Inflation Reduction Act Overview

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November Chapter Meeting

November 16th | 11:30 AM CDT

The Houstonian

JOIN US FOR A PANEL DISCUSSION WITH CONSTRUCTION CFO'S DISCUSSING CURRENT HOT TOPICS IN THE CONSTRUCTION INDUSTRY, AND HOW TO NAVIGATE DIFFICULT TIMES.

CFMA CONSTRUCTION FINANCIAL MANAGEMENT ASSOCIATION
HOUSTON CHAPTER

Caryl Coronis – NBG Constructors
Andrew Husmann – Marek Brothers
Samantha Hutchison – Brookstone Construction
Joe McLaughlin – Austin Industries

POLLING QUESTION #1

Will the Astros win the World Series next year?

- Yes
- No

Agenda

- How did we get to the Inflation Reduction Act (IRA)?
- Corporate provisions
- Individual provisions
- Energy Credits
  - New Credit Structure
  - Credit Monetization
  - Details of Credits
- Other Provisions – IRS Funding
- Future – Midterm Elections Impact
- Accounting Implications?


How did we
get here?

Build Back Better Act

- On March 31, 2021, the White House released The American Jobs Plan, a blueprint of the administration's intent to invest in rebuilding the country's infrastructure and target job creation
- The Made in America Tax Plan was released simultaneously as a general proposal of primarily corporate tax reforms aimed at financing the intended infrastructure investment
- Green Book - formal outline with additional detail into the proposals introduced in The American Jobs Plan and The American Families Plan.
- October 21, 2021 – President Biden introduced the Build Back Better Act
  - Presented as a $1.9 trillion spending bill
- December 19, 2021 – Senator Manchin (D-WV) announces the bill is dead
  - CBO cost estimate upwards of $4.5 trillion
- Infrastructure Investment and Jobs Act
  - No tax policy included

CHIPS Act

- Bipartisan Bill – The Creating Helpful Incentives to Produce Semiconductors and Science Act of 2022
- Focuses on federal aid to encourage the construction of microprocessor manufacturing facilities in the United States
- New 25 percent tax credit for investments in semiconductor manufacturing facilities in the United States (48D)
- Subsidies to build chip plants in the U.S. and support U.S. chip research and development

Schumer-Manchin Agreement

- July 27, 2022 – Senators Schumer and Manchin announce an agreement on the Inflation Reduction Act
  - Carved out key pieces of the Build Back Better Act
- Contained a provision to close the "carried interest" loophole

Sinema Demands

- Would not support tax hikes
- The sticking point was a relatively obscure tax break called the “carried interest loophole”
- In case anyone needs a refresher, this is the tax break that taxes private equity and venture capital income at a lower tax rate.
- Hedge-fund managers and Wall Street executives have fought tooth and nail to protect this loophole, especially as the Obama White House tried to eliminate it.

POLLING QUESTION #2

Have you looked at or are you interested in any of the provisions of the Inflation Reduction Act?

- Yes
- No

Corporate Provisions

Corporate Minimum Tax

- Imposes a minimum tax on the adjusted financial statement income (AFSI) for “applicable corporations”
- Average annual AFSI over a three-year period in excess of $1 billion
- Tax is equal to the excess of 15% of a corporation’s adjusted financial statement income (AFSI) over its corporate AMT foreign tax credit
- Congress was focused on the phenomenon of very large publicly traded corporations with significant accounting earnings paying little or no tax
- The Joint Committee on Taxation has estimated that “only approximately 150 taxpayers annually will be subject to” the CAMT

Excise Tax on Repurchase of Corporate Stock

- Imposes a 1% tax on the fair market value of stock repurchased by a publicly traded U.S. corporation during the taxable year.
- Reduced for stock issuances during the taxable year.
- Applies to IRC §317(b) redemptions and economically similar transactions, as well as stock acquired by a corporation's specified affiliate from another person.
- Also applies to certain acquisitions and repurchases of publicly traded foreign corporation stock.
- Exceptions for IRC §368 tax-free reorganizations, total repurchased stock of $1 million or less for the taxable year, repurchases treated as dividends, and certain other transactions.
- Applies to repurchases of stock after 2022.

