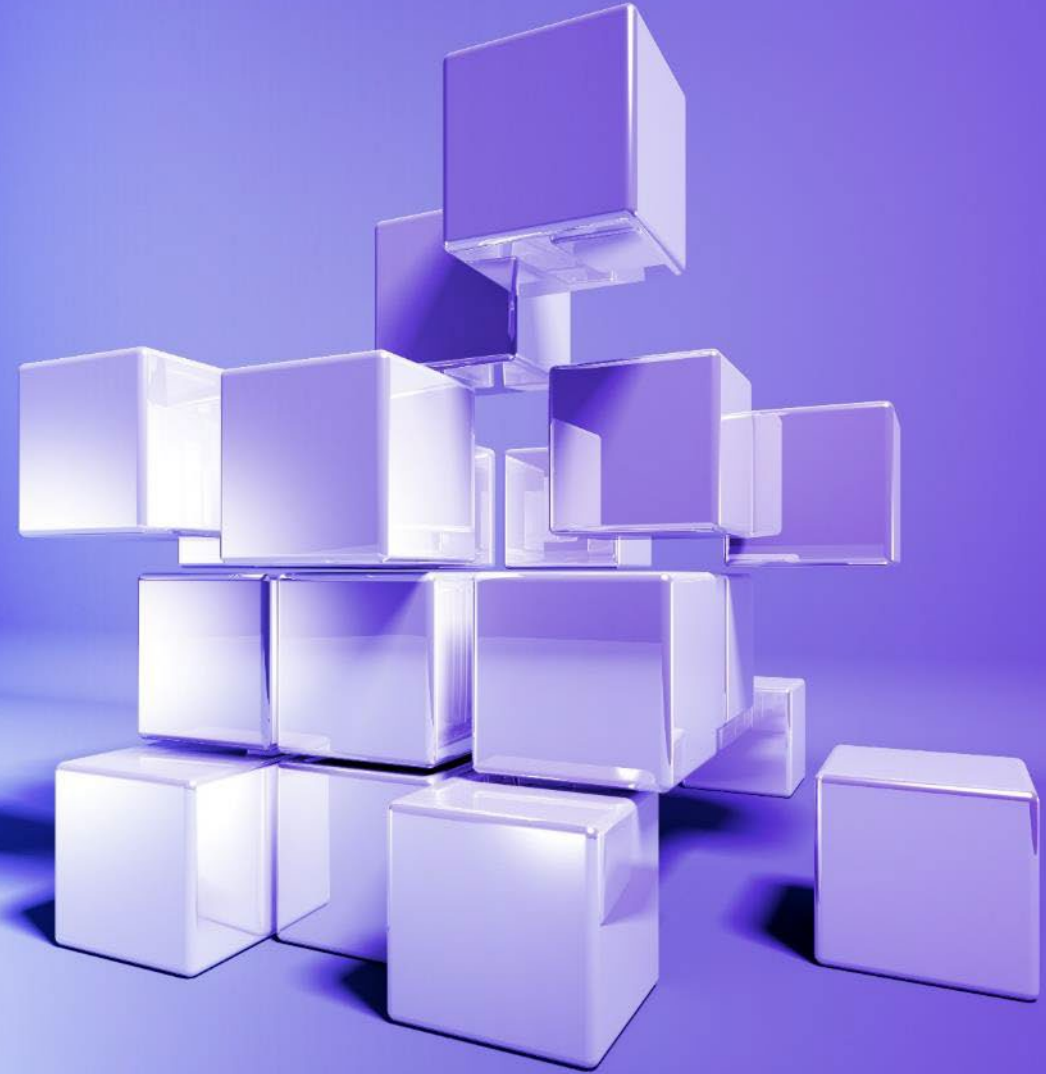




# Clean Energy Tax Incentives for Higher Education

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June 27, 2023



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## Content questions

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# Agenda

**Introduction/ Overview**

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**Inflation Reduction Act  
Energy Incentives**

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**Other Considerations for  
Exempt Organizations**

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**Clean Energy Strategy**

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**Q & A**

**Inflation Reduction  
Act Energy  
Incentives**

# Energy Tax Credits Overview

## Prior law

- Under prior law, many energy tax credits were expired or phasing down; all credits were nonrefundable and nontransferable
- Tax-exempt and government entities had very limited ability to utilize the investment tax credits –
  - Under **section 50(b)(3)**, tax-exempt organizations could not claim a credit unless the applicable property was used predominantly in an unrelated trade or business;
  - Under **section 50(b)(4)(A)(i)**, property used “by the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing” was ineligible for the credit altogether.

