Brownstein

Senate-Passed Inflation Reduction Act (IRA): Tax Policy – Summary and Analysis

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This document summarizes the tax provisions included in the Inflation Reduction Act (IRA) of 2022 that passed the Senate on Aug. 7, 2022. Modifications made to the bill by floor amendment are bolded and highlighted in blue.

Subtitle A—Deficit Reduction

Part 1—Corporate Tax Reform

IRA Section 10101. Corporate Alternative Minimum Tax.

(Significant modifications made through an adopted amendment on the Senate floor.)

- Provides a 15% minimum tax on corporations with applicable financial statement income (AFSI) in excess of $1 billion (based on a rolling three-year average), reduced by any minimum-tax foreign tax credit for the year.
    - In the case of a U.S. corporation that is a member of an international financial reporting group with AFSI in excess of $1 billion and the common parent of which is a foreign corporation, the minimum tax applies if the U.S. corporation has an average annual AFSI of $100 million or more.
    - An international financial reporting group means two or more entities included in the same applicable financial statement provided (i) at least one is a foreign corporation engaged in a U.S. trade or business, or (ii) at least one entity is a U.S. corporation and the other is a foreign corporation and such entities.
    - AFSI means, with respect to any corporation, the net income or loss of the taxpayer on its applicable financial statement for the year, as adjusted under the provision. Applicable financial statements are defined under section 451(b)(3) (e.g., 10-K or audited financial statement reported to shareholders).
- **Senate amendment 5472: Sen. John Thune (R-SD) struck a proposed aggregation rule that was reportedly added to the bill by Senate Finance Committee Chair Ron Wyden (D-OR) after the original Manchin-Schumer agreement. The rule would have required the income of subsidiary companies and other taxpayers categorized as "component members" of controlled groups to be taken into account for purposes of determining if a corporate taxpayer exceeds the $1 billion threshold. Had it not been removed, the aggregation rule would have caused several thousand more component member companies to be subject to the minimum tax, even if they did not meet the $1 billion threshold individually.**
- Reduces the minimum tax by: (1) aggregate financial statement net operating loss carryovers to the taxable year (i.e., amount of the net loss, without regard to the AFSI reduction, on the applicable financial statement for taxable years ending after Dec. 31,

2019) up to 80% of the AFSI; (2) any base erosion and anti-abuse tax (BEAT) imposed; and any prior year minimum-tax credits.

- The minimum tax ceases to apply when the corporation has not met the above requirements for a number of consecutive years (such number of years to be determined by the secretary of the Treasury) and the secretary of the Treasury determines such corporation should no longer be treated as an applicable corporation.
- Provides adjustments to AFSI, concerning:
    - Related-party items on consolidated returns attributable to other members of the consolidated group, as well as taking into account (for non-consolidated returns) dividends received from related corporations and the distributive share of AFSI from partnerships;
    - Certain items of foreign income and income effectively connected with a U.S. trade or business;
    - Income or similar taxes imposed by any foreign country or possession of the United States that are taken into account on the applicable financial statement (unless the taxpayer does not take the foreign tax credit with respect to such taxes);
    - Disregarded entities;
    - Amounts received as a direct payment with respect to certain green-energy tax credits included in the bill, which are treated as tax refunds under new section 6417 (*see* Section 13801 below).
    - Income in connection with a mortgage servicing contract until required to be included in gross income;
    - Depreciation of tangible property, ensuring the tax benefits of accelerated depreciation;
    - Amortization deductions on qualified wireless spectrum acquired after Dec. 31, 2007, and before the date of enactment of the bill;
    - Defined benefit plans; and
    - Other adjustments provided by the secretary of the Treasury through regulation or other guidance.
- Amends the general business credit limitations in section 38(c) applicable to corporations so that the credit limitation is based on 25% of the taxpayer's net income tax in excess of $25,000 and without regard to certain other limitations on general business credits.
- Applicable to any corporation (other than S-corporations, regulated investment companies (RICs) or real estate investment trusts (REITs)) that meets the minimum-tax requirements for one or more prior taxable years ending after Dec. 31, 2022.
- Impact: Imposes a minimum tax on financial statement income, rather than taxable income, with potential unintended consequences for certain taxpayers and industries based on the myriad differences between financial-statement and tax-accounting requirements.

Part 2—Excise Tax on Repurchase of Corporate Stock

IRA Section 10201. Excise Tax On Repurchase Of Corporate Stock.

- Adds a nondeductible 1% excise tax on the fair market value of purchases or repurchases by a covered corporation (i.e., publicly traded U.S. corporations) or specified affiliates of the covered corporation's stock. Specified affiliates include (i) any corporation where more than 50% of the stock (by vote or value) is owned, directly or indirectly, by such corporation, and (ii) any partnership where more than 50% of the capital or profits interests is held, directly or indirectly, by such corporation.

- Reduces the amount subject to the 1% tax by the amount of stock issued during the year, including stock issued to employees or specified affiliates, and also includes stock issued in response to the exercise of a stock option.
- Provides exceptions for foreign corporations and foreign partnerships (unless such partnership has a U.S. entity that is a direct or indirect partner), when a specified affiliate purchases stock of a publicly traded foreign corporation from an unrelated third party, the amount subject to the 1% tax is reduced only by the amount of stock issued by such specified affiliate to its employees.
- For repurchases under the anti-inversion rules, the expatriated entity may be treated as a covered corporation, and the amount subject to the 1% tax is reduced only with respect to stock issued by such expatriated entity to its employees. (See modifications to the anti-inversion rules in SFC Section 128153, below.)
- Excludes the following transactions:
    - Repurchases that are part of tax-free reorganizations;
    - Repurchased stock that is contributed to an employee retirement or stock ownership plan;
    - Repurchases where the total annual fair market value of the repurchased stock does not exceed $1 million;
    - Repurchases by a dealer in securities in the ordinary course of business;
    - Repurchases by a RIC or REIT; or
    - Repurchases that are treated as a dividend.
- Applies to stock repurchases after Dec. 31, 2022.
- <u>Impact:</u> Imposes an additional cost on capital structuring transactions to the extent that stock repurchases are employed.

