RETC Working Group Updates and the Inflation Reduction Act

The Inflation Reduction Act has $369 billion in clean energy and renewable energy provisions, including the allowance of certain energy tax credits to be separately transferred, the allowance of qualified tax-exempt entities to elect to get a refund of certain tax credits in lieu of syndicating them and the extension of certain tax credits. The Novogradac Renewable Energy Tax Credit Working Group is working with stakeholder members to submit comments to Treasury and the IRS with respect to the Inflation Reduction Act. Michael Novogradac, CPA, and Novogradac partner Tony Grappone, CPA, discuss key provisions of the Inflation Reduction Act that are drawing the most attention from the renewable energy community and how to provide input on the Novogradac Renewable Energy Tax Credit Working Group's comment letter.

Summaries of each topic:

Transcript

Introduction

[00:00:10] **Michael Novogradac, CPA:** Hello, I'm Michael Novogradac this is Tax Credit Tuesday. This the October 25th, 2022 podcast. About four months ago, on August 16th, to be exact, President Joe Biden signed into law the Inflation Reduction Act.

This recently enacted law has $369 billion with a B in clean energy and renewable energy provisions. The enacted provisions of greatest interest to most of our listeners is likely the 10-year extension of both the investment tax credit and the production tax credit. That said, the legislation contains many other notable provisions, certainty of interest to many listeners.

These other provisions include allowing certain energy tax credits to be separately transferred, allowing qualified tax-exempt entities to elect to get a refund of certain tax credits in lieu of syndicating them. As well as extending 45L new energy efficient home credit, allowing developers to claim ITC on the cost of standalone storage, think batteries, and expanding the Section 45Q carbon dioxide sequestration credit. Now beyond the extension of the ITC at 30%, subject to prevailing wage and apprenticeship rules, the new law created some bonus credits that can be claimed if eligible. In addition to the baseline 30% ITC, there are three opportunities to generate bonus ITCs, and they are additive. The first is a 10% credit for certain renewable energy in low-income communities, and this 10% credit increases to a 20% bonus credit for solar installed in qualifying affordable housing.

Now this category of bonus credits are for smaller projects with a cap of five megawatts for the low income communities one megawatt for affordable housing. Also, this category of bonus credits is not an as of right credit. Rather, there's an annual cap of 1.8 gigawatts of capacity, and the Department of Treasury is responsible for allocating the right to claim these bonus credits.

Now the second of the three opportunities to claim bonus credits is a 10% credit when using domestic content that meets a minimum required amount of iron, steel or manufactured products produced in the United States. Domestic content means United States content. And then the third opportunity to potentially claim bonus credits is a 10% credit for clean energy properties located on brownfield sites or in economically distressed sites of former fossil fuel production. We provided some initial thoughts and analysis on the Inflation Reduction Act in two previous episodes of Tax Credit Tuesday. Our August 23rd episode with my partner, Nat Eng, provided an overview on the Inflation Reduction Act and some initial impressions of the renewable energy provisions. Then the following week, our August 30th episode with my partner Brent Parker, took a closer look at how the Inflation Reduction Act makes it more affordable to include renewable energy and energy efficiency measures in residential rental real estate.

Which brings us to our discussion today. Since those two podcasts, Treasury and the IRS issued a set of notices requesting public comment on implementing key provisions of the Inflation Reduction Act. The Novogradac Renewable Energy Tax Credit Working is one of the many renewable energy stakeholder groups planning to submit comments by the November 4th deadline. And that's a topic of today's podcast. We're going to take a closer look at certain key provisions of the Inflation Reduction Act and how the renewable energy community is responding to those provisions. My guest today is my partner, Tony Grappone. Tony is working on the Renewable Energy Tax Credits Working Groups comment letter to Treasury and the IRS so can share with us firsthand insights as the stakeholder impressions and priorities concerning the Inflation Reduction Act.

He is also the chair of the Novogradac 2022 Fall Renewable Energy and Environmental Tax Credits Conference. That'll be held next week in Washington, D.C. That's November 3rd and 4th, I share more information about the conference later on in the podcast, as well as share a link to register in today's show notes.

Tony and I will divide today's discussion into two parts. First, we'll talk about key provisions of the Inflation Reduction Act that are drawing the most attention from the renewable energy community. And second we'll cover how our listeners can participate in the Renewable Energy Working Group's discussions, and provide input on the comment letter. This is an important podcast topic for anyone involving clean energy.

So as I say each week, if you're ready, let's get started.

[00:05:09] **Michael Novogradac, CPA:** Tony, welcome back to Tax Credit Tuesday.

[00:05:13] **Tony Grappone, CPA:** It's great to be here, Mike. Thanks for having me back.

Renewable Energy Tax Credit Working Group Focus Areas

[00:05:17] **Michael Novogradac, CPA:** So, as I mentioned in the introduction, the Renewable Energy Tax Credit Working Group here at Novogradac is planning to submit comments on the Inflation Reduction Act. What are some of the main areas where the working group plans to focus its comments?

[00:05:33] **Tony Grappone, CPA:** Sure. So the group right now is... as the IRS issued several notices, soliciting public comments on all aspects of the inflation reduction Act. Right now, we are looking at, key areas of those notices to respond to our members' concerns as well as our clients'. So far, the greatest interest we're getting from clients and members is around transferability.