# Energy Tax Credits Overview (cont.)

## The Inflation Reduction Act made significant changes to energy tax credits

- Significant enhancements and modifications made to existing energy tax credits for solar, wind, EVs, charging stations, etc.
- New credits added for additional technologies and activities
- For many credits, new prevailing wage and apprenticeship requirements must be met to receive highest available credit
- Additional “bonus” credit rates are possible - depending, *inter alia*, on where the property is placed in service and content requirements
- New “direct pay” election allows most tax-exempt and some government entities to access credits by making them “refundable”
- Transferability election allows other taxpayers to monetize credits



# Direct Pay Election – Section 6417

**Tax-exempt and governmental entities can make a direct pay election and receive a cash refund for the amount of several specified credits in excess of their tax liability.**

**The statute states that the credit is determined:**

- without regard to sections 50(b)(3) and 50(b)(4)(A)(i) and
- “by treating property with respect to which such credit is determined as used in a trade or business of the applicable entity.”

**Effective for tax years beginning after December 31, 2022.**

# Direct Pay Election – Section 6417 (cont.)

**Proposed regulations clarify that when section 6417 indicates that “the credit is determined...by treating property with respect to which such credit is determined as used in a **trade or business** of the applicable entity,” it means (among other things) that:**

- Even though the various credit provisions may use different phrases to refer to business property, the credit property is treated as business property for purposes of the specified credits (e.g., for section 48, it is treated as property “for which depreciation (or amortization in lieu of depreciation) is allowable”)
- The entity can determine the basis of the property using the usual capitalization rules (e.g., sections 263, 263A) that apply to determine the basis for business property

# Direct Pay Election – Applicable Entities

**Unless otherwise specified, organizations eligible for direct pay (“applicable entities”) include:**

- Any organization exempt from the Federal income tax imposed by subtitle A of the Code (e.g., 501(c) organizations)
- Any state or political subdivision thereof
- The Tennessee Valley Authority
- An Indian tribal government
- Any Alaska Native Corporation
- A rural electric cooperative

**(Other organizations are also eligible for direct pay for certain credits)**

# Direct Pay Election – Applicable Entities (cont.)

**Proposed regulations clarify that the term “applicable entity” includes a variety of tax-exempt and governmental entities not expressly mentioned in the statute, including:**

- Governments of U.S. territories and their political subdivisions
- Tax-exempt entities in U.S. territories
- District of Columbia
- Subdivisions of Indian tribal governments
- **Agencies and instrumentalities of any state, the District of Columbia, Indian tribal government, U.S. territory or political subdivisions of any of the foregoing**

# Direct Pay Election – Applicable Entities (cont.)

**Proposed regulations also address situations where a disregarded entity or a partnership directly holds the applicable credit property:**

- Disregarded entities are disregarded – their activities are attributed to their owner and if the owner is an applicable entity, it could elect direct pay for the credit
- Partnerships are NOT applicable entities
  - Even if all of the partners are applicable entities, the partnership is not
- Comments are requested regarding whether any applicable entity (as defined in the statute and proposed regulations) could be organized as a partnership

# Applicable Credits

## Pre-IRA credits (now with a direct pay option):

- **Sec. 30C – Alternative fuel vehicle refueling property credit**
- Sec. 45 – Electricity produced from certain renewable resources (but only for projects originally placed in service after 12/31/2022)\*
- Sec. 45Q – Credit for carbon oxide sequestration (but only for projects originally placed in service after 12/31/2022)
- **Sec. 48 – Energy credit\***
- Sec. 48C – Qualifying advanced energy project credit

\* Special phaseout rule for direct pay if domestic content requirements aren't satisfied.

# Applicable Credits (cont.)

## New Credits (with a direct pay option):

- Sec. 45U – Zero-emission nuclear power production credit
- Sec. 45V – Credit for production of clean hydrogen (but only for projects originally placed in service after 12/31/2022)
- **Sec. 45W – Credit for qualified commercial clean vehicles**
- Sec. 45X – Advanced manufacturing production credit
- Sec. 45Y – Clean electricity production credit\*
- Sec. 45Z – Clean fuel production credit
- **Sec. 48E – Clean electricity investment credit\***

\* Special phaseout rule for direct pay if domestic content requirements aren't satisfied.

