The Inflation Reduction Act and What it Means to Renewable Energy and Beyond

One week ago, President Joe Biden signed The Inflation Reduction Act into law, legislation that includes major clean and renewable energy provisions, as well as raising a net total tax of about $90 billion over 10 years, according to the Joint Committee on Taxation. In this week's podcast, Michael Novogradac, CPA, is joined by Nat Eng, CPA, and Novogradac's director of public policy and government relations, Peter Lawrence, to talk about the provisions of the bill. After giving an overview, they discuss the significant broad and crosscutting provisions of the legislation before diving into the specifics of the clean and renewable energy provisions, including the effect of the increase in credit totals, the direct-pay provisions, transferability and bonus credits. They also discuss provisions that are related to affordable housing and community development.

Summaries of each topic:

Transcript

[00:00:10] **Michael J. Novogradac, CPA:** I'm Michael Novogradac. And this is Tax Credit Tuesday. This is the Aug. 23rd, 2022, podcast.

One week ago today, President Joe Biden signed into law the Inflation Reduction Act, thereby enacting legislation that, according to the Joint Committee on Taxation, raises a net total tax of about $90 billion over 10 years. The bill includes additional tax increases of about $360 billion and additional expanded and extended energy tax credits and deductions of about $270 billion over the same 10 years. Among the tax increases is a 15% corporate minimum tax on book income. Now this legislation came nearly 18 months after President Biden took office and eight months after Sen. Joe Manchin effectively killed Biden's Build Back Better Act.

The Build Back Better Act was a much larger and more expansive bill, a bill that included extensions and/or expansions of the low-income housing tax credit, new markets tax credit and historic rehabilitation tax credit. Now many observers assumed that attempts to pass any significant clean energy legislation were dead. To many's surprise, in late July, Manchin and Senate Majority Leader Chuck Schumer announced that they had reached an agreement on potential legislation, which ultimately became the Inflation Reduction Act.

As I said, there are many significant clean energy provisions in the bill, which we'll discuss in a moment. However, it is important to note that the provisions sought by those in the affordable housing, community development and historic preservation worlds were, generally speaking, not included in this bill. It's also important to note that there may be opportunities for those provisions to be added to a year-end tax bill, if there is such a bill. We'll discuss that in a future podcast.

Today's podcast is focused on the provisions in the Inflation Reduction Act and what stakeholders can and/or should do now in light of the provisions that were enacted. We'll also discuss some of the many issues for which Treasury will need to issue some degree of guidance in order to provide clarity. I should say Treasury and/or the IRS. Now, before we get to the interview portion of today's podcast, let me take a moment to provide an overview of the key provisions likely to be most important to our Tax Credit Tuesday audience.

If I don't cover one of these items, if we don't cover it on the podcast, please send an email to cpas@Novoco.com or reply to me on Twitter. My Twitter handle is @Novogradac.

Overview of Provisions

Now as regards renewable energy, the headline provisions are extensions and enhancements of the investment tax credit and production tax credit for facilities that start construction after Jan. 1 of this year, 2022. The extensions are through the year 2032, with an interesting statutory transition that occurs at the start of 2025, which I'll address in a moment. The enhancements are that the ITC is increased back up to 30% of eligible costs and the PTC is extended at $26 per megawatt hour. That means of course, that the higher rates are retroactive to the beginning of 2022. Now there are two caveats: First, the extensions are for properties that began or begin construction before Jan. 1, 2025, and to receive the full credit, eligible properties must adhere to some labor requirements which we'll discuss later in the podcast. So, in short, the investment tax credit and production tax credit are extended, but the benefits are based on meeting certain conditions. I'll note there's also a 10% bonus for using domestic content in a facility, which could be a significant boost for many developments.

Now let's discuss the 2025 transition I mentioned. Starting in 2025, the investment tax credit and production tax credit transition to technology-neutral credits under section 45Y and 48D. And that's for facilities that start construction by the end of 2032. I'll note that ITC and production tax credit rates stay the same in 2025, but they are expanded, these credits and rates are expanded to more technologies. And that's how we get to an extension of those credits through 2032.

Now the legislation also includes a provision to make standalone energy storage–think batteries and interconnection property–eligible for the 30% investment tax credit. The Inflation Reduction Act allows taxpayers that did not generally pay federal income taxes to elect a direct payment of certain clean and renewable energy tax incentives. That's a direct payment in lieu of using the tax credits, I should say syndicating the tax credits. Now, the types of taxpayers that do not generally pay federal income taxes and are therefore under the new law allowed to receive a direct payment, includes state and local governments, Indian tribes and Alaska native claims corporations.

Now for taxable entities, they're not eligible as a general rule for the direct pay, but the bill does create an alternative option to monetizing tax credits. This would be an alternative to syndicating the tax credits or claiming them themselves. In lieu of a direct payment option, starting in 2023, taxable entities will generally be allowed to transfer some or all of certain credits to unrelated parties with the cash proceeds of that transfer not being considered taxable income. It's important to note that the transfer has to be in cash.

Looking beyond renewable energy, the new law significantly enhances the Section 45Q carbon oxide sequestration credit. Under the new law, any carbon capture, direct air capture or carbon utilization project that begins construction by the end of 2032 will be eligible for the credit. And in this situation, developers will have the option to receive direct pay for the full value of the tax credit for the first five years after the project is placed in service with an option of direct pay fully phasing out over the final seven years they receive the credit. Another provision in the new law allows a three-year carryback and 22-year carryforward for the production tax credit, investment tax credit, Section 30C alternative fuel vehicle credit and the Section 45Q carbon oxide sequestration credit. Prior to the bill, they were allowed only a one-year carryback and a 20-year carryforward. So once again, there's now a three-year carryback and a 22-year carry forward. Obviously, the three-year carryback is the more significant of those two changes.

