

Clean Energy Tax Incentives for Tax-Exempt and Governmental Entities

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Overview

The Inflation Reduction Act (the “Act”), enacted into law on August 16, 2022, extended and significantly enhanced existing energy tax credits for a wide range of clean energy technologies, including solar, battery storage, and alternative energy vehicles and charging stations. The Act also added several new incentives for investing in clean energy technologies and energy efficient buildings.

Notably, many tax-exempt organizations and certain government entities may now benefit from these clean energy tax incentives. The Act debuted a “direct pay” option for a variety of energy tax credits, which will enable these organizations to receive a payment directly from the federal government if they do not have tax liabilities for the credit amounts to offset. For eligible tax-exempt and government entities, the energy tax credits will likely be reported on a return as a refundable credit. This is a sea change in the energy tax credit space, as these credits previously had very limited benefit for tax-exempt and governmental entities.

Additionally, the Act enhanced the deduction available for energy efficient building property and also now allows certain tax exempt entities, in addition to government entities, to transfer the deduction from the construction of certain energy efficient buildings and improvements to the lead project designer – a benefit that these entities can leverage when negotiating building contracts.

The Act’s clean energy incentives, including direct pay for certain tax credits, are generally available to eligible tax-exempt and government entities for *tax years beginning after December 31, 2022*. Because direct pay availability is dependent on the start of the entity’s tax year, credits that are otherwise in effect starting in calendar year 2022 or 2023 may not be available for direct pay eligible entities unless the property is placed in service *after the start of their tax year beginning in 2023*.

Clean energy technologies eligible for tax credits include, but are not limited to, the following:

- Solar energy panels
- Alternative energy vehicles and refueling property
- Geothermal heat pumps (a heating/cooling system that uses a heat pump to transfer heat to or from the ground)
- Energy storage technology (equipment that receives, stores, and delivers energy for conversion to electricity)
- Combined heat and power (cogeneration) systems (a system that produces heat and electricity in a single plant with one primary energy source)

The following chart summarizes some of the most relevant clean energy incentives now available to tax-exempt and certain governmental entities.

Incentive type	Tax benefits	Dates
Investment Tax Credit (ITC) (Sections 48 and 48E)		
Section 48 ITC for specified technologies, including solar, fuel cell, waste energy, small wind, combined heat and power, energy storage, and microgrid controllers	Up to 30%* of eligible basis	For projects placed in service (PIS) after 2021 (PIS after 2022 for energy storage and microgrid controllers) and beginning of construction (BOC) before 2025
Section 48 ITC for geothermal if BOC before 2035	Up to 30%* of eligible basis	30% available for projects PIS after 2021 and BOC before 2033; phase down for BOC in 2033-2034
Section 48E technology-agnostic ITC for certain qualified facilities with no greenhouse gas emissions and for energy storage technology	Up to 30%* of eligible basis	For new facilities PIS after 2024; phases out at the later of 2033 or the year in which annual emissions from production of electricity in the U.S. is cut by more than 75% as compared to 2022
	Direct pay available; phaseout for BOC starting in 2024 if certain “domestic content” rules are not met	
Clean vehicles and refueling property (Sections 30C and 45W)		
Section 30C alternative fuel vehicle refueling property	Up to 30%*; maximum credit of \$100,000 per any single item; census tract restrictions apply; direct pay available Certain tax-exempt and government entities may also pass the credit to the seller of the charging station	For refueling property PIS after 2022
Section 45W Qualified Commercial Clean Vehicles	Lesser of (i) 30% of basis (15% if vehicle is powered by a gas or diesel engine) or (ii) incremental cost of such vehicle (as compared to a “non-clean vehicle”); capped at \$7,500 (\$40,000 if gross weight exceeds 14,000 pounds); direct pay available	Vehicles acquired in calendar years 2023 – 2032
Energy Efficient Commercial Buildings Deduction (Section 179D)		
Deduction for energy-efficient commercial building expenditures (property designed to significantly reduce heating, cooling, water heating, and interior lighting energy costs)	Deduction equal to cost of energy efficient commercial building property PIS during taxable year; maximum deduction not to exceed \$5 per square foot,* depending on energy cost savings For buildings owned by tax-exempt and government entities, those entities may pass the deduction to the energy efficient building designer	New rules are effective for tax years beginning after 2022

* Credit/deduction rates are the “bonus” rates, which assume that prevailing wage and qualified apprenticeship requirements are met. For ITC, additional 10% bonus credit amounts may be available for using domestic content and/or locating projects in “energy communities.” Credit amounts are significantly smaller (e.g., 20% of the bonus credit rate) if prevailing wage and qualified apprenticeship requirements are not satisfied

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