



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

October 29, 2022

[via Email](#)

Dear Tribal Leader:

As the Point of Contact for Tribal Consultation for the U.S. Department of the Treasury (Treasury), I invite you to consultations on the Inflation Reduction Act of 2022 (IRA). These consultations will be held virtually on Monday, November 28, 2022, 2pm-5pm EDT, and Tuesday, November 29, 2022, 2pm-5pm EDT.

Background

The IRA represents the most significant legislation to invest in clean energy and address climate change in our nation's history. Of the IRA's \$369 billion investment in addressing climate change, \$270 billion will be delivered through tax incentives, putting Treasury and the Internal Revenue Service (IRS) at the forefront of this Act's implementation.

On October 5, 2022, Treasury and the IRS issued a set of Notices requesting public comment on implementing key provisions.

1. [Notice 2022-49: Energy Generation Incentives](#): Production Tax Credit, Investment Tax Credit, Zero-Emission Nuclear Credit, Clean Electricity Production Credit, Clean Electricity Investment Credit, Low Income Community Adder to Investment Tax Credit
2. [Notice 2022-51: Credit Enhancements](#): Prevailing Wage, Apprenticeship, Domestic Content, Energy Communities provisions that increase the value of multiple credits
3. [Notice 2022-48: Incentives for Homes and Buildings](#): Energy Efficient Home Improvement Credit, Residential Clean Energy Credit, New Energy Efficient Home Credit, Energy Efficient Commercial Building Deduction
4. [Notice 2022-46: Consumer Vehicle Credits](#): Clean Vehicle Credit, Credit for Pre-Owned Clean Vehicles
5. [Notice 2022-47: Manufacturing Credits](#): Advanced Energy Project Credit, Advanced Manufacturing Production Tax Credit
6. [Notice 2022-50: Credit Monetization](#): Direct Pay, Transfer of Certain Credits

Commented [AF1]: Language taken from Treasury's fact sheet that accompanied the public notices.

The Notices seek initial input from the public on specific questions, as well as requests for general comments. Responses will inform Treasury and the IRS' implementation of this landmark legislation.

Indian Tribal governments and Indian Lands are referenced in the following sections of

the Act:

- **Sec. 13103. Increase in Energy Credit for Solar and Wind Facilities Placed in Service in Connection with Low-Income Communities.**

Amends Section 48 of the Internal Revenue Code of 1986 (Code) to increase credits for solar and wind facilities generating electricity in low-income communities, on Indian land, or as part of a low-income economic benefit project or a low-income residential building project (including programs administered by Tribally designated housing entities). See [Notice 2022-49: Energy Generation Incentives](#).

- **Sec. 13303. Energy Efficient Commercial Buildings Deduction.**

Amends Section 179D of Code to provide increased deductions for energy efficient commercial buildings, and to permit tax-exempt owners of such facilities to allocate their tax deduction to the person designing the property.

- Tax-exempt entities defined to include Indian Tribal governments and Alaska Native Corporations. See [Notice 2022-48: Incentives for Homes and Buildings](#).

- **Sec. 13401. Clean Vehicle Credit.**

Amends Section 30D(b) of the Code to allow taxpayers to elect to transfer their “new clean vehicle” tax credit to car dealers registered with the Secretary of the Treasury or her delegate (Secretary).

- The definition of “Dealer” includes a person licensed by an Indian Tribal government or Alaska Native Corporation to engage in the sale of vehicles. See [Notice 2022-46: Consumer Vehicle Credits](#).

- **Sec. 13702. Clean Electricity Investment Credit.**

Amends Section 48C of the Code to create a clean electricity investment credit for a taxable year in an amount equal to the applicable percentage of the qualified investment for that year. Where the Secretary makes an allocation of environmental justice capacity limitation, the credit will be increased:

- 10 percentage points for facilities located on Indian lands; and
- 20 percentage points for facilities that are part of a program administered by a Tribally designated housing entity, where the financial benefits of the electricity produced by the building are allocated equitably among the occupants of the building’s dwelling units. See [Notice 2022-47: Manufacturing Credits](#).

- **Sec. 13801. Elective Payment for Energy Property and Electricity Produced from Certain Renewable Resources, Etc.**

Under section 6417 of the Code, “tax-exempt” entities—defined in the statute to include Indian Tribal governments and Alaska Native Corporations—may elect to monetize certain tax credits for alternative re-fueling properties, renewable electricity production, carbon oxide sequestration, zero-emission nuclear power

Commented [AF2]: Senate Committee on Indian Affairs has this summary, should we reference the IRA sections under IRS’ purview that are in this summary and then cite to the component of Treasury’s public notices for additional context?

<https://www.indian.senate.gov/sites/default/files/2022-08-16%20%28Final%29%20SCIA%20IRA%20Resource%20Guide.pdf>

production, clean hydrogen production, qualified commercial vehicles, advanced manufacturing production, clean electricity production, clean fuel production, energy activities under section 48 of the Code, qualifying advanced energy projects, and clean electricity investments; and establishes special rules. See [Notice 2022-50: Credit Monetization](#).

Pursuant to Executive Order 13175, President Biden's Presidential Memorandum for Tribal Consultation and Strengthening Nation to Nation Relationships, and Treasury's Action Plan for Tribal Consultation and Collaboration, Treasury is commencing consultation to inform the development of guidance to implement the Act with regard to provisions that affect Indian Tribal governments.