I said earlier that affordable housing and community development provisions generally did not make it into the final bill, but there are a handful of renewable energy changes that overlap with affordable housing and community development. The overlap includes the Section 45L, 25C, 25D, all those credits, as well as the 179D deduction. Regarding the Section 45L energy-efficient home tax credit, which is often used in concert with low-income housing tax credit properties, it was extended for 10 years. Similarly of importance, the 45L credit no longer reduces low-income housing tax credit basis. This change, or these changes, should further encourage the use of the 45L credit with low-income housing tax credit properties.

Regarding other energy-related housing provisions in the Internal Revenue Code, the new law extends and or modifies the Section 179D energy-efficient commercial property deduction. The Section 25C nonbusiness energy property credit and the Section 25D residential energy-efficient property. We will have a separate podcast next week, where we're going to discuss the implications of the Inflation Reduction Act for affordable housing. We'll discuss it in part during this podcast, we'll go into more depth next week.

The last significant clean energy provision I'll mention here is incentives for the manufacturing of key renewable energy components in the United States. This is found in Section 48C. The new law expands the qualifications for the Section 48C credit and provides an additional $10 billion in credits for Treasury to allocate.

Now I have just shared a lot of information and in today's show notes, I'll share a link to a blog post that discusses the provisions. But clean energy was just a portion of the bill. There are some other provisions that we'll discuss today. Perhaps the most significant, as I noted earlier, is the establishment of a 15% minimum tax on corporations with an average adjusted financial statement income of more than $1 billion. Now we often refer to this as a tax on book income and that of course brings into some question as to how community development tax credits will be affected by the legislation.

The legislation does allow, I say legislation, but it is enacted, so I should say the new law allows for some adjustments, most notably for accelerated depreciation amortization, which should help protect the value of community development tax incentives. The bill does allow the low-income housing tax credit, new market tax credits, historic tax credit and renewable energy tax credits to be claimed against the minimum tax. But for those in the community development tax credit community, there are some outstanding questions, including how to account for proportional amortization method of accounting. Now we can make certain assumptions about Congress intended, but as we'll discuss later, it'll be very helpful and even needed in some cases for Treasury to issue some guidance. For example, Treasury could confirm that using methods such as the proportional amortization method, is acceptable and doing so won't adversely affect the way in which a corporation calculates their book income.

Now, these are just some of the questions that have come up with respect to legislation. Virtually every day, stakeholders are identifying new questions and situations, which the answer isn't obvious. Because of that, I'd like to encourage listeners to work with experienced tax advisors who are tracking the Act and the implications of it. Doing so can help you prepare for any future issues as they arise.

Now, today two returning guests join me to talk about the reconciliation legislation and what it means to the clean energy world, as well as other community development areas.

First joining me is Nat Eng, my partner in Novogradac's Walnut Creek, California, office. Nat is one of the leaders of our clean energy practice and is the chair of one of our renewable energy tax credit conferences every year. Nat's clients include stakeholders in solar, wind and battery storage. He works with developers, sponsors, syndicators and investors in the green energy space and has unique insights into the details of the bill.

Joining Nat today is Peter Lawrence, Novogradac's director of public policy and government relations. Peter has his finger on the pulse of Congress and the rest of the federal government when it comes to a broad swath of issues in which Novogradac is involved. Peter's an expert on affordable housing and has deep knowledge of community development, historic preservation and renewable energy issues. You've heard Peter many times before on this podcast.

Now the focus of today's podcast is to address some of the implications of this new law. Our hope is to answer questions you might have to provide an understanding of what we know and, similarly important, areas where we are awaiting guidance. We're going to start by talking about a couple of the big-picture items, the 15% minimum tax on book income and some of the crosscutting provisions in the bill, provisions that cut across a variety of renewable energy provisions. Then we'll look at some of the details of the various clean energy provisions, focusing on what we know and where we expect to need further guidance. After that, we'll talk about some of the provisions that affect affordable housing again and we'll discuss also there where guidance is needed.

This is a monumental energy bill and there's a lot to talk about today. So let's get started.

Peter and Nat, welcome back to Tax Credit Tuesday.

[00:12:45] **Nat Eng, CPA:** Thanks for having me back.

[00:12:57] **Peter Lawrence:** Likewise, Mike. Always appreciate the opportunity.

15% Corporate Minimum Tax Affect

[00:12:51] **Michael J. Novogradac, CPA:** So, Peter, let me start with you. The inclusion of the 15% corporate minimum tax on book income is one of those provisions that indirectly could have a major impact on the community development tax incentive world. Now I say *could* have, because it might not. Please explain to our listeners some of the key issues that we should be watching and in what areas we'll need guidance from the Treasure Department.

[00:13:26] **Peter Lawrence:** Thanks Mike. The proposed minimum book tax was a concern for many in the community development tax incentive industries given the fact that we were concerned with the potential impacts on investor interest in these tax credits. Various iterations of the proposal might have potentially had challenges in investors getting the tax benefits they expect in their investments. But fortunately, there have been some elements of the legislation that provide some comfort. For example, as you pointed out, you can use the various community development tax incentives against your minimum book tax, so that's important. And then, potentially having that ability may entice certain corporations to increase their appetite, if they were considerably lower than the 15% effective tax rate. But one thing will— a big question we've received as the legislation was being developed is what happens with tax losses? Late in the process as Congress was considering, they did allow for accelerated depreciation to be counted against the minimum book tax as well. However, as you point out, Mike, the concern we have is that the proportional amortization method of accounting combines the effect of losses and benefits under the line. And so there's some uncertainty on how the calculation of the book minimum tax will be interpreted with investors using the proportional amortization method. So we will be seeking guidance from Treasury to ensure that for purposes of a minimum book tax, that they can claim, for example, accelerated depreciation, but still report for purposes of reporting the financial statements using the proportional amortization method. And so that's something we're going to pursue with Treasury from the Novogradac working groups.