Individual Provisions

Excess Business Losses

- Section 461(l)
- Limitation applies to noncorporate taxpayers, such as individuals, trusts and estates, and does not allow a "business" loss to exceed $270,000 for single filers or $540,000 for married joint filers for the tax year 2022, indexed annually
- Extends limitation on excess business losses of noncorporate taxpayers by two years
- Losses disallowed for taxable years beginning in 2021 through 2028

Premium Tax Credit

- Section 36B - Refundable credit that helps eligible individuals and families cover the premiums for their health insurance purchased through the Health Insurance Marketplace
- Extends through 2025, the reduced percentage of household income that is used to calculate the premium contribution for an individual claiming the premium tax credit
- Also through 2025, allows a taxpayer with household income for the year of 400% or more of the federal poverty line to qualify for the premium tax credit
- Applies to taxable years beginning after 2022

POLLING QUESTION #3

Does your business utilize any solar technologies?

- Yes
- No

Energy Credits and Incentives

Energy Credits and Incentives

- New Credit Structure
- Production and Investment Credits
- Fuels Credits
- **Building/Construction Incentives and Credits**
- Vehicle Credits

New Credit Structure

- Base credit amount
- Bonus rate – meet prevailing wage and apprenticeship requirements – 5X
- Additional credit for –
  - Domestic content requirements – 10%
  - Energy communities – 10%
  - Low-income communities – Up to 20%

Prevailing Wage and Apprenticeship Requirements

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- Prevailing wage – with respect to a project the taxpayer must ensure that any laborers and mechanics employed by contractors and subcontractors are paid prevailing wages during the project construction and, in some cases, for the alteration and repair of the project for a defined period after the project is placed into service
- Apprenticeship – with respect to a project the taxpayer must ensure that no fewer than the applicable percentage of total labor hours are performed by qualified apprentices

Prevailing Wage and Apprenticeship

- Have a delayed effective date - applies to projects 60 days after the date on which the United States Treasury publishes guidance for these new requirements
- Grandfathering period will give project sponsors much-needed time to coordinate with Engineering, Procurement, and Construction (EPC) contractors and other service providers to make sure their projects comply with the new rules
- The prevailing wage and apprenticeship requirements will challenge the economics of projects for taxpayers seeking a bonus tax credit.

Prevailing Wage and Apprenticeship Requirements

- Contractors and subcontractors must pay prevailing wages.
- If a taxpayer doesn't satisfy that requirement, it must pay each worker the difference between the wages paid and the prevailing wage, plus interest, and a $5,000-per-worker penalty for each employee paid less than the prevailing wage.
- The penalty increases to $10,000 per worker for intentional failure.
- Must pay the prevailing wage requirement the prevailing wage requirement during project construction and the 10-year PTC credit period or the 5-year ITC recapture period

Prevailing Wage and Apprenticeship Requirements

- Apprenticeship – must be met during the project construction

Construction of the facility begins:	Required apprentice labor hours:
Before January 1, 2023	10%
On or after January 1, 2023 and before January 1, 2024	12.5%
On or after January 1, 2024	15%

Prevailing Wage and Apprenticeship

- These labor standards requirements will challenge the economic calculus and construction budgets for taxpayers seeking tax credits for their green energy projects. Careful analysis would be necessary to determine whether the benefits of the tax credit outweigh the additional costs of satisfying the prevailing wage and apprenticeship requirements. Before undertaking such a commitment, the taxpayer should evaluate whether it has or is committed to establishing the requisite management and infrastructure to absorb the additional overhead and responsibilities in appropriately managing a compliant prevailing wage project. Once the taxpayer decides to proceed, the taxpayer should work further with counsel to develop the necessary processes that will ensure meeting the various challenges that are outlined below.

- Article: Build Back Better Green Energy Tax Credit Proposals: Labor Laws

Domestic Content

- With respect to the facility for which a tax credit is claimed, the taxpayer must ensure that the facility is composed of steel, iron, or products manufactured in the United States.
- The domestic content requirements generally would apply for purposes of the production tax credits (PTC) and investment tax credits (ITC).
- Projects meeting the requirements could receive higher-value credits.
- Projects not meeting the requirements may be restricted in the amount of the credit that is eligible for the direct pay elections provided for most credits under the bill.

