



November 7, 2023

# Federal Tax Controversy

**39<sup>th</sup> Annual SJSU-TEI High Technology  
Tax Institute**



## Topics for Discussion

### ❖ LB&I Workload

- Partnerships
- Large Corporate Compliance
- Campaigns
- Compliance Assurance Program

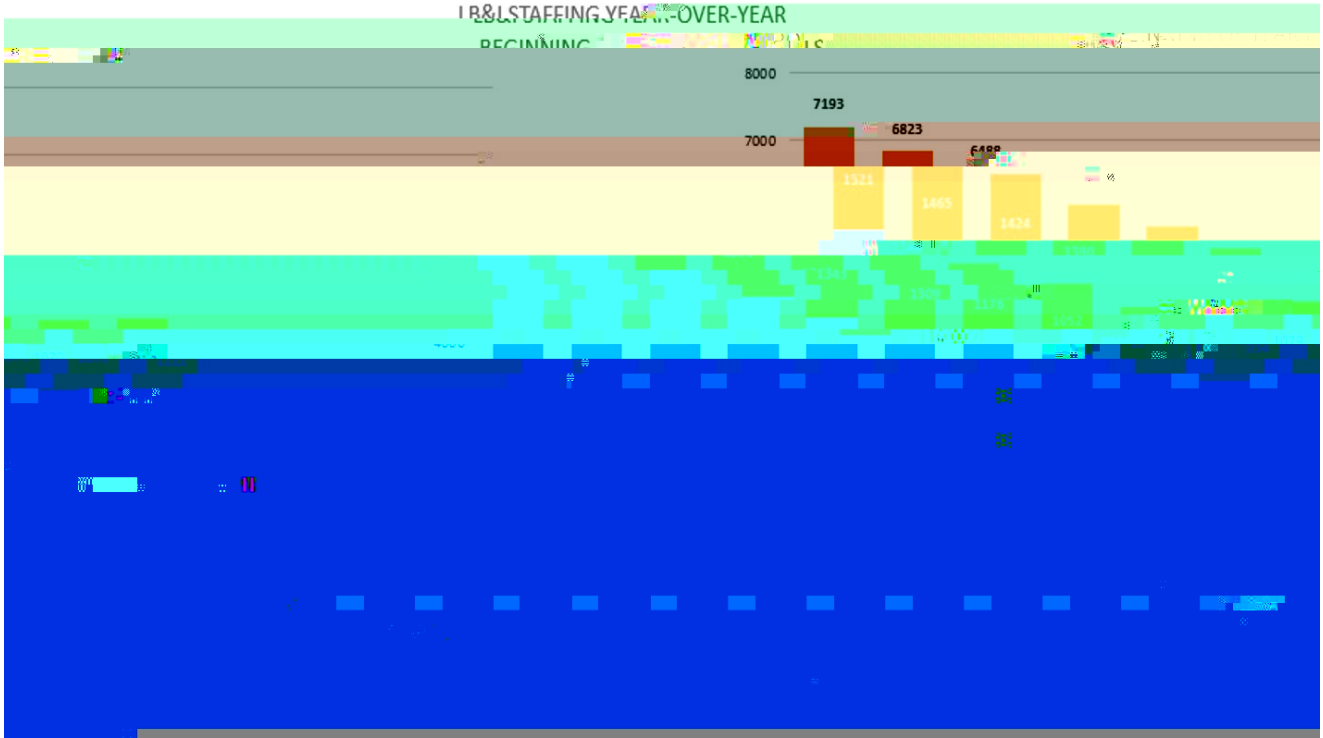


## State of LB&I and Hiring

### FY2024 LB&I Strategic Goals

- ❖ Meet our tax administration responsibilities effectively
- ❖ Support current and future LB&I employees by pursuing sustainable, consistent workplace improvements that incorporate the future of work

# Current Workforce Distribution



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# LB&I Hiring – FY23

- ❖ Final # Added to Rolls 366
- ❖ All Job Classifications

## LB&I Hiring – FY23

Revenue Agents – including CAS, International, Transfer Pricing, FPs 83

Engineers 65

Economists 8

Appraisers 7

Tax Law Specialists 21

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# Inflation Reduction Act / Strategic Operating Plan



# Inflation Reduction Act / Strategic Operating Plan



## LB&I's Role

- ❖ The plan specifically calls for expansion of enforcement for large corporations, large partnerships, and HIHW individuals.
- ❖ These have all been goals of LB&I for quite a while, but we haven't had the resources to increase our capacity. At the same time, the number and complexity of filings has increased.
- ❖ In order to achieve the goals, we plan to hire and train specialized staff. The Service also plans to increase



## LB&I's Role

- ❖ We will continue to expand and refine our use of data analytics to ensure we employ the right compliance approaches in our enforcement efforts in light of the specific noncompliance risks.
- ❖ The plan also calls for expansion of tax certainty and issue resolution programs and initiatives.

