

Inflation Reduction Act Tax Opportunities for Tribes

Stanford Law School
August 3, 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.

Speakers



Molly Loughney Melius

Director, Stanford Lawyers for a Sustainable Economy Initiative



PaaWee Rivera

Senior Advisor and Tribal Affairs Director,
White House Office of Intergovernmental
Affairs

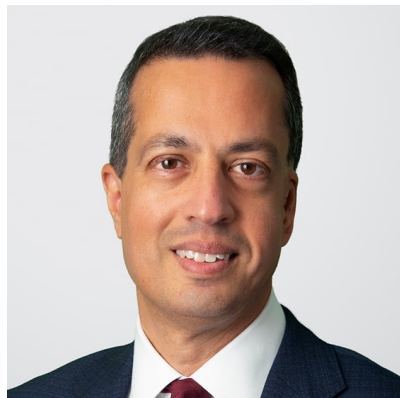
Holland & Knight Team



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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

- Today's webinar is Overview of the IRA

Future Webinars

- August 28 – Deep Dive, Direct Pay for Tribes
- September 25 – Deep Dive, ITC and PTC

Agenda

- IRA Tax Benefits
 - Overview of Tax Provisions
 - Introduction to Direct Pay
- Questions and Answers

Tax Incentives

Tax Credits

Energy Manufacturing

- Advanced Energy Project Credit - Section 48C
- *NEW* Advanced Manufacturing Production Credit – Section 45X

Clean Vehicles

- *NEW* Qualified Commercial Vehicles - Section 45W
- Alternative Fuel Vehicle Refueling Property (charging stations) - Section 30C

Carbon Sequestration

- Credit for Carbon Oxide Sequestration - Section 45Q

Tax Credits

Energy Generation

- Investment Tax Credit - Section 48 ↓
 - *NEW* Clean Electricity Investment Credit – Section 48E
- Production Tax Credit – Section 45 ↓
 - *NEW* Clean Electricity Production Credit – Section 45Y

Clean Fuels

- Extension of existing credits
- *NEW Clean Hydrogen* – Section 45V
- *NEW Clean Fuel Production Credit* – Section 45Z

Direct Pay of Tax Credits

Credits can be directly paid to Native American tribes

- Only available for applicable entities, which includes Native American tribes.
- Can elect for direct payment of most of IRA energy credits.
- Direct payment = asking IRS for \$

Investment Tax Credit Example

- Tax credit for placing in service projects that produce renewable energy (e.g., solar, wind, electrochromic glass), certain interconnection property, qualified biogas property, or energy storage projects.
- 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**.
- Tax credit claimed in the year the project is placed in service.

Investment Tax Credit Example (con'td)

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.

Base Rate

5%

Labor Conditions

For a number of the IRA tax credits, the credit amount is increased by five times for projects that meet requirements for paying prevailing wages and using registered apprentices.

30%

Domestic Content Bonus

For a few of the IRA credits, meeting domestic content requirements entitles a Tribe to an additional 10%. For projects or facilities beginning construction starting in 2024, failure to meet domestic content requirements can also result in a reduction of the credit.

Extra 10%

Energy Community Bonus

For a few of the IRA credits, projects located in historical energy communities, including areas with closed coal mines or coal-fired power plants, are eligible for a 10 percent increase. 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%

Low Income Communities Credit Program Bonus

For one of the IRA credits, 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%

Other Tax Benefits - Section 179D - Energy Efficient Commercial Building Deduction

Tax Deduction = Cost of qualified energy efficient property x square feet of building

- Tax deduction for installing qualifying energy efficient property that reduce a building's annual energy costs.
- Such property includes improvements to a building's interior lighting systems, heating, cooling, ventilation and hot water systems, or improvements to the building envelope.
- The value of the deduction is variable based on the improvements to efficiency, with a maximum allowable benefit - assuming certain **labor conditions** are met - of \$5.00 per square foot of the building area.
- The value of the deduction is also capped at the cost of the property and overall the property must improve the energy efficiency of a building by 25%.

Tribes can now benefit!

Section 179D – Tax Deduction Example

- A Tribe expends \$100,000 for energy efficient building property, e.g. a new cooling system for an existing building meeting **certain labor conditions**. The building is 200,000 square feet. Based on the cost expended, a \$100,000 tax deduction is available.
 - (Note: The deduction is based and limited on the costs expended - under these facts the maximum deduction amount, \$1,000,000 (200,000 square feet x \$5.00), is unavailable because it is limited by cost.)
- Although the Tribe would historically not benefit from the available deduction, as a result of the IRA the Tribe can allocate the deduction to the architect. At a 35 percent federal income tax rate, the architect's tax bill is reduced by \$35,000.
- By leveraging the ability to allocate the Section 179D deduction to the architect, the Tribe has lowered its costs for making such improvements.

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***.
- Example: A Tribal government is using Fiscal Recovery Funds to construct a new administration building. If that building is qualified energy efficient property, the tribe's costs for the building would be reduced due to the Section 179D deduction – freeing up funding for other projects.

Electrification of fleets

■ EV Vehicles

- Tax credit for the purchase of qualified commercial clean vehicle – vehicle must be propelled by a significant extent with electrify from a battery.
- Max credit of \$7,500 for vehicles with a weight rating less than 14,000 lbs; \$40,000 for all other vehicles.
- In addition to vehicles, the credit is available for clean mobile machinery.

■ EV Charging

- Credit for cost of alternative fuel vehicle refueling property placed in service.
- Must be located in eligible census tract, i.e. non-urban or lower income.*
- Credit is 6% up to 30% if **labor conditions** are met.
- Maximum credit per single unit is \$100,000.

* This could be a significant limitation.

Questions and Answers

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Future Webinars

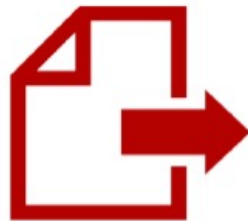
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How to Apply for Pro Bono Help



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

Learn More

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

Contact the Initiative

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