Part 3—Funding the Internal Revenue Service and Improving Taxpayer Compliance

IRA Section 10301. Enhancement of Internal Revenue Service Resources.

- Appropriates 10-year funding for the Internal Revenue Service (IRS) as follows:
    - $3.18 billion for the IRS to provide taxpayer services, including pre-filing assistance and education, filing and account services, and taxpayer advocacy services.
    - $45.64 billion for tax enforcement activities, including for the IRS to: (1) determine and collect taxes owed; (2) provide legal and litigation support; (3) conduct criminal investigations (this includes investments in investigative technology); (4) provide digital asset monitoring; (5) enforce criminal statutes related to violations the code other financial crimes; and (6) purchase and hire passenger motor vehicles.
    - $25.33 billion for operations support. This includes supporting: (1) taxpayer services and enforcement programs; (2) facilities services; (3) administrative services (e.g. printing and postage); (4) physical security; (5) headquarters and other IRS-wide administration activities; (6) research and statistics of income; (7) telecommunications, information technology development, enhancement, operations, maintenance, and security; and (8) the operations of the IRS Oversight Board.
    - $4.75 billion for business systems modernization, including the development of callback technology and other technology to provide a more personalized customer service experience. This does not include the operation and maintenance of legacy systems.
    - Additional funding is also provided for Treasury Inspector General for Tax Administration (TIGTA), the Office of Tax Policy, the U.S. Tax Court, and various Treasury Department offices.

    - All funding is available until Sept. 30, 2031.
- Appropriates $15 million for the IRS to prepare and deliver a report to Congress on the cost of developing and running a free direct e-file tax return system. Specifically, the report would have to include the following items:
    - Cost of developing and running a free direct e-file system, including costs to build and administer each release, with a focus on multilingual and mobile-friendly features, as well as safeguards for taxpayer data. The cost analysis would also have to consider cost differentials based on taxpayers' adjusted gross incomes (AGI) and return complexities.
    - Taxpayer opinions, expectations and level of trust for a free direct e-file system. This information would be gathered through taxpayer surveys.
    - The opinions of an independent third party on the overall feasibility, schedule, cost, organizational design and the IRS's ability to administer a direct e-file system.
- Requires the IRS commissioner to submit an operational plan to Congress on how the funding under this provision would be spent over 10 years.
- Permits the secretary of the Treasury to exercise greater flexibility with respect to personnel, including certain "direct hire" authority.
- Impact: The increase in funding that would be provided to the IRS by this section of the bill would allow for a significant expansion in enforcement activities through taxpayer audits, among other methods. The bill also allocates monies to revitalize taxpayer services and modernize customer support activities provided by the IRS.

Subtitle D—Energy Security

Part 1—Clean Electricity and Reducing Carbon Emissions

IRA Section 13101. Extension and Modification of Credit for Electricity Produced from Certain Renewable Resources.

- Extends the section 45 production tax credit (PTC) allowing producers to claim a base credit of 0.3 cents per kilowatt-hour and bonus credit of 1.5 cents per kilowatt-hour (indexed to inflation). The bonus credit is subject to the producer satisfying the new prevailing-wage requirements during the facility's construction and the 10-year credit period, as well as meeting the new apprenticeship requirements.
- Qualifying generation facilities include most sources of renewable electricity generation, including wind, solar, geothermal, hydropower, biomass and municipal solid waste.
- A qualified facility would be eligible for the bonus credit even if it does not meet the prevailing-wage and apprenticeship requirements provided construction of the facility begins prior to 60 days after the secretary of Labor publishes guidance with respect to the wage and apprenticeship requirements—or if the facility has a maximum net output of less than one megawatt.
- The prevailing-wage requirement applies to the taxpayer and its contractors and requires that employees receive the prevailing-wage rates for construction, alteration or repair in the project's locality as determined by the secretary of Labor, in accordance with subchapter IV of chapter 31, of title 40, U.S. Code. Rules are provided to cure noncompliance, subject to a penalty of $5,000 per affected worker. A $10,000 penalty applies if noncompliance was due to intentional disregard.
- The apprenticeship requirement is satisfied by ensuring that for projects beginning in or after 2024, not less than 15% (10% for projects with construction beginning before 2023 and 12.5% for projects beginning in 2023) of the total labor hours for construction, alteration or repair work on any applicable project are performed by qualified apprentices.

An exception can be obtained if the taxpayer demonstrates a lack of available qualified apprentices in the area for the construction, alteration or repair work and makes a good faith effort to comply with the requirement. Rules are provided to cure noncompliance, subject to a penalty of $50 per hour (increased to $500 per hour if the taxpayer intentionally disregards the rules) of apprenticeship requirement that has not been met, capped at the value of the credit.

- The credit value is increased by 10% if the facilities meet domestic-content requirements.
- The domestic-content provision generally requires that a certain percentage of the total cost of the components are mined, produced or manufactured in the United States. The IRA sets this at 40% for most facilities (20% for offshore wind facilities).
- The secretary of the Treasury is permitted to make exceptions to domestic-content requirements where relevant components are not produced in sufficient supply in the United States, or the requirement would increase the overall cost of the project by more than 25%.
- The credit value is increased by 10% for projects in energy communities, where a coal mine has closed or a coal-fired electric generating unit has been retired.
- The IRA version generally expands the definition of a qualified energy community to include brownfields or facilities that are located in, or adjacent to, a census tract that contains (or recently contained) "significant" employment in the processing, mining, transport or storage of coal, oil or natural gas (as determined by the secretary of the Treasury).
- Modifies the formula for calculating the reduced credit amount for tax-exempt bonds to allow for a greater reduced amount to be claimed.
- Qualified hydroelectric production and marine and hydrokinetic renewable energy qualify for the full credit amount and are no longer subject to a rate reduction of one-half for electricity produced. The nameplate capacity rating for a qualified facility is reduced from 150 kilowatts to 25 kilowatts.
- All modifications are effective for projects that are placed in service after Dec. 31, 2021, and that construction begins before Jan. 1, 2025. Following this date, the credit switches to a tech-neutral version (*see* Section 13701 below).
- Impact: The credit would incentivize the production of clean electricity. The IRA shortens the length of the PTC before it transitions to tech neutral compared to previous reconciliation proposals. It would also make it easier to qualify for the domestic content restrictions and expand eligibility for the 10% bonus credit through the energy communities clause.