[00:15:23] **Michael J. Novogradac, CPA:** Great. Thank you for that, Peter. And I would emphasize that I do think that the proportion amortization methodology, where you report the losses below the line so it's in part of your tax provision and this minimum tax is based upon your book income before tax provision, that I do believe the better reading of the statute is that you should report your allocable share of book losses, adjusted for tax depreciation as you noted above the line for purpose of this calculation. But we will need guidance from Treasury to confirm that interpretation. And I always like to emphasize your other point, that if you're a corporation out there that wasn't paying much in the way of federal taxes or any federal taxes and now because of this change, you're going to be paying a minimum tax, now you might become an investor in community development tax credits. So, there is the potential for this to expand the number of investors in community development tax credits and renewable energy credits and other types of tax incentives.

So that'll be interesting to see how that develops over time. I will note to listeners that back in 1993, when the low-income housing tax credit was made permanent, there was also notable increases in taxes on many corporations and that did lead a number of those corporations to begin investing in tax credits so they could bring their effective tax rate back down to what it was before the ’93 act was enacted or at least lower it so it was closer to what it was before.

Cross-Cutting Provisions

So, I would like to next turn to the actual clean energy provisions, really the focus of the podcast, but before getting the specifics of each individual green energy provision or class of provisions, there are some cross-cutting provisions. The law has several provisions that cut across multiple energy tax incentives, call it provisions, call it requirements, call it conditions. So, Peter, if you could explain some of these crosscutting requirements or provisions to listeners and, most importantly, maybe what listeners should be doing to address these crosscutting provisions.

[00:17:33] **Peter Lawrence:** So, in general, the law sets up a two-tier structure of many of the incentives. There's a base rate, where if you don't meet certain conditions you're eligible for, but if you meet these requirements then you're able to get what’s often referred to as the bonus rate, which is for example, the 30% ITC or the $26 per megawatt hour for PTC, and one of the key crosscutting provisions are regarding labor or specifically prevailing wage and apprenticeship requirements. So, if your property is paying prevailing wage, then you're eligible for the bonus rate and if your property has a certain percentage of your labor hours conducted via an apprenticeship program, then the combination enables you to get that bonus rate. I will note that given that the challenges there may be in certain circumstances of meeting the apprenticeship, that the law does allow for a penalty. You pay $50 per total labor hours if you don't meet the apprenticeship requirements, so that there is a possibility to get the bonus rate if you don't completely comply with apprenticeship requirements, but, in general, obviously, I think for those want to maximize the resources there's an incentive to meet the apprenticeship requirements. So, I think that will be something that we'll be seeking verification from Treasury on what’s required to meet those two. There's a lot of details yet to be really ironed out and we'll just have to see when Treasury comes out with its guidance.

[00:19:18] **Nat Eng, CPA:** Yeah, Peter, I think I will add that it's a multiple of five times the base rate for satisfying these provisions. So that's why there's, quite frankly, a lot of focus by developers and investors across the board. I also find it interesting, I hope somebody comes out with a map one of these days to sort of show what areas geographically might be perhaps maybe more impacted by these provisions. Hopefully, someone's already working on that.

[00:19:54] **Peter Lawrence:** Yeah, apprenticeship programs are not necessarily available every single area of the country. So definitely it'll be harder to meet those in areas other than some of the major cities.

[00:20:04] **Nat Eng, CPA:** Right, right. You definitely get a range of potential impacts, I think, depending on where projects are constructed.

[00:20:12] **Michael J. Novogradac, CPA:** So, thank you for those insights, Peter, and thanks for sharing your insights as well there, Nat, from the ground, if you will. And Nat, you obviously work in a clean energy space. Many of our listeners know you from prior podcasts and your various podcast appearances talking about different clean energy matters. The new law presents enormous opportunities for our clients as a firm. And I was just wondering what initially are some of the most common questions that clients are coming to you with.

Most Common Questions

[00:20:43] **Nat Eng, CPA:** Yeah, there's a wide range of questions and quite frankly, I think there's been a lot of discussions and our phones are sort of ringing off their hooks, so to speak, right now. Although I guess phones don't really have hooks anymore for that.

[00:21:08] **Michael J. Novogradac, CPA:** No, you don't dial a phone either, but we won't go there.

[00:21:12] **Nat Eng, CPA:** Yeah. In terms of, most common questions, going back to Peter's comment on the crosscutting provisions with prevailing wages and apprenticeship requirements, that's definitely a key question. I probably should elaborate that there's certain exceptions to that that we should know, just for the benefit of the audience. There's a 1 megawatt AC cap or requirement there, so that projects underneath that threshold don't need to satisfy these requirements. And then also there is a period of time where a project can begun construction and not be subject to such requirements. And that's within or 60 days after the secretary publishes guidance, which many believe will be four to six months. Peter, I think you said it could be 270 days after Jan. 1, 2023, whatever that date is. Hopefully we'll get guidance sooner.

[00:22:21] **Peter Lawrence:** That's when Congress would like it. We'll see if Treasury produces it by them.

[00:22:25] **Nat Eng, CPA:** Yeah, certainly look forward to that as a practitioner in the weeds here. There's a lot of questions on that, a lot of questions on domestic content, what domestic content is, which we'll dive into further. And then I get a lot of crystal ball questions, quite frankly, these transferability rules. I think we're all trying to understand what they mean or how they can result in things being structured differently. We also come up with a lot of ideas that we'll probably want to get guidance on. There's certain ways that I think things could be structured with these rules that probably weren't intended, so it's, definitely exciting times for accountants and attorneys and others participating in the industry.

Choosing Between ITC and PTC

[00:23:05] **Michael J. Novogradac, CPA:** And are you getting the question about, should I claim production tax credits versus investment tax credits as well?

[00:23:12] **Nat Eng, CPA:** Yeah. we're getting that a lot. And I'm sort of seeing a range of questions out there. There's a few clients that were fairly proactive, suggesting that there'll be this option, but wow, even before Build Back Better was, folks were asking a while back to run some analysis and it's interesting. Quite frankly, I think it will probably impact a certain segment of the market probably or most likely utility-scale projects that have low-cost, lower revenues relative to high production factors.

[00:23:53] **Michael J. Novogradac, CPA:** OK.