The tax credit transferability option under the Inflation Reduction Act has widespread implications and opens up opportunities to so many different players in the renewable energy industry. And so, whether you're a developer looking to transfer tax credits or a tax exempt entity looking at transfer tax credits or even, or a syndication of tax credits, the transferability option is getting interest from all different areas of the renewable energy industry.

Another area that's getting a lot of attention is obviously the elective pay or the refundability option. So as the tax exempts and other applicable entities will have the option to be able to, forgo using tax credits and instead apply that tax credit their tax return and get a potential refund of tax liability.

So we're getting a lot of interest on direct pay. Also, from the environmental justice allocations, there's that, the adder that you mentioned earlier where taxpayers could potentially get a 10 or even 20% boost to their tax credit percentage if their projects are located in low income communities or at affordable housing tax credit properties. So that's an area where taxpayers have a lot of questions in terms of how that award process is going to be administered and , how taxpayers can benefit from that program.

Transferability

[00:07:12] **Michael Novogradac, CPA:** Thanks Tony. Thanks for that, initial introduction in terms of some of the key areas, and I do want to take a bit of a closer look at each of the items that you mentioned.

Now the first two items that you mentioned, that you focused on transferability and direct pay. These are two new options for monetizing renewable energy tax credits, and they're very, exciting of unanswered questions. So let's, look at transferability first. And transferability allows taxpayers to sell or transfer their credits third-party purchasers, which is, a unique aspect that is for certain of the removal energy tax credits.

Tell me some of the ways in which you think this transferability feature could end up affecting the renewable energy community.

[00:08:03] **Tony Grappone, CPA:** Thanks Mike. So with respect to transferability, I mean the amount of liquidity that the transferability option inserts into the marketplace is like something we've never really seen before. we've taken phone calls from many, taxpayers that have expressed interest in participating in the renewable energy program, but maybe have had reservations or concerns or issues around becoming a partner in a partnership.

And so they've wanted to participate in the program, but haven't been able to either get approval or get comfortable with actually becoming an owner in a deal. The transferability option allows these taxpayers to now participate in the program without having those same sort of requirements.

And so I think what you'll see here is you'll see just an increase in the number of taxpayers participating like you've never seen before, which is fantastic because it allows the syndicators who raise tax equity and tax credit dollars, it provides them with substantially more liquidity. To be able to issue commitment letters to deals, and so the developers have the credit support they need so that they can move forward with financing projects.

So I think just in terms of like credit enhancement, liquidity in the marketplace. Allows the volume of deals to move forward in a way that's lead to so much more efficiency in the marketplace compared to what we're seeing before in the past. So I think it's, I think it's excellent. I think it's a great decision, that Congress made to adopt that measure.

And I think it'll allow for just greater efficiency in terms of how projects get financed.

[00:09:45] **Michael Novogradac, CPA:** So you mentioned greater efficiency and more liquidity. and for our listeners that maybe aren't as experienced, the idea is the transferability would replace in some situations the tax credit syndication. but the credit syndication brings with it also depreciation benefits and loss benefits.

So right now, when you're raising money from an equity investor, from a tax incentive perspective, they're investing both in the, losses as well as the tax credits. So how do you see the transferability, impacting the ability of many developments to build and monetize the depreciation benefits?

[00:10:28] **Tony Grappone, CPA:** Yeah. Yeah. Great question. there's so much to, like, unpack here with these issues, right? So, alright, so transferability really, it touches every area of the renewable energy food chain. So, you've got a developer, is looking to monetize the credits. So the transferability option allows a developer to monetize the tax credits without necessarily bringing in a third-party investor.

However, as these facilities generate not just tax credits, but also other valuable tax incentives like depreciation benefits. Although the transferability option allows you to monetize the credit without, bringing in an investor. That doesn't also allow you to monetize that depreciation.

So if you're a developer that's looking to simply just monetize the credit through transfer. You can do that, and that's a great option that didn't exist before, but it doesn't allow the developer to also monetize those depreciation benefits. So the way we're looking, the way we're seeing this right now is a developer has more options.

They can still work with a traditional tax equity investor. You could have a traditional tax equity investor that comes into your deal and advances you money for both the credits and the depreciation benefits. And under that scenario, the developer is raising probably more gross equity than they would if they simply just transferred the tax credits.

[00:11:47] **Tony Grappone, CPA:** Alright, now behind the scenes of that tax equity investor, that tax equity investor, they might be the ultimate, they might be the entity that ultimately, is able to sort of bring in a transferee of the tax credits. And so what you see there is under that scenario where you've got a developer that pursues traditional tax equity,

However, at the end of the day, that tax equity investor ultimately transfer those credits. What you're going to see there is you'll see a developer that's able to raise the higher gross proceeds for monetizing both depreciation and tax credits. Whereas the, but now the syndicator has greater liquidity and optionality in terms of how they monetize, how they raise the backend equity for that credit.

Because now currently, or historically prior to the Inflation reduction Act, that investor would have to be a partner in that partnership. on or before the date the facility was placed in service, but now you can have a class A investor, limited partner, come into a partnership and have the option to potentially transfer that credit down the road after the facility was actually placed in service.

