Transferable Tax Credit Market

A comprehensive guide to buying clean energy tax credits to offset tax bills

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wholesale guide

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2 About this guide

2.1 Purpose

This guide is best thought of as a desk reference for corporate tax, treasury, and finance professionals who are exploring transferable tax credits under the IRA. We designed this guidebook with corporate tax credit purchasers in mind. Since many corporations are new to the tax credit market, we wrote this guidebook without any assumption of prior knowledge. We hope, however, that a range of stakeholders in the transferable tax credit marketplace find it useful.

This handbook is for informational purposes only, and you should not construe any such information or other materials as legal, tax, investment, financial, or other advice. All content in this handbook is information of a general nature and does not address the circumstances of any individual or entity.

3 Background

3.1What are transferable tax credits?

The IRA greatly expanded energy-related federal income tax credits and added §6418 to the Internal Revenue Code, which allows "eligible taxpayers" to elect to transfer (i.e., sell) certain tax credits to unrelated taxpayers for cash.

Eligible taxpayers can elect to transfer all or a portion of an eligible credit, and the transferee taxpayer is treated as the taxpayer with respect to such credit (or such portion thereof). The transferee taxpayer is allowed to claim the transferred tax credits on their tax returns, while also assuming some risk in the event of a recapture event or a challenge by the IRS on the qualification of the transferred tax credit.

Tax credits can be transferred for tax years starting after December 31, 2022. The cash payments are excluded from the transferor's gross income and are not deductible by the transferee.

Tax credits under the following U.S. tax code sections can be transferred: §45, §45Y, §48, §48E, §45Q, §45V, §45U, §45Z, §45X, §48C, and §30C. Appendix A provides an overview of key features of each credit, including period of availability and project eligibility.

3.2 What are the benefits of transferable tax credits?

Tax credits have been the primary mechanism for the U.S. government to provide subsidies to clean energy projects such as wind and solar. However, most developers of clean energy projects lack sufficient tax liabilities to take full advantage of tax credits generated by their projects. Prior to the IRA, only an owner of the clean energy project could utilize the tax credits. This led to the creation of tax equity structures such as the partnership flip, whereby a third-party investor enters into a partnership with the clean energy developer to co-own a project and is allocated a share of project cash and the vast majority of tax benefits.

Tax equity partnerships are complex to set up and cumbersome to manage; as a result, the supply of tax equity has been dominated by a small number of large financial institutions. JP

Morgan and Bank of America accounted for more than 50% of all tax equityin recent years.

A tax credit can be transferred in a simpler process that is meant to propel a broader pool of capital to invest in clean energy projects. Rather than having to make an equity investment into a clean energy project through a complex legal partnership, a tax credit purchaser can simply buy a transferable credit that directly offsets federal tax liabilities. The benefits of transferable tax credits versus tax equity are summarized below.

3.2.1 Simpler structure, leading to lower costs

Transferability negates the need for complex tax equity structures, which require a developer to negotiate and enter into a partnership or leasing arrangement. The legal, due diligence, and accounting costs can exceed $1 million for a single tax equity partnership.
In contrast, buyers and sellers of tax credits use a straightforward tax credit transfer agreement (TCTA) to memorialize the terms and conditions of a tax credit sale. The purchase is effectuated by making a transfer election on an original tax return filed no later than the due date (including extensions) for the original return for the tax year in which the credit is determined.

3.2.2 Less ongoing management

For tax equity investors, who are co-owners of a project, a typical deal requires extensive ongoing asset management and financial reporting. At minimum, the investor must monitor project performance, conduct complex hypothetical liquidation at book value[3] (HLBV) accounting, collect K-1 and other tax forms from the developer, and ensure receipt of timely payments from the developer (e.g., preferred payments in a partnership flip structure).

3.2.3 More favorable reporting

Traditional tax equity has complex GAAP accounting treatment, which can increase volatility of earnings reporting[4] for publicly traded companies. The accounting complexity, and risk of tax equity's impact on reported earnings, has made tax equity a non-starter for many publicly

[2] https://www.projectfinance.law/publications/2021/december/solar-tax-equity-structures/

[3] https://www2.deloitte.com/content/dam/Deloitte/us/Documents/energy-resources/us-er-2014-aes-presentation-es7-topic2-112614.pdf

[4] https://www.novoco.com/periodicals/articles/solar-tax-equity-investor-gaap-accounting-update-deferral-method-and-hypothetical-liquidation-book

traded companies. In contrast, a transferred tax credit has a more straightforward accounting treatment.[5]

3.2.4 Less risk

A tax equity investor is investing true equity into a project, meaning that their returns may be impacted if a project has lower performance than what was underwritten – for instance, if a wind turbine doesn't produce as much power as originally estimated. In a tax credit transfer, the buyer is simply purchasing a tax credit, which is not subject to project performance risk.

