



Local Government Tailored Incentives Available Under the IRA

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Energy Subsidies for Government

- The conundrum: How do you take advantage of tax credits if you're an entity that doesn't pay taxes?
 - Don't bother
 - Sometimes complex Power Purchase Agreement with a private partner who can utilize the tax credits and pass back some savings
- Result: limited willingness for government to invest in clean or renewable energies.
- Now: Numerous opportunities for direct pay from the IRS in exchange for clean energy efforts.

Opportunities

- Reduce energy load of government-owned facilities
 - Use solar, wind, or other renewables to offset energy costs of highest-users
- Upgrade or enhance existing energy-related technology within government facilities.
- Transition government-owned fleets (police, garbage, etc.)
- Install alternative fuel facilities (charging stations) and utilize alternative fuels (biodiesels and the like)
- Airport- and Port-specific incentives available

- What makes sense will be very project specific.
 - Is direct pay even an option or do we need to go complicated again?
 - Production credits pay over time. Investment credits pay up front.
 - Base credits are good. Bonus credits might be better.
 - Tax exempt financing is great. Might want to use taxable financing.
 - Is the power produced, fuel consumed, or energy-efficient building improvement made being used to further the government's tax-exempt purpose?
- The best deals expire if construction hasn't started by December 31, 2024.
 - Some already under construction might be eligible.

Prevailing Wage and Apprenticeship Requirements

- Prevailing Wage Requirements:
 - Must be in compliance with the terms of the Davis-Bacon Act
 - Applies to laborers and mechanics who work on the project, not clerical staff
 - Required during initial construction of project **PLUS** repairs and alterations during the credit period
- Apprenticeship Requirements:
 - Must Be in Compliance with:
 - Required Percentage of Labor Hours (12.5% in 2023; and 15% onward),
 - Ratio Requirements (as set by Department of Labor or a state agency), and
 - Participation Requirements (at least 1 apprentice for each subcontractor with 4 employees or more)

PW&AR = Prevailing Wage and Apprenticeship Requirements

**RECORD KEEPING IS EXTREMELY IMPORTANT TO ENSURE RECEIPT OF THE
MAXIMUM AMOUNT OF CREDIT ELIGIBLE FOR A PROJECT**

Investment Tax Credit (ITC)

- Based on the upfront costs of a project
 - Reimbursable or Transferable
- Base Rate – 6% of costs; 5x increase to 30% if PW&AR are met
 - Additional incentives can increase amount up to 70% of a project's costs
- Solar projects, small wind projects, microgrid controllers, combined heat and power facilities, certain biogas property, and electrochromic glass (smart glass)

Production Tax Credit (PTC)

- 10-year credit based on the amount of energy produced each year
 - Reimbursable or Transferable
- Base Rate: .005/kWh; increased 5x to .026/kWh if PW&AR are met
 - Incentives are available to increase credit amount by up to 20%
- Applies to facilities producing energy by means of solar, wind, qualified hydropower, and geothermal systems

Both the ITC and the PTC are available for projects that begin construction by December 31, 2024

Domestic Content (10%)

- All iron and steel used for project
- Percentage of costs of manufactured materials for projects
 - 2022-2024 = 40%;
 - 2025 = 45%;
 - 2026 = 50%;
 - 2027 = 55%
 - Exceptions available

Low-Income Community (10-20%)

- 1.8 GW cap/year
 - 4 categories of projects
- Solar and Wind
 - Max output 5 MW

Energy Community (10%)

- A brownfield site
- area affected by unemployment greater than the national average and has had significant employment related to coal, oil, or natural gas
- (i) a census tract containing a coal mine that has closed since December 31, 1999, (ii) a census tract containing a coal-fired electric generating unit that was retired after December 31, 2009, or (iii) a census tract that is adjacent to a tract described in (i) or (ii)