[00:23:54] **Nat Eng, CPA:** So utility scale in certain parts of the country, like down in the Southeast will probably check these boxes and it's really sort of a complicated math exercise, some of which I'm not exactly sure how to calculate. But one thing's for sure, what does need to be factored in the math is with investment tax credit transactions, there's this concept of a fair market value step-up, which usually gets tied in with the income approach and fair market value appraisals. So, when comparing or trying to compare apples to apples as close as possible, or make an orange look like an apple, so to speak, I think what that entails is really comparing PTCs to a stepped-up ITC value and where it gets a little bit complicated and my crystal ball is proving unreliable is with the transferability provision sort of adding potential complexity or changing the world, at a minimum, there'll probably be some disruption, is the fact that the tax equity markets might change. So, you know, is PTC pricing before the Inflation Reduction Act, how much is that going to stay status quo versus fundamentally changing in the future with transferability and the fact that it might allow investors to buy credits on a year-to-year basis, which they couldn't do before. So anyways, lots of possibilities there that will definitely deserve and warrant further attention and analysis.

Benefit of Increase in Credit Amounts

[00:25:46] **Michael J. Novogradac, CPA:** So, I could have asked you what the clients are asking you about the most, but maybe of more interest to many of our listeners is what are the clients reaching out to you most excited about in the new law? You mentioned transferability. So that's certainly one, but I don't know if you want to say anything more about that or are there some of the other provisions that you're finding clients are most excited about?

[00:26:09] **Nat Eng, CPA:** Yeah. In terms of excitement, I think clients went to sleep thinking we have a 26% credit and then they woke up the next day to a 30% credit and some clients were even happier when they realized that their projects could qualify for more of the bonus credits. I think that quite frankly has a large impact on the industry in that it greatly improves economics. In some cases, it brings projects back from the dead. I'm calling them zombie projects, for now, projects that were marginal and couldn't quite pencil. Now get over the line some that are developing projects have started the process of revising their appraisals to see what sort of change this law has on the economics of their project and the amount of ITCs available, which directly ties in with the amount of investor proceeds that can be raised. So, in some cases, talking to some of my developer clients, this is a pretty large windfall to their projects that they're planning to reinvest and build more projects in the future. So, yeah, anyways, I could keep on going and going.

Carryback and Carryforward Provisions

[00:27:31] **Michael J. Novogradac, CPA:** Well, maybe talk about the three-year carryback. I didn't really talk about that in the intro.

[00:27:37] **Nat Eng, CPA:** The three-year carryback is definitely something that I think a lot of investors are happy with and salivating over. The past two years, we've been in a pandemic and quite frankly, the industry wasn't able to meet the demand for renewable energy projects, so this three-year carryback is really helpful because it basically allows investors to go back and offset their tax liability. Now, granted, there's going to be timing delays likely with getting or receiving payment from the IRS, but it definitely gives some of the investors out there who weren't able to get all the projects that they wanted to have sort of a second bite at the apple, so to speak. So, yeah, it's in a way greatly expanded tax appetite out there by allowing a carryback.

[00:28:29] **Michael J. Novogradac, CPA:** And it affects, just so our listeners are clear, it affects both those that are thinking of investing now, if they get the credits to be allocated them, this year, in the sense that they could go back three years to a pre-pandemic year, depending upon when you think of the pandemic began.

[00:28:58] **Nat Eng, CPA:** Still trying to figure that out.

[00:29:00] **Michael J. Novogradac, CPA:** Right. Exactly, but also for those investors that have credits already that maybe weren't going to be investing, because they had credit carryforwards, this provision creates that opportunity for them to get back into the credit investing market. Would you agree with that?

[00:29:17] **Nat Eng, CPA:** That's right. yeah, it definitely helps those investors that weren't able to time things perfectly.

[00:29:25] **Michael J. Novogradac, CPA:** Maybe before we move on to some other topics, you could say a few words about the webinar that we're scheduling.

[00:29:33] **Nat Eng, CPA:** Yeah, we're planning a series of webinars. I think we realized early on that one webinar wouldn't be able to do the Inflation Reduction Act any justice. So, we'll have a series of webinars taking deep dives into various topics, probably have a variety of practitioners and industry participants involved, because no one wants to listen to an accountant ramble on and on. But yes, the first part of the series of webinars will be sometime the week of Sept. 12.

[00:30:04] **Michael J. Novogradac, CPA:** Great.

[00:30:05] **Nat Eng, CPA:** Conveniently before everyone goes to Anaheim for Solar Power International.

Standalone Storage Questions

[00:30:11] **Michael J. Novogradac, CPA:** Got it. Good deal. So I'm going to drill down one of the provisions of the new law and now investment tax credits can be claimed on standalone storage, which wasn't the case before. So, I'm sure some of the questions you're getting from solar developers is well, now that I can claim credits on standalone storage versus having to combine storage with renewable energy generated from solar, when should I do a combined project and when should I do a standalone solar project and standalone storage?

[00:30:47] **Nat Eng, CPA:** Yeah, I think the question of conjoining or not conjoining has been coming up more than I thought it would over the last week or so. I think, as a whole, the standalone storage bill or storage provision was quite frankly helpful because everyone was trying to pair with solar or not, and then they wouldn't get the credit at all. So it it's definitely beneficial for projects to get the 30% credit, no doubt. What's interesting is there's a few instances where conjoining actually may make sense. One of those is perhaps if you started on a solar project and the solar project's start of construction was before the prevailing wage window kicked in. It's possible to have battery storage attached to solar and perhaps the battery storage is not subject to those prevailing wage and apprenticeship requirements. There's additionally an environmental justice bonus available to solar and wind and it does not apply to batteries, but it does apply when solar and wind are combined with the battery. So that's why conjoining or trying to combine the two might be beneficial in certain circumstances and I'm sure there's a few fact patterns that I'm not thinking of or haven't come up with that will be discussed.

