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The Inflation Reduction Act was signed into law on August 16, 2022. The Act provided extended, modified, and expanded energy incentives that may be utilized by residential homebuilders and multifamily developers. One of the most significant, the Renewable Energy Credit for the production of solar property, is discussed below.

ENERGY (SOLAR) INCENTIVES

Existing Credit for property beginning construction before December 31, 2024– The existing investment tax credit under Section 48 (ITC) was being phased out. The Act made significant modifications to the existing credit as described below:

- Extension – The Act extended the applicable period for the credit for projects that begin construction prior to December 31, 2024. We expect the IRS to provide further guidance on what it means to begin construction.
- Basis Reduction for LIHTC - The Act removes the required reduction in eligible basis for LIHTC developments for solar placed in service after 12-31-22.
- Base Rate – A new base credit rate of 6% is available to solar, fuel cell, waste and storage energy property.
- Multiplier – The base credit rate can be increased by a multiplier of 5 by satisfying certain prevailing wage and apprenticeship requirements as established by the Secretary of Labor (Secretary). These multiplier requirements apply to project that begin construction more than 60 days after the Secretary publishes guidance on the requirements. Projects beginning construction earlier, as well as facilities with a maximum net output of less than 1 megawatt, will automatically qualify for the tax credit multiplier. The multiplier provides a 30% tax credit.
- Additional percentage boosts – The Act provides for additional percentage boosts as follows:

  1) 10% boost for projects meeting the multiplier requirements discussed above that contain certain levels of content produced in the US. The boost is 2% if the multiplier requirements are not met.

  2) 10% boost for projects meeting the multiplier requirements that are located in specified energy communities including Brownfield sites and other areas relating to coal, oil or natural gas unemployment. The boost is 2% if the multiplier requirements are not met.

  3) 10% boost for projects located in low-income communities or on Indian Land and 20% boost for projects that are part of a low-income residential building project or economic benefit project. These projects are eligible for the 10% or 20% boost regardless of whether the multiplier requirements are met. However, the 10% or 20% boost has to be allocated by the Secretary and the allocations are limited to providing 1.8 gigawatts of direct current capacity per calendar year. This boost is likely to be competitive and will probably be allocated out quickly each year. Available for 2023 and 2024 only.

- Direct Pay – The Act provides for taxpayers to elect a direct payment of the tax incentive in lieu of utilizing the credits. Eligible tax payors for this election are tax-exempt entities, state and local governments, and certain tribal governments. This applies to tax years beginning after 12-31-22.
- Credit Transferability – Taxpayers not eligible to elect Direct Pay, may transfer the credits to an unrelated party in exchange for cash. This cash transaction is not deductible by the purchaser of the credits and likewise would not be considered taxable income of the seller. This applies to tax years beginning after 12-31-22.

Mahoney's Thoughts – These are impactful changes and enhancements to the ITC. It may provide up to a 50% tax credit for affordable housing (LIHTC) developments. The transfer of credits provides developers options to wholly own the project, or in a LIHTC development, transfer the credits to an unrelated 3rd party.

New Credit options for property beginning construction after December 31, 2024 – The Act provides a transition from the existing Production Tax Credits under Code Section 45 and Investment Tax Credits under Code Section 48 to new code Sections.The two new code sections are 45Y "The Clean Electricity Production Credit" and 48D "The Clean Electricity Investment Credit."

- Applicable period – For Projects beginning construction by 2032.
- Election – can elect the 45Y or the 48D credit
- 48D credit 6% base rate and the prevailing wage and apprenticeship multipliers to get to 30% credit.

The new 48D credit should effectively allow affordable housing developers to claim a 30% tax credit on solar projects through 2032.