

Elective Pay for Local Governments

**Disclaimer: These summaries are based on proposed Treasury and IRS guidance for elective pay and should not be used as tax or legal advice.*

On June 14, 2023 the U.S. Department of the Treasury and the Internal Revenue Service (IRS) [released proposed guidance](#) on key provisions in the [Inflation Reduction Act](#) to expand the reach of the clean energy tax credits and help build projects more quickly and affordably, which will create good-paying jobs, lower energy costs for families, and advance American innovation.

[What is Elective Pay?](#)

Elective pay allows applicable entities, including tax-exempt and governmental entities that would otherwise be unable to claim certain credits because they do not owe federal income tax, to benefit from some clean energy tax credits. By choosing this election, the amount of the credit is treated as a payment of tax and any overpayment will result in a refund.

[Who is Eligible for Direct Pay?](#)

Applicable entities can use elective pay. Applicable entities include tax-exempt organizations, states and political subdivisions such as local governments, as well as their agencies and instrumentalities are all eligible for elective pay. Water districts, school districts, economic development agencies, public universities and hospitals that are agencies and instrumentalities of states or political subdivisions are also included.

[What Tax Credits Are Eligible Under Direct Pay?](#)

Tax exempt entities, including state and local governments, can take advantage of the direct pay option under a variety of tax credits for both the production of and investment in clean energy.

The Production Tax Credit (PTC) provides an ongoing tax credit for the first ten years of a project based on the amount of renewable energy produced in each year and sold to an unrelated person. The Investment Tax Credit (ITC) are one-time tax credits based on a percentage of the qualifying costs of a project.

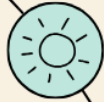
The tax credit most cities are likely interested in taking advantage of is the **Commercial Clean Vehicle Tax Credit (45W)**, which many cities have expressed interest in using the tax credit to purchase to electric heavy-duty fleets like fire

trucks, city-buses, garbage and recycling trucks to help municipalities reach transportation decarbonization goals.

The IRA includes the following new and expanded tax credits that are eligible for the direct pay option:

Production Tax Credits

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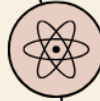
Renewable Electricity PTC (Section 45)

A per-kW tax credit based on production of renewable energy



Carbon Capture and Sequestration PTC (45Q)

A credit of between \$12 and \$180 per ton of carbon oxide captured and sequestered, injected or used



Nuclear Power PTC (45U) *New*

A per-kW tax credit based on the production of nuclear energy



Clean Hydrogen PTC (45V) *New*

A per-kg credit for producing clean hydrogen at a qualified, U.S. facility



Advanced Manufacturing PTC (45X) *New*

A production tax credit for domestic manufacturing of components of clean energy projects



