



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Transferability of Clean Energy Tax Credits/Inflation Reduction Act: American Clean Power Association Comments Addressing Proposed U.S. Department of Treasury Regulations

10/02/2023

The Inflation Reduction Act (“IRA”) included provisions addressing the transferability of clean energy tax credits.

Prior to the enactment of these IRA provisions, it was not possible to monetize federal tax credits generated by renewable energy projects outside of tax equity financing structures.

The objective of their inclusion included the reduction in transaction costs of monetizing these tax credits in the tax equity market. This would allow additional investors to enter the market which would presumably make it broader and more diverse, enabling projects to be financed more quickly and affordably.

The United States Department of Treasury and Internal Revenue Service (collectively, “IRS”) proposed rules addressing these IRA components. See Section 48 Transfer of Certain Credits: 88 Fed. Reg. 40496 (“Proposed Rule”).

The American Clean Power Association (“ACPA”) submitted April 14th comments addressing the Proposed Rule.

The ACPA describes itself as the leading voice of today’s multi-tech clean energy industry, representing 750 utility-scale solar, wind, energy storage, green hydrogen and transmission companies. Its commitment is stated to include meeting America’s national security, economic and climate goals with fast-growing, low-cost, and reliable domestic power.

The primary points raised in ACPA’s comments on the Proposed Rule include:

- Confirm that transferred credits can be carried forward.
- Clarify the treatment of transferred credits for estimated tax purposes.
- Allow grouping of related credit properties and facilities.
- Allow “bonus” credits to be transferred separately.
- Provide more flexibility to the cash payment rule to allow pre-sales of credits.
- Proposed modifications to the registration and information requirements.

- Expressing concern that the Proposed Rule requires substantial registration, documentation, and reporting requirements to initiate and complete tax credit transfers under Section 6418.
- Arguing the opportunity for fraud is not apparent in the case of transferability.
- It is unclear that the registration and documentation requirements address fraud concern.
- Can the federal government process required information in a timely fashion?
- Provide ability to cure registration and election effects.
- Provide additional exceptions to assessing and recapture liability on the transferee when recapture is the result of a lender foreclosure or sale of a business.
- Lender foreclosure exception.
- Sale of business exception.
- Prohibition on double recapture.
- Allow transferability in passthrough leases.

A copy of the ACPA letter can be found [here](#).