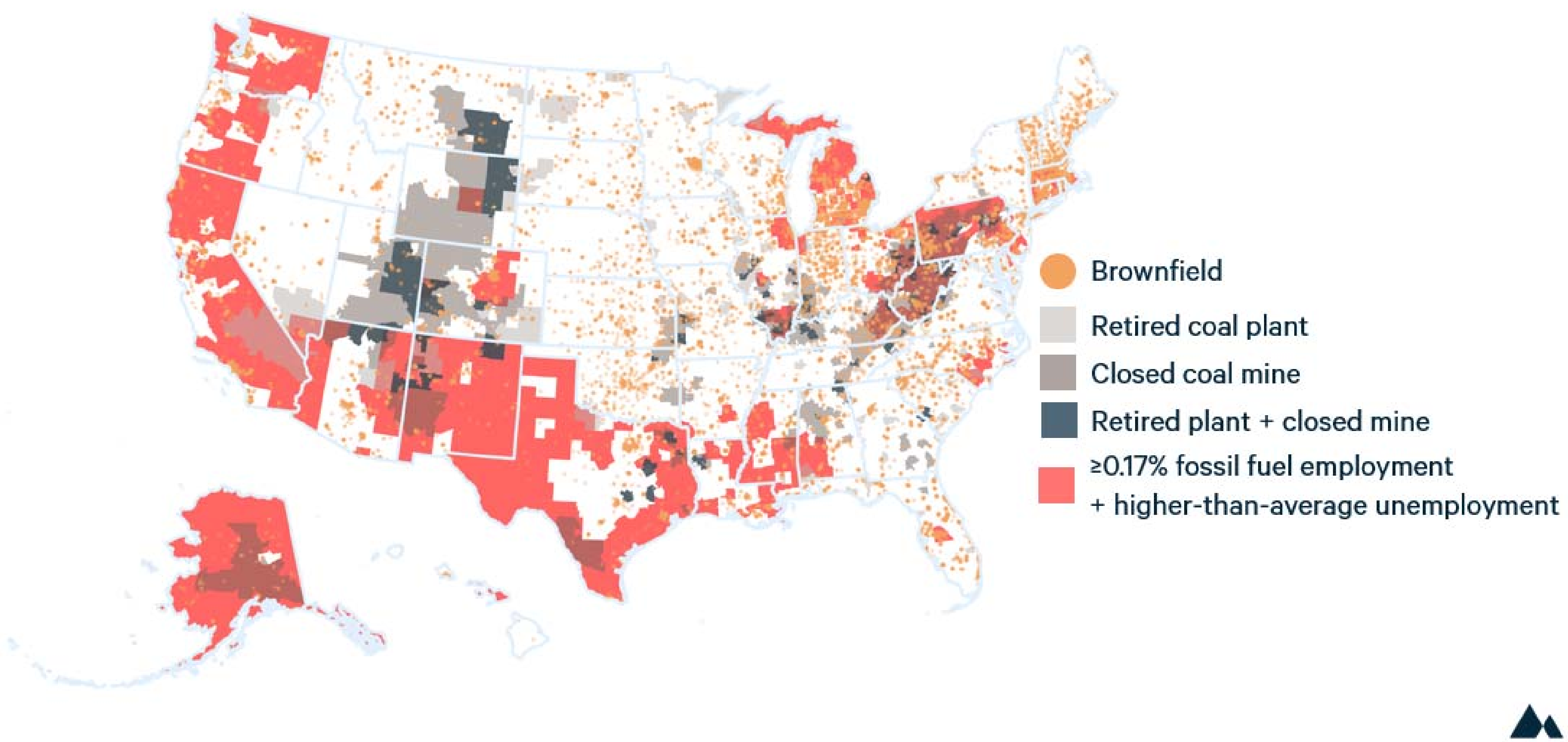
Domestic Content

Construction Begins:	Adjusted Percentage:	Adjusted Percentage (Offshore Wind):
Before January 1, 2025	40%	20%
On or after January 1, 2025 and before January 1, 2026	45%	27.5%
On or after January 1, 2026 and before January 1, 2027	50%	35%
On or after January 1, 2027 and before January 1, 2028	55%	45%
On or after January 1, 2028	55%	55%

Energy Communities

- Credit rate also would be increased by 10% for any facility placed in service in an "energy community,"
- Defined as
  - A brownfield site
  - An area with significant fossil fuel employment and higher than average unemployment,
  - Or a census tract or any immediately adjacent census tract in which, after December 31, 1999, a coal mine has closed, or, after December 31, 2009, a coal-fired electric generating unit has been retired.
- Encourages investment in clean energy projects in "energy communities" that likely will be disproportionately affected by the transition to a carbon-neutral economy

Energy Communities Map



Source - https://www.resources.org/common-resources/what-is-an-energy-community/

Low-Income Community

- An up-to-20% adder to the ITC for solar and wind projects located in certain low-income communities, low-income residential buildings, or on Indian land

Monetization of Credits

- Direct Pay
- Allow taxpayers that fall within the definition of “applicable entities” to elect to be treated as having made a payment of tax equal to the value of the credit for which they otherwise would be eligible
- Rather than opting to carry forward credits to years when their credits could offset their tax liability, taxpayers could elect to treat the amount of credit as a payment of tax.
- Would allow eligible entities with little or no tax liability to accelerate utilization of these credits.
- However, the definition of “applicable entities” would be limited to tax-exempt entities, state and local governments (and subdivisions thereof), tribal governments, the Tennessee Valley Authority, and certain rural electric cooperatives.