IRA Section 13102. Extension and Modification of Energy Credit.

- The section 48 investment tax credit (ITC) provides a base credit of 6% for fuel cell, qualified small wind, waste energy recovery and solar energy property (2% for all other energy properties) and a bonus credit of 30% for projects meeting the prevailing-wage and apprenticeship requirements (*see* Section 136101 above).
- The credit also includes energy storage technology with a minimum capacity of at least 5 kilowatt-hours; qualified biogas property forming gas of not less than 52% methane; linear generators with a nameplate capacity of at least 1 kilowatt-hour; thermal energy storage property; dynamic glass; and microgrid controllers at a base credit rate of 6% (bonus credit rate of 30%).
- Hydropower environmental improvement property no longer qualifies as energy property for purposes of the credit.
- The base credit amount is increased to 26% for projects that began construction after Dec. 31, 2019, and were placed in service before Jan. 1, 2022.

- The base credit is increased by 2% if the facilities meet domestic-content requirements and by 10% where the prevailing-wage and apprenticeship requirements are also met (*see* Section 13101 above for modified bonus credit requirements*)*.
- Projects in energy communities are also eligible for a bonus credit *(see* Section 13101 above*)*.
- The tax-exempt bond rules similar to those applicable to the PTC apply (*see* Section 13101 above).
- Applies to facilities placed in service after Dec. 31, 2021. Construction on the facility must begin before Jan. 1, 2025. Following this date, the credit switches to a tech-neutral version *(see* Section 13702 below)
- However, the IRA extends the credit, with a phasedown, for taxpayers that begin construction of energy equipment that uses the ground or groundwater as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure if construction begins before 2034.
- Impact: The credit would incentivize investments in clean electricity facilities. The IRA shortens the length of the ITC before it transitions to tech neutral compared to previous reconciliation proposals.

IRA Section 13103. Increase in Energy Credit for Solar Facilities Placed in Service in Connection with Low-Income Communities.

- Expands the section 48 ITC to include solar and wind facilities located in low-income or Native American communities, including energy-storage technology property, provided the facility receives an allocation of environmental justice solar and wind capacity.
- Requires the secretary of the Treasury, in consultation with the secretary of Energy and the Administrator of the Environmental Protection Agency, to allocate an annual environmental justice solar and wind capacity limitation to qualifying projects based on those with the greatest health and economic benefit, the greatest employment and wages and the greatest engagement with local governments, Indian tribal governments and community-based organizations.
- Sets the annual capacity limitation from 2023 through 2024 at 1.8 gigawatts direct-current capacity and zero thereafter, taking into account the prior year's unused credit allocations through 2026.
- Increases the allocation by an additional 10% if the project is located in a low-income community or on an Indian reservation, and 20% if the project is a qualifying low-income residential building project or low-income economic benefit project.
- The selection criteria for determining the allocation of environmental justice solar and wind capacity limitation to qualified solar and wind facilities has been eliminated.
- Impact: Creates an investment incentive for solar and wind facilities in qualifying low-income residential and Native American building projects. There would be no specific changes in comparison to previous iterations of the credit.

IRA Section 13104. Extension and Modification of Credit for Carbon Oxide Sequestration.

- Extends and expands the section 45Q carbon oxide sequestration credit for facilities that begin construction before 2032. Direct-air capture (DAC) facilities would qualify for the enhanced credit if they capture at least 1,000 metric tons of carbon oxide per year. Electricity-generating facilities would be required to capture at least 18,750 metric tons of carbon oxide and at least 75% of total carbon emissions that otherwise would have been

released by the facility. All other facilities would be required to capture at least 12,500 metric tons of carbon oxide per year to qualify for the credit.

- For geological storage, the base credit rate is $17, and the bonus credit rate is $85 per metric ton of carbon oxide captured. For carbon oxide that is captured and utilized, the base credit is $12, and the bonus credit rate is $60 per metric ton. For the enhanced DAC credit applied to geological storage, the base credit rate is $36, and the bonus rate is $180 per metric ton. DAC carbon oxide that is utilized qualifies for an enhanced base credit rate of $26 and a bonus rate of $130 per metric ton.
- Requires taxpayers claiming the credit to satisfy the prevailing-wage and apprenticeship requirements during the facility's construction and the 12-year credit period (*see* Section 13101 above).
- Tax-exempt bond rules similar to those applicable to the PTC apply (*see* Section 13101 above).
- Applies to projects placed in service after Dec. 31, 2021, and before Jan. 1, 2033.
- Generally, the section 45Q carbon sequestration credit is one of three energy tax credits included in the IRA that is able to be claimed by any taxpayer as a direct payment.
- Impact: Extends the carbon-capture credit and provides an additional incentive for investments in direct-air capture facilities. Any taxpayer can elect to receive this credit as a direct payment.

IRA Section 13105. Zero-Emission Nuclear Power Production Credit.

- Creates a new credit for electricity from a qualified nuclear facility. The base credit is 0.3 cents per kilowatt-hour and a bonus credit rate of 1.5 cents per kilowatt-hour.
- Stipulates that as the price of electricity increases, the credit is reduced. The credit reduction formula reduces the credit by 16% of the excess of gross receipts from electricity produced and sold over the product of 2.5 cents times the amount of electricity produced and sold during the year.
- Applies to a facility owned by the taxpayer that uses nuclear energy to produce electricity, provided the taxpayer has not claimed a credit for advanced nuclear power facilities under section 45J.
- Requires taxpayers claiming the bonus credit to satisfy the prevailing-wage and apprenticeship requirements (*see* Section 13101 above).
- Permits taxpayers to elect the direct-payment option in lieu of the credit.
- Applies to electricity produced and sold after Dec. 31, 2023. The credit expires after Dec. 31, 2032.
- Impact: Creates a credit to support power production by existing nuclear facilities and power sources not dependent on sources like wind and solar. The IRA reverts the reduction amount to the House-passed proposal, limiting the value of the credit for some existing nuclear electricity producers.

