annual basis, Form 990-T, Exempt Organization Business Income Tax Return, should be used. Because ABC has not previously established a taxable year, it has chosen to adopt a December 31 calendar year end. Therefore, ABC's 2025 tax return (reporting the section 48E ITC for the project) is due on May 15, 2026, which may be extended until November 15, 2026.

ABC's tax return should include:

- Form 990T, Exempt Organization Business Income Tax Return, marked to indicate that the return is being filed solely to make a direct pay election.
- Form 3800, General Business Credit, which should include the property registration number(s) and any required attachments.
- Form 3468, Investment Tax Credit, which provides details about the project.
  - A statement attached to the Form 3468 attesting to the satisfaction of the PWA Requirements
  - A statement attached to the Form 3468 attesting to the satisfaction of the Domestic Content Requirements

### Receiving the Direct Payment

A direct payment election is treated as a payment against the federal income tax imposed during the taxable year. Because ABC has no federal income tax liability, the refund will equal the amount of the applicable tax credit.

ABC is not entitled to the payment of the refund until the due date of the tax return (i.e., May 15, 2026), even if the return is filed prior to that date. The payment of the refund occurs after the tax return is processed.

Once ABC has received the payment, it should maintain all records to substantiate the credit in the event the credit is subsequently audited by the IRS.

ABC's "Sunrise Solar Initiative," a 2 MW community-based solar energy project, is now operational and helping to reduce the electricity bills of the local residents. Because of **careful planning and rigorous recordkeeping**, ABC was able to receive the **maximum credit amount available** for the project. ABC was also able to utilize separate grant funding for workforce development which means local workers were hired to install and operate the solar power facility and the community has the capacity to develop future projects.

## Energy Tax Incentives Summary

|   | Clean Electricity Investment Tax Credit<br>(Section 48E)   | Clean Electricity Production Tax Credit<br>(Section 45Y)  | Qualified Commercial Clean Vehicle Credit<br>(Section 45W)  | Alternative Fuel Vehicle Refueling Property Credit<br>(Section 30C)  | Energy Efficient Commercial Buildings Deduction<br>(Section 179D)   |
|---|--|---|---|--|---|
| Entities and Usage                            | Businesses and tax-exempt entities that make an investment in a qualified facility or energy storage technology within the U.S.  | Businesses and tax-exempt entities that produce electricity at a qualified facility within the U.S.   | Businesses and tax-exempt entities that purchase qualified commercial clean vehicles that are primarily used in the U.S.  | Businesses and tax-exempt entities that install a qualified refueling property in certain low-income communities and non-urban areas. Qualified fuels include electricity, ethanol, natural gas, hydrogen and biofuel. | Businesses that place in service energy efficient commercial building property or energy efficient commercial building retrofit property. Tax-exempt entities may not claim the section 179D deduction but can allocate it to designers of the energy efficient features or retrofits of the property.  |
| Credit Amount                                 | 6% of qualified investment, 30% if PWA requirements are met.   | 0.6 cents per kWh generated, 3 cents per kWh if PWA requirements are met.<br>The per kWh credit rates are for 2025 and adjust annually for inflation. | Lesser of 15% of the vehicle's cost (or 30% for vehicles without internal combustion engines) or the incremental cost of the vehicle.<br>Maximum credit of \$40,000 per vehicle (\$7,500 for vehicles under 14,000 pounds). | 6% of qualified investment, 30% if PWA requirements are met.   | Lesser of (i) the cost of the installed property or (ii) \$0.58 to \$1.16 / sq. ft. depending on the level of energy savings, \$2.90 to \$5.81 / sq. ft. if PWA requirements are met.<br>Every percentage increase in energy savings above 25% adds \$0.02 / sq. ft. to the deduction amount, \$0.12 / sq. ft. if PWA requirements are met.<br>The credit rates are for 2025 and adjust annually for inflation. |
| Period of Availability                        | Property placed in service after December 31, 2024 that begins construction by the later of: (i) 2032, or (ii) the year after annual GHG emissions from U.S. electricity production are less than or equal to 25% of the 2022 emission rate. |   | January 1, 2023 – December 31, 2032   | January 1, 2023 – December 31, 2032  | Permanent   |
| Direct Pay Eligible?                          | Yes  | Yes   | Yes   | Yes  | No, this incentive is not a tax credit.   |
| Domestic Content Bonus Credit Eligible?       | Yes, 2 or 10%  | Yes, 10%  | No  | No   | No  |
| Energy Communities Bonus Credit Eligible?     | Yes, 2 or 10%  | Yes, 10%  | No  | No   | No  |
| Low-Income Communities Bonus Credit Eligible? | Yes, 10 or 20%   | No  | No  | No   | No  |



## Resource Links

Below are informational resources and potential opportunities for funding/financing and available technical assistance programs that may be useful as consider when considering a clean energy project and using the new tax credits.