Direct Pay

- The limitation on applicable entities does NOT apply to –
  - Carbon capture and sequestration (45Q)
  - Clean hydrogen (45V)
  - Advanced manufacturing production credit (45X)
- Makes these credits refundable

Tax-Exempt Financing

- If a facility is financed with tax-exempt debt, credits are reduced by 15% or, if less, the percentage of the facility financed with tax-exempt proceeds
- For example, if an issuer finances 15% or more of the cost of a project with tax-exempt debt and otherwise would be eligible for a 30% ITC, the ITC will be reduced by 15% to 25.5%
- Previous rate was 50%

Transferability

- Taxpayers ineligible for the direct-pay election can transfer all or a portion of a credit to another taxpayer
- Can only be transferred once
- Transferability will be less valuable than direct-pay – will not be able to sell credit on a dollar for dollar basis
  - Taxpayer would need to leave a margin for the buyer of the credits
  - Similar marketplace will open as there currently is for certain state credits
- Gives small and mid-size projects opportunities to monetize credits that were not available before
  - Gives an option other than tax equity

Transferability

- Eligible Credits
  - Section 30C alternative fuel refueling property credit
  - Section 45 renewable electricity production credit
  - Section 45Q credit for carbon oxide sequestration
  - Section 45U zero-emission nuclear power credit
  - Section 45V clean hydrogen production credit
  - Section 45X advanced manufacturing production credit
  - Section 45Y clean electricity production credit
  - Section 45Z clean fuel production credit
  - Section 48 energy investment tax credit
  - Section 48C advanced energy project credit
  - Section 48E clean electricity investment credit.

Transferability

- Any consideration paid in respect of the transferred credit must be paid in cash and is not included in income of the transferor (it is treated as tax exempt income for partnerships or S corporations), but is not deductible by the transferee
- The election to transfer the credits is made on a facility-by-facility basis, and for credits available over an extended period, for each year in which the credit is available
- Once transferred, the transferee cannot further transfer the relevant credit. Credits which have been carried back or carried forward may not be transferred
- An additional 20% penalty may apply in situations involving excess payments
- The IRS will issue guidance on making the transferability election. Taxpayers must make the election by the due date (including extensions) for the tax return for the election year, and no earlier than Feb. 12, 2023.

Transferability Issues

- Legal concerns for buyer
  - Assignment agreement
    - A buyer will likely want to include conditions precedent that will need to be satisfied. These conditions precedent will likely include a tax opinion, to give the buyer comfort the project in fact qualifies for the tax credits it is purported to, and for investment tax credit projects a cost segregation report and an appraisal to confirm the amount of the investment tax credit.
  - Indemnity provision
    - The IRS can still challenge the amount of the tax credit claimed by the buyer.
- It is unclear in the proposed transferability rules as to what happens if an owner of an investment tax credit project decides to transfer the project (or more than a one-third interest therein) in the first five years of its operations or to remove it from service: would the project owner or the tax credit buyer suffer the recapture?
- As noted, still does not monetize depreciation deductions

Carryback

- For taxable years beginning after December 31, 2022, a 3-year carryback (instead of a 1-year carryback) is included for certain credits
  - the ITC, the PTC, the 45Q Credit, the technology neutral ITC (48D) and PTC (48Y), the section 30C credit for alternative fuel vehicles, the section 45U zero-emissions nuclear power production credit, the clean hydrogen credit, the section 45X advanced manufacturing credit, the clean fuel production credit, and the section 48C credit for qualifying advanced energy projects

POLLING QUESTION #4

Who is ready to dive into some detailed tax provisions?

