Four Revamped Tax Incentives with Real (Estate) Implications

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01.09.2024

The Inflation Reduction Act of 2022 (the ?IRA?) will disburse approximately $370 billion to spur private sector building decarbonization.[1] As it relates to commercial real estate, there are at least four (4) key tax incentives to keep in mind when undertaking new construction or rehabilitation projects:

1. 26 United States Code § 179D ? Energy efficient commercial buildings deduction
2. 26 United States Code § 48 ? Energy credit
3. 26 United States Code § 45L ? New energy efficient home credit
4. 26 United States Code § 30C ? Alternative fuel vehicle refueling property credit

Section 179D

Section 179D (?179D?) was initially signed into law in 2005 and made permanent in 2020.[2] 179D is a tax deduction for commercial buildings. The IRA increased the potential maximum deduction from $1.88 per square foot to $5.00 per square foot.[3] The deduction applies to both newly constructed buildings and improved buildings that exceed standards set by the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America.[4] However, receiving the fullest deduction possible requires meeting prevailing wage and apprenticeship standards.[5]

Section 48

The IRA also expands Section 48, known as the ?Investment Tax Credit.? The Investment Tax Credit was originally established by the Energy Policy Act of 2005. Investments in renewable energy projects fostered by new technology, such as standalone energy storage systems and microgrids, are now covered by the Investment Tax Credit.[6] A thirty percent (30%) credit can be received if prevailing wage and apprenticeship requirements are met.[7] Plus, bonus credits are available if the project is located in an applicable energy community.[8] Availability of the Investment Tax Credit has been extended through the end of 2034.[9] The IRA also makes direct pay available for the Investment Tax Credit ? making it accessible to state and local governments, nonprofit organizations, and other historically excluded groups.[10]

Section 45L

Section 45L (?45L?) provides a tax credit for new or substantially rehabilitated homes (single or multifamily) that meet certain energy efficiency standards. Prior to the IRA, multifamily housing developers were strained to take advantage of 45L because receiving 45L reduced a project?s low-income housing tax credit (?LIHTC?) eligible basis.[11] The IRA eliminates the LIHTC eligible basis reduction. Additionally, pre-IRA, 45L only covered multifamily buildings up to three stories tall, a height requirement the IRA also nixes.[12] Now, vastly more multifamily housing projects can take advantage of 45L.

Section 30C

Section 30C (?30C?) is an alternative fuel vehicle refueling property credit. Enter: electronic vehicle charging stations (?EV Charging?)! The IRA expands qualified 30C property to include EV Charging and increases the maximum credit available per property from $30,000 to $100,000.[13] Businesses meeting prevailing wage and apprenticeship requirements can be eligible for a thirty percent (30%) credit (with a $100,000 maximum).[14] However, all eligible property must be located in targeted rural or low-income census tracks.[15] Thankfully, this restriction is not too restrictive. For example, approximately seventy percent (70%) of the City of Richmond, Virginia, falls into one of the qualifying census tracks for 30C[16] Direct pay is also available for 30C.[17]

In sum, the IRA includes many renewals and revitalizations of various tax incentives, several of which developers can make use of when undertaking commercial real estate projects. While the IRA does prohibit ?stacking? certain tax credits, the four noted above can be viewed as a ?menu? in which more than one can be selected to benefit a project.[18] With real estate responsible for approximately forty percent (40%) of greenhouse gas emissions and the growing competitive advantage of environmental, social and corporate governance in the real estate space,[19] IRA-provided tax incentives should not be neglected.

[1] *Inflation Reduction Act: Implications for Real Estate* (ULI Virginia, Nov. 8, 2023).

[2] Greg A. Fairbanks, *Recent Changes to the Sec. 179D Energy-Efficient Commercial Buildings Deduction*, Tax Adviser, Feb. 1, 2023, https://www.thetaxadviser.com/issues/2023/feb/recent-changes-to-the-sec-179d-energy-efficient-commercial-buildings-deduction.html#:~:text=179D%20provides%20taxpayers%20with%20an,Appropriations%20Act%20of%

[3] 26 U.S.C.A. § 179D(b)(3)(A) (West).

[4] *Id.* at § 179D(c)(2).

[5] *Id.* at § 179D(b)(4)?(5).

[6] 26 U.S.C.A. § 48(a)(2)(A) (West).

[7] *Id.* at § 48(a)(10).

[8] *Id.* at § 48(a)(12); 48(e).

[9] *Id.* at § 48(a)(7).

[10] *Direct Pay Through the Inflation Reduction Act: What is Direct Pay (Elective Pay)?*, The White House, last visited Nov. 26, 2023, https://www.whitehouse.gov/cleanenergy/directpay/.

[11] Nick DeCicco & Brent Parker, *45L Credit Extension Expands Clean Energy Possibilities for LIHTC Developers*, Novogradac, May 5, 2023, https://www.novoco.com/periodicals/articles/45l-credit-extension-expands-clean-energy-possibilities-lihtc-developers.

[12] *Id.*

[13] 26 U.S.C.A. § 30C(c)(2) (West); 26 U.S.C.A. § 30C(b)(1) (West).

[14] *Id.*

[15] *Id.* at § 30C(c)(3).

[16] *Inflation Reduction Act: Implications for Real Estate* (ULI Virginia, Nov. 8, 2023).

[17] *Direct Pay Through the Inflation Reduction Act: What is Direct Pay (Elective Pay)?*, The White House, last visited Nov. 26, 2023, https://www.whitehouse.gov/cleanenergy/directpay/.

[18] *Inflation Reduction Act: Implications for Real Estate* (ULI Virginia, Nov. 8, 2023).

[19] *Id.*

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