Direct Pay Provisions and Issues

[00:32:20] **Michael J. Novogradac, CPA:** You know, it just sort of reinforces the need to be working with experienced tax professionals that already know some of these details or at least are in a position to be learning more in the course of their practice. So, I did mention in the intro about the direct pay provisions that were included in this law and these direct pay provisions were pared down from the options that were originally included in the Build Back Better Act. I'm sure listeners are wondering when can they use them, when can they not? I mentioned briefly about it's generally applicable for those entities that don't pay taxes, but maybe you could expand on the situations where you expect direct pay option to be a more effective execution.

[00:33:09] **Nat Eng, CPA:** Yeah, that's a very relevant question right now. And I guess the question is what is direct the direct pay option really an option? It applies to tax-exempts, government entities as Mike said earlier and quite frankly allows these entities to more easily participate in renewable energy transactions. Before, there were instances of, it could be a house of worship or school having solar installed and they would forego the credit. There was also a lot of instances where a PPA, a power purchase agreement, was the only option, but this now gives an ownership option to these entities and I think a lot of folks in the industry sort of breathed the sigh of relief when direct pay was sort of narrowed down from Build Back Better. I think there was a lot of folks were around 10-plus years ago when there was the 1603 Treasury grant program. I think a lot of folks were having reservations with potentially having direct pay be wider in scope. So, in a lot of ways, the industry is, or are members of the industry are, happier with the way the direct pay provisions were structured. I probably should just note that the one downside of a tax-exempt entity electing the direct pay option or structuring around direct pay is there's a good chance that depreciation benefits will be lost. So, there is still a piece of economics that a lot of people consider that's sort of left off the table. I'm sure some smart tax attorney out there will figure out a way to hopefully structure a transaction to not lose depreciation, but that's definitely one of the considerations that pops on my mind, sorry for rambling, Mike.

[00:35:14] **Michael J. Novogradac, CPA:** I think of it like this. When you hear about the direct pay option, the initial reaction is that this is a way to avoid the effort and the challenge of going through a syndication to monetize the credit. So direct pay would be an obvious first option. And when you have, as you said earlier, say a school where the solar installation's small and syndication isn't really an option, in the past, the opportunity to claim the credit is lost. For those situations, direct pay is a huge benefit. It makes the smaller size installations more financially feasible. For larger installations though, when you consider what you are noting about depreciation benefits and other factors, it is by no means a foregone conclusion that the direct pay option is the better option for a tax-exempt as opposed to monetizing the credits and other attributes through syndication. There's certainly some who suggest that many, if not most tax-exempts will find that direct pay isn't the better option in terms of maximizing the financing available from the tax incentives, which would mean that you'll still see a very robust syndication market with tax-exempt and state local governments in spite of this direct pay option.

We'll, of course, have to wait and see and I know that that's something that the Renewable Energy Tax Credit Working Group will be working on in terms of working through the issues involved in weighing the pros and cons of various options. We can talk about the Renewable Energy Tax Credit Working Group a bit more later.

I wanted to turn to the Section 45Q carbon sequestration credits and several others, because in lieu of being eligible for direct pay, absent the five-year direct pay benefit I mentioned in the intro regarding 45Q, there is this ability to transfer credits to unrelated parties. That transfer feature came out of the policy idea that if they don't want to make the direct pay option available to all types of taxpayers, they'll take some of the credits and let them be separately transferable with the proceeds of those credits not being considered taxable income to the recipient. What been the reaction among your clients with respect to that option? Knowing of course, that there's so many questions that you can't really form a finalized analysis until some of those questions get answered.

Transferability Option

[00:37:22] **Nat Eng, CPA:** Yeah, I think there's a wide range of 45Q projects that are out there. For instance, I haven't had an opportunity to work on a hydrogen project yet, but there's certainly a few 45Q projects out there. And while I think direct pay is a nice option, I do understand that there's those developers that need the capital sooner than later so waiting for direct pay and then the seven years of credits after direct pay ends isn't exactly an option. So, there may be some structures or alternative financings. Maybe a lender might get involved who will help bridge direct pay and/or those credits and that might be helpful for these 45Q developers. There's other projects where a lot of folks point out that 45Q is in some ways found money, so to speak, to the developers. There was already an existing project that was emitting carbon dioxide, for instance, and for some of those projects I think they can definitely afford to wait for direct pay proceeds to come in and I would hope that they reinvest that in other green technologies at the end of the day. But there's definitely a variety of fact patterns out there that sort of drive the need for direct pay or not in some instances.

Domestic Content Other Bonuses

[00:39:04] **Michael J. Novogradac, CPA:** So, we've talked a bit about additional bonus credits and the like and I mentioned domestic content in the opening. So maybe you could talk about how a project sponsor would benefit from the bonus credits for domestic content.

[00:39:22] **Nat Eng, CPA:** So domestic content has been a fairly popular question as well, because there's a 10% bonus credit available for those projects meeting domestic content provisions. I understand that it can get complicated in terms of what projects qualify for this bonus and that a lot of the materials that go into projects can come from a variety of sources. Some manufactured here, some partially manufactured globally. It basically comes down to how a lot of projects are assembled in the USA of global components at the end of the day. I found out from a smart tax attorney–I'll give them a plug, from Snell and Wilmer–mentioned that the wording in the domestic content provisions come from the Buy America Act and I attempted to read the Buy America Act this weekend but to say the least, it was a little bit complicated and I don't think I fully gotten my arms around those provisions. But I suspect a lot of developers will be consulting with attorneys and specialists that are very familiar with the requirements of that.

[00:40:49] **Michael J. Novogradac, CPA:** Great. Thank you.

[00:40:51] **Peter Lawrence:** Mike, if I could just jump in here for a second. There's a bonus available similar to the 10% bonus for domestic content. If your facility is located so-called energy community and what an energy community is defines you are a brownfield site or you are in a census track that has a coal mine that was closed or a coal-fired electric power plant that was retired. If you're in a community that had significant amount of employment in fossil fuel or you're in the census tract that has unemployment rate high above the national average the previous year, then either of those circumstances enable you to get a 10% bonus as well. I think that's something to keep an eye out as for various ways you can increase the value of your credit.

