Renewable Energy Tax Credit Finance Series: Prevailing Wage and Apprenticeship: Meeting the Criteria

The Inflation Reduction Act of 2022 reduced the base rate of the then-26% renewable energy investment tax credit to 6% for renewable energy projects. Few projects are financially viable with just the 6% credit, but projects can qualify for a 30% credit if they satisfy two criteria: prevailing wage and apprenticeship (PWA) requirements. In the latest installment in Tax Credit Tuesday's recurring Renewable Energy Tax Credit Finance series, Michael Novogradac, CPA, and Tony Grappone, CPA, discuss the credits and technologies to which PWA criteria apply, how to meet PWA criteria and how to provide investors comfort with PWA compliance.

Summaries of each topic:

1. Introduction (0:14-4:14)
2. Renewable Energy Tax Credit Services (4:15-7:04)
3. Credits and Technologies Subject to the Prevailing Wage and Apprenticeship Criteria (7:05-10:27)
4. Prevailing Wage and Apprenticeship Criteria (10:28-13:26)
5. Hot Topic (13:27-15:59)
6. Gaining Comfort with PWA Compliance (16:00-22:56)
7. Wrap-Up (22:57-24:43)
8. Off-Mike Section (24:44-27:12)

Transcript

Introduction

[00:00:14] **Michael Novogradac, CPA**: Hello, I'm Michael Novogradac, and this is Tax Credit Tuesday. This is the May 7, 2024, podcast. As those of you watching on YouTube can see, I'm here today with my partner, Tony Grappone, and this is going to be the latest installment in our monthly Renewable Energy Tax Credit Finance series. We launched this series last year to keep you updated on renewable energy tax credit financing news, trends and strategies.

Also, we do have a playlist of all those episodes in this energy series. It's on YouTube. I do encourage you to check it out on our Novogradac channel. I will share the relevant links in this episode's show notes so you can find it with ease. With that said, let's turn now to our topic today. It's a very hot topic in renewable energy, and this is how to qualify for the 30% investment tax credit.

Now, many of you may be thinking, I thought it was 30%, so I want to give you some technical information. The Inflation Reduction Act of 2022 actually reduced the base rate of the then-26% down to just 6% for renewable energy projects. But as you likely know, the industry operates as if it is 30%, and that's because some projects are automatically eligible for the higher 30% rate somewhat automatically. However, most renewable energy projects are only eligible for the 30% rate if they satisfy two criteria. So what are the two criteria? One is prevailing wages are paid. The second is that an apprenticeship program is in place.

Now these are the two requirements that are the subject of today's podcast. The prevailing wage requirement, as you likely have discerned, mandates that laborers or mechanics who work on the construction, repair, installation of an energy facility are paid the prevailing local wages, as determined by the Secretary of Labor. Now, the apprenticeship requirement mandates that the developer or project sponsor hire a minimum number of apprentices to perform a minimum number of hours in building and installing or repairing a renewable energy facility. Now, as you can obviously tell, meeting the prevailing wage and apprenticeship requirements are crucial for renewable energy projects.

Very few are financially viable with just the 6% credit. I'm not aware of any that have operated using the 6% credit, and those of you who are watching on YouTube can see Tony shaking his head no. There aren't any, or at least none that he's seen because as a good tax advisor, the first thing you would be saying is, why are you doing that?

And for that reason, the need to build so you can get 30% investors and financiers are trying to find means to get comfort that the projects that they invest in are going to qualify for the 30% credit by satisfying these prevailing wage and apprenticeship requirements. We at Novogradac have developed a service to help sponsors and developers, and most importantly tax credit investors, gain comfort that their energy project will be able to satisfy the criteria for the 30% credit.

And it's that service that we will discuss today. I first want to cover the basics of prevailing wage requirements and the apprenticeship program requirements. And then go into the service that can give some level of comfort to investors as to the ability of the given project to satisfy those requirements.

That's a lot we want to cover today. So if you're ready, let's get started Tony, welcome back to Tax Credit Tuesday.