## Fast Track Settlement Program



### Key Points

Key points about FTS include the following:

- ❖ FTS program is jointly administered by the LB&I Division and the Office of Appeals
- ❖ FTS provides an opportunity to resolve their disputes with an Appeals Official using mediation skills and settlement authority



## Key Points (cont.)

Key points about FTS include the following:

- ❖ Eligibility
- ❖ Mandatory Consideration
- ❖ Copy provided of the Fast-Track Settlement [Pub 4539](#) at the opening conference
- ❖ Appeal Rights retained



## Large Business & International

# Prefiling Agreement Program







## PFA Applications

- ❖ Requests can be filed with the team manager or PFA Program Analyst.
- ❖ The application is evaluated by counsel, the audit team, and technical specialists.
- ❖ Final acceptance decision at Practice Area Director level; no appeal.



## Resources

- ❖ Refer to Rev. Proc. 2016-30 for the PFA application process
- ❖ Refer to PFA page on IRS.gov

## Industry Issue Resolution Program



### Industry Issue Resolution

#### Revenue Procedure 2003-26

#### The program goals are to:

- ❖ Address frequently disputed or burdensome business tax issues that affect a significant number of taxpayers.
- ❖ Provide clear guidance to reduce the time and resources associated with resolving issues during tax examinations.

#### The IIR process includes:

- ❖ Issue Submission and Selection
- ❖ Planning, Analysis and Development
- ❖ Resolution and Guidance



## IIR Submission

**Taxpayers, associations, and others can submit an issue anytime:**

**No required format, but should include:**

- ❖ Issue statement and description of why the issue is appropriate for the program
- ❖ Explanation of the need for guidance and estimated number of taxpayers impacted
- ❖ Name and phone number of a contact person
- ❖ May include a recommendation as to how the issue could be resolved



## Issues Appropriate

**Issue should have two or more of the following attributes:**

- ❖ Uncertain tax treatment of common factual situation
- ❖ Uncertainty results in frequent, repetitive exam of the same issue
- ❖ Uncertainty results in taxpayer burden
- ❖ Significant and impacts a large number of taxpayers
- ❖ Extensive factual development, understanding of industry practices and views would assist the Service in determining the proper tax treatment



- ❖ Research Credit - LB&I Directive 04-0917-005 provides an



## Advance Pricing Agreement Program



### Advance Pricing Agreements

APMA received a lot more cases in 2022 than it resolved.

- ❖ The program is popular, and we expect it to continue to grow.
- ❖ We are actively hiring to support that growth.
- ❖ Interim guidance issued in April 2023 establishes a consistent process to identify roadblocks up front and potentially more efficient paths to certainty based on APMA's experiences. It is meant to improve the process for everyone.



## Large Business & International

# Partnerships



## LPC Program

- ❖ Round 1 – 50 partnerships
- ❖ Round 2 – 75 partnerships
- ❖ Who's in?
- ❖ What's the risk?
- ❖ How do we approach these audits?



## Compliance Alert – Balance Sheet

- ❖ CIR announcement in early September
- ❖ Identified hundreds of instances where partnership's current year beginning balance sheet did not match the prior year ending.
- ❖ Will be sent a letter asking to explain the reason for the discrepancy
- ❖ Next steps will be determined after a review of the responses and may result in an audit



## Future Compliance Work



- ❖ Large Corporate Compliance (LCC) Program replaced Coordinated Industry Case (CIC) program in 2019
- ❖ LCC is one of the compliance programs in LB&I's portfolio
- ❖





- LB&I Examination Process applies to LCC
- Revenue Procedure 2022-39 and Form 15307 issued November 2022.
  - Revenue Procedure 94-69 now obsolete.
  - Transition rule for 2020 and prior returns
  - 4 of 5, LCC, LPC criteria for 2021 and after returns





