

Capitol Tax Partners Summary of Tax Provisions in the Inflation Reduction Act of 2022

The Senate on August 7 approved the Inflation Reduction Act (IRA) of 2022 by a 51-50 party-line vote, with Vice President Kamala Harris casting the tie-breaking vote. The Senate-approved version was slightly revised from a version released by Senate Majority Leader Chuck Schumer (D-NY) on July 27, 2022. The House on August 12, 2022 passed the Senate-approved IRA of 2022 with no Republican support.

The document below is divided into three primary sections:

- (1) summary of the tax revenue raisers and other non-energy tax provisions included in the IRA of 2022 (Page 1);
- (2) summary of the energy tax provisions included in the IRA of 2022 (Page 8); and
- (3) a comprehensive overview of Treasury authority and guidance projects outlined in the energy tax provisions (Page 20).

Tax Revenue Raisers and Non-Energy Tax Provisions

<p><i>Corporate Alternative Minimum Tax (also referred to as the “book minimum tax”)</i></p> <p>§10101.</p>	<p><u>In general.</u> A new corporate alternative minimum tax (AMT) based on book earnings would apply to any applicable corporation. A tentative minimum tax would be calculated as 15% of an applicable corporation’s adjusted financial statement income (AFSI) for the taxable year, reduced by the corporate AMT foreign tax credit. AMT liability is the excess of the tentative minimum tax over the sum of regular tax liability (before general business credits) and BEAT. General business credits generally would be allowed to reduce AMT liability up to \$25,000 plus 75% of net income tax liability (regular tax + AMT) that exceeds \$25,000. AMT credit carryforwards reduce future regular tax liability (but not below AMT).</p> <p><u>Applicable corporation.</u> Any corporation (other than an S-corporation, RIC, or REIT) that meets an average annual AFSI test for one or more taxable years which are prior to the current taxable year and end after December 31, 2021. The annual AFSI test is generally satisfied if a corporation’s 3-taxable-year average AFSI exceeds \$1 billion. Special rules apply for corporations in existence for less than three years, short tax years and predecessor corporations. Section 52 aggregation rules (as amended to remove the exclusion of foreign corporations) apply for purposes of determining whether a corporation is an applicable corporation.</p> <ul style="list-style-type: none">• <i>Foreign parented multinational groups.</i> Under a special rule for corporations that are members of a foreign-parented multinational group, the \$1 billion AFSI test is applied by reference to the AFSI of the international financial reporting group (IFRG, defined below), including all foreign members of such group. If an IFRG meets the \$1 billion test, the corporation that is a member of the IFRG is an applicable corporation only if its 3-year average AFSI is \$100 million or more, taking into account only the AFSI of the US group, AFSI of foreign group members that would be effectively connected income (see section 882) and a pro-rata share of AFSI of controlled foreign corporations (CFCs).
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	<ul style="list-style-type: none">○ <u>International financial reporting group.</u> Defined as a group of entities that includes: (i) at least one foreign corporation engaged in a US trade or business; or (ii) at least one domestic corporation and one foreign corporation, and such group is included in the same applicable financial statement. Treasury would have authority to provide rules for determining (i) the entities to be treated as having a common foreign parent, (ii) whether to include or exclude any corporation as a member of an IFRG, and (iii) the common parent of an IFRG.• <i>Exception.</i> If a corporation has an ownership change or has a specified number of consecutive years (to be determined by Treasury) that it does not meet the average annual AFSI test, it will not be an applicable corporation if Treasury determines it would not be appropriate to continue treating it as an applicable corporation. This exception would end in any year that such corporation subsequently satisfies the average annual AFSI test.• <i>Regulatory authority.</i> Treasury to issue regulations or other guidance (i) providing a simplified method for determining applicable corporation status, and (ii) addressing application to corporations that experience an ownership change. <p><u>Adjusted financial statement income (AFSI).</u> Net income or loss set forth on the taxpayer's applicable financial statement, with specified adjustments generally intended to match the categories of income reflected on an applicable corporation's tax return (but measured under financial accounting principles).</p> <ul style="list-style-type: none">• <i>Applicable financial statement.</i> Defined by cross-reference to section 451(b)(3) (generally referring to financial statements prepared in accordance with GAAP or IFRS) or as specified by Treasury in regulations or other guidance.• <i>Adjustments.</i><ul style="list-style-type: none">○ <u>Different year.</u> Appropriate adjustments shall be made where the applicable financial statement covers a period other than the taxable year.○ <u>Related entities.</u><ul style="list-style-type: none">▪ <i>Consolidated financial statements.</i> If the taxpayer's financial results are included in the applicable financial statement for a group of entities, rules similar to the rules of section 451(b)(5) apply (i.e., the group financial statement is treated as the applicable financial statement of the taxpayer).▪ <i>Consolidated returns.</i> Except as provided in regulations, AFSI of the affiliated group takes into account items on the group's applicable financial statement which are properly allocable to members of the consolidated group.▪ <i>Dividends and other amounts.</i> AFSI of the taxpayer takes into account earnings of a corporation not included in the consolidated return only to the extent of dividends and other amounts required to be included in gross income (other than subpart F income and GILTI) with respect to such corporation. According to committee staff, this is intended, in
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	<p>part, to exclude income from unrealized gains on portfolio stock that are marked to market for book purposes under fair value accounting.</p> <ul style="list-style-type: none">▪ <i>Groups including partnerships.</i> Except as provided by Treasury, if the taxpayer is a partner in a partnership, AFSI shall be adjusted to only include the taxpayer's distributive share of the partnership's AFSI.○ <u>Foreign income.</u> AFSI of a US shareholder of one or more CFCs is adjusted to take into account the taxpayer's pro-rata share (determined under rules similar to the rules of section 951(a)(2)) of CFC items taken into account in computing net income or loss in the applicable financial statement. If the aggregate amount is negative, no adjustment is made in the current year, but the negative amount is carried forward to the succeeding taxable year.○ <u>Effectively connected income (ECI).</u> The principles for determining ECI under section 882 would apply to determine the AFSI of a foreign corporation.○ <u>Taxes.</u> Appropriate adjustments would be made to disregard any Federal income taxes or foreign income or other taxes (within the meaning of section 901) taken into account on the taxpayer's applicable financial statement. To the extent provided by Treasury, adjustments would not be made if the taxpayer does not choose to claim a foreign tax credit with respect to such taxes. Treasury to provide guidance for the proper treatment of current and deferred taxes, including timing of when such taxes should be taken into account.○ <u>Disregarded entities.</u> AFSI is adjusted to take into account AFSI of a disregarded entity owned by the taxpayer.○ <u>Cooperatives.</u> AFSI is reduced by amounts referred to in section 1382(b) (relating to patronage dividends and per-unit retain allocations) to the extent such amounts were not otherwise taken into account in determining AFSI.○ <u>Rules for Alaska native corporations.</u> AFSI is adjusted to allow (i) cost recovery and depletion attributable to property the basis of which is determined under section 21(c) of the Alaska Native Claims Settlement Act, and (ii) deductions for amounts payable pursuant to section 7(i) or (j) of such Act at such time as the deductions are allowed for tax purposes.○ <u>Direct pay for certain tax credits.</u> AFSI is adjusted to disregard amounts received as a refund of taxes attributable to an election for direct pay of certain credits under new sections 48D(d) and 6417, which allow certain semiconductor manufacturing tax credits and energy tax credits to be treated as payments of tax.○ <u>Consistent treatment of mortgage servicing income of taxpayer other than a RIC.</u> AFSI is adjusted to not include an item of income in connection with a mortgage servicing contract any earlier than when such income is included in gross income for tax purposes. Treasury to provide regulations to prevent avoidance of tax with respect to amounts not representing reasonable compensation with respect to a mortgage servicing contract.