[00:41:53] **Michael J. Novogradac, CPA:** So, thank you for that, Peter. And before I actually switch over to Peter to talk about some of the housing provisions, Nat I did want to ask you a more overarching question and you can kind of take this question any way you want to take it. What are some of the most interesting ways that you think this new law will affect the clean energy world?

How the New Law Affects Clean Energy World

[00:42:15] **Nat Eng, CPA:** Yeah, it's definitely, impactful, to say the least. I probably have said that a hundred times during this podcast. What's interesting about this bill is, it was really, or legislation, is that it was really trying to get ahead of technology. There's the technology-neutral credits, 45Y, 48B. I felt like in prior years, we were always trying to jam a round peg in square holes, so to speak, with various technologies and trying to get them bucketed under something that sort of applied. Whereas here, there's the way the provisions are written it's a lot more inclusive to new technologies.

So I really think it was a leap forward in terms of trying to accommodate varying technologies that would be beneficial from a climate perspective, some of which, probably those technologies probably don't exist right now. So, that's something that I look forward to. I look forward to the new technologies that clients bring to us and we're sort of scratching our heads trying to think about what the technology is or asking to see a picture and maybe seeing something that looks like a flux capacitor, I don't know.

So that's something that excites me and then there's other provisions in here that benefit existing technologies that quite frankly haven't hit their critical mass or maybe they were in a situation where the credits were being extended sometimes retroactively or year to year. Biogas is one of those technologies that I think, historically has been left out a lot of times. Biogas had to produce electricity, so it could be scoped under Section 45. Now biogas projects can be used a lot more efficiently. Maybe they can produce something for transportation fuel. So anyway, I think a lot of the biogas developers, those that have been able to survive the past decade, were definitely looking at this bill and I think we're going to see a wave of projects finally come upon us in that space. Yeah, those are the few things that I find exciting here.

[00:44:49] **Michael J. Novogradac, CPA:** So, you don't find all the unanswered questions exciting?

[00:42:15] **Nat Eng, CPA:** Definitely. I definitely find the uncertainty, yeah.

[00:44:56] **Michael J. Novogradac, CPA:** That's another reason why the Renewable Energy Tax Credit Working Group will play a key role in trying to get guidance and covering questions that need to be answered. We bring together comment letters to Treasury, seek guidance, and then help develop consistent interpretations around different issues while we're waiting for Treasury guidance.

I often mention, as you both know, one of the key roles our working groups play is allowing various taxpayers to discuss issues and develop consensus views and then move forward with that consensus view as a herd, if you will, to go with the consensus view, while you await guidance from Treasury. Obviously, we're not going to get guidance from Treasury in every area where we'd like. In some areas of guidance, it would be kind of like waiting for Godot, you're going to be there a while. So, you definitely want to make sure that you're traveling with the herd, which as I mentioned earlier is a central role for our working groups. Then, as you mentioned, the webinars that'll be coming up is another area to discuss some of the unanswered questions, some of the initial interpretations, as well as some of the consensus views that are unfolding and forming.

There's obviously a lot more we could talk about purely on the energy side and I've talked about the Renewable Energy Tax Credit Working Group quite a bit. And we'd like to encourage our listeners to join the working group. There are already members and be part of this discussion and help frame the feedback to Treasury, as well as to help generate consensus views on different issues. In today's show notes, I will share the links to the working group as well as sharing links to the various blog posts with more detail for listeners.

Provisions Connected to Affordable Housing, Community Development

So far, a lot of the issues we talked about have been with Nat and a few cameos from Peter. I would like to turn back to Peter, so it's less of a cameo. There are many clean energy provisions in the bill that work in concert with affordable housing and community development. Peter, if you could please share with the listeners which provisions you think are the most impactful and share some of the questions that remain outstanding for those provisions.

And I will note before you speak and for our listeners' sake, we will be discussing this area in much more detail in next week's podcast.

[00:47:02] **Peter Lawrence:** Thank you, Mike. And I'll just start to note, just to reiterate at the start of your introduction, there were a number of other affordable housing provisions that we were seeking in the legislation when it was being developed. At one stage, we had quite considerable provisions that would've really financed many hundreds of thousands of units of new affordable rental housing and unfortunately they didn't make the final version. But as you point out, there are a number of provisions in the clean energy as they intersect affordable housing and they're quite significant. I just also wanted, as a point of personal privilege, Novogradac was instrumental in getting these provisions included in legislation. We got credit from the tax-writing committee staff specifically on this regard. And, so I think, want to take a moment of a little bit of credit and now that the legislation is financed or is enacted. So on two of the provisions you mentioned Mike, the renewable energy investment tax credit and the Section 45L new energy-efficient home credit, going forward you no longer need to reduce basis, your housing credit basis, low-income housing tax credit basis, by the amount of, the ITC or 45L which is a great addition. This is a permanent, part of, or indefinite, I suppose I should say, part of the tax code. So, you don't have to worry about the stop-start that you often do with a lot of tax incentives. That's a great achievement, facilitating the use of these energy incentives with affordable rental housing to a great degree. And furthermore, there is now a bonus available for the ITC. We've mentioned quite a few bonuses on the course of this podcast, so there's yet another one you can add all the ones we discussed previously. If your ITC facility is located in a low-income community, which, is essentially defined under as the eligible census tracks for the new markets tax credit, and Indian areas as well, if you are in those, you're eligible for a 10% bonus. Furthermore, if that facility is attached to covered federal affordable housing programs, which cover the broad, gamut of affordable housing programs, but most importantly, of course, including the low-income housing tax credit, you're eligible for up to a 20% bonus. So, when you add up all these potential bonuses, the case for adding solar panels, especially to a private-activity bond-financed property is pretty compelling. It all basically pays for itself to a large extent. And so that is a great advantage and with regards specifically on the 45L. We've gone from being expired at the end of 2021 for and it's suffered a number of these sort of stop-start situations over the years. Now we have a 10-year runway with enhanced credit amounts potentially available ranging between $1,000 and $5,000 per unit and it changed energy standards as well. So, there's a lot more. I think, possible. You mentioned that 45L has been used in the past, to some extent there's, I think, a lot more possible going forward, given this law. I'll just also note that the Section 179D deduction, although it was made permanent a couple years ago, they changed the standards and it make it a lot easier to access it and while it applies to commercial properties in general, one of the categories of those commercial properties is multifamily housing. And so, that is something we expect, a greater use with affordable housing.

