



So, You Want to Sell Tax Credits? IRA Incentives for CHP

Presented at:
Northeast Chapter of the Combined Heat and Power Alliance
September 13, 2023



Inflation Reduction Act

Referred to as “Act” or “IRA”



Aug. 16, 2022
signed into law



728
pages



\$738 billion
in funding



\$499 billion
in new spending
and tax cuts

Per the Congressional Budget Office – Sept. 7, 2022



Eligible entities for “qualifying” energy project tax credits

- Taxpayers and non-taxpayers alike are now eligible to earn tax credits supporting clean energy projects
- Asset owners, including corporations, partnerships, individuals are eligible for clean energy tax credits if the project meets the specific requirements
- For the first time, not-for-profit organizations and government entities will have access to federal energy tax credits through the new “Direct Pay” provision for qualifying clean energy projects



What is **meant** by a “**tax credit**”?

- The IRA provides for a direct **offset to federal tax liability** in the form of a tax credit for certain activities aimed at encouraging a transition to low(er) carbon energy.
- Three ways credits bring value to projects:
 - Owner(s) can simply **use the tax credit** against their own tax liability, in most case back 3-year and forward 22 years.
 - If owner(s) doesn't have tax liability or taxable income, they can now sell certain credits to another taxpayer* (“**Transferability**”)
 - Tax – exempt owners can receive a “direct payment” in the form of cash payment from the IRS. These include state and local governments, not-for-profits, tribes and others (“**Direct Pay**”) for certain credits.

Essentially, the Act is enabling ALL entities to utilize this legislation regardless of tax status.

**passive activity rules can apply*

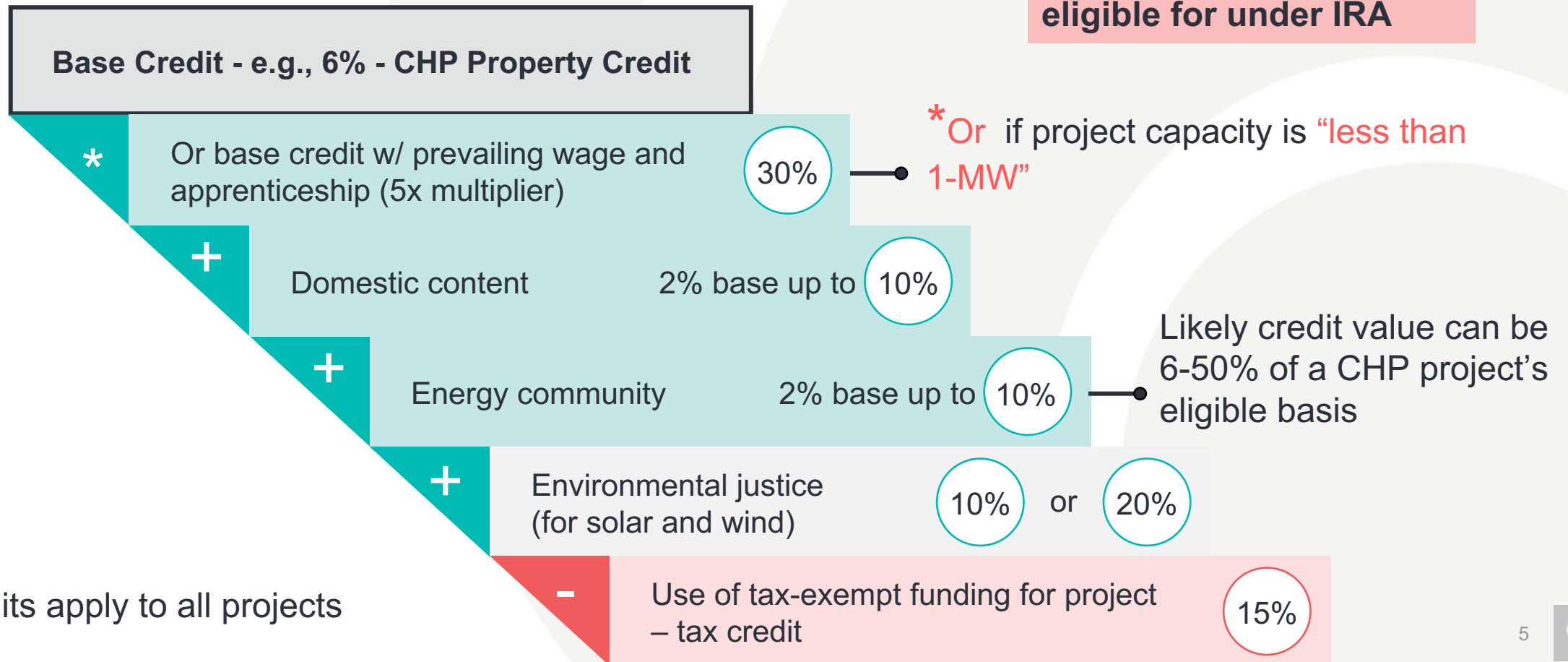


Establishing tax credit value

Section 48 - ITC

“Base credit” + “Bonus criteria” is the overriding theme of the new credit regime

CHP Projects must begin construction by December 31, 2024, to be eligible for under IRA



Not all credits apply to all projects



Prevailing wage and apprenticeship requirements

Prevailing wage

Tax credit value reduced substantially if the same "prevailing wages" that are paid on federal construction jobs are not paid to workers.