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	<ul style="list-style-type: none">○ <u>Defined benefit and foreign pension plans.</u> Except as provided in Treasury guidance, AFSI is (i) adjusted to not include any item of income cost or expense included on the AFSI with respect to a covered benefit plan, (ii) increased by the amount of any item of income that is included in gross income for Federal income tax purposes with respect to such plan, and (iii) reduced by deductions allowed for Federal income tax purposes with respect to such plan. For this purpose, a covered benefit plan generally includes any tax-exempt defined benefit plan (other than a multiemployer plan), a qualified foreign plan (as defined in section 404A(e)), and other DB plans that provide post-retirement benefits other than pension benefits.○ <u>Tax-exempt entities.</u> In the case of an entity subject to tax under section 511, AFSI shall be adjusted to include only (i) AFSI of an unrelated trade or business, or (ii) AFSI derived from debt-financed property to the extent that income from such property is treated as UBTI.○ <u>Accelerated depreciation and expensing.</u> AFSI shall be (i) reduced by depreciation deductions allowed with respect to section 168 property to the extent allowed as deductions to reduce taxable income for the taxable year and (ii) adjusted to disregard any depreciation expense taken on the taxpayer's applicable financial statement with respect to such property. The Treasury may specify other adjustments to AFSI to allow other items to be accounted for in the same manner for book purposes as it is accounted for tax purposes.○ <u>Amortization of wireless spectrum.</u> AFSI shall be (i) reduced by amortization deductions allowed under section 197 with respect to qualified wireless spectrum to the extent allowed as deductions to reduce taxable income for the taxable year, and (ii) adjusted to disregard any amortization expense taken on the taxpayer's applicable financial statement with respect to such spectrum. The Treasury may specify other adjustments to AFSI to ensure such spectrum is accounted for in the same manner for book purposes as it is accounted for tax purposes. For this purpose, qualified wireless spectrum is wireless spectrum used in the trade or business of a wireless telecommunications carrier that was acquired after 2007 and before the date of enactment.○ <u>Treasury authority.</u> Treasury is to issue regulations or other guidance to make adjustments to AFSI as necessary to carry out the purposes of the AMT, including adjustments to: (i) prevent omission or duplication of any item; and (ii) carry out the principles of the parts of the Code relating to corporate liquidations, corporate organizations and reorganizations, and partnership contributions and distributions.○ <u>Colloquy: Other comprehensive income.</u> Sen. Ben Cardin (D-MD) and SFC Chair Ron Wyden (D-OR) engaged in a floor colloquy clarifying that "other comprehensive income" shown on financial statements is not included in AFSI because it is not included as "net income" on the financial statements.
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	<ul style="list-style-type: none">• <i>Financial statement net operating loss deduction.</i> AFSI is reduced by the lesser of (i) aggregate amount of financial statement NOL carryovers to the taxable year, or (ii) 80% of AFSI (computed without regard to the NOL deduction).<ul style="list-style-type: none">○ <u>Financial statement NOL carryover.</u> A financial statement NOL for any taxable year is a financial statement NOL carryover to each subsequent year to the extent of the amount of loss remaining after application of the above annual NOL deduction limitation.○ <u>Financial statement NOL.</u> The amount of any net loss set forth on the applicable financial statement (determined after application of the adjustments to AFSI described above) for taxable years ending after December 31, 2019.• <i>Regulatory authority.</i> Treasury to issue regulations and other guidance necessary to carry out the purposes of this section, including rules relating to the effect of this section on partnerships with income taken into account by an applicable corporation. <p><u>Corporate AMT foreign tax credit.</u> Taxpayers that claim a foreign tax credit for regular tax purposes can claim an AMT foreign tax credit.</p> <ul style="list-style-type: none">• <i>Amount of credit.</i> AMT foreign tax credit is the sum of –<ul style="list-style-type: none">○ CFC foreign taxes. Aggregate pro-rata share of the foreign income taxes (see section 901) taken into account on the applicable financial statement of each CFC and paid or accrued (for Federal income tax purposes) by each such CFC, subject to a limitation of 15% multiplied by the amount of the CFC foreign earnings adjustment, and○ Direct foreign taxes. Foreign income taxes taken into account on the applicable corporation’s applicable financial statement and paid or accrued by the applicable corporation.• <i>Excess FTC carryover.</i> To the extent any credit for any CFC foreign taxes is not allowed in a given year because of the 15% limitation described above, any excess CFC foreign taxes subject to the limitation can be carried forward for 5 years.• <i>Regulatory authority.</i> Treasury is to provide regulations or other guidance necessary to carry out the purposes of the AMT foreign tax credit.<ul style="list-style-type: none">○ A floor colloquy between Sens. Robert Menendez (D-NJ) and Wyden clarifies that this authority would extend to addressing potential issues with respect to foreign income taxes relating to nonconforming foreign tax years, including “fair” rules for the utilization of foreign tax credits in the first year of the AMT. <p><u>General business credits.</u> General business credits (including carryovers) would be allowed up to \$25,000 plus 75% of net income tax liability (regular tax + AMT) that exceeds \$25,000.</p>
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	<p><u>AMT credit.</u> If AMT liability exceeds regular tax liability (plus BEAT), the excess may be carried forward for an unlimited period as a credit in subsequent years against regular tax liability (plus BEAT) to the extent it exceeds AMT liability. Sens. Cardin and Wyden engaged in a floor colloquy clarifying that Treasury has authority to clarify the proper ordering of the calculation of the AMT credit and a taxpayer's BEAT liability under section 59A.</p> <p><u>Effective date.</u> Taxable years beginning after December 31, 2022.</p>
<p><i>Excise Tax on Repurchase of Corporate Stock</i></p> <p>§10201.</p>	<p>A “covered corporation” would be subject to a non-deductible excise tax equal to one percent of the fair market value (FMV) of any stock that is “repurchased” by it (or by a “specified affiliate”) during the taxable year. If stock is issued by the covered corporation during the taxable year (including stock issued or provided to employees of the covered corporation or any specified affiliate), the excise tax only applies to the amount by which the FMV of the stock repurchased exceeds the FMV of the stock issued.</p> <p>For this purpose, a repurchase is defined as (i) a redemption within the meaning of section 317(b)¹, or (ii) any economically similar transaction as determined by the Secretary. The acquisition of stock of a covered corporation by a specified affiliate will be treated as a repurchase, unless the purchase is from the covered corporation or another specified affiliate.</p> <p>A covered corporation generally is defined as any domestic corporation which is traded on an established securities market (within the meaning of section 7704(b)(1)). Special rules would also apply the excise tax to repurchases of stock of a covered surrogate foreign corporation by such corporation or its specified affiliate. The definition of a covered surrogate foreign corporation generally has the same meaning as a surrogate foreign corporation in section 7874(a)(2)(B), but only if the corporation expatriated after September 20, 2021.</p> <p>A specified affiliate, with respect to any corporation, is (i) any corporation the stock of which is more than 50-percent owned (directly or indirectly by vote or value) by such corporation, and (ii) any partnership the capital or profits interests of which are more than 50-percent owned (directly or indirectly) by such corporation.</p> <p>Several exceptions are provided to the application of the excise tax, including: (1) the buyback is part of a reorganization and no gain or loss is recognized on the repurchase; (2) the repurchased stock (or an equivalent amount) is contributed to an employer-sponsored retirement plan, employee stock ownership plan (ESOP) or similar plan; (3) the value of all of the stock repurchased during the taxable year does not exceed \$1 million; (4) under regulations, the repurchase is by a dealer in securities in the ordinary course of its business; (5) the</p>