Part 2—Clean Fuels

IRA Section 13201. Extension of Incentives for Biodiesel, Renewable Diesel and Alternative Fuels.

- Extends the income and excise tax credits for biodiesel and biodiesel mixtures at $1.00 per gallon through 2024. Extends the $0.10 per gallon small agri-biodiesel producer credit and the $0.50 per gallon excise tax credit for alternative fuel and alternative fuel mixtures

through 2024. Following this date, the credit switches to a tech-neutral version (*see* Section 13704 below).
- The bill repeals liquid hydrogen as an alternative fuel under the alternative fuel and alternative fuel mixture credit.
- Impact: Provides a three-year extension of the tax incentives for the production of biodiesel and alternative fuels, affording greater certainty for these producers in the energy sector. The IRA shortens the length of the excise tax credit before it transitions to tech neutral compared to previous reconciliation proposals.

IRA Section 13202. Extension of Second-Generation Biofuel Incentives.

- Extends the second-generation biofuel income tax credit through 2024. Following this date, the credit switches to a tech-neutral version (*see* Section 13704 below).
- Impact: Provides a three-year extension of the tax incentives for the second-generation biofuel income tax credit through 2024, affording greater certainty for these producers in the energy sector. The IRA shortens the length of the excise tax credit before it transitions to tech neutral compared to previous reconciliation proposals.

IRA Section 13203. Sustainable Aviation Fuel Credit.

- Creates a refundable blenders credit for each gallon of sustainable aviation fuel sold as part of a qualified mixture starting in 2023. The credit operates on a sliding scale, providing $1.25 to $1.75 based on the fuel's reduction in lifecycle greenhouse emissions above 50%. The credit may be claimed against section 4041's excise tax liability.
- Requires taxpayers to certify that the fuel reduces emissions by at least 50%.
- Eliminates the $1.00 tax credit for aviation fuel produced from biodiesel under section 40A.
- Only applies to fuel sold or used in 2023 through 2024. Following this date, the credit switches to a tech-neutral version (*see* Section 13704 below).
- Impact: Creates a new tax incentive for the production of sustainable aviation fuel. The IRA shortens the length of the excise tax credit before it transitions to tech neutral compared to previous reconciliation proposals.

IRA Section 13204. Clean Hydrogen.

- Creates a new tax credit for the production of clean hydrogen in the United States for sale or use by the taxpayer. Beginning in 2022, the credit applies to the 10-year period beginning on the date the clean-hydrogen facility is placed in service.
- The credit is based on (1) a base amount of $0.60 and the bonus amount of $3.00 (indexed to inflation), multiplied by (2) the kilograms of clean hydrogen produced and multiplied by (3) an applicable percentage representing the ratio of kilograms of carbon dioxide (CO_2e) emissions to kilograms of hydrogen produced. The IRA requires a lifecycle ratio of 4:1 or lower.
- The applicable percentage (ranging from 20% to 100%) is determined by the lifecycle greenhouse gas emissions rate achieved from producing clean hydrogen.
- Allows a taxpayer to submit a petition to the secretary of the Treasury to waive the lifecycle greenhouse gas emission requirements.
- The applicable percentage (ranging from 15% to 100%) is determined by the lifecycle greenhouse gas emissions rate achieved from producing clean hydrogen.
- Permits taxpayers to claim the section 45 PTC for electricity produced from renewable resources that are used in a facility producing clean hydrogen.

- Permits taxpayers to elect to treat a qualified clean hydrogen facility as energy property under the section 48 ITC, in lieu of claiming the new PTC credit for clean hydrogen.
- The credit is available for projects that begin construction before 2033.
- Generally, the section 45V clean hydrogen production credit is one of three energy tax credits included in the IRA that is able to be claimed by any taxpayer as a direct payment.
- Impact: Creates a new tax incentive for the production of clean hydrogen. Any taxpayer can elect to receive this credit as a direct payment. The IRA reduced the maximum allowable amount of carbon emissions that will force taxpayers to limit their CO2e to clean hydrogen ratio to below 4:1.

Part 3—Green Energy and Efficiency Incentives for Individuals

IRA 13301. Extension, Increase and Modifications of Nonbusiness Energy Property Credit.

- Extends the nonbusiness energy property credit by 10 years for property placed in service before Jan. 1, 2033.
- Increases the credit amount from 10% to 30% for qualified energy efficiency improvements and residential energy property expenditures.
- Converts the lifetime limits under current law to an annual credit amount, which is increased from a maximum of $500 to $1,200.
    - The credit does not apply to the cost of any qualified energy property in excess of $600 per year per taxpayer.
    - The maximum credit amount for exterior windows and skylights may not exceed $600 per year per taxpayer.
    - The maximum credit amount for *any* exterior door may not exceed $250, and the maximum credit for *all* exterior doors may not exceed $500 per year per taxpayer.
- The credits allowed under this section should not exceed, in aggregate, $2,000 per taxpayer for energy-efficient building property including electric heat pumps, central air conditioners, or a qualified natural gas, propane or oil furnace or hot water boilers.
- Removes metal roofs and asphalt roofs from qualifying as building envelope components and adds air sealing material and systems.
- Removes the requirement for purposes of the "residential energy property expenditures" that qualified energy property be used in the taxpayer's *principal* residence. The bill requires qualified energy property only to be "used as a residence by the taxpayer."
- Changes the definition of qualified energy property to mean:
    - Any of the following that meets the highest efficiency tier established by the Consortium for Energy Efficiency in effect at the beginning of the calendar year in which the property is placed in service: an electric heat pump water heater, an electric heat pump, a central air conditioner, a natural gas, propane or oil water heater, a natural gas, propane or oil furnace or hot water boiler;
    - A geothermal heat pump that meets the requirements of the Energy Star program;
    - A biomass stove that uses the burning of biomass fuel for heat or to heat water in a dwelling unit in the United States that is used as a residence by the taxpayer and that has a thermal efficiency rating of at least 75%; and
    - Any oil furnace or hot water boiler placed in service:
        - between 2023 and 2026 that meets the 2021 Energy Star efficiency criteria and is rated for use with eligible fuel blends of 20% or more, or
        - after Dec. 31, 2026, and achieves an annual fuel utilization efficiency rate of at least 90% and is rated for use with eligible fuel blends of 50% or more.

