



TaxNewsFlash

United States

No. 2024-202
May 29, 2024

Proposed regulations: Clean electricity production and investment credits under sections 45Y and 48E

The U.S. Treasury Department and IRS today released [proposed regulations](#) (REG-119283-23) regarding the clean electricity production credit under section 45Y and the clean electricity investment credit under section 48E, as established by H.R. 5376 (commonly called the “Inflation Reduction Act of 2022” (IRA)).

The proposed regulations would provide rules for:

- Determining greenhouse gas emissions rates resulting from the production of electricity
- Petitioning for provisional emissions rates
- Determining eligibility for these credits in various circumstances

Background

The preamble to the proposed regulations explains that the renewable electricity production credit determined under section 45 is generally available for qualified facilities described in section 45(d), which provides that the construction of the qualified facilities must begin before January 1, 2025. Similarly, other than for geothermal heat pump equipment, the energy investment credit determined under section 48 is generally available for energy property the construction of which begins before January 1, 2025. Therefore, as long as construction begins on the relevant qualified facility or energy property before January 1, 2025, a taxpayer may be able to claim a section 45 credit or section 48 credit, respectively, even if the taxpayer places the qualified facility or energy property in service after December 31, 2024.

The IRA provides that the clean electricity production credit determined under section 45Y applies to facilities placed in service after December 31, 2024, and the clean electricity investment credit determined under section 48E applies to property placed in service after December 31, 2024. Thus, in some cases, if a taxpayer places in service a qualified facility or energy property after 2024, the construction of which begins before 2025, the qualified facility or energy property may be eligible for more than one of the credits determined under section 45, 45Y, 48, or 48E, although a taxpayer can only claim one of these credits with respect to such qualified facility or energy property. Accordingly, a taxpayer must choose which one of these credits to claim with respect to such qualified facility or energy property. Once the taxpayer has claimed one of these credits with respect to a qualified facility or an energy property, the taxpayer cannot claim any other of these credits with respect to the same qualified facility or energy property.

Proposed regulations

The proposed regulations are proposed to apply to qualified facilities placed in service after December 31, 2024, and during tax years ending on or after the date of publication of the final regulations in the Federal Register.

Comments on the proposed regulations, as well as requests to speak and outlines for topics to be discussed at a public hearing (scheduled for August 12, 2024, at 10:00 AM ET, and August 13, 2024, at 10:00 AM ET), are due by the date that is 60 days after the proposed regulations are published in the Federal Register (which is scheduled to be June 3, 2024). If no outlines are received by that date, the public hearing will be cancelled.

Read a related IRS release—[IR-2024-150](#) (May 29, 2024)

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