¹ IRC Section 317(b) provides that “stock shall be treated as redeemed by a corporation if the corporation acquires its stock from a shareholder in exchange for property, whether or not the stock so acquired is cancelled, retired or held as treasury stock.”

	<p>repurchase is by a RIC or REIT; and (6) to the extent that the repurchase is treated as a dividend for income tax purposes.</p> <p>Treasury is provided authority to issue regulations to carry out the purposes of the excise tax, including regulations to prevent abuse, address special classes of stock and preferred stock, and the application of the excise tax with respect to certain foreign corporations.</p> <p><u>Effective date.</u> The provision would apply to any repurchase of stock after December 31, 2022.</p>
<p><i>Extension of Limitation on Excess Business Losses of Noncorporate Taxpayers</i></p> <p>§13903.</p>	<p>The TCJA added section 461(l) to disallow immediate deduction of certain “excess business losses” of noncorporate taxpayers if the amount of the loss is in excess of \$250,000 (\$500,000 for a joint return). The disallowed amount is carried forward as a net operating loss (NOL) to the following tax year subject to current limitations on NOL use; thus, in most cases, use of the losses are deferred, rather than denied. As amended by the American Rescue Plan, section 461(l) is currently scheduled to sunset for taxable years beginning after December 31, 2026. The bill would extend the sunset for two years so that the limitation would sunset for taxable years beginning after December 31, 2028.</p> <p><u>Effective date.</u> This provision applies to taxable years beginning after December 31, 2026.</p>
<p><i>Enhancement of Internal Revenue Service Resources</i></p> <p>§10301.</p>	<p>Appropriates almost \$80 billion to the IRS for the fiscal year ending September 30, 2022, to generally remain available through September 30, 2031, for tax enforcement activities, increasing voluntary compliance, expanding audits and other enforcement activities, and modernizing information technology. The enforcement funding will, in part, be used to provide digital asset monitoring and compliance activities.</p> <p><u>IRS-run free e-file tax returns.</u> Within nine months of date of enactment, the IRS must deliver a report to Congress exploring various design mechanisms and costs associated with a free direct e-file tax return system.</p> <p><u>Estimated revenue impact.</u> The Congressional Budget Office estimates that the increased funding for tax enforcement will yield \$204 billion of additional revenues over the 2022-2031 period, resulting in roughly a \$124 billion reduction in the deficit over the period.</p>
<p><i>Increase in Research Credit Against Payroll Tax for Small Businesses</i></p> <p>§13902.</p>	<p>A qualified small business with qualifying research expenses under section 41 may currently elect to apply up to \$250,000 of the available research credit against its payroll tax liability. The House bill would increase the amount allowable to be offset against payroll tax liability under section 41(h) by \$250,000 to \$500,000.</p> <p><u>Effective date.</u> Applies to taxable years beginning after December 31, 2022.</p>

Energy Generation²

<p><i>Production Tax Credit (PTC) Extensions</i></p> <p>§13101.</p>	<p>Extends beginning construction deadline for current section 45 technologies from before January 1, 2022 to before January 1, 2025. Upon expiration, the production credit is scheduled to transition to the Clean Energy Production Credit described below.</p> <p>Reinstates 100 percent wind credit for facilities placed in service after 2021. Allows solar facilities to be eligible for the PTC. Increases and expands the PTC for certain hydropower facilities. Modifies rounding rules for inflation adjustment.</p> <p><u>Credit value.</u> Base credit amount is 0.3 cents per kWh, indexed for inflation. Credit amount is multiplied by five if projects meet prevailing wage and apprenticeship requirements³ or the facility is less than 1MW. Opportunities to cure deficiencies in labor requirements or have them waived. Labor requirements are effective for projects beginning construction 60 days after Treasury publishes guidance on the labor requirements.⁴</p>
<p><i>Investment Tax Credit (ITC) Extensions</i></p> <p>§13102.</p>	<p>Extends beginning construction deadline for section 48 technologies from before 2024 to before 2025. Extends geothermal credit to construction beginning before 2035 (with phase out beginning 2032). Upon expiration, the energy credit transitions to the Clean Electricity Investment Credit described below.</p> <p>Reinstates 30-percent credit for property placed in service after 2021 for solar, fuel cell, and small wind property.</p> <p>Adds standalone storage (with normalization opt-out for large projects), biogas property, microgrid controllers, dynamic glass, linear generator assemblies, and interconnections to small qualifying energy properties.</p>

² The IRA of 2022 dropped two notable energy tax provisions that were included in 2021’s House-passed Build Back Better Act: (1) transmission investment tax credit and (2) allowing renewable energy property income to be qualifying income for publicly traded partnerships, and modified several other provisions.

³ The legislation now applies the prevailing wage and apprentice requirements to a taxpayer’s employees, as well as its contractors and subcontractors. This change applies to all the prevailing wage and apprentice requirements throughout the energy sections and was made in the Schumer substitute amendment released August 6, 2022.

⁴ These prevailing wage and apprenticeship requirements generally apply wherever labor requirements apply throughout the energy tax title. This summary notes those instances below.