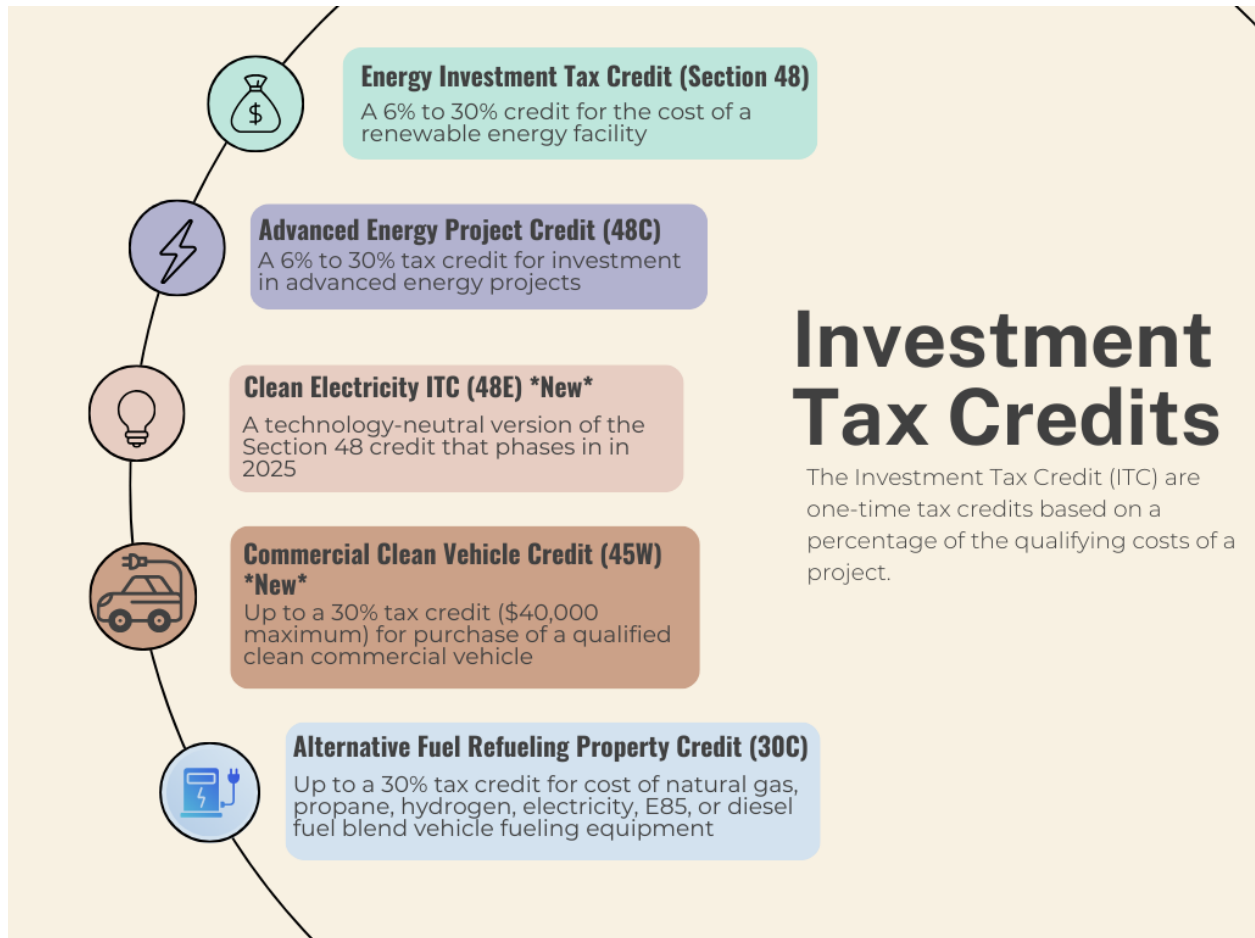
Clean Electricity PTC (45Y) *New*

A technology-neutral version of the Section 45 credit that phases in in 2025



Clean Fuel PTC (45Z) *New*

A per-gallon credit for domestic production of clean transportation fuels, including sustainable aviation fuel



*Table is based on IRS [1 pager](#) detailing the clean energy tax incentives eligible for direct pay and from [NLC blog post](#)

[How Can My City Receive the Direct Pay Tax Credit?](#)

- 1. Identify and pursue the qualifying project or activity:** You will need to know what applicable credit you intend to earn and use elective pay for.
- 2. Determine your tax year, if not already known:** Your tax year will determine the due date for your tax return.
- 3. Complete pre-filing registration with the IRS:** This will include providing information about yourself, which applicable credits you intend to earn, and each eligible project/property that will contribute to the applicable credit and other information required. Upon completing this process, the IRS will provide you with a registration number for each applicable credit property. You will need to provide that registration number on your tax return as part of making the elective pay election.

- Complete pre-filing registration in sufficient time to have a valid registration number at the time you file your tax return.
- ***More information about this pre-filing registration process will be available by late 2023.***

4. Satisfy all eligibility requirements for the tax credit and any applicable bonus credits, if applicable, for a given tax year: For example, to claim an energy credit on a solar energy generating project, you would need to place the project in service before making an elective payment election.

5. File Form 990-T by the due date (or extended due date) and make a valid elective payment election.

*List is based on IRS State and local government [1 pager](#) on direct pay

Why Should my City Use Direct Pay?

The ability to directly take advantage of tax credits changes the way that cities can approach climate change mitigation and resilience projects and **will make decarbonization more cost-effective.**

Tax credits have been used to reduce costs of clean technologies such as solar panels, wind turbines, and battery storage but now they're available to cities in the same way they have been available to taxable entities for years.

Cities can further accelerate local deployment of clean energy technologies like [solar power](#) and prioritize emissions reductions.

For example, in June, Mayor Castor and the City of Tampa unveiled a [Climate Action and Equity Plan](#) laying out a path for transitioning to renewable energy and increasing the city's resilience to the effects of climate change. The [report](#) identifies 20 city-owned buildings ready for solar implementation projects that would reduce energy usage and save over \$1.2 million annually. The ambitions of Tampa's local leadership backed by funding from the Inflation Reduction Act and direct pay mechanism could make these plans a reality and improve the lives of residents with these shovel-ready projects.

Additional Resources on Elective Pay:

City Climate Actions

- [Climate Mayors](#) recently submitted a suite of [recommendations](#), endorsed by over 50 mayors to provide recommendations to the Treasury and IRS in support of elective pay.