There's a lot that we need to get guidance on Treasury in particular. There is a calendar-year limitation on that 10% bonus for ITC facilities in low-income communities and the 20% bonus for ITC facilities on affordable housing. And basically, it's 1.8 gigawatts per calendar year and we consider there's a 5-megawatt limit that you can have for that facility for this eligible for the bonus. You're talking about, perhaps, 360 buildings a year that can access this bonus. And so, as soon as Treasury puts out guidance, some allocating that 1.8 gigawatts, I'm sure it will go fairly quickly. And so, we encourage folks to keep an eye out and I'm sure you're going to talk about this in greater detail next week, Mike, but something that the LIHTC Working Group is certainly going to be sure focused on when it reaches out to Treasury.

[00:52:27] **Michael J. Novogradac, CPA:** Thank you for that, Peter. And as I mentioned, the Renewable Energy Tax Credit Working Group, I've mentioned them quite a bit. I would just mention that the Low-Income Housing Tax Credit Working Group will be addressing a number of these issues as well. And the combination questions of combining low-income housing tax credits with some of these renewable energy provisions and as I mentioned earlier, we'll discuss that in more detail in next week's podcast. And then there's other issues in the Inflation Reduction Act that cut across some of the other working groups. But I'm going to stop there or stop here, I should say. I do wish we had more time to ask Peter and Nat more questions, there's a lot more that I'd love to ask Peter and Nat about, but we've run a bit long already on this podcast. I knew that we would, because this is such a monumental piece of legislation with so many different provisions. There's so much more to discuss. I do think that we've left our listeners with a lot of information and we've also posed a lot of questions and shared a lot of resources as to ways to get answers to those questions, not the least of which is participation in our various working groups, upcoming webinars, our Journal of Tax Credits, next week's podcast, future podcasts and, of course, our upcoming conferences.

So let me just say thank you, Nat. Thank you, Peter. Please do stick around for our Off-Mike section at the end of the podcast, where I get to ask you some fun off-topic questions to seek your words of wisdom and get other guidance from each of you.

Then to our listeners, please be sure to tune into next week's podcast. As we've made reference to many times in the course of this podcast, next week's podcast will be a deeper dive into combining renewable energy with affordable rental housing. For that podcast, my partner Brett Parker from Novogradac's Long Beach, California, office will be our guest.

Brent and I are going to look at the implications of these clean energy provisions for affordable housing developers, as Brett will discuss and as Peter has mentioned already in this podcast, the Inflation Reduction Act's provisions should incent affordable housing developers to at least consider using the investment tax credit for solar on their properties and many will conclude it makes sense to include solar on their properties. And it's not just properties under development or under renovation. It could be also for existing properties that are many years into their low-income housing tax credit period or other federal or state assistance of the affordable housing property. During the podcast, Brent and I will look at what developers should consider when making the choice and go over some of the somewhat arcane aspects of blending the investment tax credit with the low-income housing tax credit on a property under development or in operation. So, in short, if you're involved in clean energy, this could be a series of potential clients. And if you're involved in affordable rental housing, this could be an opportunity to make a project more financially feasible. You'll certainly want to tune in.

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Off-Mike Section

Now I'm pleased to reach our Off-Mike section, where listeners can get some off-topic advice and words of wisdom from our podcast guests.

So, Peter and Nat, you both work in fields that are constantly changing. Obviously, we've spent this whole podcast talking about a recent dramatic change, even though it was a dramatic change two years in the making, so I don't know that's an unexpected dramatic change two years in the making. So you have multiple things competing for your time. I was wondering how each of you ensure that you're working on the most important things or how you prioritize to ensure you're working on the matters that you yourselves find the most important. And in preparing for the podcast, we didn't identify who was going to speak first, but, I think Nat looks like you're ready to speak first.

[00:56:54] **Nat Eng, CPA:** I was going to ask a question. Mike, are you referring to work, life or both?

[00:57:01] **Michael J. Novogradac, CPA:** I thought I got to ask the questions.

[00:57:03] **Nat Eng, CPA:** Relevant question.

[00:57:05] **Michael J. Novogradac, CPA:** This is why you're such a good advisor. Because if I ask a question, you're like, well actually I need more specifics before I answer your question. So, I would say take the question whichever direction you would like to take it. Whatever you think would make it valuable for listeners to hear you share.

[00:57:21] **Nat Eng, CPA:** Yeah. I might have the same answer to both of them. I just wait until I get yelled at clients, spouse …

[00:57:29] **Michael J. Novogradac, CPA:** I know better than that. Your clients never yell at you.

[00:57:32] **Nat Eng, CPA:** They tell me where my focus should be a lot of times. And I appreciate that.

[00:57:37] **Peter Lawrence:** I guess I'll jump in. You know, Mike, I've talked in the previous podcast about trying to really focus on the most essential emails because there's so much. Obviously, I'm not going to reuse that one, but I will say Nat's question did prompt this in my mind. I do think you're more effective at your work when you have a good, in my opinion, a good work-life balance. So, I try to make sure I focus entirely at work when I'm in my work time. And then when I do my transition to home, I try very much to focus on home because if you're going to try to do both, when that line is blurred, I think both areas suffer, right? And so, I think, especially the pandemic kind of somewhat blurred these lines and I found that it really is important to try to make sure that you're fully present at either or your work or your personal life as much as possible and not try to mix them up too much.

[00:58:37] **Michael J. Novogradac, CPA:** I really like that advice, particularly your insight about the pandemic, because even pre-pandemic, that was a common view that you should be present wherever you're at and focus on one or the other and you can't focus on two things at the same time. You really can't multitask, you're just bouncing back and forth. But then when you went into the office and all the rest, it was much more division. And with so much working at home during the pandemic, that's been a greater challenge. And if you don't remind yourself of it, you lose sight of that. It's not part of what it is that you do.