	<p><u>Credit value.</u> Base credit amount is 6%. Credit amount is multiplied by five if projects meet the labor requirements described above.</p>
<p><i>Bonus credits for domestic content, energy communities, and low-income community investments</i></p> <p><i>§13103 and in each applicable tax credit section.</i></p>	<p><u>Domestic Content.</u> Taxpayers can receive a bonus credit increasing the PTC/ITC by 10 percent (PTC) or 10 percentage points (ITC) for meeting certain domestic content requirements. If the ITC project doesn't meet the prevailing wage requirements, the domestic content bonus credit is 2 percentage points. Eligible for projects placed in service beginning in 2023.</p> <p><u>Energy Communities.</u> Taxpayers can receive a bonus credit increasing the PTC/ITC by 10 percent (PTC) or 10 percentage points (ITC) for investments in certain brownfield, communities affected by the transition from fossil fuels, or census or adjoining tracts that included closed coal mines or coal-fired electricity generators. Eligible for projects placed in service beginning in 2023.⁵</p> <p><u>Low-income Communities.</u> Provides up to a 20-percentage point bonus credit for small wind and solar projects placed in service in certain low-income communities or low-income residential building or economic benefit projects. Credits are allocated by Treasury in 2023 and 2024 for up to 1.8 GW capacity each year.</p>
<p><i>Carbon Sequestration</i></p> <p><i>§13104.</i></p>	<p>Extends the current section 45Q carbon sequestration credit begin construction deadline from before 2026 to before 2033. The threshold for qualifying for the carbon sequestration credit for electricity generating facilities is capturing no less than 18,750 metric tons of qualified carbon oxide and the ability to capture at least 75 percent of the baseline carbon oxide production. Other facilities must capture at least 12,500 metric tons of carbon oxide during the year. The credit is available for certain retrofits on existing electricity generating facilities.</p> <p>Direct air capture facilities must capture at least 1,000 metric tons of qualified carbon oxide during the year to qualify.</p> <p><u>Credit value.</u> The base credit is: \$17 per metric ton for carbon captured and sequestered, \$12 per metric ton for carbon captured and used by the taxpayer as a tertiary injectant, \$36 per metric ton for direct air capture and sequestration, and \$26 per metric ton for direct air captured and used as a tertiary injectant. Credit amount is multiplied by five if project meets the labor requirements described above.</p>

⁵ The adopted bill amended the definition of energy community to also include a (1) metropolitan or non-metropolitan statistical area (2) that at any point since 2010 had greater than a 0.17 percent direct employment or 25 percent local tax revenue related to coal, oil, or natural gas, and (3) has an unemployment rate at or above the national average.

	<p><u>Effective date.</u> The increased credits are available for projects beginning construction after date of enactment. The credit is available for construction beginning before 2033.</p>
<p><i>Zero-Emission Nuclear Power PTC</i></p> <p>§13105.</p>	<p>Provides up to a 1.5 cent per kWh PTC (adjusted for inflation) for existing nuclear power facilities that are not described in section 45J PTC.</p> <p><u>Credit value.</u> Base credit amount is 0.3 cents per kWh. Credit reduced by 16 percent of the gross receipts exceeding 2.5 cents per kWh (credit zeroes out at 4.375 cents per kWh). Gross receipts include certain amounts received from any Federal, state, or local government for electricity production at the facility. Credit amount is multiplied by five if projects meet the labor requirements described above throughout the credit period.</p> <p><u>Effective date.</u> Credit is available for electricity produced and sold after 2023. The credit expires after 2032.</p>
<p><i>Technology Neutral Clean Electricity Production Credit</i></p> <p>§13701, 13703.</p>	<p>Provides a 10-year PTC for electricity generation facilities with a greenhouse gas emissions rate of zero.⁶ The credit applies to certain retrofits placed in service after 2024, provided the existing facility had not previously qualified for an energy credit. Emissions do not include amounts sequestered through carbon capture technology.</p> <p><u>Credit value.</u> Base credit amount is 0.3 cents per kWh, indexed for inflation. Credit amount is multiplied by five if projects meet the labor requirements described above or the facility is less than 1MW. Opportunity to cure deficiencies in labor requirements or have them waived. Labor requirements are effective for projects beginning construction 60 days after Treasury publishes guidance on the labor requirements.</p> <p><u>Effective date.</u> Available to facilities placed in service after 2024. The credit begins phasing out two years after the later of 2032 or when annual greenhouse gas emissions in the U.S. are 25% or less of the annual GHG emissions in 2022.</p>

⁶ Sen. Tom Carper (D-DE) and SFC Chair Wyden engaged in a colloquy clarifying that for purposes of determining lifecycle greenhouse gas emissions for the hydrogen credit, the intent was to “recognize and incorporate indirect book accounting factors, also known as a book and claim system, that reduce effective greenhouse gas emissions, which includes but is not limited to, renewable energy credits, renewable thermal credits, renewable identification numbers, or biogas credits.” August 6, 2022, Congressional Record, Pages S1465-S1466, <https://www.congress.gov/congressional-record/volume-168/issue-133/senate-section/article/S4165-3>.

	<p><u>Cost recovery.</u> Facilities qualifying for the credit are five-year property under section 168(e)(3)(B).</p>
<p><i>Technology Neutral Clean Electricity Investment Credit</i></p> <p><i>§13702, 13703.</i></p>	<p>Provides an ITC for investments in energy property that generates electricity and has a GHG rate of zero. The credit applies to retrofits of property that previous has not qualified for an energy credit.</p> <p>Standalone storage qualifies for the credit.</p> <p><u>Credit value.</u> Base credit amount is 6%. Credit amount is multiplied by five if projects meet the labor requirements described above or the facility is less than 1MW.</p> <p><u>Effective date.</u> Available to facilities placed in service after 2024. The credit begins phasing out two years after the later of 2032 or when annual greenhouse gas emissions in the U.S. are 25% or less of the annual GHG emissions in 2022.</p> <p><u>Cost recovery.</u> Property qualifying for the credit is five-year property under section 168(e)(3)(B).</p>

Credit Monetization

The House-passed reconciliation bill (the “Build Back Better Act”) provided a “direct pay” election to allow taxpayers to monetize most of the tax credits in the bill. After a phase-in period, the direct pay election was only available with respect to certain projects that had met certain domestic content requirements.

The Inflation Reduction Act of 2022 limits the availability of the direct pay election and provides a transferability provision for those taxpayers that are precluded from using direct pay.

Direct pay - §13801.

The direct pay election is available only with respect to certain tax credits and, in most cases, only for certain tax-exempt persons.

The applicable credits are:

- the alternative fuel vehicle refueling property credit of section 30C,

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- the renewable electricity PTC of section 45 (for facilities placed in service after 2022),
- the carbon sequestration PTC of section 45Q (for facilities placed in service after 2022),
- the zero-emission nuclear power PTC of section 45U,
- the clean hydrogen PTC of section 45V (for facilities placed in service after 2012),
- the credit for qualified commercial vehicles of section 45W,
- the advanced manufacturing PTC of section 45X,
- the clean electricity (technology neutral) PTC of section 45Y,
- the clean fuel (technology neutral) PTC of section 45Z,
- the energy credit of section 48,
- the qualifying advanced energy project credit of section 48C, and
- the clean electricity (technology neutral) ITC of section 48E.