[00:12:54] **Michael Novogradac, CPA:** Yep. Now those are some, great points and I know you're running lots of different models with lots of different structures, so if listeners have additional ideas, please reach out to Tony. Because he's running a lot of different approaches or thinking about different approaches to working with, transfer credits.

And as we talked about in preparing for the podcast, Tony, the example you gave is the credit being in a partnership being allocated to a partner that then transfers the credit. We'll have to wait and see if the guidance technically allows that. Hopefully it will be more flexible. And there are a number of other questions we don't know the answer to.

One is if you're an individual investor, you bought the credit. Is it passive or portfolio? There are strong arguments that it's portfolio, but it's not entirely clear what the answer is. I'd also note for listeners that you can only transfer the credit once . so. That's just a tracking measure that Congress put in place to make it easier on the IRS.

There's of monitoring transfers. and I would also note that the entity that receives the, cash for the transfer doesn't have income and the party that buys the credit doesn't have any, taxable deductions related to the transfer. Anything else you wanted to add on transferability Tony?

I appreciate you bringing up those last few comments here. Right. Especially with respect to if the credits are portfolio. I also appreciate your comment about, is going to be guidance that comes out from the IRS and Treasury that clarifies the real intent of how this program is supposed work.

[00:14:26] **Tony Grappone, CPA:** And so one of the things that we're doing, as you said, we're running different models, modeling scenarios. ultimately, The IRS and Treasury is going to provide definitive guidance in terms of how they want this program to be implemented. But right now, a lot of our clients are saying, Let's run scenarios, assuming the guidance goes in this direction, and let's maybe run an alternative scenario depending on the other direction they may go in.

So, so we're running models, modeling scenarios, assuming of variety of different fact patterns. Ultimately how the, however the guidance shakes out will be the direction we ultimately go in.

Refundability

[00:14:58] **Michael Novogradac, CPA:** Of course, and as we'll talk about later in the podcast, hence the Renewable Energy Tax Credit Working Group's many comments to try to help, guide Treasury in how we think the statute, is and should be interpreted. So now let's turn to the second focus area you mentioned the additional way to monetize tax credits under the Inflation Reduction Act, and that is the direct pay, or as I referred to it in the introduction, the refundability.

This refundability to direct pay option, allows cash payments, the taxpayer in lieu of tax credit. And this refundability option is for qualifying tax-exempt entities. So share with our listeners what you see as a significance of this direct pay or fundability option.

[00:15:48] **Tony Grappone, CPA:** Right, Right. So it's really those smaller tax-exempt entities that in the past have, it's, it's been cost prohibitive for them perhaps, or there's, or it's been too complex for them to set up traditional tax equity structures. hat's the segment of the industry that's really excited about this option more than anybody else.

It allows them the option to, forgo, structuring a more traditional tax equity investment and just doing a simple sort of structure where they are able report the credit on their return and get a refund of that credit. And so they're excited about it. And I can see why, because I think there's a segment of the marketplace that has really struggled to get access to your traditional tax equity investors.

So I feel like this is a big win for that sort of smaller segment of tax-exempt players.

[00:16:36] **Michael Novogradac, CPA:** What do you see as some of the limitations with respect to refundability and why you don't think it'll necessarily be widely and universally adopted?

[00:16:46] **Tony Grappone, CPA:** Right. Right. Good. So, well, first of all, you have a similar issue there that you have with the transferability option. if you're a developer and you transfer your credit without using a traditional tax equity investor, you don't monetize the depreciation, right? Same thing here with the refundability option.

If you're a tax exempt and you don't set up that tax equity structure to bring in a third-party investor, there's no real way for them to kind of monetize the value of those depreciation benefits. So that's one sort of inherent limitation and refundability option. Another issue there is with respect to the timing.

An amount of what you ultimately get from Treasury, With the refundability option, you need to file your tax return in order to seek and receive that refund. Well, if you place in service, let's say you're a calendar year taxpayer. And you place your facility in service in January of, call it 2023.

Well, if you're a tax-exempt with extensions, if you don't file your tax return until maybe October, November of 2024, well then you may not be getting your refund until basically two years following when you placed your facility in service. So, there's a lot of, if you used a construction loan to finance construction or you financed it with debt, there's a lot of carried interest there.

Or even if you financed it on balance sheet, there's just a lot of time delay from when could have monetized that credit versus when you ultimately got your refund. And then of course there's the issue with when you file your return and you seek that refund. I imagine it's, that process is going to work to the 1603 cash grant program where somebody at the IRS or Treasury is going to do a thoughtful review of what you're seeking for a refund, and that could lead to, that could lead to potentially delays or even reduced amount.

If it works similar to how it, it did under the 1603 cash grant program. So there's some inherent sort of question marks around how that process will work, where at the end of the day, I wouldn't be surprised if tax exempts pursue other options like transfer tax credits or maybe even if the deals big enough and it warrants, it's setting up that traditional tax equity partnership structure like they did before.

But it's nice just for them to have the option.

[00:19:05] **Michael Novogradac, CPA:** No, I think the optionality is definitely very good and I can definitely think of situations I'm aware of with tax-exempt putting solar, on facilities, but the whole concept of syndicating just wasn't a viable option.

