

Federal Law Allows Tax-Exempt Entities to Cash In on Energy Tax Credits

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Tax-exempt entities (including non-profits, states, local governments and public schools) that are planning energy-efficient projects, such as solar improvements to existing buildings or improvements to provide for electric vehicles, should be aware that the U.S. Treasury may now provide direct payments to those entities to reduce project costs.

New regulations under the Inflation Reduction Act, which have been published as Notice 2022-61, provide some clarification for the rules on how to qualify for these increased direct pay credits under the prevailing wage and apprenticeship requirements.

Prior to the federal Inflation Reduction Act of 2022, Investment and Production Tax Credits were directly available only to for-profit entities that could offset the tax credits with their taxable income. Therefore, tax-exempt organizations, public schools and governmental entities could only take advantage of tax credits through joint ventures with for-profit entities. Now, tax-exempt organizations, such as 501(c)(3) hospitals and colleges, public schools and governmental entities can receive direct payments from the federal government equal to the value of the tax credits, as determined pursuant to the Internal Revenue Code.

It is possible to obtain a credit of up to 50% of qualified costs. To obtain the maximum benefit of the direct payments, projects must adhere to prevailing wage and apprenticeship requirements, use United States-sourced materials, and be located in certain communities. Adherence to the prevailing wage and apprenticeship requirements produces a tax credit equal to 30% of qualified costs. However, failure to meet these requirements produces a credit of only 6% of qualified costs. Sourcing sufficient materials for the project from the United States can net an additional 10% of qualified costs in tax credits. Locating the project in certain communities can net an additional tax credit of 10% of qualified costs.

While these requirements are complicated, the potential amount of direct payments is substantial. Planning and preparing for obtaining these credits can start now, and the benefits may apply to projects that have already commenced. Please contact your Miller Canfield attorney if you are considering an energy project.

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