An election for the clean hydrogen PTC, the carbon sequestration PTC, and the advanced manufacturing PTC can be made by *any taxpayer* for any taxable year beginning before January 1, 2033. In these cases, the election is applicable to the taxable year for which the election is made and the subsequent four taxable years before 2033.

The election for the remaining applicable credits may only be made by certain non-profit persons, specifically:

- Entities exempt from tax,
- State and local governments,
- Tennessee Valley Association,
- Indian tribal governments,
- Alaskan Native Corporations, and
- Taxable rural electric cooperatives.⁷

An election for the section 45, 48, 45Y, and 48E credits for these tax-exempt persons is conditioned on meeting domestic content requirements for projects that start construction after 2024.

⁷ Taxable rural electric cooperatives were added to the applicable entity list in the Schumer substitute amendment released on August 6.

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In the case of a partnership or S corporation, the election is made at the entity level.⁸ The direct payment is treated as tax-exempt income for purposes of sections 705 and 1366 that is allocated to a partner's distributive share in the same manner as the credit would have been allocated.

If a person receives a direct payment greater than the amount of the otherwise applicable credit, such person has a tax liability equal to such excess plus a 20% penalty that can be waived by a showing of good cause.

Direct payments that are treated as direct spending are increased by 6.0445 percent to offset the 5.7% reduction due to mandatory spending sequestration.

Transferability - §13801.

The Inflation Reduction Act of 2022 allows taxpayers that cannot make a direct pay election to elect to transfer all or a portion of their applicable credits to another unrelated taxpayer.⁹ The applicable credits are the same as those on the direct pay list above (except for the commercial vehicle credit). In addition, the placed-in-service requirement for the renewable electricity, carbon sequestration and hydrogen production PTCs do not apply.

The election must be made by the extended due date of the tax return for which the credit is determined and is irrevocable. The transferred tax credit is then taken into account by the transferee in its first taxable year that ends within or after the taxable year of the transferor. Tax credits can only be transferred once, and tax credit carryovers cannot be transferred.

There are no restrictions regarding to whom a credit can be transferred other than it must be an unrelated party. Presumably, transfers to individuals would be subject to the passive loss restrictions.

The credit must be transferred for cash. No income is recognized by the transferor and no deduction is allowed to the transferee with respect to the transfer.

⁸ Rules relating to the treatment of partnerships under direct pay were originally included in the House-passed BBBA and subsequently added in the Schumer substitute amendment released on August 6.

⁹ Sen. Ben Cardin (D-MD) and SFC Chair Wyden engaged in a colloquy clarifying that limitations in section 38 do not reduce the amount of credits eligible for transfer and recommended Treasury issue technical guidance reflecting that intent. August 6, 2022, Page S4166, <https://www.congress.gov/congressional-record/volume-168/issue-133/senate-section/article/S4165-3>.

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In the case of partnership or an S corporation, the election is made at the entity level. The consideration received is treated as tax-exempt income under section 705 and 1366 that is allocated to a partner's distributive share in the same manner as the credit would have been allocated.

The transferor must reduce its basis in property with respect to transferred ITCs. In the event of a recapture event, the eligible taxpayer must provide notice to the Secretary and transferee of the occurrence and recapture amount. The Senate-passed version clarifies that the transferee bears the economic and legal burden of recapture. The statute is silent on the treatment of recapture of ITCs.

If a transferee claims a tax credit greater than the amount of credit generated by the transferor, the transferee has a tax liability equal to such excess plus a 20% penalty that can be waived by a showing of reasonable cause.

Energy Manufacturing

<p><i>Section 48C Advanced Energy Project Credit</i></p> <p>§13501.</p>	<p>Allocates an additional \$10 billion to the section 48C advanced energy project program. At least \$4 billion must be allocated to brownfield or coal energy communities. The project must be placed in service within two years of the Treasury allocation. Credit will not be allocated to a project located in a census tract that previously received a section 48C allocation.</p> <p>Qualifying manufacturing facilities are expanded to include renewable and clean energy manufacturing, including electric vehicles and trucks.</p> <p><u>Credit value.</u> Base credit amount is 6%, indexed for inflation. Credit amount is multiplied by five if projects meet the labor requirements described above.</p>
<p><i>Advanced Manufacturing Production Credit</i></p> <p>§13502.</p>	<p>Provides a PTC for the production and sale to unrelated persons of certain solar, wind, inverter, battery, or mineral components. Components manufactured at facilities that received the 48C credit do not qualify for the production credit. The credit only applies to components produced in the U.S. or its territories. Components incorporated into another eligible component before being sold to an unrelated person qualify for the credit. The taxpayer may sell the component to a related person that then sells it to an unrelated person and elect to treat a related person as an unrelated person.</p> <p><u>Credit value.</u> The credit amount varies based on the eligible component produced and sold and is calculated on a per component basis.</p>

	<u>Effective date.</u> The credit applies to components produced and sold after 2022 and before 2033, with a phase down in 2030-2032. ¹⁰
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Fuels

<p><i>Biodiesel Renewable Fuels and Alternative Fuels Extension</i></p> <p>§13201.</p>	<p>Extends a variety of fuels incentives through December 31, 2024. Upon expiration the fuel credits are scheduled to transition to the Clean Fuel Production Credit described below.</p> <p>The credits extended are: section 40A biodiesel and renewable diesel; section 6426(c)(6) biodiesel mixture; section 6427(e)(6)(B) biodiesel mixture; section 6326(d)(5) alternative fuel; section 6426(e)(3) alternative fuel mixture; and section 6427(e)(6)(C) alternative fuel.</p> <p>Section 6426(d)(5), which expired on December 31, 2021, is also retroactively extended for 2022.</p>
<p><i>Sustainable Aviation Fuels Credit</i></p> <p>§13203.</p>	<p>Creates a \$1.25 credit so long as the qualifying fuel reduces lifecycle greenhouse gas emissions by at least 50 percent. The value of the credit increases to \$1.75, increasing \$.01 for each percentage point by which the lifecycle emissions reduction of the fuel exceeds 50 percent.</p> <p>The credit expires on December 31, 2024. Upon expiration the credit is scheduled to transition to the Clean Fuel Production Credit described below.</p>
<p><i>Clean Hydrogen</i></p> <p>§13204.</p>	<p>Provides a 10-year PTC for U.S. production of clean hydrogen beginning on the date the facility was placed in service. Sale or use must be verified by an unrelated person. To qualify, the hydrogen must be produced through a process resulting in lifetime greenhouse gas emissions rate of no more than 4 kgs of CO₂e per kg of hydrogen. No hydrogen credit is allowed for a facility which is already qualifying for the carbon sequestration credit. A taxpayer may retrofit an existing facility to produce qualified clean hydrogen.</p> <p><u>Credit value.</u> Base credit amount is \$0.60 per kilogram of qualified clean hydrogen produced with zero carbon emissions (generally known as “green” or “pink” hydrogen.). This credit amount is reduced pursuant to a tiered formula as carbon emissions incurred during production increase (i.e., for certain “blue” hydrogen). No credit amount is allowed if lifecycle emissions exceed 4 kg of CO₂e per kg of</p>

¹⁰ Sen. Warner (D-VA) and SFC Chair Wyden engaged in a colloquy clarifying that a component is “produced” when the manufacture of the component is completed. August 6, 2022, Page S4166, <https://www.congress.gov/congressional-record/volume-168/issue-133/senate-section/article/S4165-3>.