### ***Tax Credits – General***

Alternative Fuel Vehicle Refueling Property Credit (section 30C) – <https://www.irs.gov/credits-deductions/alternative-fuel-vehicle-refueling-property-credit>

Clean Electricity Investment Credit (ITC, section 48E) – <https://www.irs.gov/credits-deductions/clean-electricity-investment-credit>

Clean Electricity Production Credit (PTC, section 45Y) – <https://www.irs.gov/credits-deductions/clean-electricity-production-credit>

Commercial Clean Vehicle Credit for Tax-Exempt Organizations (section 45W) – <https://www.irs.gov/credits-deductions/commercial-clean-vehicle-credit>

Domestic Content Bonus Credit – <https://www.irs.gov/credits-deductions/domestic-content-bonus-credit>

Energy Community Bonus Credit – <https://energycommunities.gov/energy-community-tax-credit-bonus/>

Energy Efficient Commercial Buildings Deduction (179D) – <https://www.irs.gov/credits-deductions/energy-efficient-commercial-buildings-deduction>

Low Income Communities Bonus Credit – <https://www.irs.gov/credits-deductions/clean-electricity-low-income-communities-bonus-credit-amount-program>

Prevailing Wage and Apprenticeship Requirements (PWA) – <https://www.irs.gov/credits-deductions/prevailing-wage-and-apprenticeship-requirements>

### ***Elective Pay and Filing with the IRS***

Application for Low-Income Communities Bonus Credit – <https://eco.energy.gov/licbonus/s/>

DOE Elective Pay – General Information – <https://www.energy.gov/elective-pay>

IRS Indian Tribal Government Office – <https://www.irs.gov/government-entities/indian-tribal-governments>; <https://www.irs.gov/government-entities/indian-tribal-governments/contacts>

IRS Elective Pay & Transferability – General Information – <https://www.irs.gov/credits-deductions/elective-pay-and-transferability>

IRS Pre-Filing Registration User Guide and Instructions – <https://www.irs.gov/pub/irs-pdf/p5884.pdf>

Obtain an Employer ID Number (EIN) – <https://www.irs.gov/businesses/small-businesses-self-employed/get-an-employer-identification-number>

Registration for Elective Pay – <https://www.irs.gov/credits-deductions/register-for-elective-payment-or-transfer-of-credits>

### ***Technical Resources***

30C Tax Credit Eligibility Locator (Alternative Fuel Vehicle Refueling Property) – <https://experience.arcgis.com/experience/3f67d5e82dc64d1589714d5499196d4f/page/Page/>

DOE Incremental Purchase Cost Methodology for Clean Vehicles - <https://www.energy.gov/eere/vehicles/incremental-purchase-cost-methodology-and-results-electric-vehicles>

DOE Indian Energy Foundation Online Courses on Energy Technologies and Project Management – <https://www.energy.gov/indianenergy/online-curriculum>

Energy Communities Interactive Map – <https://arcgis.netl.doe.gov/portal/apps/experiencebuilder/experience?id=a2ce47d4721a477a8701bd0e08495e1d>

Low-Income Communities Bonus Credit Interactive Map – <https://experience.arcgis.com/experience/12227d891a4d471497ac13f60fffd822/page/Page/>

Qualified Vehicle Manufacturers List for 45W Tax Credit – <https://www.irs.gov/credits-deductions/manufacturers-for-qualified-commercial-clean-vehicle-credit>

REopt: Renewable Energy Integration & Optimization, NREL – <https://reopt.nrel.gov/tool>

### ***Grant, Loan and Financing Programs***

EPA Solar for All – Funding program for distributed solar energy projects in low-income and disadvantaged communities. Funds are available through 60 Tribal, State and National grantees listed on the EPA website. – <https://www.epa.gov/greenhouse-gas-reduction-fund/solar-all>

USDA, Rural Development – General Funding and Financing Programs -- <https://www.rd.usda.gov/programs-services/all-programs>

### ***Technical Assistance***

DOE Clean Cities and Communities – <https://cleancities.energy.gov/technical-assistance/>

DOE Grid Deployment Office – <https://www.energy.gov/gdo/tribal-nation-transmission-program>

DOE Indian Office – <https://www.energy.gov/indianenergy/request-technical-assistance>

DOE Tribal Nation Transmission Program – <https://www.energy.gov/gdo/tribal-nation-transmission-program>

DOI-BIA Division of Energy and Mineral Development Technical and Business Advisory Services – <https://www.bia.gov/service/technical-business-advisory-energy>

EPA Brownfields Development Technical Assistance – <https://www.epa.gov/brownfields/technical-assistance>

EPA Building Blocks for Sustainable Communities – <https://www.epa.gov/smartgrowth/building-blocks-sustainable-communities>

NREL Clean Energy to Communities Program – <https://www.nrel.gov/state-local-tribal/clean-energy-to-communities.html>

