

Inflation Reduction Act Early-Stage Entrepreneur Opportunities

Stanford Law School
September 27, 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



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IRA Overview

- The IRA is the United States' most significant step in advancing clean energy technologies, climate solutions, and a sustainable economy.
- In particular, one crucial advancement is the creation of a stable clean energy tax policy.
 - The technology-neutral production tax credit (PTC) and investment tax credit (ITC) do not expire at the end of the 10-year budget reconciliation window.
 - Rather, the ITC and PTC expire when the power sector has reduced emissions by 75% or more or in 2032, whichever is later.
- This stability will provide for sustained, long-term investments and help propel billions of dollars into sustainable development.

Overview of Direct Pay/Transferability

- Both the Direct Pay and Transferability regimes apply to the following 11 tax credits, categorized by technology:

Topic	Tax Code Section: Tax Credit
Renewable Energy Generation	45: Production Tax Credit (PTC) 45Y: Technology-neutral PTC 48: Investment Tax Credit (ITC) 48E: Technology-neutral ITC 45U: Nuclear PTC
CCS	45Q: CCS Tax Credit
Clean Fuels	45V: Hydrogen PTC 45Z: Clean Fuels PTC
Manufacturing	45X: Advanced Manufacturing PTC 48C: Advanced Energy Project Tax Credit
Vehicles	30C: Alternative Fuel Vehicle Refueling Tax Credit

Transferability

- Means that tax credits can be bought and sold. The 11 prior tax credits can be “transferred” (i.e., sold or assigned) once and may not be sold again by the buyer who acquires them. Depreciation cannot be transferred.

Direct Pay

- Means that an “applicable entity” can elect to have the value of the “applicable tax credit” paid to them directly by the IRS, even if the taxpayer electing direct pay lacks commensurate (or any) federal tax liability.
- However, for-profit companies can only use direct pay for 3 tax credits for five years:
 1. 45Q (carbon sequestration);
 2. 45V (hydrogen production); and
 3. 45X (advanced manufacturing production).

Key Takeaways of Proposed Rules 1/3

Sellers

- The proceeds of a tax credit purchase and sale will generally not be treated as income for federal tax purposes.
- Sellers will be required to perform a number of tasks prior to selling credits. Failure to execute precisely could jeopardize the transfer.
- Due to timing mismatches of when credit sales may take place, sellers may consider investigating short term financial products to bridge any associated gaps.

Buyers

- The margin that buyers take in a tax credit sale (e.g., buying a tax credit for 90 cents on the dollar) is generally not treated as income for federal tax purposes.
- Recapture risk lies with the buyer. Additional penalties may apply as well.
- Bonus credits may not be sold separately from the underlying credits.

Key Takeaways of Proposed Rules 2/3

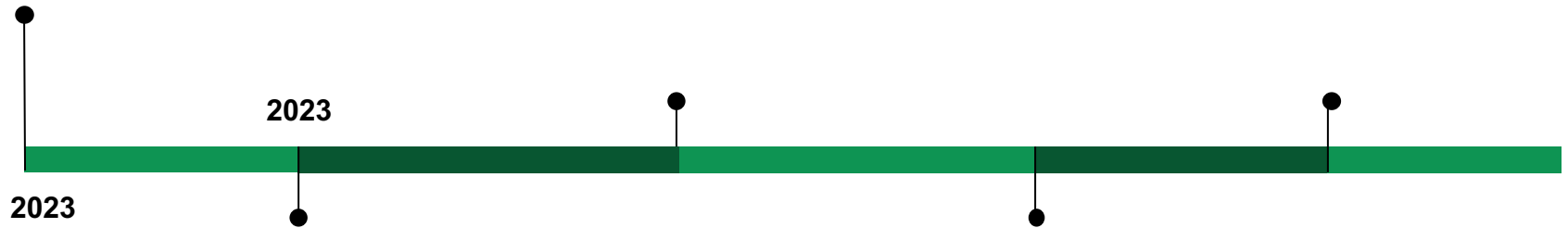
- *Transferee or Purchaser of Tax Credits has:*
 - 1) Recapture risk imposed on the transferee, instead of the transferor.
 - This generally means that the transferee will seek to be “*indemnified*” by the transferor for any recapture liability. This will favor a transferor with a strong balance sheet, guarantee, and/or insurance.
 - 2) Excessive Credit Risk – to avoid a 20% penalty on an excessive credit transfer, transferees will need to conduct diligence to confirm the availability and amount of an eligible credit, obtain relevant third-party reports, negotiate robust “*representations,*” and review the transferor’s financial statements.

Key Takeaways of Proposed Rules 3/3

- *Application of Passive Loss Rules Clarified*
 - Transferees are fully subject to Code Section 469, which effectively means that an individual, a closely held C corp., or a personal service corporation may be unable to benefit from the purchase of eligible credits.
- *Open Question*
 - The ability of transferees to claim losses with respect to purchased credits (e.g., if amounts paid exceed the credits ultimately acquired).

Sample Direct Pay Timeline

**Design Project/
Obtain Financing**



Links to Further Resources

General IRA Resources

- [Wilson Sonsini's Inflation Reduction Act Resource Page](#) (contains links to other alerts and publications)
- [Wilson Sonsini's IRA Implementation Tracker](#)
- [Internal Revenue Service IRA Website](#)
- [Wilson Sonsini's Clean Energy and Climate Solutions Federal Funding Database](#)
- [White House IRA Guidebook](#)

Direct Pay Resources

- [Wilson Sonsini White Paper | Opportunities for Financing Renewable Energy Projects Using the Direct Pay and Transferability Regimes under the Inflation Reduction Act of 2022](#)
- [Lawyers for Good Government, Wilson Sonsini, and Linklaters Direct Pay Legal Primer Webinar](#)

Tax Credit Marketplaces

- Crux Climate: <https://www.cruxclimate.com/>
- Ever.green: <https://www.ever.green/>
- Evergrow: <https://www.evergrow.com/>
- Greenprint Capital: <https://greenprintcapital.com/>
- Reunion: <https://www.reunioninfra.com/>

Answers to Audience Questions

Various questions asked on the webinar could not be answered due to time constraints. Below are responses to the remaining questions (questions have been rephrased for brevity and clarity):

Q1: Can a manufacturer of wafers take advantage of direct pay?

A1: Yes. Solar wafers are an eligible technology under the Code Section 45X tax credit.

Q2: Various questions were submitted related to applicability of direct pay to tribal entities.

A2: Please see LSE's tribal webinar series for more: <https://law.stanford.edu/event/stanford-lawyers-for-a-sustainable-economy-initiative-inflation-reduction-act-webinar-series/>

Q3: Is 45X eligible for transferability?

A3: Yes.

Q4: Is direct pay available to large NGOs like Stanford University or a non-profit health system?

A4: Yes. Generally speaking, tax-exempt entities and those that are considered "instrumentalities of the state" such as a public university are eligible.

Q5: Many questions were submitted on whether pre-revenue startups can utilize direct pay.

A5: Yes! For-profit entities may utilize direct pay for three credits (45X, 45V, 45Q) for a five-year period. It doesn't matter what your federal tax liability is – direct pay allows you to claim the amount of the credit on your annual returns and get a check from the IRS in the value of the credit, regardless of your tax liability.

Q6: How do we get connected with buyers of tax credits?

A6: Please see previous slide for some links to current companies working to stand up the tax credit transferability marketplace. This is just an example of some startups in this space.

Questions and Answers

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:



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