[00:19:19] **Tony Grappone, CPA:** Right.

[00:19:20] **Michael Novogradac, CPA:** The credits ended up, not being used and I think your point about time value of money is particularly significant, in the current interest rate environment. a year and a half ago I might have said, how significant is the time I have money given where interest rates were, but with, the one year Treasury at what it's at now and interest rates, rising a time by money becomes much more significant, in terms of a discount, on the value, of the credit.

So how do you think transferability option will compare, with the direct pay option in terms of use?

my sense based on where we are right now is I'm guessing that the transferability option out in favor of direct pay. So if you're a tax exempt and you earn that credit, you've got the option to transfer that credit and monetize the credit obviously much sooner than if you were to wait until when you file your tax return.

[00:20:15] **Michael Novogradac, CPA:** And when do you think that there will actually be transactions, using, uh, direct pay or transactions that are using transferability? Given that both of those, we need so much guidance from Treasury.

[00:20:30] **Tony Grappone, CPA:** Right?

And we don't know. We know there's promises of guidance in some areas by the end of the year. Some of those promises were accompanied by the statement that regulatory guidance would be coming later, which implies . The guidance by then this year would be regulatory guidance and that regulatory guidance that does come out, I would presume much of it will be temporary and proposed. Temporary so you can rely on it, proposed so you have time to continue to comment on it.

[00:21:02] **Michael Novogradac, CPA:** And if you're thinking of buying a credit, regulatory guidance, you don't really know what you're buying and if you're complying with the rules to be able to buy it. and on the refundability side, you don't know what that whole refundability process is going to be. So the ability to work on a transaction now counting on refundability, seems like there's a lot of, wood to chop, if you will, in order a lot of the comfort you have to get that you can't get until you get the guidance.

So do you see the equity monetization continuing for a while until we get more guidance from Treasury in these other two areas?

[00:21:39] **Tony Grappone, CPA:** I think for the most part, I think it's been, I think to be business as usual, behaving like under pre-IRA, practices for the foreseeable future.

Now, I do know parties are, there are parties out there that are trying to get ahead of things as much as they can by drafting, agreements on what they think contractual language should look like and this and that. so folks are trying to be as proactive as they possibly can, but I'd be surprised if you see any sort of meaningful amount of transactions getting executed under the direct pay or transferability provisions anytime soon.

[00:22:14] **Michael Novogradac, CPA:** And part of that also depends upon where one is in their development timeline. If it's a project that isn't coming online for a couple of years, and the rest, you can create a little bit more optionality in your planning structures versus those that are, ready to, start the development, the construction process this year.

[00:22:35] **Tony Grappone, CPA:** Yeah, we're seeing, the area of the, Inflation Reduction Act that you're seeing folks try to transact on the most right now is around certain adders. And I know you're going to get into adders probably in a bit here, but you know the adders around, like if a project is located in an energy community, like on a brownfield site.

Some of these adders where it might be a little bit more cut and dry. Not as much to debate there. You're either in the census, tract or, you're not. and so you, we've got some clients where they closed on tax equity transactions previously. But as it turns out, their project is located on a brownfield site.

And so those developers are trying to go back to their investor and say, Look, I know we've got a deal, but it looks like my credits might be more now because we're in a brownfield site. And so you're seeing, you're definitely seeing some remodeling and renegotiating around some of these, I'll call them like low hanging fruit areas of the Act.

Environmental Justice Allocations

[00:23:28] **Michael Novogradac, CPA:** Yep. Now that's, that's good. I'm glad you mentioned the, brownfield sites that clean energy communities, that bonus. One of the bonus areas that isn't as accessible yet, that you also mentioned was the environmental justice allocations. and those are the, that's the framework wherein bonus credits are available for developments in low-income communities get an extra 10% or, that 10% becomes 20% if it's associated with certain affordable housing developments.

These aren't available yet. There's an application process you'll have to go through that the Department of Treasury will be running. We're not sure where within treasury we have a couple of, of, we have ideas as to a couple of areas where it could end up, running the sort of competition, if you will.

But what do you see as the significance of these bonus allocations?

[00:24:19] **Tony Grappone, CPA:** Few things really. First off, you know, the industry, I think, applauds these bonus provisions under the energy justice allocations for low income buildings and low income areas, mainly because this is going to allow, consumer, certain consumer base access to clean energy that it, that's typically in the past been more or less shut out from clean energy.

All right, so I think these bonus amounts are really critical, right? They help get a certain consumer base, finally gets to participate in the clean energy program where in the past they've been shut out of it. So I love it. I think it helps provide a certain amount of credit enhancement to certain consumers that maybe lack a credit profile. I don't know if you know this, but you know, in, solar, you, you when you go through the revenue underwriting, you for residential consumers, you typically look at credit scores, right? The credit profile of the actual customers.

And for certain demographics, the credit profiles may be lacking or they may not be at the same level as certain market-based consumers. And so I think that this energy justice allocation provision provides a certain amount of credit enhancement to, a certain segment of the, energy base that has been missing.

So I love it from that standpoint. All right. Now, if you are a low-income housing tax credit developer, you are just, you're so incentivized to put solar on your, at your property.