- Yes
- No


Credits

Production Tax Credit

- Section 45
- Production tax credits ("PTCs") based on the quantity of energy produced and sold to an unrelated party over a 10-year period are retroactively extended for wind, biomass, municipal solid waste (landfill gas and trash), hydropower, marine and hydrokinetic and geothermal facilities that begin construction before 2025
- Solar is added to the list of PTC-eligible technologies
- The PTC provisions are generally effective for projects placed in service after 2021. Projects placed in service in 2021 or earlier do not benefit from any PTC rate increase

Investment Tax Credit

- Section 48
- Investment Tax Credits are calculated as a percentage of the cost of the project
- Extended for solar, fiber-optic solar, fuel cell, microturbine, combined heat and power, small wind energy, and waste energy recovery property where construction begins before 2025
- New technologies, including energy storage technology with a minimum capacity of five kWh, linear generators, and microgrid controllers would be ITC eligible
- The cost of certain “interconnection property” (e.g., transmission upgrades) associated with an ITC-eligible project would now be treated as qualifying property for purposes of the tax credit

Investment Tax Credit

- ITC provisions are generally effective for projects placed in service after 2021
- **Provisions related to new technologies, including energy storage, apply to projects placed in service after 2022**
- Projects placed in service in 2021 or earlier do not benefit from any ITC rate increase

Investment Tax Credit

- Example – Project cost is $10,000,000
- Investment Tax Credit - $3,000,000 (30%)
- Basis of property eligible for depreciation - $8,500,000 ($10,000,000 less 50% of $3,000,000 credit claimed)
  - Eligible for bonus depreciation

- For taxpayers without the tax appetite, prior to the IRA, the credits and depreciation deductions had little value unless a tax-equity partner could be found
- Can now monetize the credits through transferability
  - Still lose the value of the depreciation deductions
- Recapture applies if facility sold within 5 years (includes ownership changes)

Solar

- The law expands PTC eligibility to solar energy facilities placed in service after 2021 that begin construction before 2025
  - The PTC for solar projects had expired in 2006
- Solar ITC –
  - Collectors, Hot liquid storage tanks, Thermostats, PV panels, Panel racking
  - Roadways that are integral to the functioning of the facility
  - **Purchased projects also eligible – taxpayer buys a “turnkey” project and places the entire project in service**
  - Recapture!
- It is anticipated that a significant number of future solar projects will claim the PTC rather than the ITC because, by doing so, the risk of credit recapture on projects held less than five years can be avoided

Carbon Oxide Sequestration Credit

- Section 45Q - IRC section 45Q allows taxpayers to claim a federal income tax credit based on the amount of qualified carbon oxides (“CO/CO2”), captured from a qualified facility, that would otherwise be emitted into the atmosphere over a 12-year period. The period begins on the date in which the carbon capture equipment is placed in service.
- Extends the existing credit under section 45Q for carbon sequestration for projects that begin construction before 2033
- Increase the credit value (slide to follow)

Carbon Oxide Sequestration

- The credit amounts were increased in recognition of the complexity of the capture processes, especially those involved in direct air capture, where significant technological hurdles still exist
- The IRA significantly reduces the minimum capture amounts required to qualify for the credit, some as low at 1,000 metric tons annually
- The revised 45Q provisions are effective for facilities or equipment placed in service after 2022.

Carbon Oxide Sequestration Credit

- To qualify, the taxpayer must "complete the cycle" of the credit requirements by physically or contractually ensuring the disposal, injection, or utilization of the captured CO/CO2
- The section 45Q credit is generally earned by the taxpayer that owns the carbon capture equipment, and physically or contractually ensures the capture and disposal, injection, or utilization of the CO/CO2. If the owner of the carbon capture equipment makes a timely annual election, the 45Q Credit may be allocated to the first contracted third party that disposes of, injects or utilizes the captured CO/CO2.

45Q

End Use	Base	Increased Credit	Current Law
Traditional Carbon Capture Carbon Oxide Used or Utilized	$12	$60	$35
Carbon Oxide Sequestrated	$17	$85	$50
Direct Air Capture Carbon Oxide Used or Utilized	$26	$130	$35
Carbon Oxide Sequestrated	$36	$180	$50

Zero-Emission Nuclear Power Production Credit

- New Section 45U
- A PTC for the production of electricity from a nuclear facility (other than an advanced nuclear power facility under section 45J) which is placed in service before the date of enactment
- To be eligible the electricity produced by the facility must be produced and sold to an unrelated person after December 31, 2023
- Base credit of 0.3 cents per kWh. An increased credit rate of 1.5 cents per KwH is available if prevailing wage requirements are met (similar to those described above). The credit is also reduced by 80% of the excess of gross receipts from electricity produced and sold over $0.025 times the amount of electricity sold