## Campaign Guiding Principles



## How Campaigns Function

- ❖ LB&I harnesses the combined intellect of our team to make intentional decisions about compliance risks we will respond to, how we will respond and how we will know success
- ❖ Allows us to focus limited resources in the right areas to drive specific compliance objectives
- ❖ Improves our understanding of taxpayer compliance risks and how we respond



## How We Measure Success

- ❖ Announcing campaigns has the potential to improve taxpayer compliance
- ❖ Tracking metrics and measures to evaluate campaign effectiveness and results
- ❖ Looking at the impact of individual campaigns while seeking to assess the effect of campaigns as a whole
- ❖ Aiming to have measurable results that can be evaluated alongside traditional enforcement and examinations
- ❖ Partnering with our research function to explore effective methods to evaluate the effect/impact of campaigns on taxpayer compliance



## Other Compliance Efforts

- ❖ Syndicated Conservation Easements Campaign
- ❖ Micro-Captives Campaign
- ❖ Research Credit
  - Requirements for administrative claim for refund or credit under Section 41, requiring specific information
  - Chief Counsel Memorandum and FAQs (Feb. 2022)
  - Transition period until January 10, 2024, whereby IRS will notify a claimant of any perceived deficiency and taxpayer



## CAP Program Overview

- ❖ Collaborative program driven by cooperation and transparency
- ❖ Pre-file identification and resolution of issues
- ❖ Efficient use of resources
- ❖ Tax and financial reporting certainty
- ❖ Goal is more efficient use of audit resources



## CAP Program History

- ❖ 2005: CAP Pilot Began  
17 Taxpayers
- ❖ 2018: CAP Recalibration Announced  
169 Taxpayers
- ❖ 2023: CAP Program  
123 Taxpayers



## CAP Program Essentials

- ❖ Collaboration
- ❖ Customer Service
- ❖ Compliance
- ❖ Certainty

**Achieved through Continuous  
Communication**



## CAP Program Eligibility

- ❖ Company assets \$10 million
- ❖ A C-Corporation that is a U.S. Publicly-held entity filing Forms 10-K, 10-Q and 8-K
- ❖ Grandfathered privately-held or grandfathered foreign



## Evaluation of Suitability Criteria



## Phases of the CAP Program

Compliance Assurance Process Phase  
(CAP)

Compliance Maintenance Phase  
(CM)

Bridge Phase (Bridge)/ Bridge Plus Phase Pilot



## Bridge Phase / Bridge Plus Phase

- ❖ Equivalent of a skip cycle
- ❖ Previous participation in the CM phase unless exception
  - Low risk issues
  - Optimal cooperation and transparency
- ❖ No disclosures
- ❖ No review of transactions
- ❖ May apply for a Pre-filing Agreement (PFA) if issues arise
- ❖ Yearly application to program and placement in appropriate phase
- ❖ Bridge Phase Taxpayers may be invited to participate in a Bridge Plus Pilot





## CAP Program Benefits

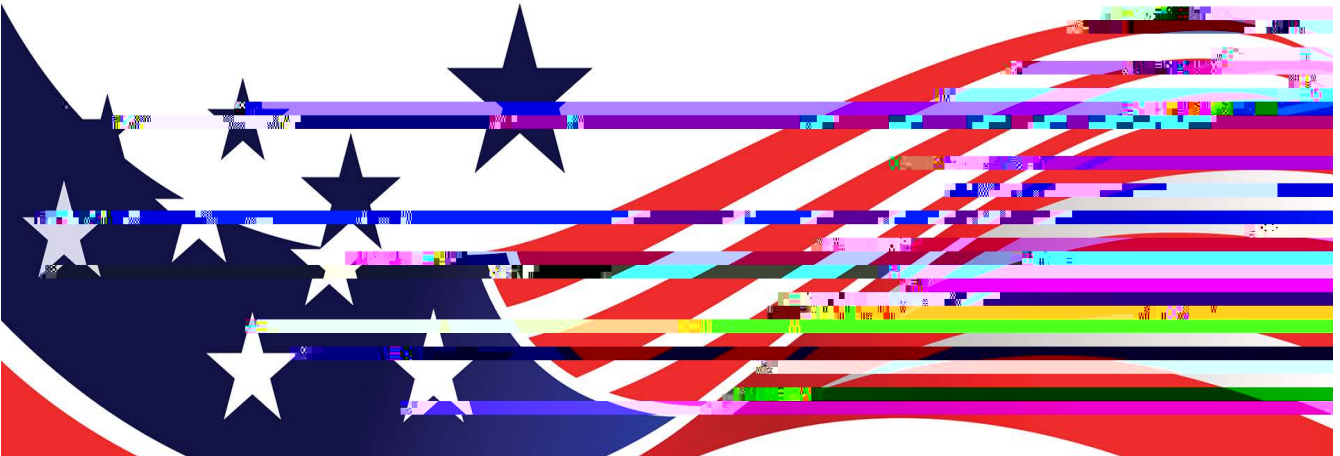
- ❖ Facilitates the real time review of transactions
- ❖ Promotes voluntary compliance
- ❖ Can expedite tax and financial reporting certainty
- ❖ Has identified new and/ or emerging issues sooner
- ❖ Can afford resource efficiencies for both the IRS and the Taxpayer
- ❖ Can result in currency for both the IRS and the Taxpayer