"Begin construction"

PW & A requirements do not apply for projects that "begin construction" within 59 days of guidance released on 11/30/22.

Jan. 28th, 2023

< MW AC

Requirements do not apply to projects < 1 MW AC. For CHP this is the combined electrical and thermal output- based on installed capacity.

Prevailing wage requirements – the basics

- **For Investment tax credits (generally Sec. 48)** , prevailing wages must be paid during construction and for 5 years following the placed in-service date
- **For Production tax credits (generally IRC Sec. 45)** , prevailing wages must be paid during construction and for 10 years following placed in-service date

“Construction”

“Alteration”

“Repair”

Apprenticeship requirements – the basics

- Applicable percentage of labor hours must be performed by qualified apprentices
 - Construction begins prior to 2023 = 10%
 - Construction begins in 2023 = 12.5%
 - Construction begins in 2024 and beyond = 15%
- This percentage is subject to any applicable requirements for apprentice-to-journey worker ratios of the Department of Labor or the applicable State Apprenticeship Agency. The ratios vary by state and by trade. They typically range from 1 apprentice to 2 journey worker to 1 apprentice to 5 journey workers.
- A qualified apprenticeship program is one registered under the National Apprenticeship Act of August 16, 1937. Union programs are almost all qualified and some employer programs are qualified.

“Begun construction”



Originally framed in via IRS Notice 2013-29 and 2013-60, with ongoing clarifications in subsequent notices

Taxpayers may use two methods to establish the date of beginning of construction:

- By starting physical work of a significant nature (Physical Work Test), or
 - By having paid or incurred five percent or more of the total cost of the facility (5% Safe Harbor)
-
- For both tests, taxpayers must demonstrate either continuous construction or continuous efforts (Continuity Requirement). Project must be placed in service no more than 4 calendar years after begun construction met,
 - A binding written contract, that is non-refundable, will need to be entered into with each vendor so costs are incurred prior to 1/29/22.

Domestic Content and Energy Community bonuses are complex

Tax Credit Adder

Requirements

Domestic content

- Any steel, iron or manufactured product which is a component of the energy project (upon completion of construction) was produced in the United States
- For manufactured products, at least 40% of the total cost of all manufactured products of such facility are attributable to products (including components) which are mined, produced or manufactured in the United States.

