Commercial/Institutional Opportunities in the Inflation Reduction Act

The commercial provisions in the Inflation Reduction Act consist of two major areas: a tax deduction for energy-efficient new construction or retrofits; and, a tax credit for solar and storage installations. Additionally, there are provisions for commercial vehicle charging infrastructure. These programs are summarized below but please refer to the references and your tax advisor for more detail.

Energy-efficient Commercial Building Tax Deduction (Section 179D)

The IRA modified the Sec. 179D energy-efficient tax deduction for commercial buildings. This tax deduction, which reduces a taxpayer's tax liability by lowering taxable income is a permanent deduction and the new changes take effect on January 1, 2023. The IRA modifies this commercial building tax deduction by increasing the specific tax deduction values, extending the eligibility of this tax deduction, and changing other provisions. The standard deduction provides a higher deduction on a $/per square foot (SF) basis when new buildings or building retrofit projects demonstrate levels of energy efficiency that exceed the base ASHRAE 90.1 energy Standard. There are two tiers for deductions:

- **Standard deduction:**
  - $0.50/SF for 25%+ energy savings
  - Up to $1.00/SF for 50%+ energy savings
- **Bonus deduction**:
  - $2.50/SF for 25%+ energy savings
  - An additional $0.10/SF deduction for every 1% of energy savings above 25%, up to $5.00/SF for buildings that achieve 50%+ energy savings.
  - This Bonus deduction is available for projects where specific prevailing wage and apprenticeship requirements are met.

The specific value of the commercial building tax deduction will be based on how much more efficient the building is as compared to if that building were built to code. The specific standard that will be used for comparison is the ASHRAE 90.1 Standard that was published by ASHRAE within 4 years of the date the building was placed in service.

The IRA also expanded eligibility to include non-taxable entities, such as schools, tribes, churches, and non-profit organizations. Tax-exempt entities can assign the deduction to building designers such as architects, engineers, design build contractors, or energy service companies. The tax deduction cannot be assigned to contractors.

Under the new provisions outlined in the IRA, the same building can re-certify when new energy improvements are made. Privately owned buildings will be able to utilize the tax deduction every three years, and government/tax exempt buildings can utilize the tax deduction every four years.

The U.S. Secretary of the Treasury and Secretary of Energy are charged with developing guidance on the implementation for the expanded tax deduction, including the prevailing wage and apprenticeship requirements, and details about which version of ASHRAE 90.1 Standard is the comparable standard.

Federal Renewable Energy Tax Credits for Businesses

1. The **investment tax credit (ITC, Section 48)** is a tax credit that reduces the federal income tax liability for a percentage of the cost of a renewable energy and/or storage system that is installed during the tax year.
2. The **production tax credit (PTC, Section 45)** is a per kilowatt-hour (kWh) tax credit for electricity generated by solar and other qualifying technologies for the first 10 years of a system's operation. It reduces the federal income tax liability and is adjusted annually for inflation.

Generally, project owners cannot claim both the ITC and the PTC for the same property, although they could claim different credits for co-located systems, like solar and storage.

Summary of Investment Tax Credit (ITC) and Production Tax Credit (PTC) Values Over Time

			Start of Construction						
			2006 to 2019	2020 to 2021	2022	2023 to 2033	The later of 2034 (or two years after applicable year[a])	The later of 2035 (or three years after applicable year[a])	The later of 2036 (or four years after applicable year[a])
ITC	Full rate (if project meets labor requirements[b])	Base Credit	30%	26%	30%	30%	22.5%	15%	0%
		Domestic Content Bonus				10%	7.5%	5%	0%
		Energy Community Bonus				10%	7.5%	5%	0%
	Base rate (if project does not meet labor requirements[b])	Base Credit	30%	26%	6%	6%	4.5%	3%	0%
		Domestic Content Bonus				2%	1.5%	1%	0%
		Energy Community Bonus				2%	1.5%	1%	0%
	Low-income bonus (1.8 GW/yr cap)	<5 MW projects in LMI communities or Indian land				10%	10%	10%	10%
		Qualified low-income residential building project / Qualified low-income economic benefit project				20%	20%	20%	20%
PTC for 10 years ($2022)	Full rate (if project meets labor requirements[b])	Base Credit			2.6 ¢	2.6 ¢	2.0 ¢	1.3 ¢	0.0 ¢
		Domestic Content Bonus				0.3 ¢	0.2 ¢	0.1 ¢	0.0 ¢
		Energy Community Bonus				0.3 ¢	0.2 ¢	0.1 ¢	0.0 ¢
	Base rate (if project does not meet labor requirements[b])	Base Credit			0.5 ¢	0.5 ¢	0.4 ¢	0.3 ¢	0.0 ¢
		Domestic Content Bonus				0.1 ¢	0.0 ¢	0.0 ¢	0.0 ¢
		Energy Community Bonus				0.1 ¢	0.0 ¢	0.1 ¢	0.0 ¢

a "Applicable year" is defined as the later of (i) 2032 or (ii) the year the Treasury Secretary determines that there has been a 25% or more reduction in annual greenhouse gas emissions from the production of electricity in the United States as compared to the calendar year 2022.