Renewable Energy Tax Credit Services

[00:04:15] **Tony Grappone, CPA**: Thanks, Mike.

[00:04:15] **Michael Novogradac, CPA**: According to my count, and hopefully, it's accurate, this is your 14th appearance. on the podcast.

[00:04:23] **Tony Grappone, CPA**: Okay. So am I the most frequented guest speaker on your podcast series?

[00:04:28] **Michael Novogradac, CPA**: You know, I don't know if you're there just yet, but given the repetition of what you're coming back-

[00:04:36] **Tony Grappone, CPA**: I'm getting there.

[00:04:37] **Michael Novogradac, CPA**: Getting your sights set.

[00:04:38] **Tony Grappone, CPA**: Exactly.

[00:04:39] **Michael Novogradac, CPA**: Now our regular listeners certainly probably know you well by now. You do chair our annual fall Renewable Energy Tax Credit Conference.

And you also help lead the Novogradac Renewable Energy Tax Credit Working Group. That said, for our listeners, our newer listeners and viewers, please provide a brief introduction. And discuss some of the ways and the services you provide to our renewable energy clients.

[00:05:04] **Tony Grappone, CPA**: Sure. Great. Thanks, Mike. Yeah, so I like people to know that I oversee three different types of service platforms here at the firm for renewable energy clients.

One is with respect to what I call transaction advisory services. That makes up like financial forecasting, cost segregation services and kind of related consulting services that kind of wrap around cost segs and financial models. Okay. Another platform I oversee is financial statement audit services and kind of related financial reporting matters.

And then lastly, I oversee a team of professionals that specializes in preparing tax returns. And so I'd like the industry to know that if they need something related to those three platforms, reach out to me and I can help them get plugged in with the right professionals here at the firm.

[00:05:46] **Michael Novogradac, CPA**: Great. Thank you for that, Tony. And also, I should mention to our audience that Tony and I will both be at our spring Renewable Energy Tax Credit Conference later this month. It's actually just a week and a half away on May 16th. That's Thursday, May 16th and Friday, May 17th. It's in San Diego, and we also have on Wednesday a project finance primer session.

That's a great session for those new to renewable energy finance or those who just want to get a refresher on renewable energy finance. And there's lots of 202 issues discussed there as well as a 101. So it's really a primer and beyond. And the good news, for those of you that really enjoy getting advice from Tony, he's moderating it.

[00:06:31] **Tony Grappone, CPA**: That's right. That's right. Yeah, I'm glad you mentioned, yeah, I appreciate you mentioning the, you know, the primer that sort of takes place the day before the main conference. You know that primer is really, it's like a classroom type of setting, and it provides a lot of really good, useful hands-on learning opportunities.

And the networking is fantastic. We get great attendance at that event, and so just meeting other people, learning some great hands-on practical knowledge. It's wonderful for that. And it's a great way to sort of prepare for the big conference that takes place starting on Thursday.

[00:07:01] **Michael Novogradac, CPA**: And a great way to meet Tony in person.

[00:07:04] **Tony Grappone, CPA**: There you go.

Credits and Technologies Subject to the Prevailing Wage and Apprenticeship Criteria

[00:07:05] **Michael Novogradac, CPA**: Indeed. So with that, let's focus on or turn to our topic for today. I mentioned in the introduction, there are the two requirements for prevailing wage and apprenticeship in order to qualify for the 30% investment tax credit. If you could build that out and explain a little bit more about each of those requirements for our listeners, I would appreciate it very much.

I know that they would.

[00:07:29] **Tony Grappone, CPA**: Sure. No, thanks. No, that's great. Yeah. So I'll start off by just kind of providing the list of credits and technologies that the prevailing wage and apprenticeship criteria apply to. And then after that, I'll shed some light on a couple of exceptions to the PWA criteria. Okay. First, I'm going to run through credits and a deduction that are subject to both the prevailing wage and the apprenticeship criteria.

