

IRS Releases Final Regulations for Section 45X Advanced Manufacturing Credit

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The Internal Revenue Service (“**IRS**”) and Department of the Treasury last week released final regulations (the “**Final Regulations**”) relating to the advanced manufacturing production tax credit under Section 45X (“**45X Credits**”) of the Internal Revenue Code (the “**Code**”). The release of the Final Regulations follows the issuance of proposed regulations in December 2023 (the “**Proposed Regulations**”), which we described [here](#). The final regulations are available [here](#).

The Final Regulations largely adopt the Proposed Regulations, with a few exceptions. Importantly, these Final Regulations are applicable to eligible components and applicable critical minerals for which production is completed and sales occur after December 31, 2022, and during taxable years ending on or after October 28, 2024. Taxpayers may rely on the Final Regulations for eligible components for which production and sales occur after December 31, 2022, and taxable years ending before October 28, 2024, so long as the regulations are followed in their entirety in a consistent manner.

The following provides a brief background of Section 45X of the Code, as well as a summary of the key points from the Final Regulations, highlighting the changes to the calculation of production costs for both electrode active materials and applicable critical minerals.

Background to Section 45X Advanced Manufacturing Credit

Section 45X of the Code, enacted as part of the Inflation Reduction Act in August 2022, provides a manufacturing production tax credit to taxpayers that produce and sell to an unrelated person during the taxable year certain components for renewable energy and battery storage projects, including certain critical minerals. The tax credit rate varies depending on the eligible component. 45X Credits may be claimed by the taxpayer that produces eligible components. A taxpayer otherwise entitled to claim the 45X Credits may sell 45X Credits to another taxpayer pursuant to Section 6418 of the Code, or claim direct payments in lieu of the tax credits for a five-year period pursuant to Section 6417 of the Code. 45X Credits are set to phase out starting in 2030.

The Final Regulations for 45X Credits

The Final Regulations provide guidance on a number of issues relating to the advanced manufacturing credit. Among the highlights:

- The Final Regulations expand the definition of “produced by the taxpayer” to include secondary production, which is defined as the production of an eligible component using recycled materials. Although the preamble to the Proposed Regulations had indicated that secondary production is eligible, the clarification will be welcome news to many taxpayers.
- The term “mere assembly” from the Proposed Regulations is replaced with “minor assembly” regarding whether certain activities or processes result in substantial transformation.
 - This change is primarily concerned with certain eligible components, such as solar modules and battery modules using battery cells, that may be produced primarily by assembling other components but which are clearly eligible for the 45X Credit even though no production beyond assembly is performed by the eligible taxpayer.
 - Like under the Proposed Regulations, where the eligible components have undergone substantial transformation and only minor assembly remains, the party who only performs minor assembly is not entitled to 45X Credits.
- §1.45X-1(c)(3)(v)(D), Example 4 is added to demonstrate how contract manufacturing provisions may apply to taxpayers who perform extracting and refining activities.
- The Final Regulations maintain that the domestic production requirement does not apply to constituent elements, materials and subcomponents used in the production of eligible components.

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