    - Defines eligible fuel as biodiesel and renewable diesel and second-generation biofuel.
- Creates a 30% credit for home energy audits that may not exceed $150. Defines a home energy audit as an inspection and written report with respect to a dwelling unit located in the United States and owned or used by the taxpayer as the taxpayer's principal residence, which (1) identifies the most significant and cost-effective energy efficiency improvements including an estimate of the energy and cost savings, and (2) is conducted and prepared by a home energy auditor that meets the certification or other requirements specified by the secretary of the Treasury.
- Requires taxpayers to report product identification numbers for property, with respect to which the energy-efficient property credit is claimed, on their annual tax return if placed in service after 2024.
- Renames section 25C the "Energy Efficient Home Improvement Credit."
- Applies generally to property placed in service and to amounts paid for home energy audits after Dec. 31, 2021.
- Impact: Extends and triples the Nonbusiness Energy Property Credit, making it more affordable for homeowners to invest in energy-efficient home improvements, as well as encouraging home energy audits. The IRA places an aggregated $2,000 credit limit on several, previously uncapped technologies.

IRA Section 13302. Residential Clean Energy Credit.

- Extends the residential energy efficient property credit under section 25D by 10 years to property placed in service by Jan. 1, 2035, with adjustments to the corresponding phaseout dates.
- The initial credit value is 30%. It begins to phase down in 2032 until it reaches 22% in 2034.
- Covers qualified battery storage technology expenditures for battery storage technology that is installed in the taxpayer's U.S. residence and has a capacity of at least 3 kilowatt-hours to qualify for the credit.
- Eliminates the carryforward of unused credits starting in 2023.
- The IRA also removes the provision that contemplated a Treasury Department program to register installers and provide installation identification numbers. Installers would have been required to provide written receipt of qualifying purchases and installations and make periodic written reports to the secretary of the Treasury of such installation transactions.
- Redesignates the credit as section 36C, the "Residential clean energy credit."
- Generally applies to expenditures made after Dec. 31, 2021. However, in the case of residential clean energy credit for battery storage technology, it applies to expenditures made after Dec. 31, 2022.
- Impact: Extends and makes refundable the Residential Energy Efficient Property credit so taxpayers can more easily pay for residential alternative energy equipment, such as solar hot water heaters, wind turbines and solar electricity equipment, subject to new compliance requirements regarding qualified installers.

IRA Section 13303. Energy Efficient Commercial Building Deduction.

- Modifies the energy-efficient commercial building deduction for taxable years beginning after Dec. 31, 2022:

- Requires "energy efficient commercial building property" to be part of a plan to reduce total energy and power costs with respect to certain systems of the building by only 25% as opposed to the 50% requirement under current law.
- Sets the maximum deduction equal to the applicable dollar value multiplied by the square footage of the building, divided by the aggregate amount of deductions with respect to the building for the three years immediately preceding the taxable year.
  - The applicable dollar value is $0.50, which increases (but not above $1.00) by $0.02 for each percentage point by which the total annual energy and power costs for the building are certified to be reduced by a percentage greater than 25%.
  - A higher applicable dollar value—$2.50, which increases (but not above $5.00) by $0.10 for each percentage point by which the total annual energy and power costs for the building are certified to be reduced by a percentage greater than 25%—generally applies if construction for a building or retrofit plan satisfies certain wage and apprenticeship requirements guidance (*see* Section 13101 above) and satisfies the requirements.
- Allows an alternative deduction for energy-efficient retrofit buildings based on the energy usage intensity and the aggregate adjusted basis for the building. A qualified retrofit plan is a written plan prepared by a qualified professional that specifies modifications to a building that, in the aggregate, are expected to reduce the building's energy usage intensity by at least 25%.

- Allows for the allocation of the deduction to certain tax-exempt entities in the same manner as is allowed for federal, state and local governments.
- Provides that for real estate investment trusts any amount deductible shall be allowed in the year in which the property is placed in service.
- Updates the energy-efficiency standard to the more recent of: (1) Standard 90.1-2007 published by the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRACE) and the Illuminating Engineering Society of North America (IESNA), or (2) the most recent Standard 90.1 published by ASHRACE.
- Applies to taxable years beginning after Dec. 31, 2022.
- Impact: Increases the incentive for building owners to make energy-efficient commercial building improvements and retrofits.

IRA Section 13304. Extension, Increase and Modifications of New Energy Efficient Home Credit.

- Extends the new energy-efficient home credit for 10 years for qualified new energy-efficient homes acquired through Dec. 31, 2032.
- Increases the credit amount applicable to single-family and multifamily housing construction:
  - Dwelling units in which heating and cooling energy consumption is at least 50% below the annual consumption of a comparable unit are eligible for a credit of $2,500 ($500 for units in which the building is eligible to participate in the Energy Star Multifamily New Construction Program), and
  - Units in which building envelope component improvements account for at least 20% of such 50% are eligible for a credit of $5,000 ($1,000 for units in which the building is eligible to participate in the Energy Star Multifamily New Construction Program).
- Provides that a dwelling unit meets the energy-saving requirements if it conforms to Federal Manufactured Home Construction and Safety Standards or is certified as a zero-

energy ready home under the zero-energy ready home program of the Department of Energy.
- The credit is also retroactively extended to dwelling units that are purchased after Dec. 31, 2021, but on or before Dec. 31, 2022.
- Impact: Increases the incentive for developers to construct or substantially reconstruct energy-efficient residences and multifamily housing.