	<p>hydrogen. The credit amount is then multiplied by five if projects meet the labor requirements described above. Thus, the maximum credit is \$3 per kilogram for hydrogen produced with no carbon emissions.</p> <p>Taxpayers may elect to claim an ITC in lieu of the hydrogen PTC for a base credit of up to 6%, multiplied by five if labor requirements are met.</p> <p>Taxpayers may claim section 45 credit or section 45U PTCs if they use electricity from qualified facilities to produce qualified clean hydrogen.</p> <p><u>Effective date.</u> The credit applies to hydrogen produced after 2022. The qualifying facility must begin construction before 2033.</p>
<p><i>Clean Fuel Production Credit</i> <i>§13704.</i></p>	<p>On December 31, 2024, existing fuel credits transition to the Clean Fuel Production Credit.</p> <p><u>Credit value.</u> Base credit for transportation fuel is \$0.20 per gallon.¹¹ Credit is \$1.00 if production meets the labor requirements described above.</p> <p>SAF base credit is \$0.35 and \$1.75 if the labor requirements described above are met.</p> <p>The value of the credit is generally determined by the emission level of the fuel. To receive the credit the fuel must have a lifecycle emission level of less than 50 kilograms of CO₂e per mmBTU. The full value of the credit is available to fuels with 0 kilograms of CO₂e per mmBTU and proportionately decreases as emission level rises to 50 kg CO₂e per mmBTU.</p> <p>Facilities producing fuels that receive this credit are not eligible for credits under the sections 45V hydrogen and 45Q carbon sequestration credits.</p> <p><u>Effective date.</u> The credit applies to fuel produced after 2024 and expires on December 31, 2027.</p>

¹¹ Sen. Maggie Hassan (D-NH) and SFC Chair Wyden engaged in a colloquy clarifying that to qualify for the clean fuel production credit the fuel must be suitable for use in a highway vehicle or aircraft, but the actual use of the fuel is not limited to those purposes. August 6, 2022, Congressional Record, Page S4166, <https://www.congress.gov/congressional-record/volume-168/issue-133/senate-section/article/S4165-3>.

Clean Vehicles

<p><i>Clean Vehicle Credit</i></p> <p>§13401.</p>	<p>Provision replaces the existing electric vehicle credit with a Clean Vehicle Credit worth up to \$7,500.</p> <p>The definition of a qualified vehicle expands section 30D(d) by requiring that an electric vehicle increase from 4 to 7 its kilowatt hour capacity and expands the definition to include fuel cell vehicles.</p> <p><u>Credit value.</u> The \$7,500 credit is available in two \$3,750 tranches. The first requires that a percentage of the critical minerals in the battery are extracted or processed in the U.S. or a country with a United States free trade agreement or recycled in North America. The second requires that a certain percentage of the battery is manufactured or assembled in North America.</p> <p>The taxpayer may elect to transfer the credit to the car dealer in exchange for a reduction in the vehicle’s purchase price.</p> <p><u>Means testing.</u> The credit institutes income and retail price thresholds. The credit is limited to taxpayers earning less than \$300,000 for a joint filer, \$225,000 for a head of household, and \$150,000 for a single filer. In the event that a taxpayer does not meet the income thresholds but made an election to transfer the credit to the dealer, the tax imposed on the taxpayer is increased by the amount of discount on the vehicle.</p> <p>The credit is limited to vehicles with MSRP less than \$80,000 for vans, SUVs and pickup trucks. The limit is \$55,000 for any other vehicle.</p> <p><u>Effective date.</u> The new credit eliminates the 200,000 per manufacturer limit and expires on December 31, 2032.</p>
<p><i>Previously Owned Clean Vehicles</i></p> <p>§13402.</p>	<p><u>Credit value.</u> A credit worth the lesser of \$4,000 or 30 percent of the sale price is available for previously owned clean vehicles.</p> <p><u>Means testing.</u> The credit institutes income and retail price thresholds. The credit is limited to taxpayers earning less than \$150,000 for joint filers, \$112,500 for a head of household, and \$75,000 for a single filer. In terms of price limitations, the sale price cannot exceed \$25,000.</p>

	<p><u>Effective date.</u> The credit expires on December 31, 2032.</p>
<p><i>Qualified Commercial Clean Vehicles</i></p> <p>§13403.</p>	<p>This provision creates a credit for commercial clean vehicles. Amongst other requirements to qualify, a vehicle must be treated as a motor vehicle in title II or the Clean Air Act or mobile machinery for purposes of section 4053(8).¹² Additionally, the vehicle must not be propelled by an internal combustion engine and have a battery capacity of at least 10 kilowatt hours.</p> <p>The value of the credit is limited to \$7,500 for vehicle with a weight rating less than 14,000 pounds or \$40,000 for other qualifying vehicles.</p> <p><u>Effective date.</u> The credit expires on December 31, 2032.</p>
<p><i>Alternative Fuel Refueling Property Credit</i></p> <p>§13404.</p>	<p>The provision expands the credit by providing a maximum credit of 30 percent (6 percent for items subject to depreciation) for expenses up to \$100,000.</p> <p>The provision also clarifies that bidirectional charging equipment is eligible and expands the list to include electric charging stations.</p> <p><u>Effective date.</u> The provision expires on December 31, 2032.</p>

Superfund

<p><i>Reinstatement of Superfund</i></p> <p>§13601.</p>	<p>Reinstates the Superfund tax on crude oil received at a U.S. refinery and petroleum products entered into the U.S. for consumption, use, or warehousing.</p> <p><u>Tax rate.</u> Levied at a rate of 16.4 cents per barrel. For years beginning after 2023, this amount would be adjusted for inflation (the chemical Superfund tax, which was reinstated on July 1, 2022, was not indexed for inflation).</p> <p><u>Effective date.</u> The reinstatement would be effective on January 1, 2023.</p>
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¹² Sen. Chris Van Hollen (D-MD) and SFC Chair Wyden engaged in a colloquy clarifying that commercial lawn mowers are intended to be a qualifying vehicle for purposes of the commercial clean vehicle credit. August 6, 2022, Congressional Record, Page S4167, <https://www.congress.gov/congressional-record/volume-168/issue-133/senate-section/article/S4165-3>.