Advanced Energy Project Credit

- Section 48C
- Extends the advanced energy project credit, a competitively awarded investment tax credit for clean energy and energy efficiency manufacturing projects.
- Provides for as much as $10 billion of new credit allocations
- Reduces the credit rate by 80% if wage and apprenticeship requirements are not met
- Modifies the definition of a qualifying advanced energy project
- Effective beginning in 2023

Advanced Manufacturing Production Credit

- New Section 45X
- Production of certain eligible components produced by the taxpayer in the United States and sold to an unrelated person after December 31, 2022
- Eligible components include PV cells, PV wafers, solar grade polysilicon, polymeric backsheets, solar modules, wind energy components, torque tubes, structural fasteners, electrode active materials, battery cells, battery modules, and certain critical minerals
- Credit amount varies depending on the applicable eligible component

New Clean Energy Credits

- "New" PTC and ITC after 2024
  - Clean Electricity Production Tax Credit - New Section 45Y
  - Clean Electricity Investment Tax Credit - New Section 48E
- For property
  - Used for the generation of electricity,
  - Which is placed in service after 2024 and
  - Which emits zero greenhouse gases
- Similar to PTCs, 45Y Credits have a 10-year credit period with a 0.3 cents/kWh base rate and an increased rate of 1.5 cents/kWh (adjusted for inflation)
- Similar to ITCs, 48E Credits have a base rate of 6% or an increased rate of 30% of the taxpayer's cost of the energy property

Credit for Production of Clean Hydrogen

- Section 45V
- Creates a new business credit for the production of clean hydrogen during the 10-year period beginning on the date a qualifying facility is originally placed in service.
- Credit amounts are a percentage, based on emissions rates, of $0.60 (adjusted for inflation).
- Taxpayers qualify for an increased credit amount if certain wage and apprenticeship requirements are met
- Eliminates the excise tax credit under IRC §6426(d)(2)(D)
- Applies to clean hydrogen produced after 2022
- Cannot claim both the 45Q credit and the 45V credit for the same facility
- IRA expressly allows clean hydrogen facilities that produce hydrogen using electricity produced by wind, solar, or nuclear facilities to receive both the clean hydrogen tax credit and the clean energy credit that the wind, solar, and nuclear facilities are eligible to receive

POLLING QUESTION #5

Do you have any questions so far?

- Yes
- No

Fuels Credits

Tax Credits for Biodiesel, Renewable Diesel, and Alternative Fuels

- Section 40A
- Prior to the IRA, Section 40A of the Code allowed a tax credit for biodiesel, renewable diesel, biodiesel mixtures, alternative fuel, and alternative fuel mixtures, which expired on December 31, 2021
- The IRA extended this credit through 2024 for fuel sold or used after December 31, 2021
- Income and excise tax credits for biodiesel and biodiesel mixtures (including renewable diesel) would be extended at $1.00 per gallon
- Excise tax credits for alternative fuels and alternative fuel mixtures would be extended at $0.50 per gallon
- In addition, the IRA excludes sustainable aviation fuel produced from biodiesel fuel (new credit discussed later)

Second Generation Biofuel Credit

- Section 40
- Prior to the IRA, Section 40 of the Code allowed a tax credit for selling, using, or in limited instances producing second generation biofuel
- This credit expired on December 31, 2021
- The IRA reinstated and extended the credit through 2024 with respect to second generation biofuel that is produced after December 31, 2021

Sustainable Aviation Fuel Credit

- New Section 40B
- Creates a new business credit for each gallon of sustainable aviation fuel sold or used as part of a qualified fuel mixture
- The credit equals the number of gallons of sustainable aviation fuel in the mixture, multiplied by a base amount of $1.25, with increases available for meeting certain greenhouse gas emissions reductions.
- Eliminates the tax credit under IRC §40A for sustainable aviation fuel produced from biodiesel.
- Included in gross income under IRC §87.
- Applies to fuel sold or used in 2023 and 2024.

Clean Fuel Production Credit

- New Section 45Z
- Creates a new business credit for clean fuel the taxpayer produces at a qualifying facility and sells for qualifying purposes
- The fuel must meet certain emissions standards
- The credit per gallon base amounts are $0.20 (non-aviation fuel) and $0.35 (aviation fuel), with increases available if certain wage and apprenticeship requirements are met. All amounts are adjusted for inflation.
  - Multiplied by an applicable emissions factor
- Applies to clean fuel produced after 2024 and sold before 2028
- Negative CI scores?