Part 4—Greening the Fleet and Alternative Vehicles.

IRA Section 13401. Clean Vehicle Credit.

- Creates a refundable income tax credit for purchases of new plug-in electric motor vehicles through 2032. Sets the base credit amount at $3,750 each for clean vehicles meeting the critical-mineral and battery-component requirements, for a total of $7,500 in tax credits for vehicles placed in service after 2022 through 2032.
- Applies only to vehicles assembled in North America (i.e., in the United States, Canada and/or Mexico).
- Disallows the credit for vehicles with a manufacturer's suggested retail price that exceeds:
    - $80,000 for vans, SUVs and pickup trucks, and
    - $55,000 for any other vehicle.
- Disallows the credit for buyers with a modified adjusted gross income of more than $150,000 ($300,000 for married couples filing jointly and $225,000 for head of household filers).
- Limits the credit to the purchase of one electric vehicle per year.
- Removes the current 200,000-vehicle per manufacturer cap for automakers.
- Requires dealers to report to the buyer and the IRS certain information regarding the vehicle.
- Beginning in 2024, allows the buyer to transfer the credit to the dealer, thereby allowing the credit effectively to be taken into account in the purchase price. The transfer process includes significant requirements for vehicle dealers to qualify. The secretary of the Treasury is directed to establish a direct-payment program for dealers to monetize the transferred credits.
- Prevents the credit from being reduced under budget sequestration.
- Impact: Encourages the purchase of electric vehicles for personal use and allows the value of the credit to be passed to the consumer by the dealer through the purchase price.

IRA Section 13402. Credit for Previously Owned Clean Vehicles.

- Creates a refundable credit for the purchase of used clean vehicles through 2032.
- Sets the base credit amount at the lesser of $4,000, or 30% of the sale price.
- Applies to the first resale of a used electric vehicle from a dealership for personal use following after 2022.
- Limits the credit to one used-vehicle purchase every three years.
- Applicable to qualifying electric and fuel cell vehicles (under the existing sections 30D and 30B credit) priced at $25,000 or less and with a model year at least two years old at the time of sale.
- Disallows the credit for buyers with a modified adjusted gross income of more than $75,000 ($150,000 for married couples filing jointly and $112,500 for head of household filers).

- Beginning in 2023, allows the buyer to transfer the credit to the dealer, thereby allowing the credit effectively to be taken into account in the purchase price. Similar to the credit for new, clean vehicles (*see* IRA Section 13401 above).
- Taxpayers must report the VIN on their tax return to qualify for the credit.
- Prevents the credit from being reduced under budget sequestration.
- Impact: Encourages the sale of electric vehicles in the used-car market.

IRA Section 13403. Qualified Commercial Clean Vehicles.

- Creates a new credit equal to 15% (30% in the case of a commercial vehicle that does not run on gasoline or diesel fuel) of the incremental cost of qualified commercial electric vehicles acquired after 2022 through 2032. The incremental cost is the difference between the clean vehicle cost and that of a comparable gasoline- or diesel-powered vehicle.
- Taxpayers must report the VIN on their tax return to qualify for the credit.
- Extends the credit for the purchase of qualified fuel cell motor vehicles through 2032.
- Impact: Promotes the purchase of electric vehicles at the commercial level.

IRA Section 13404. Alternative Fuel Refueling Property Credit.

- Extends the credit for alternative fuel vehicle refueling property placed in service after 2022 through 2032.
- Expands the credit for zero-emissions charging and refueling infrastructure with a base credit of 6% for expenses up to $100,000.
- Provides an alternative bonus credit for taxpayers that meet certain prevailing-wage requirements during construction: 30% for expenses up to $100,000.
- Limits the credit to property located in a qualifying census tract (i.e., low-income communities under the New Markets Tax Credit or non-urban areas).
- Expands the list of eligible property to include electric charging stations for electric two- and three-wheel vehicles and clarifies the eligibility of bidirectional charging equipment.
- Impact: Promotes and incentivizes the construction of electric vehicle refueling property in low-income communities and non-urban areas.

Part 5—Investment in the Green Workforce and Manufacturing

IRA Section 13501. Extension of the Advanced Energy Project Credit.

- Extends section 48C qualified advanced energy property credit and provides an additional $10 billion, of which $6 billion may be allocated to qualified investments that are not located in energy communities.
- Each applicant has two years from the date of acceptance to provide evidence that the taxpayer qualifies for certification and to place the project in service.
- Taxpayers receive a base rate of 6%, increasing to 30% if taxpayers satisfy prevailing-wage and apprenticeship requirements.
- Modifies and expands the definition of eligible projects to include energy storage systems and components, electric grid modernization equipment or components, renewable and low-carbon fuels, energy conservation technologies, electric and fuel-cell vehicles, charging and refueling infrastructure, hybrid-vehicle projects and the decarbonization of industrial facilities.
- Removes the selection criteria included in the House-passed provision.
- **Applies as of Jan. 1, 2023.**

- Impact: Provides additional incentives for advanced energy projects by providing a base credit and bonus credit for projects that create jobs and reduce carbon emissions.

IRA Section 13502. Advanced Manufacturing Production Credit.

- Creates a production credit for eligible components produced by the taxpayer and sold to an unrelated person. Both the production and sale must be in a trade or businesses of such taxpayer.
- The credit amount varies depending on the particular product or component, which include: thin film photovoltaic cells, crystalline photovoltaic cells, photovoltaic wafers, solar grade polysilicon, polymeric backsheet, solar modules, wind energy components, torque tube, structural fasteners, inverters, electrode active materials, battery cells and modules and critical minerals.
- Phases out the credit beginning after Dec. 31, 2029. Components sold during 2030 will only receive 75% of the credit, components sold during 2031 will only receive 50% of the credit and components sold in 2032 will only receive 25% of the credit. After Dec. 31, 2032, the credit is zero. The phase-out does not apply to critical minerals.
- Applies only to U.S. production of qualifying components.
- Eligible for direct pay or transferability of the credit.
- Applies to components produced and sold after Dec. 31, 2022.
- Impact: Creates incentives for manufacturing components for clean energy property in the United States.