# Direct Pay Election Mechanics

## Applicable entity must make the direct pay election to access credit

- Election must be made on an original annual tax return, no later than the due date (including extensions), with additional required forms

The Secretary may require information or registration deemed necessary to prevent **duplication, fraud, improper/excessive payments**

- Online pre-filing registration is required

**Penalty for “excessive payments” = 120% of the “excessive payment” (or just the excessive payment amount if reasonable cause is demonstrated)**



# Transferability of Credits – Section 6418

- “Eligible taxpayer” – any taxpayer which is not an “applicable entity” **described in** section 6417(d)(1)(A) (referring generally to tax exempt and government entities) – can elect to transfer all or a portion of several specified credits to an unrelated “transferee taxpayer” and receive cash in return; credits cannot be transferred more than once.
- Amounts received in cash are not included in gross income of the eligible taxpayer (and amounts paid by the transferee taxpayer are not deductible)
- **Eligible credits are same as 6417 except that the credit under section 45W (relating to qualified commercial vehicles) is not included**
- **Penalty applies for excessive credit transfer, unless there is reasonable cause**

# Overview of § 48 Investment Tax Credit (ITC)

One-time investment tax credit (ITC) equal to a percentage of the eligible basis of qualifying energy property placed in service during the taxable year.

Eligible basis

×

ITC %

=

ITC

# Section 48 Energy Credit

Approximately 16 types of property qualify under section 48, including:

- Solar energy property
- Combined heat and power system property (cogen)
- Geothermal heat pumps
- Energy storage technology
- Thermal energy storage property
- Fuel cell powerplants
- Microturbine powerplants
- Microgrid controller

# Section 48E (New) Energy Credit

- Section 48E is available for property that is **placed in service after 2024**
- Facility must be a “zero emissions” facility (except for energy storage technology and thermal energy storage property)
  - Certain technologies that qualify under section 48 would likely not qualify under new section 48E without carbon capture (*i.e.*, cogen, fuel cells, microturbines)
  - Solar energy property would likely qualify as zero emissions
- Phases out over a three-year period beginning the later of: (i) projects that begin construction after 2032 or (ii) when electric power sector’s carbon emissions are reduced by 75% as compared to 2022 levels

# Section 48 Energy Credit (cont.)

- Section 48 is available if TP **begins construction *prior to January 1, 2025***
  - *But* geothermal heat pump credit available if construction begins before 2035
- **Constructed, reconstructed, erected, or acquired (and original use) by TP**
- “with respect to which depreciation... is allowable” (i.e., business property)
- Credit “bonus rate” of 30% is generally available if certain prevailing wage and apprenticeship requirements are satisfied; otherwise the rate is generally 6% (“base rate”). Additional credit rate bonuses are available (see *infra*)
- **Credit rate reduced if tax-exempt bond financing used**
- **Proposed regulations also reduce credit if property is acquired with income (including grants and forgivable loans) that is exempt from tax and received for the specific purpose of acquiring certain “investment-related credit property” (§§ 30C, 45W, 48, 48C, 48E)**

# “Bonus” Credit Rates

## Prevailing wage & apprenticeship requirements

- “Bonus rates” are available for projects which satisfy certain wage and apprenticeship requirements during construction and operation of the projects – generally 5 times the “base rate” (i.e., 30% vs 6%)
- Meeting prevailing wage and apprenticeship requirements can also be key to getting other top bonus credit rates

# “Bonus” Credit Rates (cont.)

## Domestic content

- Additional up to 10% credit rate may be available if projects are constructed using specified levels of domestically sourced steel, iron, and manufactured products

## Other targeted credit enhancements

- Additional credit rates available in some cases for energy projects located in “energy communities” – including brownfields and communities formerly reliant on coal and fossil fuel industries – and in certain low-income communities or projects
  - Up to 10% for energy community
  - Up to 20% for environmental justice allocation

# Overview of § 48 Investment tax credit (ITC)

One-time investment tax credit (ITC) equal to a percentage of the eligible basis of qualifying energy property placed in service during the taxable year.