Energy Efficiency

<p><i>Extension and Modification of Nonbusiness Energy Property Credits</i></p> <p>§13301.</p>	<p>Provides a 30% credit, subject to certain annual limitations, for certain residential energy property expenditures, such as energy efficient windows, doors, and appliances. Qualified energy property and residential energy property expenditures is updated and expanded with new efficiency standards. Provides up to a \$150 home audit credit.</p> <p><u>Effective date.</u> Generally applies to property placed in service after 2021 through 2032.</p>
<p><i>Residential Clean Energy Credit</i></p> <p>§13302.</p>	<p>Extends and expands the residential energy efficient property credit to provide a 30% credit for certain residential clean energy investments, including energy storage, before 2035. Beginning in 2033 the credit begins phasing out.</p> <p><u>Effective date.</u> Applies to expenditures after 2021.</p>
<p><i>Energy Efficient Commercial Buildings Deduction</i></p> <p>§13303.</p>	<p>Amends current section 179D energy efficient commercial buildings deduction to provide a scalable credit based on the total energy and power cost reductions over 25%. Deduction applies to new construction and retrofits. Modifies the efficiency standards under the current section 179D.</p> <p><u>Credit value.</u> Base credit is \$0.50 per square foot (increases to \$1.00 by \$0.02 for each percentage point reduction in energy and power costs over 25%). Credit is reduced by the amount of deductions previously taken under this section. Credit is multiplied by five if the labor requirements described above are met. Credit is adjusted for inflation.</p> <p><u>Effective date.</u> Credit applies to taxable years beginning after 2022.</p>
<p><i>Extension and Modification of New Energy Efficient Home Credit</i></p> <p>§13304.</p>	<p>Increases the credit for the construction of new, energy efficient single-family and multi-family homes. Modifies the efficiency standards to qualify for the credit.</p> <p><u>Effective date.</u> Increased credit applies to dwelling units acquired after 2021 and further modifications to the credit, including efficiency and labor provisions, apply to dwelling units acquired after 2022.</p>

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Energy Tax Regulation Authority

Included in the IRA of 2022 are several requirements for Treasury to issue regulations or other guidance within a specified time period. The following table reflects those instances in chronological order:

Within 30 days after enactment	<u>§13201 – Extension of Incentives for Biodiesel, Renewable Diesel, and Alternative Fuels.</u> Treasury shall issue guidance within 30 days after date of enactment providing for a one-time submission of claims for retroactive alternative fuel credits. The submission of claims period shall be 180 days beginning not later than 30 days after guidance is issued. Claims shall be paid no later than 60 days after receipt, and if the claim hasn't been paid within 60 days, it shall be paid with interest.
December 31, 2022	<u>§13401 – Clean Vehicle Credit.</u> Treasury shall issue guidance necessary to carry out the purposes of the clean vehicle credits.
Not later than 180 days after enactment	<u>§13103 - Increase in credit for certain investments in low-income communities.</u> Treasury must establish a program to allocate amounts of the solar and wind capacity limitation (1.8 GW for 2023 and 2024). Treasury shall provide an efficient allocation process, including, when appropriate, considering multiple projects in a single application if the projects would be placed in service by a single taxpayer. Treasury may not allocate more capacity than allowed with respect to any year. <u>§13501 – Extension of the Advanced Energy Project Credit.</u> Treasury shall establish a program to consider and award certifications for qualified investments eligible for credits. Treasury shall establish the timing and information required for the application.
Within one year after enactment	<u>§13204 – Clean Hydrogen.</u> Treasury shall issue regulations or other guidance to carry out the hydrogen credit within one year after the date of enactment. <u>§13301 – Extension, Increase, and Modifications of Nonbusiness Energy Property Credit.</u> Treasury must issue regulations or other guidance within 365 days of date of enactment providing rules for certifying home energy auditors.

<p>January 1, 2025</p>	<p><u>§13701 – Clean Energy Production Credit.</u> Treasury shall issue guidance regarding the implementation of the clean energy production credit, including calculation of the GHG rates for qualified facilities and determination of credits.</p> <p><u>§13702 – Clean Energy Investment Credit.</u> Treasury shall issue guidance implementing the clean energy investment credit.</p> <p><u>§13702 – Clean Energy Investment Credit.</u> Treasury shall establish a program to allocate amounts of environmental justice capacity limitation to applicable facilities, including providing for an efficient allocation process.</p> <p><u>§13704 – Clean Fuel Production Credit.</u> Treasury shall issue guidance implementing the clean fuel production credit, including calculation of emissions factors and the determination of clean fuel production credits.</p>
<p>***</p>	<p><u>Prevailing Wage and Apprenticeship Requirements.</u> The labor requirements throughout the energy sections are applicable 60 days after Treasury publishes guidance with respect to those requirements.</p>

Below is a comprehensive list of express Treasury authority or directives to issue regulations or other guidance relating to the energy tax provisions in the IRA of 2022. This list does not include any potential guidance that Treasury may need to issue to clarify or address various issues presented under the IRA of 2022 under its general or other existing regulatory authority.

In General

- Prevailing wage and apprenticeship requirements. The labor requirements throughout the energy sections are applicable 60 days after Treasury publishes guidance with respect to the requirements (*See* §13101). Treasury shall issue this guidance, which may include providing requirements for recordkeeping or information reporting.
- Domestic content. Treasury has the authority to provide the timing, form, and manner in which a taxpayer certifies any qualified facility or energy property meets the domestic content requirement for the bonus credit or direct pay (*See* §13101).
 - Exceptions. Treasury shall provide exceptions to the domestic content requirement for purposes of the direct pay phaseout if the inclusion of the products would increase the overall costs of construction by more than 25% or relevant

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materials are not produced in the U.S. in sufficient and reasonably available quantities or satisfactory quality (*See* §13101).

- Energy community bonus credit. Treasury shall determine whether areas meet the direct employment or tax revenue thresholds and whether they meet the unemployment rate for purposes of determining the energy community bonus credit (*See* §13101).

§13102 – Extension and Modification of Energy Credit

- Treasury shall issue regulations or other guidance recapturing the benefit of the labor requirement bonus for property in which the taxpayer is no longer meeting the labor requirements but the property continues to be energy property.
- Authority to issue guidance to carry out the purposes of section 48(a), including requirements for recordkeeping or information reporting for purposes of administering the subsection's requirements.

§13103 – Increase in Energy Credit for Solar and Wind Facilities Placed in Service in Connection with Low-income Communities

- Not later than 180 days after date of enactment, Treasury must establish a program to allocate amounts of the solar and wind capacity limitation (1.8 GW for 2023 and 2024). Treasury shall provide an efficient allocation process, including, when appropriate, considering multiple projects in a single application if the projects would be placed in service by a single taxpayer. Treasury may not allocate more capacity than allowed with respect to any year.
- Treasury shall issue guidance regarding recapturing the bonus credit under this section if the property continues to be investment credit property.

§13104 – Extension and Modification of Credit for Carbon Oxide Sequestration

- Authority to publish guidance directing the time and manner in which a taxpayer would make an election starting the 12-year credit period for certain projects located in a Federally-declared disaster area.

