Wednesday, August 10, 2022

On August 7, 2022, the Senate passed the budget reconciliation bill known as the Inflation Reduction Act. The legislation includes several key tax provisions, and addresses health insurance and prescription drug affordability, climate change, and taxation through a variety of measures.

To review the full text of the Act, view here.

### 15% Corporate Alternative Minimum Tax

The Act implements a 15% corporate alternative minimum tax that applies to U.S.-owned corporations (other than an S corporation, a regulated investment company, or a real estate investment trust) with more than $1 billion in applicable financial statement income and US corporations with more than $100 million in applicable financial statement income when such U.S. corporation is a member of a foreign-owned multinational group with more than $1 billion in applicable financial statement income. In calculating the minimum tax, corporations would be able to take into account any applicable financial statement net operating losses and any base erosion and anti-abuse tax paid.

When this provision takes effect after Dec. 31, 2022, these corporations will be required to pay a 15% tax on their “book income,” the amount they report to shareholders on financial statements, if it is greater than what they would have paid under the current 21% corporate tax rate after applying tax credits and deductions. As a result, corporations reporting high income to their shareholders will not be able to avoid taxation by reporting little to no income for tax purposes.

The Joint Committee on Taxation estimates that only approximately 150 taxpayers will be required to pay the 15% minimum tax. Additionally, their analysis shows that the provision targets manufacturers in pharmaceuticals, technology, apparel, and other industries known for avoiding taxes by manufacturing their products overseas while selling primarily to American customers. Moreover, Secretary of Treasury Janet Yellen emphasizes that the tax will have no effect on families with income below $400,000.

### Excise Tax on Stock Buybacks

Although previous versions of the Act included a provision to close the carried interest tax loophole, it was ultimately swapped out in favor of a 1% excise tax on stock buybacks at the behest of Senator Sinema. This tax provision will help correct a tax policy inefficiency stemming from the differential tax treatment of dividends and stock buybacks. When corporations distribute profits, they do so by either issuing dividends or by buying back a portion of their own shares. The effect of a stock buyback is that the value of the remaining stocks held by shareholders increases. While dividends are generally taxable when received by shareholders, an increase in stock value as the result of a stock buyback is not taxable until a shareholder sells. The 1% excise tax on stock buybacks purportedly results in more even tax treatment of the two payout methods, which have similar economic effects.

### Other Tax Provisions of the Act

In addition to the two provisions discussed above, the Act provides $80 million in additional IRS funding to improve its enforcement capabilities, establishes an excise tax on drug manufacturers who fail to enter into drug pricing agreements, temporarily extends the American Rescue Plan’s expansion of premium tax credits, and modifies or extends tax credits related to renewable energy.

**IRS Funding** — The Act appropriates 10-year funding for the IRS as follows: $3,181,500,000 for taxpayer services, $45,637,400,000 for...
enforcement, $25,326,400,000 for operations support, and $4,750,700,000 for business systems modernization. In addition, $15 million is allocated to the IRS with funding for a report to Congress on the potential creation and maintenance of an IRS-run e-file system.

**Drug Pricing — Excise Tax on Selected Drugs During Nonenforcement Period.** In order to facilitate Medicare in negotiating prescription drug costs, the Act imposes a nondeductible excise tax on the sale by the manufacturer, producer, or importer of certain drugs during a “noncompliance period,” applicable to sales after the date of enactment. This covers drugs that are designated as Medicare high-spend and negotiation eligible. Noncompliance periods include certain periods not covered by pricing agreements between the manufacturer and the Health and Human Services (HHS) Department and periods in which information due to the HHS is overdue. An exemption is provided for export of the drug or for resale to a second purchaser for export. The tax may not be appealed to the IRS. The Act requires payment in full before any judicial action to recover amounts tax.