Eligible basis\*



ITC %

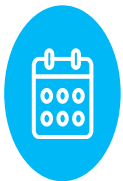


ITC



## Eligible Basis

- Compute eligible basis based on project costs
- Cost segregation analysis identifies eligible vs. ineligible direct costs
- Generally indirect costs allocated based on direct costs



## ITC %

- Base rate
- Prevailing wage & apprenticeship bonus
- Domestic content bonus (or reduction)
- Energy community bonus
- Environmental justice bonus



# Sec. 45W: Commercial Clean Vehicles Credit

Provides a new credit for qualified commercial clean vehicles (“QCCVs”) acquired for business use/lease by the taxpayer (and not for resale)

Credit is equal to the lesser of:

- 15% of the cost of such vehicle (30% in the case of a vehicle not powered by a gasoline or diesel internal combustion engine), or
- The incremental cost of such vehicle.
  - The incremental cost of a qualified commercial clean vehicle is the excess of the purchase price for the clean vehicle over the price of a comparable vehicle (one powered solely by a gasoline or diesel internal combustion engine comparable in size and use)

# Sec. 45W: Commercial Clean Vehicles Credit (cont.)

- Maximum credit:
  - QCCVs with a gross vehicle weight rating under 14,000 lbs: \$7,500
  - All other QCCVs: \$40,000
- New credit for “mobile machinery” – e.g., commercial lawnmowers
- Effective for vehicles acquired in 2023 through 2032
- ***No prevailing wage or apprenticeship requirements***

# Sec. 30C: Electric Vehicle Charging Stations Credit

## Extension of EV charging stations credit (§ 30C)

- Up to 30% of qualifying costs (“bonus rate”) if prevailing wage and apprenticeship requirements are satisfied, otherwise 6% (“base rate”)
- Business credit cap increased from \$30,000 to \$100,000
  - ***Note that credit is now only available for charging stations installed in census tracts that qualify as low-income communities (as defined under the new markets tax credit) or in census tracts that are not urban census tracts***
- Credit available for property placed in service before 2033 and changes/enhancements to the credit are effective for property placed in service after 2022

# Sec 179D: Energy efficient commercial building deduction

- Under prior law, section 179D provided a tax deduction of up to \$1.80 per square foot for energy efficient commercial building property
  - In the case of a government owned building, the deduction could be allocated by the government entity to the designer of the property.
- The Inflation Reduction Act **increased the available deduction amount (to up to \$5 per square foot)** and provides that **the deduction can also be allocated to the designer in the case of buildings owned by tax-exempt entities.**
- Maximum deduction is only allowed if prevailing wage & apprenticeship requirements are satisfied.

# EO Tax Considerations

# Some considerations for tax-exempt organizations

Credit provisions and associated regulations were drafted to apply to for-profit business entities – so expect there will be interpretive questions as you apply them in an EO context

- Proposed regulations address some of the clashes in the statutory text; likely to be more questions going forward.

All the usual EO tax considerations apply, including:

- Operated exclusively for exempt (charitable, educational, etc.) purposes
- Prohibition on private inurement / private benefit not more than incidental to exempt purposes
- Unrelated business income tax
- Form 990 reporting – public disclosure

# Some considerations for tax-exempt organizations

If a tax-exempt organization is generating power for its own use, or using alternative fuel vehicles or energy efficient buildings in carrying out its own exempt purposes, such use would generally further its exempt purpose.

- In a system of related entities, one entity can generate power for other related entities. See Treas. Regs. §1.502-1(b)

If a §501(c)(3) organization is selling EV charging to its own employees, students, or patients, such sales would presumably not generate unrelated business taxable income under the “convenience exception.” See §513(a)(2)

- This is the case regardless of whether the EV charging facility is debt-financed. See §514(b)(1)(D).

Whether making clean energy, vehicles, buildings, etc. available to *other, unrelated persons* furthers or is substantially related to charitable or educational purposes is more uncertain

# Environmental protection as a charitable purpose

- Protecting environment generally serves a charitable purpose. (Rev. Rul. 76-204)
- In Rev. Rul. 72-560, the IRS concluded that an organization formed to educate the public about environmental deterioration due to solid waste pollution and operated with contributions and proceeds from the sale of collected solid waste for recycling was exempt under §501(c)(3)
  - “Income derived from the sale of the waste materials to the recycling companies is merely incidental to the accomplishment of the exempt purposes of the organization”
  - See *also* Treas. Reg. § 53.4944-3(b), Ex. (12). Investment in a business enterprise in a developing country that sells collected waste for recycling has the primary charitable purpose of combatting environmental deterioration
- Generally, authorities on environmental protection as a charitable purpose are not well-developed, especially in the context of clean energy/reducing carbon emissions.