Just the way the way the solar eligible costs also add into your low-income housing tax credit base.

[00:25:49] **Tony Grappone, CPA:** And so you get to raise more low-income housing credits and more low-income housing tax credit equity. And so when you start to layer these in there, it becomes, know, pretty obvious if you're a low-income housing developer, that you should probably be putting solar at your property. So I love it.

It makes deals, adds credit enhancement and brings clean energy to an important, segment of the population that's in the past has been missing. So I love it.

[00:26:13] **Michael Novogradac, CPA:** And I'm glad that you mentioned the fact that if you're putting solar on a low-income housing tax credit property, the eligible basis for your calculation of low-income housing tax credits is not adjusted downward. That wasn't the case before the Act, but the Act makes it clear that eligible basis is not adjusted.

And that really makes solar additive and that's why so many of our clients are now, if their properties are development, they're looking at including. And so we mentioned the environmental justice, this 10% of 20% low income communities or affordable housing. And you mentioned earlier the clean energy communities or the energy communities.

The third area was domestic content in terms of the adders. Is there, any comments you wanted to make on domestic content and some of those questions? You know, my initial thought was domestic content, extra 10%. That seems, good. But you have to know is there sufficient domestic content and it starts off at 40% domestic content.

How's that measured? And to what extent will satisfying the domestic content requirements lead to higher costs, and or the higher costs worth the, 10% when you're looking at it from a pure financial visibility perspective?

[00:27:32] **Tony Grappone, CPA:** Yeah. No indeed. So with domestic content, that's one area our working group is pretty focused on too, is just trying to get additional clarity from the Treasury and IRS in terms of what, what qualifies. For domestic content, how you do that calculation. When you look at the rules, you can really start to,you start to un peel back the, onions, so to speak, and it's just like one question after another.

So there's a lot of guidance needed there to really help taxpayers figure out how to satisfy the domestic content provisions. like one question we have is, how will that developer. Be measured with respect to satisfying the domestic content provisions. And that's just one example, but you know, there's a lot of just areas of domestic content that need to get sorted out.

Tax Credits for a Variety of New Technology

[00:28:11] **Michael Novogradac, CPA:** So we could spend a lot of time talking about the three areas we've talked about so far, but let's, move on to another area that we get a lot of them talking about as well and that's that the, and it's also an area I should note that the working group I know is planning on commenting on as well.

The Inflation Reduction Act provides tax credits for a variety of new technology. And there are certain technologies that our clients, I presume, are more interested in than others. So what are the technologies that our clients are most interested in that ITC has been expanded to?

[00:28:43] **Tony Grappone, CPA:** Yeah, so the renewable energy industry had been lobbying for standalone batteries to be eligible for tax credits for a long time. And so that was, that was a really welcomed aspect of the bill. I think a surprising aspect of the bill was the qualified interconnection property. That's something that I don't think many in the industry anticipated, but was very much welcomed.

All right. Solar projects, can really be hit with significant interconnection costs, which previously weren't eligible for tax credits. So that's a plus for the industry.

[00:29:14] **Michael Novogradac, CPA:** Let me actually interrupt you for our listeners. What's an interconnection cost?

great. So when you when you build a renewable energy or when you build any kind of energy project, you need to get that facility interconnected to the grid. Now, what if the grid, what if the point of interconnection that you're tying your facility into, that point that you're tying into may not be suitable for the utility or the grid to accept the power coming from that facility.

[00:29:46] **Tony Grappone, CPA:** And so that call, think of it like your street pole. You know the electric pole at the end of your street. That pole may need to be upgraded and modified so it can actually accept the power coming from your facility. Sometimes you have to upgrade the, you have to incur interconnection costs on your side of the meter, and sometimes you have to actually improve the utilities equipment.

And so those costs, the utility side of the meter costs in particular in the past haven't been eligible for tax credits.

[00:30:14] **Tony Grappone, CPA:** And so, this is huge because, again, you can have small projects that, that really get socked with significant interconnection costs that haven't been eligible in the past. So now this is a way to make those projects so much more viable.

[00:30:26] **Michael Novogradac, CPA:** Well, thank you for that. And I interrupted you, so you, I think you were going to talk about another technology that's now eligible for ITC.

Great. No, thanks for reminding me. So, yeah, so in addition to standalone batteries and qualified interconnection property, there's a variety of other technologies that are eligible now, but one in particular that's getting a lot of attention is the green hydrogen. And so green hydrogen, you can use that for transportation.

[00:30:47] **Tony Grappone, CPA:** It's a transportation fuel. I think a lot of people in the industry assume that's going to be a valuable, source of energy for trains and buses and maybe even beyond that. We're getting a lot of calls from developers looking at, developing green hydrogen facilities.

[00:30:59] **Michael Novogradac, CPA:** Got it. So thank you for those. just touching upon those three. I did want to return to something that I discussed in the beginning, the 10-year extension of the investment tax credit. And when I said that in the intro, I was thinking there's probably some listeners saying, "Well, Mike, technically, uh, it's 6%.

technically it was extended at 6% with the credit increasing to 30%. If prevailing wage and apprenticeship requirements are met." I tend to think of it as a 30% credit and you need to meet prevail wage apprenticeship requirements because I don't think you're going to see too many not meeting those requirements and claiming 6%.