**Expansion of ACA Premium Tax Credits.** The Act extends through 2025 the reduced percentage of household income that is used to calculate the premium contribution for an individual claiming the premium tax credit. Also through 2025, allows a taxpayer with household income for the year of 400% or more of the federal poverty line to qualify for the premium tax credit. This provision applies to taxable years beginning after 2022. 14

**Renewable Energy**

- **Extension and Modification of the Renewable Electricity Production Tax Credit (PTC).** The Act extends the beginning-of-construction deadline for certain renewable electricity production facilities through the end of 2024, and extends to the end of 2024 the election to treat certain facilities that otherwise qualify for the Code Section 45 Production Tax Credit (PTC) for “qualified investment credit facilities”) as energy property qualified for the Code Section 48 ITC instead. The Act reduces the base amount of the credit. Increases credit amounts if wage and apprenticeship requirements are met. The Act generally applies to facilities placed in service after 2021. Increased credit amounts for domestic content, energy communities, and hydropower apply to facilities placed in service after 2022. 15

- **Extension and Modification of the Energy Investment Tax Credit (ITC).** The Act extends for one year, through the end of 2024, the beginning-of-construction deadline for some types of energy property (for example, qualified fuel cell property) to qualify for the energy credit. The Act extends the beginning-of-construction deadline for geothermal equipment through the end of 2034 and reduces the base energy credit rate unless wage and apprenticeship requirements are met. The Act allows the credit for new types of energy property, including energy storage technology, qualified biogas, and microgrid controller property. The Act quintuples the credit amount in some circumstances, for example, if wage and apprenticeship requirements are met. The Act adds a 10% bonus credit if a domestic content requirement is met. The credit for new types of energy property applies to property placed in service after 2022. The extension of the beginning-of-construction deadline applies to property placed in service after 2021. 16

- **Increase in Energy Credit for Solar and Wind Facilities Placed in Service in Connection with Low Income Communities.** The Act expands the Code Section 48 energy investment tax credit to include certain qualified solar and wind facilities for which the Treasury Department allocates environmental justice solar and wind capacity limitation. To qualify, a facility must have a maximum net output of less than 5 megawatts and must be in a low-income community, or on American Indian land, or part of a low-income residential building project or a low-income economic benefit project. This provision is effective beginning in 2023. 17

- **Extension and Modification of Carbon Oxide Sequestration Credit.** The Act extends, with modifications, and enhances the carbon oxide sequestration credit for qualified industrial facilities and direct air capture facilities if construction begins before 2033, subject to conditions. The Act lowers the minimum carbon capture requirement. Increases credit amount if wage and apprenticeship requirements are met. These provisions generally apply to facilities or equipment placed in service after 2022. The modified carbon capture requirements apply to facilities or equipment the construction of which begins after the date of enactment. The amendments to the special rules for carbon capture equipment placed in service before February 9, 2018, take effect on the date of enactment. 18

- **Zero-Emission Nuclear Power Production Credit.** The Act provides a new business credit for electricity produced by the taxpayer at a qualified nuclear power facility that is placed in service before the date of enactment and sold to an unrelated person. The credit amount is quintupled if wage requirements are met. This provision applies to electricity produced by a qualified nuclear power facility and sold after 2023, in taxable years beginning after 2023 but before 2033. 19

- **Extension of Tax Credits for Biodiesel, Renewable Diesel, and Alternative Fuels.** The Act extends the tax credits for biodiesel, renewable diesel, biodiesel mixtures, alternative fuel, and alternative fuel mixtures through 2024, applicable to fuel sold or used after 2021. 20

- **Extension of Second Generation Biofuel Credit.** The Act extends the tax credit for second generation biofuel production through 2024. This provision applies to second generation biofuel production after 2021. 21

- **Sustainable Aviation Fuel Credit.** The Act creates a new business credit for each gallon of sustainable aviation fuel sold or used as part of a qualified fuel mixture. The credit equals the number of gallons of sustainable aviation fuel in the mixture, multiplied by a base amount of $1.25, with increases available for meeting certain greenhouse gas emissions reductions. The Act eliminates the tax credit under Code Section 40A for sustainable aviation fuel produced from biodiesel. The amount of the credit is included in gross income under Code Section 87. This provision applies to fuel sold or used in 2023 and 2024. 22

- **Credit for Production of Clean Hydrogen.** The Act creates a new business credit for the production of clean hydrogen during the 10-year period beginning on the date a qualifying facility is originally placed in service. Credit amounts are a percentage, based on emissions rates, of $0.60 (adjusted for inflation). Taxpayers qualify for an increased credit amount if certain wage and apprenticeship requirements are met. The Act eliminates the excise tax credit under Code Section 6426(d)(2)(D). This provision applies to clean hydrogen produced after 2022. 23

- **Extension and Modification of Nonbusiness Energy Property Credit.** The Act extends the nonbusiness energy property credit through 2032, increases the credit rate to 30%, replaces the lifetime limit with an annual limit, and modifies the standards for qualified energy-efficiency improvements. This provision generally applies to property placed in service after 2021. Identification number requirements apply to property placed in service after 2024. 24

- **Extension and Modification of Residential Energy Efficient Property Credit (Residential Clean Energy Credit).** The Act...
extends the residential energy efficient property credit (renamed the “residential clean energy credit”) through 2034. Replaces the credit for biomass fuel property expenditures with a new credit for battery storage technology expenditures. This provision applies to expenditures made after 2022.