Okay. And that list is as follows. So first you've got the production tax credit and the investment tax credits that you find under Sections 45 and 48, as well as their tech-neutral versions that fall under 45Y and 48E. And so, you know, when you think of the production credit, most people associate that with, you know, wind, biomass, and so those fall under 45 as well as other technologies under 45.

And then when people usually think of Section 48, they're thinking of the solar energy credit or the battery storage credit, fuel cells, and so forth. Other credits and technologies that, you know, need to meet the PWA criteria include the alternative fuel vehicle refueling property credit under Section 30C.

You also have the credit for carbon oxide sequestration under 45Q. You also have the Clean Hydrogen Production Credit under Section 45V, as well as the Clean Fuel Production Credit under 45Z. You also have the Advanced Energy Project Credit under 48C. And then you have the, not a credit, but a deduction.

You've got the Advanced Efficient Commercial Buildings Deduction under Section 179D. And then we have two other types of technologies or project types that are subject to prevailing wage but not the apprenticeship criteria. And those programs include the new energy efficient home credit under section 45L and then the zero-emission nuclear power production credit under 45U.

And so I know I just went through a lot there, and so this is maybe where a download of the transcript might help you just kind of from a just an ease of reference standpoint. You might want the download of the transcript just to help you there. Now what about the exceptions to these rules? There are two very helpful exceptions here.

One, if your facility is under one megawatt AC, well, then you're deemed to meet the PWA criteria, so you don't have to, you don't have to actually implement a program to make sure that you meet that criteria. You're deemed to satisfy it. And then the other exception is if you commenced construction on your facility before Jan. 29, 2023.

Again, if you meet that criteria, you're deemed to satisfy PWA criteria.

Does that help, Mike?

[00:10:23] **Michael Novogradac, CPA**: That's really helpful. So I appreciate you sharing what does and doesn't qualify.

[00:10:27] **Tony Grappone, CPA**: Great.

Prevailing Wage and Apprenticeship Criteria

[00:10:28] **Michael Novogradac, CPA**: The, discerning listener would have noticed that in my introduction, I create a room for that. So I appreciate you explaining that a little bit more. So it's not universal, but it's there. For the most part, most projects do have to satisfy both requirements, at least at this point in time.

So now maybe if you could describe a bit about what the prevailing wage requirement is, and what the apprentice requirement is. And obviously you can't go into all the nuances, but at a high level, if you could share those requirements.

[00:11:00] **Tony Grappone, CPA**: Sure, right. So when it comes to the prevailing wage criteria, this is about making sure that any mechanics or laborers that are performing physical construction at the site for either construction, alteration or repair, those workers need to be paid prevailing wages, and taxpayers can access those rates on the, there's a link to those rates on the Department of Labor's website, okay, and you need to, taxpayers need to be able to track the laborer by type of job.

Those are broken down into different various classifications, and those classifications can also be per location, and so if you have a facility that you're developing, or maybe you've got a portfolio of facilities, and you're using one contractor to do work at multiple locations, and maybe you've got some laborers that are also performing multiple functions, well, what the taxpayer wants to be able to show is that they understand each classification that each laborer is working, performing certain work for, and then the taxpayer needs to make sure that they understand minimum prevailing wage that the taxpayer needs to be paying those workers. So that's kind of big picture. That's kind of the spirit behind prevailing wage.

Now, as far as apprenticeship criteria goes, under that set of rules, the taxpayer needs to be able to document that they have made efforts to reach out and participate in a registered apprenticeship program. And again, we can, if folks reach out to me, I can help them access, you know, how they can sort of figure out which apprenticeship programs are applicable in the location that their facility is being built at. And then the apprenticeship criteria requires taxpayers to make sure that minimum hours of work are being performed by apprentices. And if there are journey workers that are employed by the taxpayer, you need to make sure that there's a certain ratio of apprentice to journey worker ratio minimums that are being satisfied.

And then there's record keeping, you know, where taxpayers have to be able to document that they're keeping track of the prevailing wages that are being paid, as well as the minimum labor hours that are being worked by apprentices. And so that gives you some appreciation, that gives you some general insight on the prevailing wage and apprenticeship, you know, criteria that taxpayers need to be able to keep track of.