So if you could share a little bit about what those requirements are for our listeners.

[00:31:41] **Tony Grappone, CPA:** Sure. So first off, yeah, you're right. It's a 6% base credit and then goes to 30, assuming you meet prevailing wage and apprenticeship criteria. With respect to qualifying for those criteria, if your facility's under one megawatt, you're exempt from those requirements, number one. Number two, you're deemed to satisfy the prevailing wage and apprenticeship criteria as long as you begin construction prior to the 60th day of when Treasury provides program rules on how to meet the criteria.

And so what you're probably, So right now, if you have started construction, you're deemed to meet the criteria. And you don't need to do anything else. Once you get beyond the 60th day of when the guidelines come out, then you really have to make sure you get a plan in place to satisfy these guidelines, these criteria.

What I expect you'll see happen too is probably Q1 2023, I anticipate developers will rush to commence construction on large pipelines of projects so that they can sort of grandfather their, deemed satisfaction of those. It'll be interesting to see if, the supply chain can handle those, increased orders.

And it'll also be interesting to see if, um, the rules that we've had to date on commencing construction stay the same or if the IRS and Treasury will modify existing rules on how to prove that you commence construction.

Failing to Satisfy the Prevailing Wage Requirement

[00:33:05] **Michael Novogradac, CPA:** Right. Thank you for that. And one of the questions that we've talked about at prior renewable energy tax credit conferences, and I know you'll talk about at the upcoming conference is what happens if a development is found to not have satisfied the prevailing wage requirements or the apprenticeship requirements? And the concerns were naturally that if satisfying these, if you failed to satisfy these, if you had, if it meant you weren't eligible for the credits, then that would be a pretty substantial penalty provision and would really affect the equity investor market.

And fortunately that's not the penalty. So maybe you could describe what the penalty is if it were to turn out that you didn't meet the prevailing wage requirements, or you didn't meet the apprenticeship requirements.

[00:33:56] **Tony Grappone, CPA:** Right. great. So let's say, a taxpayer, didn't pay their laborers the prevailing wage they would have to make them whole. They'd have to figure out whatever the difference was between what they were supposed to pay them and what they did pay them. And it's supposed to make them whole plus interest based on an underpayment rate.

In addition to that, with respect to prevailing wage, they would have to, pay a penalty to Treasury equal to, $5,000 per underpaid laborer. So it's significant. And if the Treasury ultimately determines that it was willful misconduct there, then. it's three x on the make whole provision and the penalty doubles.

So it's significant. So I think one of the things you're going to see there is for developers that kind of rush to commence construction, within that sort of 60th day window, I think what you're going to see there is you're going to see investors underwriting their commencement of construction plan pretty tightly to make sure everybody feels comfortable with that. So, there was a point in time under the 1603 cash grant program, investors would really underwrite the commencement of construction criteria really tightly, because back then it was either you got the full grant or you got zero. Then, in more recent years, taxpayers would commence construction to preserve, say, a 30% tax credit, but if they didn't meet it, it would drop to 26.

Right? So you're talking 30 to 26. So during that time period, the commencement of construction criteria wasn't really being underwritten that tightly, right? Cause it's not like a make or break sort of difference. I think now with this year, you're going to see investors go back to wanting to see really carefully and well-documented commencement of construction.

[00:35:33] **Michael Novogradac, CPA:** Got it.

[00:35:34] **Tony Grappone, CPA:** So, yeah, and with the apprenticeship criteria, if you fail to meet the apprenticeship criteria, you pay Treasury a penalty equals a, basically $50 multiplied by every hour that wasn't complied with. And again, if there's intentional disregard, then the penalty goes from $50 per hour up to $500 per hour.

So the penalties are stiff.

[00:35:54] **Michael Novogradac, CPA:** I think it's important to point out that the penalties are stiff. So I do think the penalties will be effective at ensuring compliance . But that being said, the fact that you don't go from a 30% credit to a 6% credit, is really helpful because you take those issues away from the investor credits or not to the economic cost, to the development itself. So we talked about the solar credit being 30%, and I'm sure some other listers were also saying, "But Mike, wait. Solar's also eligible for production tax credits." So maybe you could, at a explain super high level how the production tax credit works, and then if you could comment on how the solar industry is looking at ITC versus PTC or production tax credits since solar's now, once again, eligible for both.

[00:36:53] **Tony Grappone, CPA:** Yeah, great. Right, the—

[00:36:54] **Michael Novogradac, CPA:** Let me interrupt you. Sorry. I say eligible for both. Eligible for one or the other.

[00:36:59] **Tony Grappone, CPA:** Yeah. Yeah. Good. Yeah. Good clarification.

[00:37:01] **Michael Novogradac, CPA:** Not eligible for both at the same time.

[00:37:04] **Tony Grappone, CPA:** That's right. Emphasis added. It's one or the other. It's not both. Right? Indeed. So. All right, so with the investment tax credit, most people know that is, you, the investment tax credit is a percentage of qualified construction costs. With the PTC,it's very different.

