IRS Releases 2024 Procedural Guidance for Solar and Wind Projects in Low Income Communities

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Last week the Department of Treasury and Internal Revenue Services (IRS) issued procedural guidance for the second year of the Low-Income Communities Bonus Credit Program under Section 48(e) of the Internal Revenue Code (Code). The program created by the Inflation Reduction Act provides an increase in the investment tax credit available for qualified solar or wind facilities that have a maximum net output of less than 5 megawatts of alternating current and produce clean energy in underserved communities.

Section 48(e) of the Code provides a 10-percentage point increase in the investment tax credit for qualified solar and wind facilities that are installed in low-income communities or on Native American land, and a 20-percentage point credit increase for qualified solar and wind facilities that are part of a qualified low-income residential building or a qualified low-income economic benefit project. To receive an increased tax credit amount, a taxpayer must apply for and receive an allocation of environmental justice solar and wind capacity limitation (Capacity Limitation). Each year 1.8 gigawatts of direct current capacity are available for allocation along with any unallocated Capacity Limitation carried over from a previous program year. Taxpayers that receive an allocation and properly place the facility in service may claim the increased investment tax credit in the year that the facility was placed in service.

The Capacity Limitation available for allocation is divided among four facility categories which include qualified solar and wind facilities located in low-income communities, on Native American land, in a qualified low-income residential building project, and in a qualified low-income economic benefit project. For the 2024 program year, the IRS will allocate the Capacity Limitation to each of the four categories in the following amounts: up to 600 megawatts of the Capacity Limitation to qualified solar and wind facilities located in low-income communities, 200 megawatts to facilities located on Native American lands, 200 megawatts to facilities that are part of qualified low-income residential building projects; and 800 megawatts to facilities that are part of a qualified low-income economic benefit project where at least 50 percent of the financial benefits of the electricity produced go to households with income below 200 percent of the poverty line or below 80 percent of the area median gross income.

For the 2024 program year, at least 50 percent of the Capacity Limitation for each of the four categories will be reserved for facilities meeting the ownership criteria and/or the geography criteria. A facility meets the ownership criteria if it is owned by one of the following types of entities: a Tribal enterprise, an Alaska native corporation, a renewable energy cooperative, a qualified renewable energy company, a qualified tax-exempt entity, or a tax-equity partnership with a qualifying partner. A tax equity partnership will be deemed to meet the ownership criteria if it has a partner that meets the ownership criteria and such partner has at least a 1 percent interest in partnership items (such as income, gain, loss, deduction, and credit) and is a managing member or general partner of the partnership. A facility meets the geographic criteria by being in a persistent poverty county or a census tract that is designated as disadvantaged in the Climate and Economic Justice Screening Tool of the Department of Energy (Tool can be found here). A persistent poverty county is defined as any county where 20 percent or more of residents have experienced high rates of poverty over the past 30 years as determined by measures adopted by the U.S. Department of Agriculture.

Applications are submitted through the Department of Energy's online program portal. Similar to the IRS pre-filing registration required for energy tax credits under the Inflation Reduction Act, applicants wishing to receive an allocation of Capacity Limitation for a qualified solar or wind facility must register in the Department of Energy's online portal before beginning the application process.

The program will be open for applications for the 2024 program year in two phases starting in the second quarter of 2024 with the IRS publicly announcing the opening and closing dates. The first phase of the application process will be a 30-day period beginning on the opening date of the program year. All applications submitted during this first phase will be treated as being received on the same date and at the same time. The Department of Energy will review the initial applications and make recommendations to the IRS, which will allocate Capacity Limitation to the four categories of qualified solar and wind facilities.

After the first phase of the application process, the Department of Energy will continue to accept applications for a second phase until the closing date of the 2024 program application period. If there is Capacity Limitation remaining, the Department of Energy will review applications submitted in the second phase and make recommendations to the IRS for an allocation of Capacity Limitation in the order in which the applications are received by the Department of Energy by category. The IRS will award Capacity Limitation allocations in the order that it receives recommendations from the Department of Energy. If any of the four categories are oversubscribed, the Department of Energy will conduct a lottery to determine which facilities should receive a recommendation for funding. Applications purporting to meet the ownership criteria and/or geography criteria described above will be given priority for an allocation in the lottery process over applications not purporting to meet such criteria.

If a submitted application is identified as defective by a Department of Energy reviewer, the applicant will have 12 business days to respond and provide any requested information or documentation, or the application will be marked as withdrawn. The applicant can then create and submit a new application if the facility remains eligible and the program is still accepting applications for the 2024 program year. Applicants receiving an allocation of Capacity Limitation will be notified by the IRS through the online portal.

During the 2023 program year application process, the Department of Energy received more than 46,000 applications within the first 30 days of the application process period[1]. Therefore, because of the phased approach to the application process, taxpayers wishing to submit an application for an allocation of the 2024 Capacity Limitation should be prepared to do so in the first phase of the application process.

For information about guidance on this complex program, contact Attorney Ashley Edwards or Attorney John Bryant.

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[1] U.S. Department of Treasury. (March 29, 2024). *U.S. Department of the Treasury, IRS Release 2024 Guidance for Second Year of Program to Spur Clean Energy Investments in Underserved Communities, As Part of Investing In America Agenda* [Press Release].