Hot Topic

[00:13:27] **Michael Novogradac, CPA**: No, I like that summary because I both described it at a high level, but also a dip down into some of the mechanics that make it not as simple and in a few traps for the unwary. Now, when you were explaining the projects that are subject to these rules, you mentioned the Jan. 29, 2023, date. And you explain that facilities that began construction before Jan. 29, 2023, didn't need to satisfy these requirements, but that was well over a year ago.

We're recording this the day before May 7, so we're recording this on May 6, 2024. And we're talking about this issue now. And if I'm a listener, I might be thinking, why are you talking about this now if it's been in effect since January 29 of 2023. And why don't you do the big reveal here and explain why this is such a hot topic right now?

[00:14:27] **Tony Grappone, CPA**: Yeah, exactly. This has really turned into a very hot topic in the industry just over the last few months. You know, in 2023, most of the projects that were financed started construction before Jan. 29, 2023. So they didn't need to meet the criteria because they were deemed to have met the criteria.

There wasn't a lot of diligence being done on PWA projects. And so, but now, and now that we're in 2024, that pipeline of projects that had commenced construction before the applicable date, those projects are gone. They've already started construction. Now we're in 2024, it's those projects that started construction after Jan. 29, 2023, that are trying to land financing. And so now it's become very quickly just a real major issue in project finance in the renewable energy sector. And so industry participants are playing catch up a little bit, you know, because a lot of these projects are an active financial closing underwriting, and investors, tax attorneys, advisors, insurance providers and developers, they're all kind of scrambling to figure out what makes the most sense for sort of documenting their compliance with prevailing wage. And so we've been fielding just, you know, an onslaught of phone calls and emails from industry participants asking us here at Novogradac, how can we help folks figure out a way to assist them with gaining a level of comfort with PWA compliance.

So it's really ramped up very quickly just in the last few months.

Gaining Comfort with PWA Compliance

[00:16:00] **Michael Novogradac, CPA**: Well, you've kind of asked yourself the next question. How can we help? Yeah, it's really help the developer slash project sponsor, and then also, you know, help the investor get comfort that the project will be able to qualify for the 30% credit.

[00:16:26] **Tony Grappone, CPA**: Yeah, right. Exactly. Yeah. So because we're, because the industry is still kind of fairly early on in terms of trying to figure out, you know, a standard operating procedure here with helping clients figure out how to gain comfort with PWA compliance, we've kind of heard and seen maybe a few different sort of shapes and sizes of deliverables being offered by third parties.

Okay, you know, but Novogradac has a lot of experience in this area, you know, beyond just renewable energy. So, you know, there are a lot of different kind of tax credit programs out there where taxpayers have to be able to document sort of how they comply with various tax credit programs. And so one way that we've done that over the years is through what we call an agreed upon procedures report.

And, you know, the spirit of an agreed upon procedures report is it helps the users. And in this case, the users would be, you know, the developer, and most likely the tax equity investor. And it helps those are the users, and the agreed-upon procedures help those users figure out the degree to which they're complying with various rules.

Okay, and so one of the nice things there is the users get to dictate what those procedures are, and they, and, so there's a lot of discretion there, there's some subjectivity, and so because the users determine what the procedures are, the users can decide if they want to go, you know, belts and suspenders, or very exhaustive, and do, you know, a very deep dive, and try to, you know, get a high degree of comfort, or they can go lower.

And sometimes parties depend on just their inherent comfort level with each other, sometimes they do fewer procedures, and maybe they're looking for a lower degree of comfort. But anyway, big main point is when it comes to agreed upon procedures, what the CPA firm does is they perform the procedures that are really dictated by the users.

So in this case, the developer and the investor, and then we perform those procedures and then we list our findings, or we make certain determinations with respect to the procedures that we perform, and then we provide the results of those procedures to the users, and then what that does is it helps the users ascertain the degree to which they are comfortable with the compliance at hand.