It's based off of the amount of electricity produced and sold to an unrelated third party taxpayer. And, and so that's a 10-year credit based on production. All right. Whereas the ITCs, so the ITC is earned all up front, you, you place it in service and you generate that credit on day one, one is placed in service, whereas the solar PTCs over time is as electricity is produced.

developers will evaluate, which is the better option, is if you've got a solar project in a high sun producing state and the construction costs are lower, then that usually tips the scales in the direction of the PTC. If it's a high construct, if it's a high capital intensive area and the sun isn't as strong, that sort of leans you more in the direction of the ITC.

From a developer's perspective, all right. from an investor's perspective, you might like the PTC more because it doesn't bring with it the same recapture risk that the ITC does. When you, when you generate the ITC, that's subject to a five year tax credit recapture period, The PTC is not subject to that same recapture exposure. So from an investor's standpoint, especially with respect to transfer tax credits, I could see investors favoring the PTC. and then lastly, regulated utilities. If they're looking to own solar facilities, this, it might be easier now for them to do so, with a solar PTC asset than an ITC.

Renewable Energy Tax Credit Working Group Comments

[00:38:39] **Michael Novogradac, CPA:** Great. Thank you. Um, and now that we've covered some of the major areas of interest in the Inflation Reduction Act, let's talk about the Renewable Energy Tax Credit Working Group's planned responses. And how listeners can provide input. Maybe start by saying how the group's organized in some of the near-term goals versus the longer term goals.

[00:38:59] **Tony Grappone, CPA:** Excellent. Great. So, our Renewable Energy Working Group, right now is primarily focused on responding to the IRS's notices, listing public comments on the Act. And our group is really comprised of six subcommittees. Those subcommittees are broken down by major theme within the Inflation Reduction Act.

And so those themes include, transferability, direct pay, new eligible costs and technologies, bonus amounts and adders, PTCs, and the minimum tax. And so each subcommittee is headed up by a different Novogradac partner, and then they're supported by various members and other members of Novogradac internally. And so they help the group, draft comments back to Treasury with respect to these notices. And we meet, the group meets. right now we're meeting twice a week, Wednesdays and Fridays up until November 4th. we'll submit comments then, on kind of our highest priority items. And then beyond that, we will continue to monitor how the guidance is unfolding with the IRS and Treasury.

We will work to hopefully meet with the IRS and Treasury to discuss these topics, more closely and really serve--.The working group's real purpose is to try to do what the other working groups in Novogradac does, which is to be that leader voice in the industry on behalf of its clients, its members, and other industry stakeholders to help, take these new laws and turn them into, actionable initiatives to help projects get built and financed.

[00:40:30] **Michael Novogradac, CPA:** So thank you for that. And as you mentioned that the working group has A broad range of areas that it's going to be focused on. Obviously right now it's pretty intensively on getting comments into Treasury in the areas that we discussed so far, and a bundle of other areas. also as it, as Treasury does start to come out with guidance, we do expect that the Renewable Energy Tax Credit Working Group will be generating some recommended practices. Because one of the questions to be, we do have IRS guidance, you know what, how does that guidance get interpreted? How do you document interpretation, things of that nature. And there'll be a number of recommended practices that a number of sponsors, developers, and the like, will want to follow.

And the real purpose behind recommended practices is to travel as a herd. And that's one of the benefits of the working group itself, is everyone is chatting about different issues and getting on the same page in terms of different interpretations. And then as we develop recommended practices, you can take comfort in knowing that, a large number of your peers are viewing it in a similar fashion. So Tony, I want to. you, for joining us, and I do encourage our listeners to reach out to you. So listeners, please reach out to Tony with any specific questions or any input you have. I will include Tony's email in today's show notes, which will be posted with this episode at www.novoco.com/podcast and if you want to meet Tony in person, I'd encourage you to register for the Novogradac 2022 Fall Renewable Energy and Environmental Tax Credits Conference, and that is coming up next week, as I noted in the intro, November 3rd and fourth, Thursday and Friday in Washington, D.C. I will note we already have more than 400 attendees registered, so be sure to, go online, register and save your spot as soon as you can.

During the conference, we will have several sessions, as you can imagine, dedicated to the Inflation Reduction Act. We will have a Washington Report panel. We also have a panel on how the Inflation Reduction Act is affecting the tax equity investment marketplace and lots of other hot topics. Really a continuation of lot of what we've discussed during this podcast and much, much more over the day and a half. Also wanted to share some other resources. one is the Novogradac Journal of Tax Credits. Our November issue has a special focus on renewable energy tax credits, and there are a number of articles in the issue that will be of interest. My Washington Wire column, which I do every month. This month, it's on low-income housing tax credit properties and why developers and owners should consider solar, as we've touched upon, during the course of this podcast. We also had an article by my partner Brent Parker on the Inflation Reduction Act implication for renewable energy tax credits and energy efficiency updates and affordable housing. That's the 45L credit. There's a useful summary of the Inflation Reduction Act provisions by attorney Forrest Milder of Nixon Peabody. And there's an article by John Dalton and Megan Christensen of Manatt on tax credit alternatives in the Inflation Reduction Act, including the credit sale or transferability option, and direct pay option.

