

Publications

Upcoming Deadline: “Concept Papers” for Proposed Advanced Energy Projects Applying for Section 48C Tax Credits Due by July 31, 2023

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CLIENT ALERT | 6.29.2023

Among its many other provisions encouraging investments in the United States, the Inflation Reduction Act of 2022 (IRA) reinstated funding for Section 48C tax credits to qualified investments in eligible qualifying advanced energy projects. The program is intended to incentivize the expansion and build-out of the country’s advanced energy and critical materials supply chains, as well as the general decarbonization of the country’s manufacturing facilities. As detailed below, potentially qualifying projects fall into three categories:

1. those that re-equip, expand, or establish an industrial or manufacturing facility for the production or recycling of specified advanced energy property;
2. those that re-equip any industrial or manufacturing facility with equipment designed to reduce greenhouse gas emissions from the facility; and
3. those that re-equip, expand, or establish an industrial or manufacturing facility for the processing, refinement, or recycling of critical materials.

Under the reinstated program, the Internal Revenue Service (IRS) will be allocating \$10 billion in tax credits to projects based on recommendations from the Department of Energy (DOE). It is anticipated that the allocation of credits will occur in at least two rounds and that \$4 billion in credits will be allocated in Round 1, of which approximately \$1.6 billion will go to projects located in certain “energy communities.” To be eligible for credits in Round 1, **you must submit a “concept paper” for your project to the DOE by July 31, 2023.**

Generally, the Section 48C program under the IRA provides for a baseline credit that is 6% of the qualifying investment in eligible project components. Projects may also be eligible for bonus or increased credit based on certain project characteristics such as compliance with prevailing wage and apprenticeship requirements (increasing the credit to 30%) or the project’s location in a qualifying “energy community” (discussed more below).

Potentially Qualifying Advanced Energy Projects

Advanced energy projects are ones that:

- Re-equip, expand, or establish an industrial or manufacturing facility for the production or recycling of specified advanced energy property. Examples of eligible property include, but are not limited to:
 - Property designed to be used to produce energy from the sun, water, wind, geothermal deposits, or other renewable resources, such as solar panels, wind turbines, geothermal turbines and heat pumps, and hydropower turbines;
 - Fuel cells, microturbines, or energy storage systems and components, such as stationary batteries, hydrogen storage vessels, microturbines for combined heat and power systems, and pumps and turbines for pumped hydropower storage systems;
 - Electric grid modernization equipment or its components, such as transformers, power electronics, advanced cables and conductors, advanced meters, breakers, switchgears, composite poles, medium and high voltage direct current lines, and grid-enhancing technologies;
 - Property designed to capture, remove, use or sequester carbon oxide emissions;
 - Equipment designed to refine, electrolyze or blend any fuel, chemical or product which is renewable, or low-carbon and low-emission;
 - Property designed to produce energy conservation technologies;
 - Light-, medium-, or heavy-duty electric or fuel cell vehicles, as well as technologies, components, or materials for such vehicles and associated charging or refueling infrastructure;
 - Hybrid vehicles with a gross vehicle weight rating of not less than 14,000 pounds, as well as technologies, components, or materials for such vehicles; and
 - Other advanced energy property designed to reduce greenhouse gas emissions as may be determined by the Secretary of the Treasury;
- Re-equip any industrial or manufacturing facility with equipment designed to reduce greenhouse gas emissions by at least 20% through the installation of: (i) low- or zero-carbon process heat systems; (ii) carbon capture, transport, utilization and storage systems; (iii) energy efficiency and reduction in waste from industrial processes; or (iv) any other industrial technology designed to reduce greenhouse gas emissions, as determined by the Secretary of the Treasury; or
- Re-equip, expand or establish an industrial facility for the processing, refining or recycling of critical materials (as defined in Section 7002(a) of the Energy Act of 2020). Examples of critical materials (based on the currently effective list) include, but are not limited to: aluminum, cobalt, graphite, lithium, magnesium, titanium, tungsten, and zinc. The full current list of critical materials can be found in the 2022 Final List of Critical Minerals published in the Federal Register, which is available here ([Link to 2022 Final List of Critical Minerals](#)).

For additional information about potentially qualifying advanced energy projects, please see Appendix A to IRS Notice 2023-44, which can be found [here](#) at page 17. Additional helpful information about the program can be found in IRS Notice 2023-18, which is available at [N-2023-18 \(irs.gov\)](#).

Energy Communities

Of the \$10 billion in credits to be allocated under the program, the IRA requires that at least \$4 billion go to projects located in certain Energy Communities Census Tracts. Because of this limitation, it is anticipated that whether a project is located within one of these qualifying “energy communities” may impact the DOE’s recommendation with respect to the project. Additionally, projects located within these communities may be eligible to receive up to a 10% increase in their credit. To find out whether your project may be within a qualifying Energy Communities Census Tract, please visit the DOE’s Section 48C Tax Credits – Designated Energy Communities mapping tool, which can be found here ([Section 48C Tax Credits - Designated Energy Communities \(doe.gov\)](#)). A detailed list of qualifying Energy Communities Census Tracts can also be found in Appendix C to IRS Notice 2023-44, which can be found [here](#).

Concept Papers

Concept papers submitted to the DOE for advanced energy projects will be reviewed for their compliance with program requirements and determination of eligibility, as well as for technical criterion such as commercial viability, greenhouse gas emissions impacts, whether and to what extent the project strengthens United States supply chains and domestic manufacturing for a net zero economy, and the project’s impact on workforce and community development. Additionally, the DOE may consider program policy factors when determining the final portfolio of recommendations to the IRS. For detailed information about concept paper format and content requirements, as well as information about program policy factors and Round 1 priority areas (broken down by category of project), please see IRS Notice 2023-44 (linked above).

Based on its review of your concept paper, the DOE will issue a letter either encouraging or discouraging you to apply for a Section 48C credit. This letter represents the DOE’s feedback as to whether the project is likely to receive a DOE recommendation based on the information provided in the concept paper. You are still eligible to potentially receive a credit based on your Section 48C application even if you receive a discouragement letter based on your concept paper.

To be eligible for consideration in Round 1, projects must submit a concept paper to the DOE through the eXCHANGE portal, an online application portal used by the DOE, which is available at [S3 eXCHANGE: Funding Opportunity Exchange \(energy.gov\)](#). Don’t miss your opportunity to apply for Round 1 credits—**submit your concept paper by July 31, 2023.**

The information provided herein is intended to inform our clients regarding the upcoming deadline for this program, summarize general program requirements and application criteria, and provide some helpful links to learn more about the program. It is not intended as a comprehensive review of the program or all requirements.

Vorys encourages you to contact your Vorys attorney or advisor with questions about Section 48C and the IRA. Please feel free to contact the following Vorys attorneys: Scott J. Ziance, 614.464.8287, sjziance@vorys.com; Joshua R. Eckert, 330.252.5705, jreckert@vorys.com; Sean Byrne, 614.464.8247, spbyrne@vorys.com; or Jonathan K. Stock, 614.464.5647, jkstock@vorys.com.