

# **Inflation Reduction Act Tax Opportunities for Tribes**

Stanford Law School  
September 25, 2023

# Lawyers for a Sustainable Economy

**“We will continue to harness the power of the public and private sector together, moving forward to build a brighter, cleaner, and more sustainable future.”**

Xavier Becerra, Former California Attorney General

17

Major, private U.S. law firms

120

Startups and nonprofits assisted

2

Corporate and non-profit partners

Firms offer pro bono legal assistance to eligible Tribal entities, non-profits, and early-stage entrepreneurs taking on key sustainability challenges.



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# IRA: Climate & Energy

- The most significant climate legislation in U.S. history
- Provides incentives in the form of direct spending and tax benefits
- Provides a significant runway for investments
- Helps ensure disadvantaged communities are not left behind
- Has strong labor components, ensuring job creation
- Focused on domestic supply chain and onshoring

# Webinar Series

- August 3 – Overview of the IRA
- August 28 – Deep Dive, Direct Pay for Tribes
- September 25 – Deep Dive, ITC and PTC

# Agenda

- IRA Tax Benefits
  - Overview of Tax Provisions
  - Overview of Direct Pay
- Section 48 – Investment Tax Credit
- Section 45 – Production Tax Credit
- Questions and Answers

# Tax Credits

## **Renewable/Clean Energy:**

- Sec. 45 Production tax credits wind, solar, geothermal, hydropower, etc.
- Sec. 48 Investment tax credits for solar, storage, biogas, fuel cells, etc.
- Sec. 45Y and 48E Technology neutral clean electricity production and investment credits.

## **Manufacturing:**

- Sec. 48C Credit for manufacturing energy property including EV components, fuel cells, electric grids, etc.
- Sec. 45X Manufacturing credit for solar and wind components, batteries and critical minerals.

## **Carbon Capture/Hydrogen Production:**

- Sec. 45Q Credit for carbon oxide sequestration (increased rates and lower thresholds).
- Sec. 45V Clean hydrogen production credit.

## **Alternative fuels:**

- Sec. 40 Second-generation biofuel credit
- Sec. 40A and 6426 Biodiesel and renewable diesel; biodiesel mixture credit; alternative fuel credit.
- Sec. 40B Sustainable aviation fuel.
- Sec. 45Z Clean fuel production credit.

## **Energy Efficiency:**

- Sec. 25C & 25D Individual credit for energy efficient homes.
- Sec. 45L New energy efficient home credit.
- Sec. 179D Energy efficient commercial buildings deduction.

## **Transportation:**

- Sec. 30D Electric vehicles.
- Sec. 30C Charging and alternative fuel refueling stations.
- Sec. 25E Used electric vehicles.
- Sec. 45W Qualified commercial clean vehicles.

# Direct Pay of Tax Credits

- Direct Pay = Elective Pay
- Mechanism by which entities not subject to federal income taxation can benefit from tax credits.
- Only available for certain tax-exempt entities, considered “applicable entities,” which includes Indian tribal governments
- Direct payment = asking IRS for \$



# Who can claim direct payment?

- Indian tribal government
- Subdivision of an Indian tribal government
- Agency or instrumentality of Indian tribal government or subdivision thereof
- Alaska Native Corporations

# Investment Tax Credit – Section 48

- Tax credit for placing in service projects that produce renewable energy.
- Credit claimed year the property is placed in service.

Qualified Biogas Property	Energy Storage	Solar	Wind	Geothermal
Open-Loop Biomass	Municipal Solid Waste	Qualified Hydropower	Marine & Hydrokinetic	
Qualified Fuel Cell	Combined Heat and Power	Microturbines	Microgrid Controllers	
Electrochromatic Glass	Waste Energy Recovery Property	Certain Interconnection Property	Small Irrigation Power	

- Available for construction if begins before 12/31/2025 – after which tax credit is technology neutral.

# ITC Value

- 6% of the basis of the property.
- If certain **labor conditions** are met, the credit value is multiplied five (6% → 30%).
- Additional bonus credit amounts are available based on **domestic content**, placement in an **energy community**, or with an allocation for placement in connection **with a low-income community or on Indian lands**.

# ITC Example

A Tribe purchases and places into service solar panels to put on the roof of its administrative building thereby generating electricity for the facility. The solar panels cost \$500,000. Under the IRA, the tax credit eligible for direct payment is generally 6% of this cost, or \$30,000. The value of the credit is increased if additional conditions are met - if certain **labor conditions** are met or if the output is less than 1 MW, the credit is increased by five-fold to \$150,000.