# Some considerations for tax-exempt organizations

Proposed regulations limit certain credit amounts when credit property is acquired with “Restricted Tax Exempt Amounts”

- Credits in sections 30C, 45W, 48, 48C, 48E (“investment-related credit property”)
- Interactions with grant rules and structuring considerations

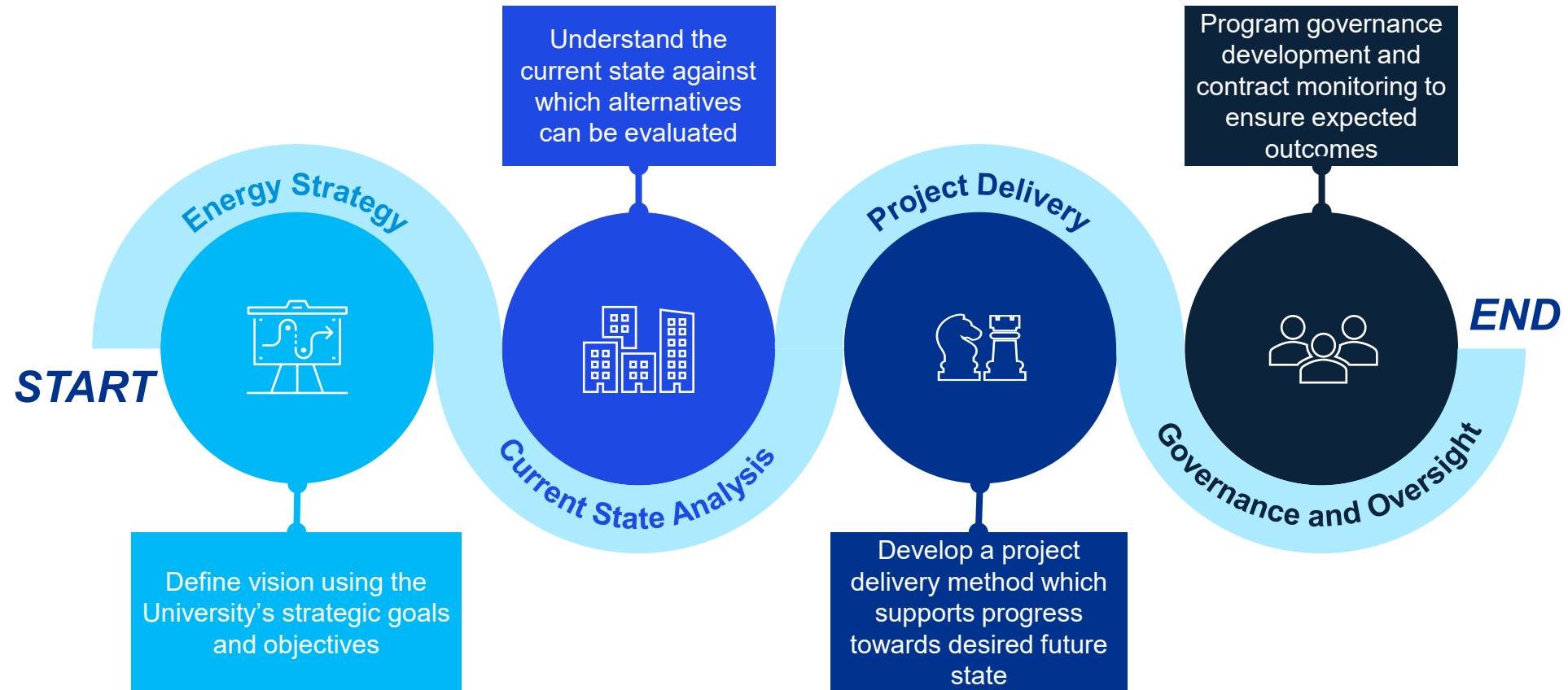
Direct pay only for credits determined with respect to the applicable entity

- Can’t buy credits and then elect direct pay for purchased credits
- But can buy credits to use to pay UBIT liability

# Clean Energy Strategy – a Journey

# Clean Energy Transformation Process

A University's energy system is a component part of a complex infrastructure system. University managers need to comprehensively analyze each component to identify value drivers that align with their strategic goals.



**Q&A**

# Q&A

If you submitted a question, someone from KPMG may contact you via phone or email. Or you may contact one of today's presenters directly:

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