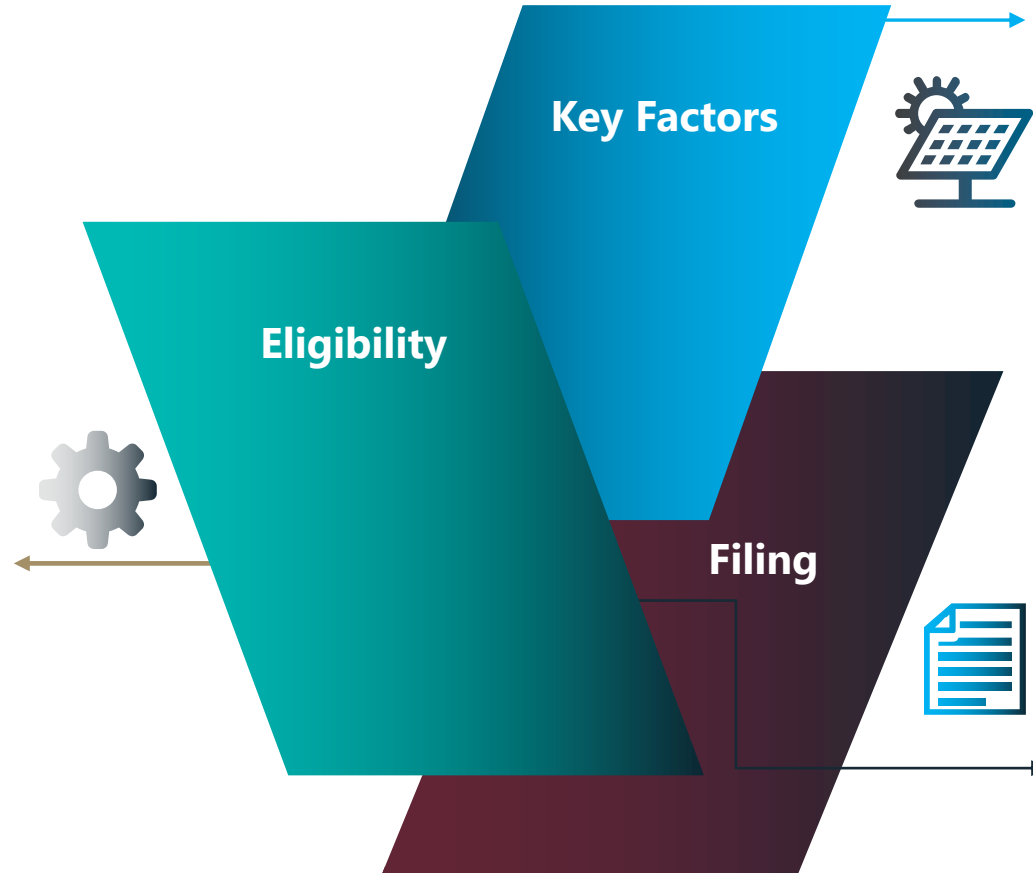
Energy community

- A brownfield site as determined by Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)
- A metropolitan statistical area or non-metropolitan statistical area which has had greater than 0.17% direct employment or 25% greater tax revenues from fossil fuel extraction, production or storage and has an unemployment rate at or above the national average unemployment rate for the previous year
- A census tract that has a closed coal mine or coal power plant. This also applies to adjoining census tracts

Direct Pay can be used by many entities for a myriad of project types

Eligible Entities

- Cities, towns, counties, municipal utilities, and schools are eligible
- Economic development agencies, and public universities and hospitals that are agencies and instrumentalities of states or political subdivisions
- 501(c), such as public charities, private foundations, social welfare organizations, labor organizations, business leagues, and others. It also includes religious or apostolic organizations under 501(d).



Key Factors

- **Types of Projects:**
 - Biogas property, Combined heat and power, Energy storage technology, Fiber-optic solar property, Fuel cell property, Microgrid controller, Geothermal property, Microgrid controllers, Small wind property, Solar energy property
- **Direct Pay Entities Only-** For projects beginning construction after 12/31/2023, penalty for not meeting domestic content. 30% credit becomes 27% if domestic content not met

Filing

- Determine tax year
- Complete pre-filing registration with IRS- expect website Q4 2023 to obtain registration number
- If no such return is required (such as for State, local, or Indian tribal governmental entities), the Form 990-T

Transferring (selling) credits is much easier under the IRA 2022 then under previous rules

Finding a Buyer

Firms like Baker Tilly have access to entities with tax credit appetite. Institutional investors may shy away from smaller projects. Market platforms are being developed to match buyers and sellers such as <https://marketplace.ever.green/locations>

Terms of Sale

The sale of the credit is for cash only and can only be sold once. However, all or part of the credit can be sold. Typically, we are seeing purchases at 85% of value of the credit with higher percentages for larger projects and smaller for smaller projects due to transaction costs. Buyer usually require indemnification

Tax Exempt

The transfer (sale) of the credits are not taxable either as income or a capital gains on a federal basis.

Timing of Sale

The tax credit needs to be transferred prior to the project filing its tax return for the year the project was placed in service this includes any extensions for filing elected by the taxpayer. Prior to the Project being placed in service a buyer of the credit, can agree to buy the credits pending the project being placed in service.



Areas to engage help

1. Helping to understand if a project is eligible for federal energy credits
2. Determine potential “bonus” credits that may be available based on domestic content or location
3. Project development advisory to help manage the project
4. Maximizing the tax credit earned – pre & post construction cost certification
5. Workpaper file generation to support investment tax credit claim
6. Support management under audit of credit
7. Monetize tax credits



Connect with us



Gary Leatherman
Managing Director

M: (202) 369-1561
gary.leatherman@bakertilly.com

Refer to the **Baker Tilly Inflation Reduction Act Resource Center** for more information on how we can help:

<https://www.bakertilly.com/page/inflation-reduction-act-energy-tax-credits>

The information provided here is of a general nature and is not intended to address the specific circumstances of any individual or entity. In specific circumstances, the services of a professional should be sought. Tax information, if any, contained in this communication was not intended or written to be used by any person for the purpose of avoiding penalties, nor should such information be construed as an opinion upon which any person may rely. The intended recipients of this communication and any attachments are not subject to any limitation on the disclosure of the tax treatment or tax structure of any transaction or matter that is the subject of this communication and any attachments. Baker Tilly US, LLP, trading as Baker Tilly, is a member of the global network of Baker Tilly International Ltd., the members of which are separate and independent legal entities. © 2022 Baker Tilly US, LLP



Disclosure

The information provided here is of a general nature and is not intended to address the specific circumstances of any individual or entity. In specific circumstances, the services of a professional should be sought. Tax information, if any, contained in this communication was not intended or written to be used by any person for the purpose of avoiding penalties, nor should such information be construed as an opinion upon which any person may rely. The intended recipients of this communication and any attachments are not subject to any limitation on the disclosure of the tax treatment or tax structure of any transaction or matter that is the subject of this communication and any attachments.

Baker Tilly US, LLP trading as Baker Tilly is a member of the global network of Baker Tilly International Ltd., the members of which are separate and independent legal entities.

© 2023 Baker Tilly US, LLP