3.3 Types of transferable tax credits

11 types of clean energy tax credits can be sold, which fall under the following U.S. tax code sections:

Section	Credit	Description
§30C	Alternative fuel vehicle refueling property	Tax credit for alternative fuel vehicle refueling and charging property in low-income and rural areas. Alternative fuels include electricity, ethanol, natural gas, hydrogen, biodiesel, and others.
§45	Renewable electricity production credit	Tax credit for production of electricity from renewable sources.
§45Q	Carbon oxide sequestration credit	Tax credit for carbon dioxide sequestration coupled with permitted end uses within the United States.
§45U	Zero emission nuclear power production credit	Tax credit for electricity from qualified nuclear power facilities and sold after 2023.
§45V	Clean hydrogen production credit	Tax credit for production of clean hydrogen at a qualified clean hydrogen production facility.

[5] https://www.pwc.com/us/en/tax-services/publications/insights/assets/pwc-accounting-for-inflation-reduction-act-energy-incentives.pdf

§45X	Advanced manufacturing production credit	Tax credit for domestic manufacturing of components for solar and wind energy, inverters, battery components, and critical minerals.
§45Y	Clean electricity production credit	Technology-neutral tax credit for production of clean electricity. Replaces the production tax credit for electricity generated from renewable sources (§45) for facilities placed in service in 2025 and later.
§45Z	Clean fuel production credit	Tax credit for domestic production of clean transportation fuels, including sustainable aviation fuels, beginning in 2025.
§48	Energy credit	Tax credit for investment in renewable energy projects.
§48C	Qualifying advanced energy project credit	Tax credit for investments in manufacturing facilities for clean energy products.
§48E	Clean electricity investment credit	Technology-neutral tax credit for investment in facilities that generate clean electricity. Replaces the investment tax credit for energy property (§48) for property placed in service in 2025 and later.

Tax credits can be transferred to an unrelated party (within the meaning of §267(b) or §707(b)(1) of the Internal Revenue Code) solely for cash, for tax years beginning after December 31, 2022.

Most credits have a "base" rate and a "full" rate. The full rate is contingent upon the underlying project meeting prevailing wage and apprenticeship requirements. §45, §45Y, §48, and §48E credits are also eligible for bonus, or "adder," credits that stack onto the full rate, including domestic content and energy communities. Solar and wind projects that fall under §48 and §48E are also eligible for low-income community bonus credits.

3.4 Prevailing wage and apprenticeship requirements

The IRA[6] aims to create a robust market for well-paying clean energy jobs. To achieve this goal, the IRA significantly increases the tax benefits for projects that meet prevailing wage and apprenticeship (PWA) requirements. Projects that comply with PWA requirements generally receive a tax credit that is five times greater than the non-PWA-compliant rate.

Prevailing wage rules require that certain workers are paid a minimum prevailing wage specified by the U.S. Department of Labor (DOL) during the construction of a facility or property, and during alteration or repair of a facility or property for certain number of years after the project is placed in service (PIS). The duration of the PWA compliance requirement[7] depends on the type of credit:

Credit	ITC/PTC	Duration of PWA requirement
§30C	ITC	During construction
§45 and §45Y	PTC	During construction and 10 years after PIS
§45Q	PTC	During construction and 12 years after PIS
§45U	PTC	During any alteration or repair
§45V	PTC	During construction and 10 years after PIS
§45Z	PTC	During construction and for 10 years after PIS unless the facility is placed in service before Jan. 1, 2025, then only for tax years in which the credit is claimed
§48 and §48E	ITC	During construction and five years after PIS
§48C	ITC	While re-equipping, expanding, or establishing a facility[8]

[6] https://www.whitehouse.gov/cleanenergy/clean-energy-updates/2022/11/29/treasury-issues-new-guidance-to-support-good-paying-jobs-in-clean-energy-industries/

[7] https://www.grantthornton.com/insights/alerts/tax/2023/flash/irs-details-wage-and-apprenticeship-requirements#:~:text=The%20prevailing%20wage%20rules%20generally,placed%20in%20service%20(PIS).

[8] §48C is an allotted credit, available only by application

The apprenticeship rules require a certain percentage of labor hours during construction, alteration, or repair for a project to be performed by a qualified apprentice. The minimum percentage of hours that must be performed by qualified apprentices is:

- 10.0% for projects that began construction before 2023
- 12.5% for projects that began construction in 2023
- 15.0% for projects that begin construction in 2024 or later

In addition, any apprentice-to-journey-worker ratios required by either the DOL or state agencies must be satisfied. Any contractor, subcontractor, or taxpayer who employs four or more individuals on the project must employ at least one qualified apprentice.

