2023 INDIANA HOUSING CONFERENCE

LIHTC 401 - Year 15 and Combining LIHTC with Other Credits

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LIHTC 401- Other Credits

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Outline

- Renewable Energy Impact Overview
- Energy Tax Credits
  - Section 45L
  - Section 48
- Affordable and Workforce Housing Credit

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Renewable Energy Impact Overview

Renewable Energy Impact Overview

- The Inflation Reduction Act (IRA) is a historic piece of legislation that includes approximately $369 billion of funding for a number of strategies to reduce carbon emissions and combat climate change.
- The backbone of clean energy tax incentives has historically been the investment tax credit and the production tax credit.
  - These credits are expected to play a key role going forward as well
- The green energy provisions of the IRA are, in the first instance, aimed at reducing carbon emissions and encouraging a move to clean energy.

Renewable Energy Impact Overview

- The IRA also contains a number of economic development and social justice tools
  - The wage and apprenticeship requirements are an example of the social justice tool.
  - The domestic content is another example
- The IRA increases the credit amount with “bonus” credit levels for property produced or located in certain geographic areas.
- There is also a 10% ITC and PTC bonus for projects that meet a domestic content requirement, which generally requires that a minimum percentage of project components be manufactured in the United States.
- For ITC, there is a bonus for wind and solar projects located in low-income communities and a 20% bonus for projects located in qualified low-income residential building projects.

Section 45L New Energy Efficient Home Credit

Section 45L New Energy Efficient Home Credit

- Section 45L provides that in the case of an eligible contractor, the new energy efficient home credit for the taxable year is the applicable amount for each qualified new energy efficient home which is
  - Constructed by the eligible contractor, and
  - Acquired by a person from such eligible contractor for use as a residence during the taxable year
- The credit amount available ranges from $500-$5000, based upon certain energy saving requirements like the Energy Star Residential New Construction Program, Energy Star Manufactured New Home Program, and Energy Star Multifamily New Construction Program
- Under Section 45L(c), in general, a dwelling unit meets the requirements of this subparagraph if such dwelling unit meets the requirements of paragraph (2) or (3)- single-family home requirements or multi-family home requirements
  - The Inflation Reduction Act now allows for the New Energy Efficient Home Credit to be claimed on buildings more than three stories in height above grade

Section 45L New Energy Efficient Home Credit

- The Inflation Reduction Act also amends IRC 45L(e) by adding to it that
  - This subsection shall not apply for purposes of determining the adjusted basis of any building under Section 42, relating to the low-income housing tax credit
- IRC 45L(h) states that this section shall not apply to any qualified new energy efficient home acquired after December 31, 2032
- Section 45L can be claimed along with the 179D Deduction, if applicable.
- Section 45L can also be claimed along with Section 48 credits
- This credit must be certified by a third party advisor

Section 45L New Energy Efficient Home Credit

ENERGY EFFICIENT NEW HOME CREDIT

Home Type	Qualification Requirement	Prevailing Wage Requirement	Credit Amount
Single Family	EnergyStar	No	$2,500
Single Family	ZERH	No	$5,000
Manufactured Home	EnergyStar	No	$2,500
Manufactured Home	ZERH	No	$5,000
Multifamily	EnergyStar	No	$500
Multifamily	ZERH	No	$1,000
Multifamily	EnergyStar	Yes	$2,500
Multifamily	ZERH	Yes	$5,000

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Section 48 Clean Energy Investment Tax Credit (ITC)

Section 48 Clean Energy Investment Tax Credit

- The IRA extended the Section 48 energy credit for certain energy properties placed in service from before January 1, 2024 to January 1, 2025
  - Section 48(a)(2)(A)(i) states that the base rate is 6% for certain energy property placed in service after December 31, 2021, and before January 1, 2025. After that time period, the credit will then be under Section 48E
  - The Act provides for a multiple of 5, or a 30% credit, when the project meets one of the following requirements- Section 48(a)(9)(B)
    - It is less than 1 megawatt
    - Meets certain labor requirements on prevailing wages and apprenticeship
    - Construction begins before the date that is 60 days after the Secretary publishes guidance with respect to prevailing wage and apprenticeship
      - Notice 2022-61 was approved on November 23, 2022

Section 48 Clean Energy Investment Tax Credit

- For certain energy properties placed in service after December 31, 2022 and before January 1, 2025, the Act provides for a credit rate increase of 10% when both the Section 48(a)(9)(B) Requirements and a domestic content requirement are met.
  - The Act provides for a 2% increase when just the domestic content requirement is met
- Under the same rules as above, the Act provides for a credit increase of 10% if the prevailing wage requirement is met and the property is located in an energy community.
  - The Act defines 'energy community' as:
    - A brownfield site
    - An area with an unemployment rate at or above the national average unemployment rate for the previous year wherein fossil fuels do, or had, contributed significantly to employment or
    - A census tract, or directly adjoining a census tract thereto, wherein certain coal mines or coal-fired electric generating units have been closed.
    - The Act provides for a 2% increase in an energy community where the project does not meet the prevailing wage requirements

Section 48 Clean Energy Investment Tax Credit

- For properties financed with tax-exempt bonds for which construction began after the date of the enactment of the IRA, the credit amount shall be reduced by the lesser of 15% or a fraction of which the numerator is the sum, for the taxable year and all prior taxable years, of proceeds of an issue of any such obligation the interest on which is exempt from tax under Section 103 and which is the aggregate amount of additions to the capital account for the qualified facility for the taxable year and all prior taxable years.
- Section 50(c)(1) provides for a reduction in the basis of the property for which an IRC 48 energy credit is taken.
  - The Act has amended Section 50(c) by adding the following paragraph
    - "paragraph (1) shall not apply for purposes of determining eligible basis under Section 42", relating to the low-income housing tax credit.
    - This amendment applies to property placed in service after December 31, 2022
- Example of the stacking concept:

