

**JUNE 2024**

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**TEXAS Law**

The University of Texas at Austin  
School of Law

# IRA ENERGY TAX CREDITS

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## Agenda

- Energy Tax Credits for Higher Ed
- Treasury Guidance Issued to Date
- Overview of the Rules
- IRS Pre-Filing Registration Process
- What to do with the Money
- Sample Situations and Calculations
- 179D Concerns and Approaches
- What Constitutes Beginning of Construction
- Maps and Links
- Pitfalls

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# Energy Tax Credits for Higher Ed

- New and expanded incentives created under Inflation Reduction Act (“IRA”)
  - Direct pay election (IRC Section 6417)
    - Available to applicable entities as direct cash refund (via 990-T filing)
    - Effective for tax years beginning AFTER December 31, 2022
    - Examples:
      - Energy Investment Tax Credit (Section 48)
      - Commercial Clean Vehicles (Section 45W)
      - Alternative Fuel Refueling Property Credit (Section 30C)
      - Carbon Oxide Sequestration Credit (45Q)
  - Expansion of Section 179D deduction
    - Energy Efficient Commercial Building Property (“EECBP”)
    - Deduction allocated to eligible parties (Designer, contractors, etc.)

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- Energy Credit (48), (Form 3468, Part VI)
- Clean Electricity Investment Credit (48E), (Form 3468, Part V)
- Renewable Electricity Production Credit (45), (Form 8835, Part II)
- Clean Electricity Production Credit (45Y)
- Commercial Clean Vehicle Credit (45W), (Form 8936, Part V)
- Zero-emission Nuclear Power Production Credit (45U), (Form 7213, Part II)
- Advanced Manufacturing Production Credit (45X), (Form 7207)
- Clean Hydrogen Production Credit (45V), (Form 7210)
- Clean Fuel Production Credit (45Z)
- Carbon Oxide Sequestration Credit (45Q), (Form 8933)
- Credit for Alternative Fuel Vehicle Refueling / Recharging Property (30C), (Part 8911, Part II)
- Qualifying Advanced Energy Project Credit (48C), (Form 3468, Part III)

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# Treasury Guidance Issued to Date

- **Eligible Property**
  - Proposed Regulation 1.48-9 (published Nov 22, 2023)
- **Prevailing Wage & Apprenticeship (“PWA”)**
  - Notice 2022-61 (published Nov 30, 2022)
  - Department of Labor Guidance (published Aug 23, 2023)
  - Proposed Regulations (published Aug 30, 2023)
- **Domestic Content**
  - Notice 2023-38 (published May 30, 2023)
  - Notice 2024-9 (published December 28, 2023)
- **Energy Community**
  - Notice 2023-29 (published, April 4, 2023)
  - Notice 2023-45 (published June 15, 2023)
  - Notice 2023-47 (published June 15, 2023)
- **Low-Income Communities**
  - Notice 2023-17 (published March 6, 2023)
  - Proposed Regulations (published June 1, 2023)
  - Final Regulations (published August 15, 2023)
  - Rev. Proc. 2023-27 (published August 2023)
  - Rev. Proc. 2024-19 (published March 2024)
- **Direct Pay (IRC Sec 6417)**
  - Final Regulations (published March 11, 2024)
  - Proposed Regulations (published June 21, 2023)
  - Temporary Regulations on Pre-Registration (published June 21, 2023)
- **Transferability (IRC Sec 6418)**
  - Final Regulations (published April 30, 2024)
  - Proposed Regulations (published June 21, 2023)
  - Notice 2024-27 (published March 5, 2024)\*

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# Overview of rules

- **Final Regulations**
  - **Sec 6417 - apply for taxable years ending on or after March 11, 2024**
    - Largely adopts the proposed regulations
    - Fixed drafting error that left out instrumentalities
    - Updated ordering rules for calculating elective payment prior to applying Section 38(d)
    - Clarification on using grants and forgivable loans to purchase energy property
  - **Sec 6418 (Transferability) – apply for taxable years ending on or after April 30, 2024**
    - Generally if eligible entity under 6417, this section is not applicable
    - Notice 2024-27 to request comments on chaining – comment period ends 12/1/2024

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