And so Novogradac has been providing agreed upon procedures for various taxpayer programs over the years. And so it just made sense as we sort of looked at PWA that we kind of thought, you know what, the industry stakeholders are used to Novogradac doing agreed upon procedures for these types of purposes.

Why don't we start there? And so that's kind of what we did. We kind of, we've been, me with my fellow partners, we've been sort of workshopping an agreed upon procedures deliverable. We've been sharing that deliverable with certain industry stakeholders. We've been gathering feedback from those stakeholders to try to come up with something that looks and feels like almost like a little bit of a template that the industry can consider using.

And so, yeah, so that's, that, we thought that made sense. And what we have found so far is that the industry has been fairly well receptive to the approach we're taking here.

[00:19:27] **Michael Novogradac, CPA**: And what time during the process or what times during the development process or development schedule would the service be provided?

[00:19:37] **Tony Grappone, CPA**: Yeah, great question, because, you know, we're seeing this a lot right now. So, because ideally the developer and the investor perform some procedures prior to financial closing. Okay, and that would give the investor some comfort that the developer has sufficient policies and procedures in place and has already demonstrated that they've been complying, you know, throughout the construction process. Okay, so ideally they would start during the financial closing process and so we could do an agreed upon procedures report around financial closing time to kind of show the progress that the developer has made up until financial closing. And then, ideally, they would close.

We would come back after the facility's been placed in service and do what we refer to as like a bring down of that report to show what, you know, to sort of update the documentation through the date the facility was actually placed in service. So there's really two points in time to look at it.

One is prior to financial closing. The other is after the facility's been placed in service. What we're dealing with right now in the marketplace though, is that there are many projects that they've already closed on financing where they didn't really get any sort of third-party, you know, assistance.

And so now they were just coming in after the fact to try to show how the profile of compliance looks post-placement in the service.

[00:21:04] **Michael Novogradac, CPA**: Yeah, I could easily see how this quickly evolves into what you're just saying. Before the first closing, there's a set of procedures that are in place. And then as there's additional funding, you know, funding requirements for the investor that they would then have updates to the AUP.

And certainly, before the sort of final funding, they'd have an updated AUP with respect to these issues. Not too dissimilar from, you know, cost certifications that demonstrate the dollar amount of money expended relative, which is obviously the basis for the amount of the credit.

[00:21:45] **Tony Grappone, CPA**: That's right.

[00:21:47] **Michael Novogradac, CPA**: Is there anything else you wanted to share about the AUP process? It seems fairly straightforward, albeit, obviously very involved.

[00:21:57] **Tony Grappone, CPA**: Right. You know, I think one thing I just share is, you know, one thing that, that we like about it is, again, tax credit programs have been around for a long time.

And so this style of report is very similar to what industry stakeholders are seeing in analogous tax credit programs. So we think it's fairly appropriate for this purpose. And so we like it there. And the other thing I like about this type of engagement is it allows the developer and the investor to sort of negotiate what those procedures should be.

What we've seen from other types of, you know, deliverables from other third parties so far is it's really the third party that's kind of dictating, you know, what the procedures are going to be or what type of approach happens here. One thing I like about agreed upon procedures, and I think this is why agreed upon procedures have become a custom deliverable in the tax credit community is it allows that developer and the investor to, you know, agree on what those procedures are.

So they've got to say and can negotiate, you know, how detailed they want to get with the analysis.

Wrap-Up

[00:22:57] **Michael Novogradac, CPA**: Great. Thank you, Tony. This has been really good. We covered a reasonable amount of ground today. And I'm sure some listeners are like, I didn't realize it was a 6% credit and you had these two requirements to get the 30%.

So, now they know, and as a general matter, if the facility is large enough in the affordable housing community, a lot of times the facilities are small enough that these rules don't apply. I would like you to stick around for our Off Mike section. If you're good with that, I do want to get your industry shout outs since you started the industry shout outs on the podcast.

I'm always interested in your shout out. To our viewers, I will share Tony's contact information in the show notes. Please reach out to him directly with any questions you might have about AUPs or prevailing wage or apprenticeship requirements. I do hope that you'll consider reaching out to Tony to join the Renewable Energy Tax Credit Working Group, and also, hopefully you'll join us, at the conference in San Diego next week.