Vehicles Credits

Clean Vehicle Credit

- Section 30D
- Provides a $7,500 tax credit for new EVs placed in service before 2033. The manufacturer's limitation is eliminated for vehicles sold after December 31, 2022.
- Battery Sourcing – The credit is reduced by 50% if the battery is not primarily sourced from North America.
- Price Cap – Price on EV sedans is capped at $55,000 and the price on EV trucks, SUVs, and vans is capped at $80,000.
- AGI Limitations – The credit is unavailable if the taxpayer's adjusted gross income for the taxable year (or the prior taxable year) exceeds a threshold amount ($300,000 for taxpayers filing a joint return, $225,000 for head of household filers, and $150,000 for other filers).

Previously Owned Clean Vehicles Credit

- Section 25E
- Provides a tax credit for used EVs which are at least 2 years old which are sold before December 31, 2032 equal to the lesser of (x) $4,000 or (y) 30% of the sales price for the used EV
- AGI Limitations – The credit is unavailable if the taxpayer's adjusted gross income for the taxable year (or the prior taxable year) exceeds a threshold amount ($150,000 for taxpayers filing a join return, $112,500 for head of household files, and $75,000 for other filers).

Qualified Commercial Clean Vehicles Credit

- Section 45W
- Provides a tax credit for qualified commercial clean vehicles sold before December 31, 2032 equal to the lesser of (x) 15% of the basis of such vehicle (30% in the case the vehicle is not powered by a gasoline or diesel engine) or (y) the incremental cost of such vehicle over the price of a comparable vehicle solely powered by a gasoline or diesel engine.
- Limitation – The credit cannot exceed $40,000 ($7,500 for vehicles with a weight rating of less than 14,000 pounds).

Alternative Fuel Refueling Property Credit

- Section 30C
- Extends the tax credit for alternative fuel refueling property (i.e., electric vehicle chargers) to property placed in service before December 31, 2032 and removes the per location limitation
- Revised credit provides a 30% tax credit on alternative fuel refueling property up to $100,000 and a 20% tax credit on amounts over $100,000
- New Structure – If the alternative fuel vehicle refueling property is depreciable property, the credit is 6% unless the prevailing wage and apprenticeship requirements are met (in which case the credit is 30%).

Building/ Construction Credits and Incentives

Nonbusiness Energy Property Credit

- Section 25C – Energy Efficient Home Improvement Credit
- Individual taxpayers
- Provides homeowners with a tax credit for investments in certain high-efficiency heating, cooling, and water-heating appliances, as well as tax credits for energy-efficient windows and doors
- Extends the nonbusiness energy property credit through 2032
- Changes the credit rate to 30% for both qualified energy efficiency improvements and residential energy property expenditures,
- Replaces the $500 lifetime limit with a $1,200 annual limit,
- Modifies limits for specific types of property, and
- Modifies the standards for qualified energy-efficiency improvements.

Residential Energy Efficient Property Credit

- Section 25D – (Residential Clean Energy Credit)
- Individual taxpayers
- Tax credit for qualified energy efficiency property expenditures made during the tax year
- Credit applies to qualified solar electric property, qualified solar water heating property, qualified fuel cell property, qualified small wind energy property, and geothermal heat pump property
- Section 25D has been updated to provide a 30 percent tax credit for qualified battery storage technology expenditures by individual taxpayers for property placed in service between December 31, 2021 and January 1, 2033
  - In lieu of the credit for biomass fuel property expenditures

Energy Efficient Commercial Buildings Deduction

- Section 179D
- The IRA materially changes the deduction allowed under Code Section 179D for energy efficient buildings
- Since 2006, this deduction has encouraged commercial building owners to install energy-efficient systems by providing an immediate deduction for installation costs
- The changes to the deduction include:
  - An increase in the maximum deduction amount from $1.88 per square foot to $5.00 per square foot
  - Relaxation of the ability to qualify for the deduction when property is retrofitted
  - The allowance of a deduction every 3 years for the same building. Prior to the IRA, the deduction could be taken only once

New Energy Efficient Home Credit

- Section 45L
- Tax credit for construction of residential homes that meet certain energy savings requirements
- Credit had expired on December 31, 2021
- For 2022 – old rules ($2,000/home) still in place
- Beginning in 2023 – increased credit amounts ($2,500/home if ENERGY STAR; $5,000/home if DOE Zero Energy Ready Home) and updated standards
- Requires certification

45L

Home Type	Qualification Requirement	Prevailing Wage Requirement	Credit Amount
Single Family*	EnergyStar	No	$2,500
Single Family*	ZERH	No	$5,000
Manufactured Home	EnergyStar	No	$2,500
Manufactured Home	ZERH	No	$5,000
Multifamily	EnergyStar	No	$500
Multifamily	ZERH	No	$1,000
Multifamily	EnergyStar	Yes	$2,500
Multifamily	ZERH	Yes	$5,000

POLLING QUESTION #6

Have you heard about that new IRS funding included in the IRA (in the news or otherwise)?