- **Modification of Energy Efficient Commercial Buildings Deduction.** The Act modifies the formula for computing the maximum amount of the energy efficient commercial buildings deduction, increases the deduction amount if new wage and apprenticeship requirements are met, modifies the energy efficiency standard, eliminates the partial deduction for property that does not meet the certification standard, and provides an alternative deduction for energy efficient building retrofit property. This provision generally applies to taxable years beginning after 2022.

- **Extension, Increase, and Modification of New Energy Efficient Home Credit.** The Act extends the new energy-efficient home credit a business credit for contractors who manufacture or construct energy-efficient homes - through 2032. Increases credit amounts, modifies energy-saving requirements, and provides a larger credit amount for residences that meet wage requirements. This provision generally applies to dwelling units acquired from an eligible contractor after 2022. Extension of credit applies to dwelling units acquired after 2021.

- **Modification and Termination of New Qualified Plug-In Electric Drive Motor Vehicle Credit (Clean Vehicle Credit).** Increases the dollar limit on the new qualified plug-in electric drive motor vehicles credit (renamed the “clean vehicle credit”) if certain requirements are met. Adds requirements that would render electric vehicles made with any battery components manufactured by “foreign entities of concern” (e.g., China) ineligible to receive the credit after 2023. Beginning in 2025, prohibits use of any critical mineral in a battery that is extracted or processed by those countries. Adds a requirement that final assembly of the vehicle occur in North America. Eliminates the limit on the number of credit-eligible vehicles but allows only one credit per vehicle. Imposes a new credit limit based on the taxpayer’s income. The Act allows a taxpayer to transfer the credit to a registered dealer in exchange for payment from that dealer. Terminates the credit after 2032. This provision generally applies to vehicles placed in service after 2022. The final assembly requirement applies to vehicles sold after the date of enactment. The per-vehicle dollar limit applies to vehicles placed in service after the proposed guidance described in Code Section 30D(e)(3)(B) is issued. The transfer-of-credit provision applies to vehicles placed in service after 2023. The elimination of the limit on the number of credit-eligible vehicles applies to vehicles sold after 2022.

- **Credit for Previously Owned Clean Vehicles.** The Act provides a new nonrefundable personal credit for qualifying previously owned clean vehicles to individual purchasers whose modified adjusted gross income does not exceed a specified limit. A taxpayer may elect to transfer the credit to a registered dealer in exchange for payment from that dealer. Credit terminates after 2032. This provision generally applies to vehicles acquired after 2022. The transfer-of-credit provision applies to vehicles acquired after 2023.

- **Credit for Qualified Commercial Clean Vehicles.** The Act provides a new business credit for qualified commercial clean vehicles, in an amount equal to 15% (or 30% for a vehicle not powered by a gas or diesel internal combustion engine) of basis, up to $7,500 (or $40,000 for a vehicle with a gross vehicle weight rating of at least 14,000 pounds). The credit terminates after 2032. This provision applies to vehicles acquired after 2022.

- **Extension and Modification of Alternative Fuel Refueling Property Credit.** The Act extends the alternative fuel refueling property credit through 2032. Lowers the credit rate from 30% to 6% if the refueling property is depreciable. Increases the credit limit to $100,000 per item of depreciable refueling property and $1,000 per item of nondepreciable refueling property. Includes certain bi-directional charging equipment and certain electric charging stations as credit-eligible property. Quintuples the credit amount for any depreciable qualified alternative fuel vehicle refueling property that is part of a refueling project that begins within a specified time period and meets wage and apprenticeship requirements. Requires alternative fuel refueling property to be placed in service in a low-income community or a nonurban area. This provision applies to property placed in service after 2022. Extension of credit applies to property placed in service after 2021.