And if you do, I'll be there as well. Please take a moment to introduce yourself to Tony and take your, take a moment to introduce yourself to me. I'd love to meet you in person if we haven't met before. I also remind you that we do have a dedicated playlist on the YouTube channel with all of our episodes in this series.

I find it's a good refresher for many of our clients. If you have someone newer to your team, I'd encourage you just to have them binge watch the YouTube channel so they can, you know, learn if nothing less, learn a lot of the acronyms and language of the business. Before this podcast, you know, many listeners may not have known when you said PWA requirement, what that was, but now you do.

Off-Mike

[00:24:44] **Michael Novogradac, CPA**: And with that, let me turn to our Off-Mike section. So Tony, as I said earlier, you introduced this fun segment, where we get to acknowledge our industry colleagues, through a shoutout. So I'm anxious to hear you, when we prepare for the podcast, we prepare the questions and things of that nature, at least the general trend.

And we talk about what we want to cover, but we don't talk about, you never reveal your shout out. So what's your industry shout out for the week?

[00:25:17] **Tony Grappone, CPA**: Excellent. All right, great. So for this podcast, I have two industry shout outs. First is to Kyle Palumbo, who is general counsel for Revity Energy. Kyle has been, he's been a great collaborator with me on this PWA project.

So he's been, you know, reading and kind of commenting on workshop sort of reports and procedures and just sharing his feedback. Revity Energy has a, from what we can tell, has already has a good set of policies and procedures in place for trying to monitor PWA compliance. And so, he was a great, just collaborator to kind of bounce ideas off of here.

My second shout out goes to David Kilper. who is a project manager with U.S. Bancorp's Impact Finance Group. And David has also just been a great person for me to collaborate with on PWA compliance matters. And so, yeah, two great shout outs for those folks for helping Novogradac just kind of gain ideas, thoughts and comments around PWA compliance matters.

And then I've got a third shout out because it's May 7. This isn't an industry shout out. This is a personal shout out to the one and only Beth Grappone. That's my wife. Today is her birthday. So I got to give a shout out to her.

[00:26:41] **Michael Novogradac, CPA**: Well, happy birthday, Beth.

[00:26:45] **Tony Grappone, CPA**: I'm sure she'll be tuning into this podcast.

[00:26:47] **Michael Novogradac, CPA**: Yes.

Yes. Happy 30th. Exactly.

[00:26:50] **Tony Grappone, CPA**: Exactly.

[00:26:52] **Michael Novogradac, CPA**: And, I'll share my thanks on behalf of Novogradac, and all my partners. Thank you to Kyle and David for helping develop and work with Tony on the AUP concept.

[00:27:04] **Tony Grappone, CPA**: Thank you.

[00:27:05] **Michael Novogradac, CPA**: With that, thank you Tony, and to our listeners, I'm Mike Novogradac, thanks for listening.

Additional Resources

Email

Tony Grappone

Working Group

Renewable Energy Working Group

Renewable Energy Tax Credit Conference

Novogradac 2024 Spring Renewable Energy Tax Credits Conference

Renewable Energy Tax Credit Finance Series

April 9, 2024: Renewable Energy Tax Credit Finance Series: Elective Pay Final Regulations

March 5, 2024: Renewable Energy Tax Credit Finance Series: Legislative and Regulatory Hot Topics

Jan. 23, 2024: The Renewable Energy Tax Credit Finance Series: Structuring Options for Transferring ITCs

Dec. 12, 2023: Renewable Energy Tax Credit Finance Series: Unpacking Sponsor Benefits

Nov. 28, 2023: Renewable Energy Tax Credit Finance Series: Unpacking Investor Benefits

Oct. 17, 2023: Renewable Energy Tax Credit Finance Series: Year-End Financial Reporting Recommended Practices

Sept. 19, 2023: The Renewable Energy Tax Credit Finance Series: RETC Structuring Trends