Part 6—Superfund

IRA Section 13601. Reinstatement of Superfund.

- Reinstates the Hazardous Substance Superfund Financing Rate on crude oil and imported petroleum products at the rate of 16.4 cents per barrel, indexed to inflation.
- The tax applies as of July 1, 2022 at a rate of 9.7 cents per barrel, and the increase in rate to 16.4 cents per barrel applies as of Jan. 1, 2023.
- Impact: Reinstates the Hazardous Substance Superfund tax to support environmental cleanup projects.

Part 7—Incentives for Clean Electricity and Clean Transportation

IRA Section 13701. Clean Electricity Production Credit.

- Creates a new 10-year clean energy production tax credit equal to the kilowatt-hours of electricity produced in the United States by a qualified facility and sold by the taxpayer multiplied by an applicable amount. In cases of a facility equipped with a metering device, the electricity may be sold, consumed or stored.
- The applicable base amount is 0.3 cents. An alternative amount of 1.5 cents applies to facilities with a maximum output of less than 1 megawatt or facilities that satisfy prevailing-wage and apprenticeship requirements. These amounts will be adjusted for inflation.
- To qualify, the facility must be used for the generation of electricity placed in service after Dec. 31, 2024, and the greenhouse gas emission rate must be not greater than zero. The credit applies to the expansion of an existing facility placed in service before Jan. 1, 2025, but only to the extent that the increased amount of electricity produced is the result of a

new unit that is placed in service after Dec. 31, 2024, or additions of capacity that are placed in service after Dec. 31, 2024.
- The credit is disallowed for facilities for which a credit is allowed under sections 45, 45J, 45Q, 45U, 48, 48A or 48D.
- In the case of facilities that produce electricity through fuel combustion or gasification, the greenhouse gas emissions rate is equal to the net rate of emissions released by that facility, excluding any carbon captured under the section 45Q credit. The secretary of the Treasury is required to publish annually a table that sets greenhouse gas rates.
- The credit is subject to phase out after the "applicable year," which is the later of (1) the year in which the secretary of the Treasury determines the annual greenhouse gas emissions from electricity production in the United States is 25% or less or (2) 2032. For a facility that begins construction during the first calendar year following the applicable year, the percentage is 100; year two is 75%, year three is 50%, and subsequent years are 0%.
- Qualified facilities located in energy communities and facilities meeting domestic-content requirements receive a 10% increase in the credit.
- Applies to facilities placed in service after Dec. 31, 2024.
- Impact: Creates a tech-neutral incentive for emission reductions from electricity production.

IRA Section 13702. Clean Electricity Investment Credit.

- Creates an investment tax credit for clean electricity production facilities and energy storage technology. The base rate of the credit is 6% and the bonus rate is 30% for facilities with a maximum output of less than 1 megawatt or that satisfy prevailing-wage and apprenticeship requirements.
- The credit is increased for facilities in low-income communities. The base credit is increased to 16% and the bonus credit is also increased to 50%.
- A qualified facility is one that generates electricity, placed in service after Dec. 31, 2024, and the greenhouse gas emission rate is not greater than zero. This definition does not include facilities that can apply for credits under sections 45, 45J, 45Q, 45Y, 48 or 48A.
- Qualified investments in energy storage technology include property meeting the same definition under section 48(c)(6) (*see* Section 13102 above).
- The credit is subject to phase out after the "applicable year," which is the later of (1) the year in which the secretary of the Treasury determines the annual greenhouse gas emissions from electricity production in the United States is 25% or less or (2) 2032. For a facility that begins construction during the first calendar year following the applicable year, the percentage is 100; year two is 75%, year three is 50%, and subsequent years are 0%.
- The credit is subject to recapture if the secretary of the Treasury determines that the greenhouse gas emission rate for a facility is greater than 10 grams of CO_2e per KWh, in which case the property for which the credit was allowed will cease to qualify for the credit in the year of the determination.
- Impact: Creates a tech-neutral incentive to invest in clean electricity production facilities and energy storage technology.

IRA Section 13703. Cost Recovery for Qualified Facilities, Qualified Property and Energy Storage Technology.

- Treats facilities qualifying for the clean electricity production credit and facilities or energy storage technology qualifying for the electricity investment tax credit as a five-year property under section 168.
- Applies to facilities placed into service after Dec. 31, 2024.

- Impact: Provide a shorter class life for designated clean energy property, thereby accelerating cost recovery with respect to such property.

IRA Section 13704. Clean Fuel Production Credit.

- Creates a production credit equal to the amount per gallon of transportation fuel produced by a qualified facility in the United States, sold during the taxable year and meeting certain emissions requirements. The base credit is 20 cents per gallon and the bonus credit is $1.00 if the fuel is produced at a facility that meets prevailing-wage and apprenticeship requirements. For sustainable aviation fuel, the base credit is 35 cents and the bonus credit is $1.75. Sustainable aviation fuel is a liquid fuel sold for use in an aircraft that meets certain requirements.
- The calculation of the emission factor of transportation fuel is an amount equal to 50 kilograms of CO_2e per mmBTU minus the emissions rate for that fuel divided by 50 kilograms of CO_2e per mmBTU. The secretary of the Treasury will publish annually a table that sets the emissions rate for transportation fuels based on the amount of lifecycle greenhouse gas emissions.
- Clarifies the emissions standard and registration requirements with respect to sustainable aviation fuel.
- In calendar years beginning after 2024, the base rates and bonus rates will be adjusted for inflation.
- The credit is subject to phaseout after the "applicable year," which is the later of (1) the year in which the secretary of the Treasury determines the annual greenhouse gas emissions from electricity production in the United States is 25% or less or (2) 2032. For a facility that begins construction during the first calendar year following the applicable year, the percentage is 100, year two is 75%, year three is 50%, and subsequent years are 0%.
- Applies to transportation fuels produced after 2024 and sold before 2028.
- Impact: Incentivizes investment in clean fuel to meet emission reduction goals.