- **Extension of the Advanced Energy Project Credit.** The Act extends the advanced energy project credit, a competitively awarded investment tax credit for clean energy and energy efficiency manufacturing projects. The Act provides for as much as $10 billion in new credit allocations. Reduces the credit rate by 80% if wage and apprenticeship requirements are not met. The Act modifies the definition of a qualifying advanced energy project. Effective beginning in 2023.

- **Advanced Manufacturing Production Credit.** The Act provides a new production credit for each eligible solar energy component, eligible wind energy component, eligible inverter, qualifying battery component, and applicable critical mineral, that is produced by the taxpayer in the United States, or in a U.S. possession, and sold to an unrelated person. This provision applies to components and minerals produced and sold after 2022.

- **Reinstatement of Superfund Hazardous Substance Financing Rate.** Beginning in 2023, reinstates the hazardous substance Superfund financing rate on crude oil and imported petroleum products at the rate of 16.4 cents per gallon (adjusted for inflation). Permits advances to the Hazardous Substance Superfund trust fund through 2032.

- **Clean Electricity Production Credit.** The Act creates a new business credit for the production of clean electricity for facilities placed in service after 2024 where the greenhouse gas emissions rate is not greater than zero. The base credit rate is 6% of the qualified investment, with increases available if certain requirements related to construction date, output, and wages, among other factors, are met. The credit begins to phase out one year after the later of 2032, or the year when annual greenhouse gas emissions from U.S. electricity production are equal to or less than 25% of the emission rate for 2022.

- **Clean Electricity Investment Credit.** The Act creates a new investment credit for clean electricity property investments in energy storage technology and qualified facilities placed in service after 2024 where the greenhouse gas emissions rate is not greater than zero. The base credit rate is 6% of the qualified investment, with increases available if certain requirements related to construction date, output, and wages, among other factors, are met. The credit begins to phase out one year after the later of 2032, or the year when annual greenhouse gas emissions from U.S. electricity production are equal to or less than 25% of the emission rate for 2022.

- **Cost Recovery for Qualified Facilities, Qualified Property, and Energy Storage Technology.** The Act provides that qualified facilities for purposes of the new clean electricity production credit and qualified property or energy storage technology for
purposes of the clean electricity investment credit are treated as five-year property under the General Depreciation System (GDS). This provision applies to facilities and property placed in service after 2024.  

- **Clean Fuel Production Credit.** The Act creates a new business credit for clean fuel the taxpayer produces at a qualifying facility and sells for qualifying purposes. The fuel must meet certain emissions standards. The credit per gallon base amounts are $0.20 (non-aviation fuel) and $0.35 (aviation fuel), with increases available if certain wage and apprenticeship requirements are met. All amounts are adjusted for inflation. This provision applies to clean fuel produced after 2024 and sold before 2028.

- **Elective Payment of Applicable Credits ("Direct Pay Election").** The Act allows tax-exempt entities, state and local governments and political subdivisions, the Tennessee Valley Authority, tribal governments, and Alaska Native Corporations to elect to receive a direct payment in lieu of any applicable credit. Applicable credits are:
  - the business credit portion of the alternative fuel vehicle refueling property credit allowed under Section 30C which is treated as a credit listed in Section 38(b);
  - the portion of the renewable electricity production credit attributable to qualified facilities originally placed in service after 2022 under Section 45(a);
  - the portion of the carbon oxide sequestration credit attributable to carbon capture equipment originally placed in service after 2022 under Section 45Q;
  - the zero-emission nuclear power production credit under Section 45U(a);
  - the portion of the clean hydrogen production credit attributable to qualified facilities originally placed in service after 2012 under Section 45V(a);
  - for the U.S., states and political subdivisions, U.S. possessions, tax-exempt organizations other than cooperatives under Code SectionSection 521, and tribal governments, the qualified commercial clean vehicle credit determined by reason of new Code SectionSection 45W(d)(3) (requirement that a qualified commercial clean vehicle be depreciable property does not apply to any vehicle not subject to a lease that is placed in service by certain tax-exempt entities); Code SectionSection 45W(d)(3) (requirement that a qualified commercial clean vehicle be depreciable property does not apply to any vehicle not subject to a lease that is placed in service by certain tax-exempt entities);
  - the advanced manufacturing production credit under Section 45X(a);
  - the clean electricity production credit under Section 45Y(a);
  - the clean fuel production credit under Section 45(a);
  - the energy investment credit under Section 48;
  - the qualifying advanced energy project investment credit under Section 48C; and
  - the clean electricity investment credit under Section 48E.
This provision applies to taxable years beginning after 2022.  