## IRA Tax Provision Implementation Office

# Inflation Reduction Act Clean Energy Credit Updates

2023





## Disclaimer

- ❖ This deck provides an overview of certain Inflation Reduction Act tax provisions for general informational purposes only and is not itself tax guidance.
- ❖ The content in this presentation is based on proposed and



## IRA Tax Provisions

- ❖ The IRA includes a significant investment in clean energy and most of it is delivered via tax incentives, including over 20 tax provisions available for individuals, businesses, tax-exempt organizations, and government entities (tribal, state and local), and include novel features aimed at encouraging investment in new ways.
- ❖ The IRA also includes a few significant tax provisions that do not relate to clean energy (for example, a new corporate alternative minimum tax, an excise tax on repurchase of corporate stock, revisions to research credit, etc.).
- ❖ Also, while not part of IRA, the Creating Helpful Incentives to Produce Semiconductors and Science Act of 2022 (CHIPS Act), signed into law on August 9, 2022, contains one energy-related provision for the IRS to implement (section 48D — a credit to incentivize the manufacture of semiconductors and semiconductor manufacturing equipment in the US).

## Implementation of the IRA

- ❖ **Scope:** IRA created or modified more than 20 clean energy tax provisions.
- ❖ **Interagency collaboration:** Novel technical and legal questions will be addressed in collaboration with Treasury and other federal agencies including the Department of Commerce, Department of Energy (DOE), Department of Labor (DOL), Department of Transportation (DOT), Environmental Protection Agency (EPA), Health & Human Services (HHS), Housing & Urban Development (HUD), the Securities & Exchange Commission (SEC).
- ❖ **Priorities and timeframe:** Guidance is being released as soon as possible to provide clarity and certainty. The IRS has issued 33 pieces of guidance, launched several webpages, and issued numerous communications (e.g., press releases, e-posters, etc.)
- ❖ **Stakeholder feedback:** Engagement is welcome and encouraged through the traditional public comment opportunities on issuance of guidance (See regulations.gov).

## IRA Implementation — IRA TPIO

- ❖ To implement the IRA energy security and clean energy provisions, the IRS stood up a dedicated office, IRA Tax Provision Implementation Office (IRA TPIO), to devote the necessary resources and expertise.
- ❖ Using IRA funding, the IRS will administer these energy security and clean energy incentives by leveraging new technology to make the process for claiming credits as seamless as possible while addressing the risk of potential fraud.
- ❖ Implementing the tax provisions is a Service-wide effort involving all business operating divisions and many other federal government agencies and other IRS stakeholders.
  - ❖ We have entered partnerships with the DOE, acting as the IRS's service provider, to establish programs for competitive allocation of certain energy security and clean energy credits, including to spur energy security and clean energy investment in low-income communities and coal communities.
- ❖ All forms relating to energy security and clean energy incentives can be submitted via Modernized e-File or on paper.