And then there's several other very insightful articles. So be sure to pick up, a copy of the Novogradac Journal of Tax Credits. And if you're not a subscriber yet, simply go to www.novoco.com/journal and click on the subscribe button to make sure you have access to next month's issue.

Exit

And looking ahead at the Tax Credit Tuesday podcast schedule, we have several in-demand topics coming up. My partner Jeff Nishita, along with Melissa Chung, will be on what we're planning as part of a multi segmented podcast series on practical insights and tips for developers interested in using the low-income housing tax credit.

During this series, we're going to cover key roles in a low-income housing tax credit tax credit transaction, plus what you need to know about tax credit applications, tax-exempt bond applications, closing transactions and more.

Also on the horizon as a podcast topic, we're going to have an annual election results podcast with Novogradac's Director of Public Policy and Government Relations, Peter Lawrence. We'll look at how the election results in November could affect community development legislation for the remainder of the year and into next session of Congress. And we're still waiting on the new markets tax credit awards, so we'll have a podcast on those awards once they're out. You can make sure that you're notified of each week's episode by following your subscribe to the Tax Credit Tuesday podcast.

Go to www.novoco.com/podcast to subscribe to and stream the show on our website. You can also follow subscribe to Tax Credit Tuesday on iTunes, Spotify, Google Podcast, Stitcher, and Radio Public. And soon you'll also be able to listen to us on YouTube.

Off-Mike

[00:45:35] **Michael Novogradac, CPA:** Now I'm pleased to reach our Off-Mike section where listeners can get some fun off topic advice and words of wisdom from our podcast guests.

So Tony, one of my frequent questions for podcast guests has to do with productivity. So I was wondering if you could share with our listeners a habit that you think might help our listeners add to their productivity and of course their daily routines.

Yeah, sure. Thanks. Let's see here. Habits to increase productivity. One thing that I like to do is recognize what part of the day I'm the most productive. I think all of us have a time a day where that's where they do their best work, so to speak. And so I try to, for me, that's the morning, that's the time of the day where I'm the least subject to distraction and interruption.

[00:46:33] **Tony Grappone, CPA:** And so I try and put my highest priority work for the day into that time of day where I'm apt to be the least distracted and the most focused. And so, I think we're all a little bit like that where we recognize that we're at our best at certain points in the day. And so trying to figure out the priority work for the day and putting it into that spot of the day to be productive.

[00:46:58] **Michael Novogradac, CPA:** No, I like that. It makes perfect sense. It's something worth remembering, every day to balancing your day in that way. And there was a recent Wall Street Journal article that talked about in the course of a day, once productivity is stronger in different areas, and I'll post a link to that on the, in the show notes that kind of builds off of what you just suggested there.

Now my second question, I, myself am preparing for the podcast, learned the answer to this question uh, really, love, I loved it. But, for our listeners, could you share a talent or skill that you have that most people might not know about? And how you acquired that talent or skill?

[00:47:50] **Tony Grappone, CPA:** Awesome. I love this question. All right, so, yeah, and I didn't realize that, you didn't know about this, previously, so, it was fun to open up to you about this hobby. So I'm a hobby songwriter and I know some of my clients know that and coworkers, but not everybody may be aware of that.

And so what that means is I basically write songs and if I like them, if I like the way they're coming out, I'll take them into a recording studio and have them demoed and and try to get them as radio quality as I possibly can. And, I don't do it a ton, it's a hobby, it's not a full-time sort of thing, but, it's a nice little outlet from the day-to-day corporate America type of job.

[00:48:31] **Tony Grappone, CPA:** And it's just a ton of fun. So I've gone to Nashville a bunch of times to record songs and been able to work with extremely talented artists. And it's been a real thrill. As a matter of fact, last year I actually got to go to Abbey Road Studio in London and, and do a recording session, which was just like a, thrill of a lifetime type of thing.

So it's a great sort of, total, total 180 from what we do here at the firm. But a lot of fun.

[00:48:53] **Michael Novogradac, CPA:** So Tony, would it be okay if we put one of your recordings at the end of this podcast?

[00:48:59] **Tony Grappone, CPA:** I would love it if you would feature one of my songs at the end of this podcast.

[00:49:03] **Michael Novogradac, CPA:** Well, that's what we'll do. So listeners, stay tuned and you'll hear a song written by my partner Tony Grappone and performed in Nashville Studios.

[00:49:14] **Tony Grappone, CPA:** That'd be great. I would love that.

[00:49:15] **Michael Novogradac, CPA:** Very good. Thank you again, Tony.

[00:49:18] **Tony Grappone, CPA:** Thanks for having me. This was fun.

[00:49:20] **Michael Novogradac, CPA:** And to our listeners, I'm Mike Novogradac. Thanks for listening.

Additional Resources

Email

Tony Grappone

RETC Working Group

RETC Working Group Home Page

Previous Inflation Reduction Act Podcasts

Aug. 23, 2022: The Inflation Reduction Act and What it Means to Renewable Energy and Beyond

Aug. 30, 2022: What the Inflation Reduction Act Means for Affordable Housing

Conference

Novogradac 2022 Fall Renewable Energy and Environmental Tax Credits Conference

Referenced Wall Street Journal Article

How to Be Healthier, Happier and More Productive: It's All in the Timing - WSJ