- Yes
- No

Other Provisions

IRS Funding

- Increases IRS enforcement funding by $80b over the next 10 years
- The funds are expected to generate $204b in additional revenue
- Rebuild and modernize the IRS
- Help close the tax gap

IRS Funding

- $45.6b for enforcement, which includes examinations, collections, criminal investigations, legal and litigation support, and digital asset monitoring.
  - (an increase of 69%)
- The additional funding will likely result in more audits of high-wealth and high-income individuals, as well as complex partnerships and large corporations, but an increase in those audits may not be immediate.
- Better targeted audits - IRS regularly publishes lists of issues for increased enforcement
  - Certain other areas, such as cryptocurrency and other digital assets, are understood to be areas where additional enforcement is expected

IRS Funding

- Out of Context – Treasury Department report – stated that the increased funding could lead to 87,000 new IRS agents
- In reality, the majority of new IRS hires over the next decade are expected to replace retiring personnel – IRS estimates as many as 50,000 of its employees may retire over the next five years.
- It is likely that audit rates, which in recent years have fallen dramatically, will remain below historical levels.
  - The IRS's audit capabilities have dropped in recent years – in 2010, 8.2% of taxpayers who had positive income of $1,000,000 to $5,000,000 were audited; by 2017 the number had dropped to 1.8%

Small Business

- Increase in Research Credit Against Payroll Tax for Small Businesses
- Increases from $250,000 to $500,000 the limit on the amount of research credit that qualified small businesses may elect to treat as a credit against their payroll tax liability.
- Applies to taxable years beginning after 2022

POLLING QUESTION #7

Who is ready for all of the political ads on TV, text messages, etc. to go away?

- Yes
- No


To Be
Continued?

IRS Guidance Needed

- Have issued numerous requests for comments
- Priority guidance plan issued last week
- High priority – Prevailing Wage and Apprenticeship Requirements

Impact of Midterm Elections

- Right now, it is projected that Republicans will take control of the House
- Senate is up for grabs, but is leaning Republican (might not know who has control for months – potential for Georgia run off election)
  - Also PA race
- Lame duck spending? – might be reluctance from Republicans if they win control given the IRA passage
- If the Republicans have a landslide election, where is the incentive to negotiate with the Democrats?

Year End Priorities

- Government needs to be funded – opportunity for year-end tax package
  - Currently funded through December 16
- Two large issues may be addressed – R&D deductions (bipartisan support) and bonus depreciation
- Child Tax Credit? – Key Democrats have said they would insist on tying the R&D provisions it to an extension of a poverty-fighting expansion of the Child Tax Credit that also expired at the end of 2021

Other Considerations

- If Republicans take control of the House, Minority Leader Kevin McCarthy (R-Calif.) has vowed to block the $80 billion in funds allotted in the Inflation Reduction Act for the IRS
  - Also taking aim at the 15% corporate minimum tax
- Republicans want to make Trump tax cuts permanent
- Democrats' ability to block Republican attacks on President Biden's tax and spending policies would be much easier if they retain control of the Senate, where they could allow most House-passed measures to die.

POLLING QUESTION #8

Did we all make it through talking taxes for this long?

- Yes
- No

Accounting Implications

- The application of the ASC 740 income tax accounting model is warranted if a particular credit or incentive can only be claimed on the income tax return and can be realized only through the existence of taxable income.
- When a company is able to receive the benefit of a credit regardless of whether it has income taxes payable or taxable income - the benefit should be accounted for outside of the income tax model. This would apply to credits with a direct-pay option.
- For credits that a taxpayer can opt to transfer to another taxpayer, the entity that generated the credit should consider how they intend to monetize the credit. If the entity does not intend to transfer the credit, and therefore will only realize the benefit of the credit by reducing its income tax payable, it would account for the benefit of the credit as part of its income tax provision determined under ASC 740.
- However, if the entity intends to realize the benefit of the credit by transferring it to another party, it should account for initial recognition of the benefit of the credit and the transfer of the credit outside of the income tax line.
- Source - PwC

Questions?

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