Projects Funded with Tax-Exempt Bonds

Example: \$100,000 Solar Farm seeking an ITC

- **No Tax-Exempt Funding Used:**
 - Does not meet PW&AR: \$6,000
 - Meets PW&AR: \$30,000
- **No Tax-Exempt Funding Used, meets energy community (10%) and domestic content bonuses (10%):**
 - Does not meet PW&AR: \$10,000
 - Meets PW&AR: \$50,000
 - If funded by tax-exempt bonds:
 - Does not meet PW&AR: \$8,500
 - Meets PW&AR: \$42,500
- **Project Fully-Financed By Tax-Exempt Bonds**
 - Maximum 15% Deduction to Amount of Eligible Credit
 - Does not meet PW&AR: \$5,100
 - Meets PW&AR: \$25,500
- **Project Partially Financed By Tax-exempt Bonds**
 - 10% deductions due to proportion of project financed by tax-exempt bonds
 - Does not meet PW&AR: \$5,400
 - Meets PW&AR: \$27,000

- **Direct Payments – for Tax-Exempt Entities**
 - Encourages ownership by Tax-Exempt Entities
 - Direct Payment = full amount of eligible credit if:
 - domestic content requirement is met
 - maximum output of less than 1 MW
 - construction begins on or before December 31, 2023
 - Direct payment for projects that do not meet 1 of those 3 criteria:
 - 90% of eligible credit if construction begins in 2024
 - 85% if construction begins in 2025
 - 0% if construction begins in 2026

Energy Efficient Commercial Vehicles

- Qualified Commercial Clean Vehicles – §45W
 - \$7,500 cap for vehicles UNDER 14,000 lbs
 - \$40,000 cap for vehicles OVER 14,000 lbs
 - Credit equals lesser of:
 - 15% of purchase price of hybrid vehicles or 30% of full alternative fueled vehicles
 - Increase in cost compared to a similar combustion vehicle (i.e. “incremental cost”)
- \$1 billion dollars to replace Class 6 and 7 Heavy-Duty Commercial Vehicles
 - Competitive grants and rebates
 - Incremental cost of replacement vehicles
 - Costs for planning activities, along with the
 - Costs for purchasing and operating any necessary infrastructure
 - Workforce development

Alternative Fuel Vehicle Refueling Property Credit IRC §30C

- Expanded to include bi-directional charging equipment and charging equipment for 2-wheeled and 3-wheeled electric vehicles
- Base Rate = 6% of cost of charging stations
 - 30% of cost if PW&AR are met
 - Max: \$100,000 per station
- Must be in low-income or rural area
- Direct Payments eligible to tax-exempt entities

Advanced Technology Vehicle Manufacturing Loan Program

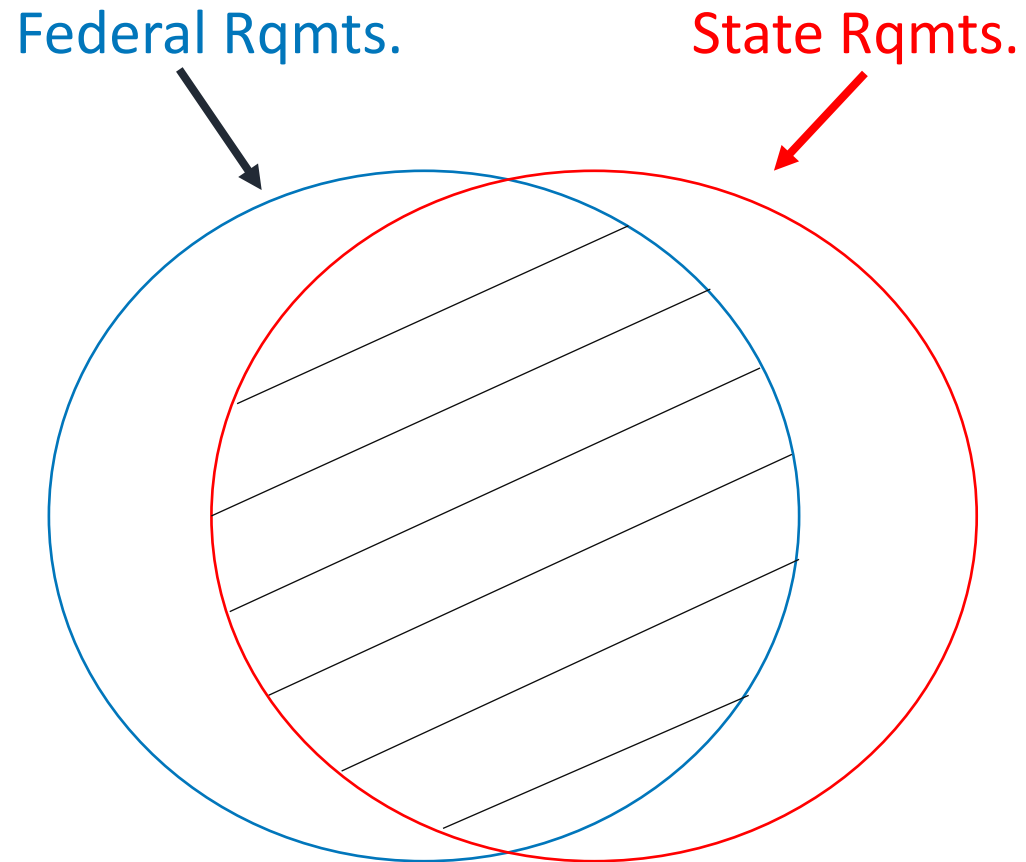
- \$3 billion
- Loans
- Increase domestic manufacturing of clean vehicles and components