b "Labor requirements" entail certain prevailing wage and apprenticeship conditions being met.

https://www.energy.gov/eere/solar/federal-solar-tax-credits-businesses#_edn19

Additional rules:

- If a system is smaller than 1 MW, then you do NOT have to meet prevailing wage/apprenticeship requirements.
- If a system is larger than 1 MW, then there are prevailing wage/apprenticeship requirements in order to receive the full 30% tax credit. (Note: 1 MW is a large system which exceeds the size of a residential system, small to moderate business, or small to moderate school).
- Tax credit increases by 10% if project meets a ***domestic content*** requirement. The details of this requirement vary over time and should be verified.
- Tax credit increases by 10% if facility is in an "energy community", defined as one of the following:
    - A brownfield site
    - A region which had 25% or more of local revenue related to fossil fuel extraction AND has greater than average unemployment
    - A region where a coal mine or coal-fired electric generating unit has been retired
- Credit is eligible for **direct pay** (full refundability) **for non-taxable entities**, state, local, or tribal government, the Tennessee Valley Authority, or Alaskan Native Corporation.
- Credit is eligible for **transferability** to other taxable entity with corporate tax liability. This means if someone has a small tax burden, they can sell their tax credit to another unrelated entity for cash.
- Projects in low-income communities are eligible for an additional 10% credit OR projects located in a qualifying low-income residential building project or a low-income economic benefit project qualify for an additional 20% credit.

Commercial Vehicles: Charging Infrastructure; Clean Vehicle Tax Credit; Clean Fleets

The ***Commercial Clean Vehicle Tax Credit*** (Section 45W) provides a tax credit of 30% of the incremental cost for an EV or fuel cell vehicle.

- Capped at $7,500 for a vehicle of less than 14,000 lbs
- Capped at $40,000 for a vehicle of more than 14,000 lbs
- Unlike the residential EV tax credit, there is NO domestic content requirement.
- The tax credit can be transferred to the seller of the vehicle
- Eligible for direct pay for non-profit and government entities

The Inflation Reduction Act extends the IRC Section 30C credits for the installation of ***EV charging infrastructure*** at their facilities. The Act increases the previously allowable maximum tax credit from $30,000 to $100,000 for projects completed after Dec. 31, 2022 (projects completed before then would still be subject to the $30,000 cap).

Note that with the greatly increased credit for charging projects, these stations must be installed in locations that meet census tract requirements set forth by Congress (currently, (1) a population census tract where the poverty rate is at least 20%; or (2) metropolitan and non-metropolitan area census tract where the median family income is less than 80% of the state medium family income level). The

Act also requires that eligible projects meet apprenticeships and prevailing wage requirements. Thinking long-term, the Act also allows for bi-directional charging equipment (effectively allowing EVs to be used as a means of providing stored electricity to serve the grid).

Grant Programs for Clean Vehicles

Additionally, both the Infrastructure Investment and Jobs Act and the Inflation Reduction Act have created grants programs that offer funds for zero-emissions fleet vehicles. See below for the key programs:

- $1 Billion appropriated for an EPA grant/rebate program for clean heavy-duty vehicles
    - $400 million set aside to replace vehicles serving communities in non-attainment areas for any pollutant.
    - Up to 100% of the cost for Class 6 or Class 7 heavy-duty vehicles
    - Eligible recipients: state and municipal gov'ts, tribes, non-profit school associations
- $3 Billion for zero-emission port equipment and technology and GHG reduction planning for ports
    - $750 million set aside for non-attainment areas (for any pollutant)
    - Eligible recipients: Port authorities, agency with jurisdiction over port, private entities within port
- $5 billion EPA Clean School Bus Program
    - Provides grants to K-12 school districts to replace diesel buses with electric, CNG, or propane school bus options.
    - Eligible recipients: state or local governments, eligible contractors, non-profit school transportation associations
    - Can provide up to 100% of the cost of a replacement bus
- $5 billion Low or No Emissions Bus Grants
    - Provides capital funding to purchase or replace bus fleets with low or zero-emissions buses.
    - Eligible recipients: states, cities, counties, special districts, tribal governments

References:

Solar Energy Technologies Office, Department of Energy, https://www.energy.gov/eere/solar/federal-solar-tax-credits-businesses#_edn19

U.S. Green Building Council, Inflation Reduction Act of 2022, https://www.usgbc.org/sites/default/files/2022-08/Inflation-Reduction-Act-Buildings-Provisions-Aug2022.pdf

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https://www.aceee.org/policy-brief/2022/09/home-energy-upgrade-incentives-programs-inflation-reduction-act-and-other

White House, *Building a Better America: Guidebook to the Bipartisan Infrastructure Law*, https://www.whitehouse.gov/wp-content/uploads/2022/05/BUILDING-A-BETTER-AMERICA-V2.pdf#page=138

JD Supra, *IRA Clean Energy Incentives and Guarantees: Electric Vehicles – What's in It for Consumers and Businesses?*, https://www.jdsupra.com/legalnews/ira-clean-energy-incentives-and-2812316/