# Clean Energy Credits Overview (1 of 2)

Objective	Provision			
Green				
Blue				
Red				





# Cross-Cutting Provisions & Bonuses

Tax Provision	Description
<b>Prevailing Wage and Apprenticeship (PWA) Requirements</b>	For a number of the tax credits created or modified by IRA, the base credit amount is increased by five times for projects that meet requirements for paying prevailing wages and using registered apprentices.
<b>Energy Communities Bonus</b>	Projects located in historical energy communities, including areas with closed coal mines or coal-fired power plants, are eligible for a 10 percent increase in the Production Tax Credit (§ 45, 45Y) and an up to 10 percentage point increase (if PWA requirements are met) in the Investment Tax Credit (§ 48, 48E). The bonus is also available to brownfield sites and to areas that have significant employment or local tax revenues from fossil fuels and higher than average unemployment.
<b>Low Income</b>	



# Credit Monetization Mechanisms (1 of 2)

Tax Provision	Description	Available to...	Available for...
<b>Elective Pay</b> (§ 6417)	Allows “applicable entities” to treat the amount of certain credits as a payment against tax on their tax returns and as a result receive refund payments for certain clean energy tax credits	Applicable entities are proposed to include: <ul style="list-style-type: none"> <li>• tax-exempt organizations,</li> <li>• states and political subdivisions</li> </ul>	

## Credit Monetization Mechanisms (2 of 2)

Tax Provision	Description	Available to...	Available for...
<b>Transfer</b> (§ 6418)	Allows “eligible taxpayers” to elect to transfer certain credits to unrelated taxpayers for cash rather than using the credits against their Federal income tax liabilities	Taxpayers that are not “applicable entities” for § 6417	11 clean energy tax credits, including the Production and Investment Tax Credits (§ 45, 45Y, 48, 48E), tax credits for manufacturing (§ 45X, 48C), clean hydrogen (§ 45V), carbon capture (§ 45Q), and alternative fuel vehicle refueling property (§ 30C)

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## Pre-File Processes

Several provisions will require a **pre-file registration or application process**:

- ❖ **Elective Payment Election**
- ❖ **Transfer Election**
- ❖ **Clean Vehicles**
  - Dealer Registration
  - Manufacturer Qualification
  - Manufacturer Reporting
  -



## Resources

### ❖ For more information on the Inflation Reduction Act's clean energy-related tax provisions see:

- [IRS.gov/CleanEnergy](https://www.irs.gov/CleanEnergy)
- [IRS.gov/ElectivePay](https://www.irs.gov/ElectivePay)
- [IRS.gov/Credits for New Clean Vehicles Purchased in 2023 or After](https://www.irs.gov/Credits%20for%20New%20Clean%20Vehicles%20Purchased%20in%202023%20or%20After)
- [IRS.gov/Credits and Deductions Under the Inflation Reduction Act of 2022](https://www.irs.gov/Credits%20and%20Deductions%20Under%20the%20Inflation%20Reduction%20Act%20of%202022)
- [IRS.gov/Notices for the Inflation Reduction Act of 2022](https://www.irs.gov/Notices%20for%20the%20Inflation%20Reduction%20Act%20of%202022)
- [IRS.gov/HomeEnergy](https://www.irs.gov/HomeEnergy)
- [CleanEnergy.gov](https://www.CleanEnergy.gov)
- [fueleconomy.gov](https://www.fueleconomy.gov)

### ❖ Public Comments

- Please visit [regulations.gov](https://www.regulations.gov) to file and view public comments.



IRS IRA Tax Provision Implementation  
Office

## Appendix



# Energy Generation Credits

Tax Provision	IRC Section	Description
<b>Production Tax Credit for Electricity from Renewables</b>	45, pre-2025	<p><b>For production of electricity from eligible renewable sources</b>, including wind, biomass, geothermal, solar, landfill and trash, hydropower, marine and hydrokinetic energy.</p> <p><b>Credit Amount (for 2022):</b> 0.55 cents/kilowatt hour (kWh) (1/2 rate for electricity produced from open loop biomass, landfill gas, and trash); 2.75 cents/kWh if Prevailing Wage and Apprenticeship (PWA) requirements are met<sup>1,2,3,7</sup></p>
<b>Clean Electricity Production Tax Credit</b>	45Y, 2025 onwards	<p><b>Technology-neutral tax credit for production of clean electricity.</b> Replaces § 45 for facilities that begin</p>