Solar Tax Credit:	30%
Qualified Low-Income Residential Building	20%
Domestic Content	10%
Energy Community	10%
Total	**70%**

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Elective Payment and Transfer of Certain Credits for Energy Property and Electricity from Certain Renewable Sources

Elective Payment and Transfer of Certain Credits for Energy Property and Electricity from Certain Renewable Sources

- The Inflation Reduction Act provides, with respect to certain applicable credits, that an applicable entity can elect to be treated as making a payment against its income tax, for the taxable year with respect to which such credit was determined, equal to the amount of such credit under Section 6417
  - This is considered a direct pay election in lieu of a nonrefundable credit
  - The applicable entity is
    - Any organization exempt from the tax imposed by subtitle A
    - Any State or political subdivision thereof
    - The Tennessee Valley Authority
    - An Indian tribal government
    - Any Alaska Native Corporation
    - Any corporation operating on a cooperative basis which is engaged in furnishing electric energy to persons in rural areas
- The Act also provides that an eligible taxpayer may transfer certain eligible credits to an unrelated taxpayer under Section 6418 starting in 2023.
  - The Act defines an “eligible taxpayer” as any taxpayer not described as noted above as being an applicable entity.

Elective Payment and Transfer of Certain Credits for Energy Property and Electricity from Certain Renewable Sources

- The cash paid for the transfer is not included in the eligible taxpayer's gross income nor is the transferee taxpayer entitled to a deduction for the payment
  - Section 50(c) basis reduction requirement "shall apply to the energy property as if the energy credit was allowed to the eligible taxpayer
    - The basis reduction is based upon the amount of the credit claimed and not the amount of consideration received by the eligible taxpayer.
    - The eligible taxpayer bears the tax burden of the credit despite the credit being claimed by the transferee taxpayer in a single-tier structure.
    - There is currently no guidance under Section 6418 regarding Section 50(d) income in a pass-through structure.
    - Section 6418 does not follow the same matching principle.

Elective Payment and Transfer of Certain Credits for Energy Property and Electricity from Certain Renewable Sources

- Section 6418’s general provisions do not appear to cleanly apply to the investment tax structure
- There are numerous other stipulations in the Act relating to the elective payment and the transfer of certain credits
  - There is no current guaranteed date by which the government has committed to provide cash for direct payment
  - The statute gives wide latitude to the conditions of both direct pay and credit transfers
  - On June 14, 2023, the Internal Revenue Service issued proposed regulations and frequently asked questions describing rules for applicable entities that earn certain energy credits and choose to make an elective payment election and rules for eligible taxpayers that elect to transfer certain credits to unrelated parties.
    - The transfer election needs to be filed together with the taxpayer’s original tax return. No election can be made on an amended return.
    - A project eligible for the increased credit amount due to various “adders” such as domestic content, cannot transfer such additional or bonus credit separate from the transfer of the base credit.
    - The proposed regulation do not provide any relief for at-risk or passive activity loss rules.

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Affordable and Workforce Housing Credit

Affordable and Workforce Housing Credit

- Enacted on July 1, 2023
- Available for multifamily projects financed with tax-exempt bonds issued by Indiana Housing and Community Development Authority
- The state credit generally follows the federal LIHTC but is taken over a period of five years instead of 10, and the credit begins with the taxable year in which the building is placed in service

Affordable and Workforce Housing Credit

- The Indiana Senate Bill 419 stated that the IHCDA can award the state credits in any amount up to 100% of the anticipated aggregate LIHTC award to a project.
- Most of the specifications for the application process, eligibility, limitations, and decision criteria fall under the discretionary authority granted to IHCDA and are detailed in Schedule D-1 of the Indiana 2023-2024 QAP
- State lawmakers approved up to $30 million in aggregate state credits to be allocated each year for a period of five years, meaning a maximum of $6 million of annual credits
- The QAP specifies that 20% of the annual credits is set aside for projects in each of the Indiana’s five geographic regions, similar to the allocation of the bond volume cap throughout the state
- The QAP explains applicants cannot use the state credit or other gap sources to supplant available LIHTC- applicants must maximize their 4% LIHTC request
- The QAP places eligibility limitations based on the occupancy type
  - Affordable assisted living, 100% supportive housing and 100% student housing will typically not be accepted

EXHIBIT A
PROJECT COST BREAKDOWN WORKSHEET

TOTAL DEVELOPMENT COST SCHEDULE - FEDERAL CREDITS

	New Construction 12/28/16
Eligible Basis	$ 8,037,851
Adjustments: None	-
Total Eligible Basis	8,037,851
High Cost Area Adjustment (100% or 130%)	103.6761%
Total Adjusted Basis	8,333,330
Applicable Fraction	100.00%
Total Qualified Basis	8,333,330
Applicable Percentage	9.00%
Total Amount of Annual Federal Tax Credits Calculated on Basis	$ 750,000
Total Amount of Annual Federal Tax Credits Reserved	$ 750,000
Total Amount of Annual Federal Tax Credits (Lessor of Possible and Reserved)	$ 750,000

TOTAL DEVELOPMENT COST SCHEDULE - STATE CREDITS

Total Amount of Annual Federal Tax Credit	$750,000
State LIHTC %	50.00%
Total Amount of State LIHTC	$375,000

Questions?

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