Domestic Manufacturing Conversion Grants

- \$2 billion
- Grants
- Retooling of production lines

Advanced Manufacturing Production Credit

- Increase domestic production and sale of clean energy components
- 5 years of direct payments to eligible taxable entities
 - Must elect to receive the payment



Two Sets of Requirements

- State Entity → State Law
- Federal Funds → Federal Law
- The most restrictive standard of award applies

We could spend an entire day talking about state law requirements...

(May 11, 2023 at OCLC, Dublin, OH:
www.brickergraydon.com/events)



Procurement – Federal Law

Method	Contract Value	Process Required
Micro-Purchase	\$10,000 or less	None; price must be “reasonable”
Small Purchase	\$10,001 – \$250,000	Must solicit an “adequate number” of price quotations
Sealed Bids	\$250,001 or more	Public advertisement; sealed bids; award to the lowest responsive bidder
Competitive Proposals	\$250,001 or more	Public advertisement; Request for Proposals; award to the “most advantageous” proposal

Procurement – Federal Law

Comparison between State & Federal Law

- Must follow the more restrictive procurement method
- May increase micro-purchase threshold to \$50,000 by resolution

Contract Value	Procurement Method to Follow
Under \$10,000	State and federal law agree; no competition necessary.
Between \$10,000 and \$50,000	Federal law is more restrictive; Must solicit “adequate” number of quotes.
Over \$50,000	State law is more restrictive; competitive procurement required.

Sealed Bids

- Publicly advertised
- Completely defines scope of services
- Public bid opening
- Lowest responsive and responsible standard
- May reject any or all bids for sound documented reason

Competitive Proposals

- Publicly advertised
- RFP identifies all evaluation criteria and weight
- Written method evaluations
- “Most advantageous” standard of award
 - Both price and technical factors considered
 - No price for A/E selection

Non-Competitive Procurement

- Single source
- Public exigency or emergency
- Inadequate responses from attempted competitive process

Cooperative Purchasing

- Procurement of original contract complied with federal law
- Original contract specifically allows others to participate in the contract
- No significant or material changes to scope of work or terms of contract
- Contract price is fair and reasonable

? State Term Program

- *Ohio Auditor of State:* Federal auditors “have historically identified noncompliance among local governments using federal awards to participate in the [State Term] program.”

Federal Contract Provisions

Uniform Guidance

- Remedies for breach of contract
- Termination for cause or convenience
- Equal Employment Opportunity
- Rights to inventions
- Clean Air Act and Federal Water Pollution Control Act
- Debarment and Suspension
- Byrd Anti-Lobbying Amendment
- Procurement of Recovered Materials

Federal Contract Provisions

Davis Bacon Act

- Applies to “federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works.”
- Contractors and subcontractors must pay prevailing wage.
- School districts not required under state law.


Additional Inflation Reduction Act Requirements

Apprenticeship Requirements

- Include at least 1 apprentice for each subcontractor with 4 employees or more, ratio requirements as set by Department of Labor or a state agency.
- Required percentage of apprenticeship work hours (12.5% for 2023, and 15% for 2024 and beyond).
- Good-faith exception for projects that do not receive a response in five business days from qualified apprentices from a registered apprenticeship program or for when no apprentices are available.

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