Part 8—Credit Monetization and Appropriations

IRA Section 13801. Elective Payment for Energy Property and Electricity Produced from Certain Renewable Resources, etc.

Code Sec. 6417. Elective Payment of Applicable Credits.

- Generally limits direct pay to tax-exempt entities, tax-exempt organizations, state and local governments, political subdivisions, the Tennessee Valley Authority, Indian tribal governments and Alaskan Native Corporations.
- Tax-exempt entities may elect to receive all energy credits modified or enacted in the IRA as either: (i) a payment against their tax liability (if applicable) or (ii) a direct payment. In the case of governmental entities (or other taxpayers that are generally not required to file tax returns), elections must be made by a date and method to be determined by the secretary of the Treasury.
- Allows taxable businesses to elect to receive the credit through direct payment in three cases: (i) section 45V Clean Hydrogen Production Credit (*see* Section 13204 above), (ii) section 45Q Carbon Oxide Sequestration Credit (*see* Section 13104 above) and (iii) section 45X Advanced Manufacturing Production Credit (*see* Section 13502 above).
- The election for the hydrogen and carbon-capture credits applies to the year in which the property is placed in service plus the following four years. Elections must be made by the

due date of a federal taxpayer's tax return (including extensions), and once made, revocation of an election is limited. No election is permitted before 180 days after the enactment of the bill.
- Excessive payments are subject to an additional 20% penalty.
- Direct payment elections are permitted for taxable years generally beginning after Dec. 31, 2022 (with specific effective dates relating to individual credits in certain cases) through Dec. 31, 2032.

<u>Code Sec. 6418. Transfer of Certain Credits.</u>

- Allows taxpayers to transfer any portion or all of an applicable tax credit to an unrelated party ("transferee taxpayer"). Transferability generally applies to any of the green-energy tax credits enacted or modified in the bill. Applicable credits may only be transferred once.
- Requires that all payments provided for the transfer of the credit be paid in cash. Payments with respect to transferred credits are not included in the gross income of the selling taxpayer and are not deductible by the transferee taxpayer.
- For partnerships and S corporations, elections may only be made at the entity level, and transfer payments are treated as tax-exempt income for the purposes of determining the basis and taxable income of the partner or shareholder.
- Elections to transfer credits must be made by the due date of a taxpayer's tax return (including extension) for the year in which the credit is determined, and all elections are irrevocable. No election is permitted before 180 days after the enactment of the bill.
- A 20% penalty applies to transferred credits if the secretary of the Treasury determines that any portion of the original credit constitutes an excessive payment. This penalty may require indemnity agreements between the taxpayer originating the credit and the transferee taxpayer.
- Allows for a three-year carryback of credits transferred under the new provision. Current-law carryforward provisions are modified to allow for unused credits to be carried forward to the earliest of the succeeding 22 taxable years (instead of the current-law 20 years).
- Eligible credits are generally transferable after Dec. 31, 2022.
  <u>Impact</u>: While previous versions of the reconciliation bill allowed for almost-universal direct pay elections, the IRA limits direct pay with respect to most credits just to tax-exempt entities. All other taxpayers will be required to monetize their excess tax credits through the tax-equity market, with exceptions for the hydrogen credit, carbon-capture credit and advanced manufacturing production credits, which remain subject to direct payment regardless of the taxpayer's status

IRA Section 13802. Appropriations.

- Appropriates $500 million for fiscal year 2022, which is available until Sept. 30, 2031.
- <u>Impact</u>: Provides additional funding for the IRS to administer the new energy credits.

Part 9—Other Provisions

IRA Section 13901. Permanent Extension of Tax Rate to Fund Black Lung Disability Trust Fund.

- Removes a provision in the section 4121 black lung trust fund tax that would reduce the tax rate imposed on coal producers beginning in 2022.

- Impact: The provision indefinitely maintains the $1.10 per-ton underground mine tax and 55 cent-per-ton surface mine tax on coal producers, allowing for the stable funding of the black lung trust fund for the foreseeable future.

IRA Section 13902. Increase in Research Credit Against Payroll Tax for Small Businesses.

- Increases the maximum amount allowed under the payroll tax from $250,000 to $500,000 after Dec. 31, 2022, for businesses with less than $5 million in gross receipts. The additional $250,000 could be applied against the Medicare Hospital insurance tax, and any unused amount can be carried forward by the taxpayer for use in future years.
- Impact: The provision doubles the amount allowed for small businesses engaging in qualified research. It also allows small businesses with a potentially small tax liability to apply the credit against Medicare taxes.

IRA Section 13903. Tax Treatment of Certain Assistance to Farmers, Etc. (Removed)

- **Senate Point of Order: Sen. Lindsey Graham (R-SC) raised a point of order against several provisions en bloc. As part of his point of order, he argued that section 13903 was extraneous and violated 313(b)(1)(A) of the Congressional Budget Act of 1974. The point of order was sustained and the entire provision was removed from the Schumer substitute.**

New IRA Section 13903. Reinstatement of Limitation Rules for Deduction for State and Local, Etc., Taxes; Extension of Limitation on Excess Business Losses of Noncorporate Taxpayers.

(New section added by amendment—subsequently replaced through a second amendment.)

- **Senate amendment 5472: To offset the revenue loss from the removal of the aggregation rule from section 10101, the Thune amendment included a one-year extension of the cap on the state and local tax (SALT) deduction. This amendment was initially agreed to, but the offset was superseded by Senate amendment 5488 proposed by Sen. Mark Warner (D-VA).**
- **The Warner amendment replaced the SALT cap extension (restoring current law) with a new two-year extension to the business loss limitations applicable to owners of passthrough businesses under section 461(l), which limits the use of such losses to offset non-passthrough income to $250,000 ($500,000 for joint filers) through 2028.**
- Impact: The final, amended provision extends the passthrough business loss limitations for two additional years.