NREL Energy Improvements in Rural or Remote Areas Technical Assistance – <https://www.nrel.gov/state-local-tribal/era-technical-assistance.html>

NREL Energy Transitions Initiative Partnership Project – <https://www.nrel.gov/state-local-tribal/etipp-technical-assistance.html>

NREL General – <https://www.nrel.gov/state-local-tribal/technical-assistance.html> ; <https://www.nrel.gov/state-local-tribal/technical-support-services.html>

NREL Solar Community Assistance for Local Equity – <https://www.nrel.gov/solar/market-research-analysis/solar-community-assistance.html>

## Federal Agencies – Contact Information

If you are interested in the latest information on programs and assistance from key federal agencies, contact information is provided below.

| Federal Agency                       | Office/Address   | Contact Information   |
|--------------------------------------|--|---|
| Bureau of Indian Affairs             | Office of Indian Economic Development<br>1849 C Street, N.W., Room 4152<br>Washington, DC 20240                          | <b>Phone:</b> (202) 219-0740<br><b>URL:</b> <a href="https://www.bia.gov/as-ia/ied">https://www.bia.gov/as-ia/ied</a>   |
| Bureau of Indian Affairs             | Division of Energy and Mineral Development<br>13922 Denver West Parkway, Suite 200<br>Lakewood, CO 80401-3142            | <b>Phone:</b> (303) 969-5270<br><b>Email:</b> <a href="mailto:demd@bia.gov">demd@bia.gov</a><br><b>URL:</b> <a href="https://www.bia.gov/bia/ots/demd">https://www.bia.gov/bia/ots/demd</a>   |
| U.S. Department of Agriculture       | Office of Tribal Relations<br>Room 501-A Whitten Building<br>1400 Independence Ave, SW<br>Washington, DC 20250           | <b>Phone:</b> (202) 205-2249<br><b>Email:</b> <a href="mailto:Tribal.Relations@usda.gov">Tribal.Relations@usda.gov</a><br><b>URL:</b> <a href="https://www.usda.gov/about-usda/general-information/staff-offices/office-tribal-relations">https://www.usda.gov/about-usda/general-information/staff-offices/office-tribal-relations</a>                       |
| U.S. Department of Energy            | Office of Indian Energy<br>1000 Independence Ave. SW<br>Room 8E-060<br>Washington, D.C. 20585                            | <b>Phone:</b> (240) 562-1352<br><b>Email:</b> <a href="mailto:indianenergy@hq.doe.gov">indianenergy@hq.doe.gov</a><br><b>URL:</b> <a href="https://www.energy.gov/indianenergy/office-indian-energy-policy-and-programs">https://www.energy.gov/indianenergy/office-indian-energy-policy-and-programs</a>   |
| U.S. Department of Treasury          | Office of Tribal Government Affairs<br>1200 New Jersey Avenue, S.E.<br>Room No. W-83<br>Washington, DC 20590             | <b>Phone:</b> (202) 366-0237<br><b>Email:</b> <a href="mailto:TribalAffairs@dot.gov">TribalAffairs@dot.gov</a><br><b>URL:</b> <a href="https://www.transportation.gov/office-tribal-government-affairs/office-tribal-government-affairs">https://www.transportation.gov/office-tribal-government-affairs/office-tribal-government-affairs</a>                 |
| U.S. Department of Treasury          | Office of Tribal and Native Affairs  | <b>Email:</b> <a href="mailto:tribal.consult@treasury.gov">tribal.consult@treasury.gov</a><br><b>URL:</b> <a href="https://home.treasury.gov/policy-issues/tribal-affairs">https://home.treasury.gov/policy-issues/tribal-affairs</a>   |
| Environmental Protection Agency      | Office of International and Tribal Affairs (2610R)<br>1200 Pennsylvania Ave., NW<br>Washington, DC 20460                 | <b>Phone:</b> (202) 564-4899<br><b>Email:</b> <a href="mailto:Oita.Contactus@epa.gov">Oita.Contactus@epa.gov</a><br><b>URL:</b> <a href="https://www.epa.gov/aboutepa/about-office-international-and-tribal-affairs-oita">https://www.epa.gov/aboutepa/about-office-international-and-tribal-affairs-oita</a>   |
| National Renewable Energy Laboratory | State, Local and Tribal Program<br>National Renewable Energy Laboratory<br>15013 Denver West Parkway<br>Golden, CO 80401 | <b>General Phone:</b> 303-275-3000<br><b>Tribal Program Phone:</b> 303-275-4498<br><b>Tribal Program Email:</b> <a href="mailto:Elizabeth.Weber@nrel.gov">Elizabeth.Weber@nrel.gov</a><br><b>URL:</b> <a href="https://www.nrel.gov/state-local-tribal/decision-support-tribes.html">https://www.nrel.gov/state-local-tribal/decision-support-tribes.html</a> |