Specifically, Treasury and the IRS request the assistance of Tribal leaders in addressing the following questions:

1. Section 6417(d)(1)(A) of the Code defines the term "applicable entity" to include an Indian Tribal government (as defined in section 30D(g)(9) of the Code) or any Alaska Native Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)), amongst other entities.
 - (i) What clarification is needed (if any) regarding the terms used in section 6417?
 - (ii) What factors should Treasury and the IRS consider in setting procedures for an Indian Tribal government or Alaska Native Corporation to make an election for an elective payment under section 6417?
 - (iii) What features should Treasury and the IRS consider in setting procedures for claiming an elective payment for an Indian Tribal government or Alaska Native Corporation that may be unique or different from procedures for other applicable entities?
2. Section 48(e) and section 48E(h) of the Code increase the credit available under section 48 and section 48E for facilities with a maximum net output of less than 5 megawatts (as measured in alternating current) by providing
 - o A 10 percent increase in the energy percentage (in the case of section 48(e)) or the applicable percentage (in the case of section 48E(h)), used to calculate the credit amount, for certain facilities located in low-income communities (as defined in section 45D(e) of the Code) or on Indian land (as defined in section 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2))), or
 - o A 20 percent increase in the energy percentage or applicable percentage for certain facilities that are part of certain low-income residential building projects or low-income economic benefit projects.

These increased credit amounts are limited by the facility's environmental justice solar and wind capacity limitation allocation (section 48(e)) or its environmental justice capacity limitation allocation (section 48E(h)).

- (i) What methods currently exist or need to be designed for a taxpayer to certify that a project is being built in a low-income community, on Indian land, or as part of a low-income residential building project or a qualified low-income economic benefit project?
 - (ii) On what basis should the overall environmental justice solar and wind capacity limitation (section 48(e)) or the overall environmental justice capacity limitation (section 48E(h)) be allocated amongst facilities located in low-income communities, located on Indian land, that are part of low-income residential building projects, or that are part of low-income economic benefit projects?
 - (iii) What factors should Treasury and the IRS use to develop criteria for allocating environmental justice solar and wind capacity limitation (section 48(e)) or environmental justice capacity limitation (section 48E(h))?
3. Section 45(b)(7)(A) of the Code provides, in general, that a taxpayer satisfies prevailing wage requirements with respect to a qualified facility if the taxpayer ensures that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction of such facility, and with respect to any taxable year for any portion of such taxable year that is within the period described in section 45(a)(2)(A)(ii) of the Code, the alteration or repair of such facility, are paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such facility is located as most recently determined by the U.S. Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code.
- (i) What (if any) guidance is needed with regard to prevailing wage rates for laborers or mechanics determined by the U.S. Secretary of Labor with regard to construction, alteration, or repair of facilities on Indian land or facilities of an Indian Tribal Government or Alaska Native Corporation?
4. Sections 45(b)(9), 48(a)(12), 45Y(g)(11) and 48E(a)(3)(B) of the Code provide domestic content requirements that must be satisfied by a qualified facility to be eligible for bonus credit amounts under those sections of the Code.
- Sections 45(b)(9)(A) and 45Y(g)(11)(A) provide for a 10 percent domestic content bonus credit amount if the domestic content requirements are satisfied.
 - Under sections 48(a)(12)(C) and 48E(a)(3)(B), the domestic content bonus credit amount is reduced from 10 percent to 2 percent if certain other requirements are not satisfied.

Section 45(b)(9)(B)(i) provides that the domestic content requirement is satisfied with respect to any qualified facility if the taxpayer certifies to the Secretary (at such time, and in such form and manner, as the Secretary may prescribe) that any steel, iron, or manufactured product that is a component of such facility (upon completion of construction) was produced in the United States (as determined under 49 C.F.R. § 661).

Section 45(b)(9)(B)(ii) provides that in the case of steel or iron, section 45(b)(9)(B)(i) is applied in a manner consistent with 49 C.F.R. 661.5. For purposes of section 45(b)(9)(B)(i), section 45(b)(9)(B)(iii) provides that the manufactured products that are components of a qualified facility upon completion of construction are deemed to have been produced in the United States if not less than the adjusted percentage (as determined under section 45(b)(9)(C)) of the total costs of all such manufactured products of such facility are attributable to manufactured products (including components) that are mined, produced, or manufactured in the United States.

- (i) Are there features of the domestic content requirements that are of particular interest to Indian Tribal governments or Alaska Native Corporations?
 - (ii) What (if any) guidance is needed for Indian Tribal governments or Alaska Native Corporations regarding the domestic content requirements?
5. Section 30D of the Code will allow taxpayers purchasing qualifying clean vehicles to elect to transfer a “new clean vehicle” tax credit to car dealers registered with the Secretary, including a person licensed by an Indian Tribal government or Alaska Native Corporation to engage in the sale of vehicles. Treasury and the IRS expect to provide procedures on how licensed dealers may register with the Secretary.
- (i) Are there particular or unique features of licenses provided by an Indian Tribal government or Alaska Native Corporation to dealers?
 - (ii) What unique factors (if any) should Treasury and the IRS consider in developing these registration procedures for dealers that are licensed by an Indian Tribal government or Alaska Native Corporation?

[Register here](#) for one or more days of the consultation.

We respectfully request that each Tribe register one person to participate in the consultation. All others are welcome to register as listen-only participants

Please note that consultations are off the record and not for press purposes.

We will send out an Agenda and a list of registered speakers before or on November

21, 2022.

We hope that you will be able to join us for this important discussion and value your participation.

Sincerely,

Chief Lynn Malerba
Treasurer
Point of Contact for Tribal Consultation
U.S. Department of the Treasury