Additional bonus amounts of 10% each are also available increasing the value if either certain **domestic content** requirements are met (e.g. the products were produced in the United States) and/or the solar panels are placed in specially designated communities (e.g. **energy communities** or receive an allocation under the **low-income community bonus** program). Accordingly, under the right circumstances, the credit can be as much as 70% of the cost of the energy property.

# Production Tax Credit – Section 45

- Tax credit for the production and sale of renewable power to an unrelated party.
- Includes some, not all of same property covered under ITC.
- Credit amount based on generation
  - 0.3 cents/kwh as base credit
  - 1.5 cents/kwh if certain **labor conditions** are met.
    - Exception for projects less than 1MW
    - Amounts are indexed for inflation – currently 2.75 cents/kwh
- Tax credit can be claimed for 10 years after placed in service.
- Additional bonus credit amounts are available based on **domestic content**, placement in an **energy community**, or with an allocation for placement in connection with a **low-income community**.
- Available if construction begins before 01/01/25, after which tax credit is technology neutral and does not need to be sold to an unrelated party.

# Technology Neutral Credits

Section 45Y Clean PTC	Section 48E Clean ITC
<p>Applies to facilities placed in service after December 31, 2024 with zero GHG emissions</p> <p>PTC equal to 0.3 cents (or 1.5 cents) (indexed for inflation) per KWh of electricity produced in US or US possession by taxpayer at a qualified facility and either (1) sold to an unrelated person, or (2) if equipped with a metering device owned and operated by an unrelated person, sold, consumed or stored by taxpayer</p>	<p>Applies to property placed in service after December 31, 2024, with zero GHG emissions and applies to interconnection costs and energy storage technology</p> <p>ITC equal to 6% (or 30%) of qualified investment in energy property for facilities (1) used for generation of electricity; (2) anticipated GHG rate not greater than zero; (3) tangible personal property or other tangible property (not including building or structural components) used as an integral part of the qualified facility; and (4) depreciable or amortizable</p>

- If **PWA satisfied**, the credit value is multiplied by five.
- **Bonus Credit:** Additional bonus credit amounts are available based on **domestic content**, placement in an **energy community**, or with an allocation for placement in connection **with a low-income community**.
- Credit available in full until at least 2033; possible ramp down thereafter unless target not achieved.
- Ability to receive credit for capacity upgrades or expansions to facilities previously placed in service

<b>Base Rate</b>		6%	0.3¢/kWh (indexed for inflation)
<b>Labor Conditions</b>	For a number of the IRA tax credits, including the ITC and PTC, the credit amount is increased by five times for projects that meet requirements for paying prevailing wages and using registered apprentices.	Multiplier x 5	
<b>Domestic Content Bonus</b>	For a few of the IRA credits, including the ITC and PTC, meeting domestic content requirements entitles a Tribe to an additional 10%. Failure to meet domestic content requirements can also result in a reduction of the direct payment of the credit.	Extra 10%	
<b>Energy Community Bonus</b>	For a few of the IRA credits, including the ITC and PTC, projects located in historical energy communities, including areas with closed coal mines or coal-fired power plants, are eligible for a 10%. 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.	Extra 10%	
<b>Low Income Communities Credit Program Bonus</b>	For one of the IRA credits – the ITC -- projects located in low-income communities, Indian lands, or federal housing projects, or serving low-income households can receive an increase in 10% or 20%. Tribes must apply and receive a capacity allocation.	Extra 10 or 20%	

# IRA Leverage Opportunities

- If structured properly, funding from the Inflation Reduction Act, American Rescue Plan Act and other non-tribal sources could be used for qualifying projects that generate tax credits for tribal governments.
- With many tribal governments already committed to transitioning to clean energy sources or making other climate investments, the Inflation Reduction Act presents a once-in-a-generation opportunity to make these energy-related investments in a manner that actually ***nets the Tribe money.***



# Questions and Answers

# Webinar Series

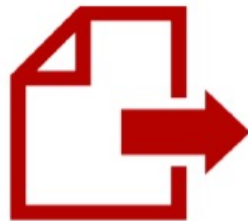
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# How to Apply for Pro Bono Help



## Step 1:

Fill out the form;



## Step 2:

Discuss legal request with Stanford Law School;



## Step 3:

Stanford Law School provides your project description and request to the firms in the Initiative;



## Step 4:

Stanford Law School will help to connect you with a firm.

For the application form and more on eligibility criteria, visit:  
**[lawyersforsustainability.com](http://lawyersforsustainability.com)**

# Learn More

Webinar content provided by: **Holland & Knight**

## Contact the Initiative

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