# Clean Vehicle Credits

Tax Provision	IRC Section	Description
<b>Credit for New Clean Vehicles</b>	30D	<p><b>For purchasers of new clean vehicles</b> that meet certain critical mineral and battery component requirements, as well as buyer income and manufacturer's suggested retail price limits. Learn more and see eligible vehicles at FuelEconomy.gov.</p> <p><b>Credit Amount:</b> Up to \$7,500 for qualifying vehicles<sup>9</sup></p>
<b>Credit for Previously-Owned Clean Vehicles</b>	25E	<p><b>For purchasers of certain previously-owned clean vehicles</b> sold by a dealer for less than \$25,000. Subject to buyer income limits. Learn more and see eligible vehicles at FuelEconomy.gov.</p> <p><b>Credit Amount:</b> The lesser of \$4,000 or 30% of sale price<sup>9</sup></p>
<b>Credit for Qualified Commercial Clean Vehicles</b>	45W	<p><b>For purchasers of commercial clean vehicles.</b> Qualifying vehicles may include passenger vehicles, buses,</p>





# Manufacturing Credits

Tax Provision	IRC Section	Description



# Fuel & Carbon Capture Credits

Tax Provision	IRC Section	Description
<b>Credit For Production Of Clean Hydrogen</b>	45V	<p><b>Credit for qualified clean hydrogen production</b> at a U.S.-based qualified clean hydrogen production facility.</p> <p><b>Credit Amount:</b> \$0.60/kg multiplied by the applicable percentage (20% to 100%, depending on lifecycle greenhouse gas emissions), amount increases by five times if PWA is met<sup>1,7</sup></p>
<b>Extension of Pre-IRA Fuel Incentives</b>	40/40A	<p><b>For Biodiesel, Renewable Diesel, Alternative Fuels, Second-Generation Biofuel.</b></p> <p><b>Credit Amount:</b> \$1.00-\$1.10 per gallon nonrefundable income tax credit (biodiesel, renewable diesel, and second-generation biofuel), and \$.50 or \$1/gallon excise tax credit for alternative fuel, biodiesel, and renewable diesel</p>
<b>Sustainable Aviation Fuel Credit</b>	40B	<p><b>For the sale or use of certain fuel mixtures that contain sustainable aviation fuel (SAF)</b> that achieve a lifecycle greenhouse gas emissions reduction of at least 50% as compared with petroleum-based jet fuel. The mixture must be produced and placed in aircraft in the U.S. prior to 2025.</p> <p><b>Credit Amount:</b> \$1.25/gallon of SAF (plus up to \$0.50/gallon bonus depending on emissions)</p>
<b>Clean Fuel Production Credit</b>	45Z	<p><b>Technology neutral tax credit for domestic production of clean transportation fuels</b>, including sustainable aviation fuels, beginning in 2025.</p> <p><b>Credit Amount:</b> \$0.20/gallon (\$0.35/gal for aviation fuel) multiplied by CO2 "emissions factor"; \$1.00/gallon (\$1.75/gal for aviation fuel) multiplied by CO2 "emissions factor" if PWA is met<sup>1,7</sup></p>
<b>Credit for Carbon Oxide Sequestration</b>	45Q	<p><b>Credit for carbon dioxide sequestration</b> coupled with permitted end uses (e.g., sequestration, use as a tertiary injectant, or utilization) in the United States.</p> <p><b>Credit Amount:</b> \$12-36 per metric ton of qualified carbon oxide captured and sequestered, used as a tertiary injectant, or utilized, depending on the specified end-use; \$60-\$180 per metric ton if PWA requirements met<sup>1,7</sup></p>



# Energy Efficiency Credits

Tax Provision	IRC Section	Description
Energy Efficient Home Improvement Credit	25C	For energy efficiency improvements of residential homes by homeowners (and in some cases renters). Learn more at <a href="https://www.irs.gov/HomeEnergy">IRS.gov/HomeEnergy</a> . <b>Credit Amount:</b> Varies by type of improvement; up to \$1,200 annually for covered home energy efficiency



# Footnotes

The information in this document may be subject to change as guidance is issued or finalized. For all IRA clean energy tax credits, please see [IRS.gov/CleanEnergy](https://www.irs.gov/CleanEnergy) for further details and eligibility requirements.

<sup>1</sup> Credit is increased by 5 times for projects that pay prevailing wages and use registered apprentices. Apprenticeship requirements do not apply for §§ 45L and 45U. Prevailing wage and apprenticeship