§13201 – Extension of Incentives for Biodiesel, Renewable Diesel, and Alternative Fuels

- Treasury shall issue guidance within 30 days after date of enactment providing for a one-time submission of claims for retroactive alternative fuel credits. The submission of claims period shall be 180 days beginning not later than 30 days after guidance is issued. Claims shall be paid no later than 60 days after receipt, and if the claim hasn't been paid within 60 days, it shall be paid with interest.

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§13203 – Sustainable Aviation Fuel Credit

- Treasury shall prescribe the form and manner in which a producer certifies its fuel meets the credit requirements.
- Authority to issue guidance regarding how to reduce the SAF credit to take into account any benefit provided under sections 6426 or 6427(e).

§13204 – Clean Hydrogen

- Authority to develop a successor model to the Greenhouse gases, Regulated Emissions, and Energy use in Transportation (GREET) model for purposes of determining lifecycle greenhouse gas emissions.
- If lifecycle emissions haven't been determined, the taxpayer may petition Treasury for a determination.
- Treasury shall issue regulations or other guidance to carry out the hydrogen credit within one year after the date of enactment.
- Authority to provide rules for purposes of determining whether a taxpayer sold electricity to a related person for purposes of producing hydrogen and earning a production tax credit under sections 45 and 45U.
- Authority to provide rules providing for third party verification of a hydrogen facility's lifecycle greenhouse gas emissions for purposes of electing an ITC in lieu of the PTC.
- Treasury shall issue guidance for purposes of carrying out the ITC election, and for purposes of recapturing credit that exceeds the amount that should have been allowed.

§13301 – Extension, Increase, and Modifications of Nonbusiness Energy Property Credit

- Treasury must issue regulations or other guidance within 365 days of date of enactment providing rules for certifying home energy auditors.
- Authority to require additional information for purposes of substantiating a home energy audit.
- Treasury may establish rules relating to qualified manufacturers, including assigning product identification numbers, establishing labeling requirements, and requiring periodic written reports.

§13303 – Energy Efficient Commercial Buildings Deduction

- Treasury shall issue regulations or guidance allowing tax-exempt entities to allocate the deduction to the person designing the property.
- Rules providing for the election for the alternative deduction for retrofit property.

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- Treasury may provide rules relating to baseline energy use intensity adjustments, energy use intensity calculation, and requirements applicable to licensed architects and engineers for purposes of the credit.

§13304 – Extension, Increase, and Modifications of New Energy Efficient Home Credit

- Authority to determine a successor program to the DOE zero energy ready home program.

§13401 – Clean Vehicle Credit

- Treasury shall issue guidance on the time and form in which dealers must report to the taxpayer and Treasury certain information relating to the vehicle purchase.
- Treasury shall provide guidance relating to qualified manufacturers providing periodic reports to Treasury.
- Not later than December 31, 2022, Treasury shall issue guidance necessary to carry out the purposes of the clean vehicle credits.
- Treasury may issue guidance relating to the transfer of the credit to the dealer, including rules relating to dealer registration and revocation of registration.

§13402 – Qualified Commercial Clean Vehicles

- Treasury shall issue guidance as necessary to carry out the section, including rules relating to determining the incremental cost of any qualified commercial clean vehicle.

§13501 – Extension of the Advanced Energy Project Credit

- Within 180 days of enactment, Treasury shall establish a program to consider and award certifications for qualified investments eligible for credits. Treasury shall establish the timing and information required for the application.
- Upon certifying projects, Treasury shall publicly disclose the identity of the applicant and the amount of credit awarded.

§13502 – Advanced Manufacturing Production Credit

- Authority to provide rules relating to an election to treat sales to related parties that subsequently sell components to unrelated persons as a sale to an unrelated party under the credit.

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§13701 – Clean Energy Production Credit

- Treasury shall annually publish a table that sets forth emissions rates for types or categories of facilities. Taxpayers may petition Treasury to make a determination of the emissions rate of a facility if it had not been published.
- By April 1 of each calendar year, Treasury shall publish the inflation adjustment factor for purposes of the clean energy production credit.
- Treasury shall determine the calendar year in which annual greenhouse gas emissions from U.S. electricity production are equal to or less than 25% of the annual GHG emissions in 2022.
- Not later than January 1, 2025, Treasury shall issue guidance regarding the implementation of the clean energy production credit, including calculation of the GHG rates for qualified facilities and determination of credits.
- Treasury may issue guidance allocating credits in which there is more than one owner in a manner not in proportion to their respective ownership interests in the gross sales of the facility.
- Authority to determine the time, form, and manner of certification of meeting the domestic content requirements for purposes of the bonus credit and direct pay.

§13702 – Clean Energy Investment Credit

- Not later than January 1, 2025, Treasury shall establish a program to allocate amounts of environmental justice capacity limitation to applicable facilities, including providing for an efficient allocation process.
- Treasury shall issue guidance providing rules for recapturing the environmental justice bonus credit in instances the property does not cease to be investment credit property.
- Not later than January 1, 2025, Treasury shall issue guidance implementing the clean energy investment credit.

§13704 – Clean Fuel Production Credit

- Treasury shall annually publish a table setting forth the emissions rate for types and categories of transportation fuels. If an emissions rate has not been published for any transportation fuel, the taxpayer may petition Treasury for an emissions rate determination.
- Not later than January 1, 2025, Treasury shall issue guidance implementing the clean fuel production credit, including calculation of emissions factors and the determination of clean fuel production credits.
- Treasury shall issue rules relating to certification as a producer of sustainable aviation fuel.
- Treasury may issue guidance allocating credits in which there is more than one owner in a manner not in proportion to their respective ownership interests in the gross sales of the facility.

§13801 – Elective Payment for Energy Property and Electricity Produced from Certain Renewable Resources, Etc.

- Treasury may provide rules relating to the time and manner for making a direct pay election, including elections made by passthrough entities or for the purposes of the hydrogen, carbon sequestration, or manufacturing credits.
- Treasury shall establish an election due date for tax-exempt entities electing direct pay and a date by which such entities must submit a claim for credit or refund.
- Treasury may establish rules under direct pay requiring information or registration to prevent duplication, fraud, improper payments, or excessive payments.
- Treasury shall issue regulations or other guidance necessary to carry out direct pay, including guidance to ensure the amount of payment or deemed payment is commensurate with the amount of credit that would otherwise be allowable (without regard to section 38(c)).
- Authority to issue guidance relating to elections by passthrough entities to transfer credits.
- Authority to issue guidance requiring certain information or registration with Treasury to make an election to transfer credits to prevent duplication, fraud, improper payments, or excessive payments.
- In the event of a recapture event where credits were transferred, Treasury may issue guidance providing the form and manner in which the eligible taxpayer and transferee must provide notice of the recapture event and the recapture amount.
- Treasury shall issue guidance necessary to carry out the transferability provision, including guidance for determining the partner's distributive share of the tax-exempt income described in the passthrough rules.