CHP & THE IRA: TAX CREDIT TRANSFERABILITY

The CHP Alliance hosted webinar on the transferability of energy tax credits in the Inflation Reduction Act, featuring Ethan Epstein and Mike Strugar of the **US Tax Credit Alliance** and Katie Cullen of **SC Partners**. In advance of the launch of the IRS pre-filing process, our panelists discussed all the latest federal guidance on transferability. Below are written answers to many of the audience questions raised during the webinar.

QUESTION AND ANSWERS

Q: How many years does the property need to operate to qualify?

A: The ITC is awardable when the property is placed into service. Assuming the question asks about recapture periods, that time window is five years.

Q: You stated, at this time, no sales have taken place?

A: Yes, because the IRS Tax Credit Registration Portal has not been yet activated, no tax credit registration numbers have been created and, therefore, no sales have taken place. More information concerning the procedure and status of the market can be found in the attached memorandum that I wrote synthesizing the Proposed Temporary Treasury Regulations earlier this summer.

Q: How does transferability does apply to Puerto Rico as a US territory with non-mirroring tax code?

A: Please call Ethan Epstein at United States Tax Credit Alliance for assistance. Equipment qualifies for an investment tax credit ("ITC") only if it is used in the United States; Puerto Rico is considered outside the United States for that purpose. However, the Internal Revenue Code makes an exception for property used in possessions as long as the equipment is owned by a United States corporation or citizen. Generally, the transfer rules should not affect qualification of an ITCs for a projects constructed in Puerto Rico; the definition of qualified taxpayer in transferability Treasury Regulations also includes US corporations. Thus, it would seem reasonable that a US corporation that owns good renewable energy property can qualify for a transferable ITC so long as it meets the underlying legal requirements necessary to qualify for the ITC.

Q: In addition to Puerto Rico, can ITCs relating to projects in the Virgin Islands also qualify for transferable tax credits?

A: While legal advice on this technical question should be sought on a per project basis, it seems that the above logic governing the Puerto Rico scenario would also govern qualified projects in other United States territories, including the Virgin Islands.

Q: When can someone register the tax credit on the IRS Portal? After project completion or before?

A: Registration on the forthcoming IRS Portal can only occur after project completion and when the renewable energy property is placed into service. Progress expenditures are not allowed for registration number purposes.

Q: Do the credits apply to projects that have already started construction but will not be completed until 2024 or 2025?

A: Yes.

Q: It was mentioned that these ITCs are for renewable energy. If we are a classic fossil fuel organization employing combined heat and power, can we qualify for an ITC?

A: Possibly, depending on if your project is a qualified one. Your status as a fossil fuel organization should have little impact on qualification so long as the underlying combined heat and power project meeting the necessary legal requirements.

Q: If we have a project that covers multiple states with similar projects at each location, can we aggregate these tax credits to a single buyer?

A: Yes. Aggregation occurs by bundling transferable tax credits with the same qualities. Thus, to the extent each renewable energy project is standardized, those tax credit will likely be good aggregation candidates.

Q: What if the organization goes through this process, filling out everything perfectly and there is not a buyer on the other end of the sale? Is the tax credit generating organization stuck holding the bag?

A: Possibly; however, in a market driven system, in theory there will always be buyers as long as the price has flexibility.

Q: Do mobile applications qualify under the IRA? Can you see a way for zero emission engines to replace diesel engines to be an opportunity for direct transfers to generate cash? Would each engine need to be individually registered to qualify for a directly transferable tax credit?

A: Based on these facts, I would first assess whether this project meets the necessary requirements to generate a transferable tax credit that must be specifically listed under Section 6418(f) of the Internal Revenue Code. Your facts may implicate the tax credit first listed in that definitional section — the Alternative Fuel Refueling Property Tax Credit may fit your targeted scenario.

Q: Can an entity sell the credit but keep the depreciation?

A: Yes. Unlike transferable tax credits, depreciation is not directly transferable to another taxpayer.

Q: If a factory installed a combined heat and power system and it burned down or the plant is shut down temporarily or permanently, what happens?

A: If this event happened within a five-year period from when the property was placed in service, in the ITC context, it may be subject to tax credit recapture.

Q: On the PTC, if you had a natural gas combined heat and power system installed in 2019, are the Kwh produced now through 2029 eligible for PTCs?

A: Yes.

Q: Which Insurance companies are planning to provide recapture insurance?

A: Please contact Ethan Epstein at US Tax Credit Alliance for more information concerning this topic.

Have other questions?

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