

Part III – Administrative, Procedural, and Miscellaneous

Energy Community Bonus Credit Amounts Under the Inflation Reduction Act of 2022

Notice 2023-45

SECTION 1. PURPOSE

This notice clarifies section 5.02(3) of Notice 2023-29, released in [IR-2023-69](#), which describes requirements for a brownfield site safe harbor for projects with a nameplate capacity of not greater than 5 megawatts (MW) in alternating current (AC). This notice also describes a prior modification that was made via an online update pertaining to the special rule for beginning of construction (BOC) under section 4.01(2) of Notice 2023-29.

SECTION 2. BACKGROUND

.01 In General. Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), amended §§ 45 and 48 of the Internal Revenue Code (Code)¹ to provide increased credit amounts or rates if certain requirements pertaining to energy communities are satisfied, and added new §§ 45Y and 48E, which provide increased credit amounts or rates for certain qualified facilities, energy projects, or energy storage technologies that satisfy similar

¹ Unless otherwise specified, all “section” or “§” references are to sections of the Code.

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requirements and that are placed in service after December 31, 2024.²

On April 4, 2023, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) released Notice 2023-29 in [IR-2023-69](#), which describes certain rules that the Treasury Department and the IRS intend to include in forthcoming proposed regulations for determining what constitutes an energy community as defined in § 45(b)(11)(B) and as adopted by §§ 45Y(g)(7), 48(a)(14), and 48E(a)(3)(A) and for determining whether a qualified facility, an energy project, or an energy storage technology is located in an energy community. In addition, Notice 2023-29 provides that the Treasury Department and the IRS intend to propose that the forthcoming proposed regulations will apply to taxable years ending after April 4, 2023. Taxpayers may rely on the rules described in sections 3 through 6 of Notice 2023-29 until the issuance of the forthcoming proposed regulations.

.02 Clarification of Safe Harbor for Brownfield Sites. Section 5.02(3) of Notice 2023-29 describes a special rule for projects with a nameplate capacity of not greater than 5MW (AC). The special rule provides that if an ASTM E1527 Phase I Environmental Site Assessment (Phase I Assessment) has been completed with respect to the site in accordance with the most current applicable version of the Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process of ASTM International, a taxpayer would satisfy the safe harbor for brownfield sites and the IRS will accept that such site meets the definition of a brownfield site under 42 U.S.C. § 9601(39)(A).

² See § 13101(g) of the IRA for the energy community provisions under § 45(b)(11), § 13102(o) of the IRA for the energy community provisions under § 48(a)(14), § 13701(a) of the IRA for the energy community provisions under § 45Y(g)(7), and § 13702(a) of the IRA for the energy community provisions under § 48E(a)(3)(A).

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This notice clarifies that a taxpayer would satisfy the safe harbor for brownfield sites under section 5.02(3) of Notice 2023-29 only if the Phase I Assessment identifies the presence or potential presence of a hazardous substance as defined under 42 U.S.C. § 9601(14) (hazardous substance), or a pollutant or contaminant as defined under 42 U.S.C. § 9601(33) (pollutant or contaminant). A site with respect to which a Phase I Assessment fails to identify the presence or potential presence of a hazardous substance or a pollutant or contaminant would not allow a taxpayer to meet the safe harbor described in section 5.02(3) of Notice 2023-29. The clarification, which reflects the intended application of section 5.02(3) of Notice 2023-29, is described in section 3.01 of this notice.

.03 Prior Modification of Special Rule for Beginning of Construction. On April 7, 2023, the Treasury Department and the IRS modified [Notice 2023-29](#) via an online update, by specifying that the special rule for BOC described in section 4.01(2) of Notice 2023-29 would apply with respect to any EC Project (as defined in section 2 of Notice 2023-29) the construction of which begins “on or after January 1, 2023,” consistent with the effective date of the energy community bonus credit provisions under the IRA. This prior modification is described in section 3.02 of this notice to ensure public awareness.

SECTION 3. CLARIFICATION AND PRIOR MODIFICATION TO NOTICE 2023-29

.01 Clarification to the Safe Harbor for Brownfield Sites. Section 5.02(3) of Notice 2023-29 is clarified to read as follows:

“(3) For projects with a nameplate capacity of not greater than 5MW (AC), an ASTM E1527 Phase I Environmental Site Assessment (Phase I Assessment) has been

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completed with respect to the site in accordance with the most current applicable version of the Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process of ASTM International and such Phase I Assessment identifies the presence or potential presence of a hazardous substance as defined under 42 U.S.C. § 9601(14), or a pollutant or contaminant as defined under 42 U.S.C. § 9601(33).”

.02 Prior Modification of Special Rule for Beginning of Construction. As modified on April 7, 2023, the first sentence of section 4.01(2) reads as follows:

“(2) For purposes of §§ 45, 45Y, 48, and 48E, if a taxpayer begins construction of an EC Project on or after January 1, 2023, in a location that is an energy community as of the beginning of construction (BOC) date, then, with respect to that EC Project, the location will continue to be considered an energy community for the duration of the credit period for §§ 45 and 45Y or on the placed-in-service date for §§ 48 and 48E.”

SECTION 4. APPLICABILITY DATE

Until the issuance of the forthcoming proposed regulations, taxpayers may rely on the rules described in sections 3 through 6 of Notice 2023-29, as previously modified by the online update and clarified by section 3 of this notice, for taxable years ending after April 4, 2023.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Notice 2023-29 is clarified as provided in section 3 of this notice. Except as provided in section 3 of this notice, this notice does not otherwise affect the guidance provided in Notice 2023-29.

SECTION 6. DRAFTING INFORMATION

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The principal author of this notice is the Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, call the energy security guidance contact number at (202) 317-5254 (not a toll-free call).