- Climate Mayors, C40 and USDN released a new report on “[Maximizing the Impact of US Federal Climate Investments: The Unique Role of Cities](#)”. This paper illustrates the roles that cities will play in implementing IRA and BIL, identifies the tools and resources local governments need to deploy federal climate funds most efficiently and effectively, and recommends what federal agencies, state governments, funders, and climate advocates can do to help.
- [Climate Mayors, C40, and USDN City Climate Investments](#) highlights city success stories of how mayors are already using federal investments from BIL and ARPA, and how they plan to use IRA investments
- US Conference of Mayors AECOM Report on Direct Pay: “[Alliance for a Sustainable Future Cities Advancing Climate Action: Unlocking the Potential of the Inflation Reduction Act](#)” provides concrete examples of how cities can utilize direct pay with city budget planning for a myriad of clean energy projects.
- America’s All In Direct Pay Memo: [IRA Tax Incentives for Businesses, Local Governments and Nonprofits](#)

Federal Fact Sheets

- **Treasury landing page for Elective Pay and Transferability** can be found [here](#) and frequently asked questions can be found [here](#)
- Treasury guidance on Qualified Advanced Energy Project Credit and Low-Income Communities Bonus Credit [here](#)
- The White House guide to direct pay: [Direct Pay through the Inflation Reduction Act](#)

Webinars and Webtools

- **World Resources Institute** IRA Bonus Tax Credit Mapper can be found [here](#)
- **The Climate Program Portal** provides resources on IRA and BIL which can be found [here](#). The Climate Program Portal pulls together crucial summary data, news, requests and updates related to the climate elements in the Infrastructure Investment and Jobs Act (IIJA) and the Inflation Reduction Act (IRA). This Portal was developed by Atlas Public Policy with input from diverse stakeholders. With all this data in one place, users can prepare for and respond to key funding and developments.
- **Rewiring America webinar** with Climate Mayors, C40, USDN, SSDN, and NLC provides an overview of the initial guidance with presenters from the Treasury, NYU Tax Law, and National League of Cities:
 - [Webinar Recording](#)
 - [Webinar Presentation](#)
 - [Q&A and other Resources](#)
- **Lawyers for Good Governance**
 - [Recording of Webinar: Elective Pay & Tax Incentives Under the IRA: The What, When and, How - August 9, 2023](#)
 - [Webinar Presentation](#)
 - [Webinar Q&A Table](#)

- [A 50-State Survey](#) of State Policies to Help Ensure Federal Investments Benefit “Disadvantaged Communities” Under Biden’s Justice40 Initiative
- **Congressional Progressive Caucus** [Partner Toolkit](#)

Blog Posts

- Amy Turner: [Proposed Regulations for Direct Pay Under the Inflation Reduction Act: Guidelines for Cities](#), details an overview of the direct pay provisions and where Treasury/IRS can provide additional clarity for cities, and [Cities and the Inflation Reduction Act](#), which provides an overview of additional programs under the IRA that cities can stake with direct pay
- Electrification Coalition: [Direct/Elective Pay Under the IRA](#)
- National League of Cities Resources on Direct Pay:
 - [Getting Started: New Elective Pay Option for Local Clean Energy Projects](#)
 - [How Local Governments Can Use Direct Pay on Clean Energy Projects](#)
- Evergreen Action: [What Is Elective Pay \(aka Direct Pay\)? Here’s How It Makes Clean Energy Tax Incentives More Accessible](#)
- Holland & Knight: [The Inflation Reduction Act: Provisions and Incentives for Local Governments](#)

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Production Tax Credits	Investment Tax Credits
Renewable Electricity Production Tax Credit (Section 45) – a per-kW tax credit based on production of renewable energy	Energy Investment Tax Credit (Section 48) – a 6% to 30% credit for the cost of a renewable energy facility
Carbon Capture and Sequestration Tax Credit (45Q) – a credit of between \$12 and \$180 per ton of carbon oxide captured and sequestered, injected or used	Advanced Energy Project Credit (48C) – a 6% to 30% tax credit for investment in advanced energy projects
Nuclear Power Production Tax Credit (45U) *New* – a per-kW tax credit based on the production of nuclear energy	Clean Electricity Investment Tax Credit (48E) *New* – a technology-neutral version of the Section 48 credit that phases in in 2025
Clean Hydrogen Production Tax Credit (45V) *New* – a per-kg credit for producing clean hydrogen at a qualified, U.S. facility	Commercial Clean Vehicle Credit (45W) *New* – up to a 30% tax credit (\$40,000 maximum) for purchase of a qualified clean commercial vehicle

<p>Advanced Manufacturing Production Tax Credit (45X) *New* – a production tax credit for domestic manufacturing of components of clean energy projects</p>	<p>Alternative Fuel Refueling Property Credit (30C) – up to a 30% tax credit for cost of natural gas, propane, hydrogen, electricity, E85, or diesel fuel blend vehicle fueling equipment</p>
<p>Clean Electricity Production Tax Credit (45Y) *New* – a technology-neutral version of the Section 45 credit that phases in in 2025</p>	
<p>Clean Fuel Production Credit (45Z) *New* – a per-gallon credit for domestic production of clean transportation fuels, including sustainable aviation fuel</p>	