How about you, Nat?

[00:59:16] **Nat Eng, CPA:** Yeah, I think the lines between work and life definitely get blurred, but there definitely needs to be some boundaries, that's for sure. I don't know. I credit my family members for making sure that I respect those boundaries. It's the most politically correct way I can say it.

[00:59:35] **Michael J. Novogradac, CPA:** And pretty accurate too, I'm sure. So something else that I always wonder is how I can travel a bit better. I travel a lot and one of the things that various travel magazines will often have is a section on travel hacks. And I always enjoy reading those sections in terms of various sort of travel hacks. Over the summer, my travel hacks relate to personal travel. Coming up in the fall when we start our Novogradac conferences, I'll be traveling a lot more, as I know, both of you will be. So maybe you could share as a travel tip or two or travel hack or two in terms of ways to make travel less of a burden or make travel easier.

[01:00:23] **Nat Eng, CPA:** I'm kind of interested in what Peter has to say, just coming back from Europe.

[01:00:40] **Peter Lawrence:** Well, this does apply to both personal and work, travel. This is not going to be any particularly shocker, Mike, but with all the devices we sort of depend on in our lives, making sure you have a fully charged battery. You think, well, of course, you're going to have an opportunity to charge things, maybe on a plane or maybe in an airport or whatever. You don't always. It's sometimes very difficult and so not having not just one battery, but a couple of batteries can be really helpful when you've got that unplanned delay and you're sitting somewhere where there's nowhere you can have your device charged. It's so important. I know some people think, well, maybe that's the time when you can disconnect, especially for personal travel, but you know, it's so helpful and so many things, various alerts about what's happening with your travel are given to our devices. So that having those batteries I find is really crucial.

[01:01:27] **Michael J. Novogradac, CPA:** Well, plus some of your travel hack might be to bring a Kindle or an iPad to read books and that might be your alone time as you're reading your book on your iPad or Kindle and without power.

[01:01:39] **Nat Eng, CPA:** That's a bad day.

[01:01:42] **Peter Lawrence:** Indeed. Absolutely.

[01:01:44] **Nat Eng, CPA:** Yeah. I think I need to find N95 masks that have like some sort of comfortable earpad or something. The last few flights that, I've gone on ... well, the one time I didn't wear a mask, I wasn't fully masked up, I caught COVID, so that taught me a lesson. So now I mask up all the time and I think maybe a more comfortable N95 mask would be a little bit make it a little bit more bearable if it's not trying to cut my ears off.

[01:02:11] **Michael J. Novogradac, CPA:** Well, I definitely, the one thing that you talked about COVID and wearing the N95 masks to avoid COVID. But I actually like the fact that now it's more acceptable to be wearing masks in flight. It was always something that some people did, but I myself would give into peer pressure and not feel at all that comfortable wearing a mask and now for COVID reasons, obviously, but even beyond COVID, we all have the stories of when travel season started, it usually meant that's when the flu season's going to start for you and you're going to catch a cold and all the rest. So even without COVID, it's like I still– obviously COVID is still here, but even if COVID wasn't here–the notion of wearing a mask while I'm traveling to avoid the flu and at least not avoid, at least help minimize how much it minimizes, we can get a bunch of theoretical debates, but I do think it minimizes it so that's a nice change.

[01:03:08] **Peter Lawrence:** I agree with you. I entirely agree with you, Mike. I think I would always pick up some sickness during travel pre-pandemic and I'm pretty religious about wearing masks when on the plane and in airports and since I've done that, I haven't gotten the flu. I haven't gotten colds like I used to during travel season. I think it matters to a large extent, I'm happy to be, even if it's one of only three people on the plane, that's, you know it won't phase me, I'm going to continue to do that and that. Nat, by the way, I do think as far as I used to have N95 masks go around ears and I've stopped doing that, because they're less comfortable. I have the one that go over top of head it's much.

[01:03:55] **Nat Eng, CPA:** I those rubber bands hurt after eight hours, those rubber bands I think started pulling out hair.

[01:04:03] **Peter Lawrence:** It's not just your ears. This is the back, the head it's to me.

[01:04:06] **Nat Eng, CPA:** That's true. It's slightly better.

[01:04:08] **Michael J. Novogradac, CPA:** Another travel hack that I can't recall if I had mentioned on our prior podcast is one that I thought Peter, you were headed toward. And you talked about having your devices. I thought you were going to say, in addition to having power, you're going to say the right adapter.

[01:04:24] **Peter Lawrence:** True. True.

[01:04:25] **Michael J. Novogradac, CPA:** I've gotten into the habit now of carrying the multiprong adapters so I can carry three or four adapters. And no matter which type of device I need to charge, I have an adapter for it, so I don't find myself marshaling through which adapter I have and that it where's that adapter and all the rest. I just have these multiprong adapters. So, I definitely would encourage listeners to use those, travel with those.

[01:04:53] **Peter Lawrence:** Well, just like I have a bag for toiletries that you have to put in, you used to do for TSA. I have a bag for all my chargers. I just keep them all in that one bag and carry it with me wherever I go to make sure I don't have to search for it. It's all in that little bag.

[01:05:10] **Nat Eng, CPA:** Yeah, you're not going to remember that running to the airport at like 3 a.m.

[01:05:14] **Michael J. Novogradac, CPA:** So, thank you, again, Thank you, Peter. Thank you. Nat. I look forward to chatting with you again on the upcoming webinar. To our listeners, I'm Mike Novogradac. Thanks for listening.

Additional Resources

Email

Email Peter Lawrence

Email Nat Eng

Novogradac blog posts on IRA

Schumer and Manchin Reconciliation Deal Provides $369 Billion in Clean and Renewable Energy Provisions, Including ITC, PTC Extension, as well as ITC Bonus for Affordable Housing and Low-Income Communities

Benefits of Tax Credit Investments Mostly Preserved in Inflation Reduction Act, But Significant Questions Remain

Low-Income Housing Tax Credit Working Group

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