**Transfer of Eligible Credits.** The Act permits a taxpayer to elect to transfer all or a portion of an eligible credit to an unrelated eligible taxpayer for cash, but the recipient taxpayer may not transfer any portion of the transferred credit. The consideration received by the transferor of the credit is not includible in gross income, and the recipient may not deduct the amount. Credits eligible for transfer include:

- the business credit portion of the alternative fuel vehicle refueling property credit allowed under Section 30C which is treated as a credit listed in Section 38(b);
- the renewable electricity production credit under Section 45(a);
- the carbon oxide sequestration credit under Section 45Q;
- the zero-emission nuclear power production credit under Section 45U(a);
- the clean hydrogen production credit under Section 45V(a);
- the advanced manufacturing production credit under Section 45X(a);
- the clean electricity production credit under Section 45Y(a);
- the clean fuel production credit under Section 45(a);
- the energy investment credit under Section 48;
- the qualifying advanced energy project investment credit under Section 48C; and
- the clean electricity investment credit under Section 48E.

Eligible credits cannot be transferred to a tax-exempt entity, a state and local government, political subdivision, the Tennessee Valley Authority, tribal government, or Alaska Native Corporation. This provision applies to taxable years beginning after 2022.  

Elisabeth Baldwin also contributed to this article.
Revenue Code of 1986 (the "Code") and references to “Reg. §” refer to Proposed and Final Regulations promulgated under the Code.


Code Section 10101; Act §55(b)(2).

Prior to the final vote, the senators changed the 15% corporate minimum tax by passing an amendment from Sen. John Thune, R-S.D., to remove special rules for determining whether businesses meet the $1 billion threshold for the tax. Under those rules, separate businesses of any size held by funds or partnerships would have been required to combine their otherwise related income for purposes of the threshold, subjecting more than 18,000 small and medium-sized businesses to $35 billion in tax increases, according to a statement by Thune. The senators approved an amendment by Sen. Mark Warner, D-Va., to the funding mechanism by enacting a two-year extension of caps on the deductibility of pass-through excess business losses that can offset nonbusiness income ($250,000 for single filers and $500,000 for joint filers for the period. January 1, 2027 to January 1, 2029. Pegged to the cost of living, the cap was $270,000 and $540,000 in 2022). Senators also modified the bill to ease the effect of some depreciation rules related to the corporate minimum tax. The provision was changed to exempt depreciation deductions under section 167 with respect to property to which section 168 applies. That was a major sticking point of the manufacturing community, which heavily lobbied Sen. Kyrsten Sinema, D-Ariz., the past week to oppose the book tax. The minimum tax also includes a new carve-out for section 197 deductions for wireless spectrum acquired by telecommunications companies after December 31, 2007, and before the legislation's enactment.


For more detailed information, see: R47202 (congress.gov)R47202 (congress.gov).


Id.

Yellen, supra note 1.


Inflation Reduction Act Takes Important Steps Forward and Should Be Enacted, supra note 8.

Id.


Id.

Code Section 36B; Act §12001.

Code Section 45; Act §13101.

Code Section 48; Act §13102.

New Code Section 48(e); Act §13103.

Code Section 45Q; Act §13104.

New Code Section 45U; Act §13105.

Code Sections 40A, 6426, 6427; Act §13201.

Code Section 40; Act §13202.

New Code Section 40B, New Code Section 6426(k), Code Section 6427(e), §87; Act §1320.

New Code Section 45V, New Code Section 45(e)(13); Act §13204.

Code Section 25C; Act §13301.

Code Section 25D; Act §13302.

Code Section 179D; Act §13303.

Code Section 45L; Act §13304.

Code Section 30D; Act §13401.
New Code Section 45W; Act §13403.

Code Section 30C; Act §13404.

Code Section 48C; Act §13501.

New Code Section 45X; Act §13502.

Code Sections 4611, 9507(d)(3)(B); Act §13601.

New Code Section 45Y; Act §13701.

New Code Section 48D; Act §13702.

Code Section 168(e)(3)(B); Act §13703.

New Code Section 45Z; Act §13704.

New Code Section 6417; Act §13801.

New Code Section 6418; Act §13801.