Apprentices during alteration and repair?

For §48 ITCs, there is ambiguity on whether apprentices are required for alteration and repair after a project is placed in service. Proposed regulations on wage and apprenticeship requirements from August 2023 indicated that apprentices are required during alteration and repair; however, November guidance on §48 ITCs define a 'recapture event' as a failure to pay prevailing wages, but do not mention failure to use apprentices.

3.4.1 Compliance and documentation management

If PWA requirements are not fulfilled, tax credit buyers that were expecting the full tax credit amount could face a credit disallowance and be subject to underpayment penalties. However, when PWA compliance is well-documented, a careful due diligence process can help buyers get comfortable that tax credits are properly accounted for. Furthermore, there are remedies that a tax credit seller can undertake to cure any PWA deficiencies identified by the IRS (see Section 3.4.4).

According to the proposed PWA regulations[9] issued by the IRS in August 2023, PWA documentation must include "payroll records for each laborer and mechanic (including each qualified apprentice) employed by the taxpayer, contractor, or subcontractor employed in the

[9] https://www.federalregister.gov/documents/2023/08/30/2023-18514/increased-credit-or-deduction-amounts-for-satisfying-certain-prevailing-wage-and-registered

construction, alteration, or repair of the qualified facility." The guidance also lists further information the taxpayer "may include" in their records for prevailing wage compliance:

- Name, social security/tax identification number, address, phone, and email
- Location and type of qualified facility
- Labor classification(s) the taxpayer applied to the laborer or mechanic for determining the prevailing wage rate and documentation supporting the applicable classification, including the applicable wage determination
- Hourly rate(s) of wages paid for each applicable labor classification
- Records to support any contribution irrevocably made on behalf of a laborer or mechanic to a trustee or other third person pursuant to a bona fide fringe benefit program, and the rate of costs that were reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a plan or program described in 40 U.S.C. 3141(2)(B), including records demonstrating that the enforceable commitment was provided in writing to the laborers and mechanics affected
- Total number of labor hours worked per pay period
- Total wages paid for each pay period (including identifying any deductions from wages)
- Amount and timing of any correction payments and documentation reflecting the calculation of the correction payments

For apprentices, the developer should capture:

- Any written requests for the employment of apprentices from registered apprenticeship programs, including any contacts with the DOL's Office of Apprenticeship or a state apprenticeship agency regarding requests for apprentices from registered apprenticeship programs

- Any agreements entered into with registered apprenticeship programs with respect to the construction, alteration, or repair of the facility

- Documents reflecting the standards and requirements of any registered apprenticeship program, including the applicable ratio requirement prescribed by each registered apprenticeship program from which taxpayers, contractors, or subcontractors employ apprentices

- Total number of labor hours worked by apprentices

- Records reflecting the daily ratio of apprentices to journeyworkers

While PWA requirements are new to the renewable energy industry, the requirements created by the IRA closely parallel those of the Davis-Bacon Act.[10] Therefore, developers will be able to reference existing best practices when complying with PWA.

3.4.2 Annual prevailing wage compliance report

For §48 ITCs[11], credit sellers must submit an annual prevailing wage compliance report to the IRS during the five-year recapture period. The report should adequately document the payment of prevailing wages with respect to any alteration of repairs of the project. Sellers submit the report to the IRS with their tax returns. To ensure compliance with the reporting requirement, tax credit buyers should receive confirmation of the seller's annual submission.

3.4.3 Exceptions to PWA requirements

Beginning of construction exception

Projects that began construction before Jan. 29, 2023, are generally exempt[12] from the wage and apprenticeship rules, except for credits under §48C and §45Z. Taxpayers can generally establish that construction has begun by either satisfying a test showing "physical work of a significant nature" has begun or by incurring 5.0% or more of the total cost of the facility under a safe harbor.

[10] https://www.dol.gov/agencies/whd/government-contracts/construction

[11] Reunion believes the prevailing wage compliance reporting requirement will extend to other credits that are subject to recapture, pending further IRS guidance

[12] https://www.grantthornton.com/insights/alerts/tax/2023/flash/irs-details-wage-and-apprenticeship-requirements

One megawatt exception

Projects under §45 and §48 (and their replacements under §45Y and §48E) are exempt from PWA if the maximum net output is less than one megawatt (as measured in alternating current) or the capacity of electrical or equivalent thermal storage is less than one megawatt. The net output will be determined by "nameplate capacity," defined as the maximum output on a steady-state basis during continuous operation under standard conditions.

In the case of thermal equipment, like geothermal heat pumps and solar process heating, a taxpayer must use the equivalent of 3.4 million British thermal units per hour (mmBTU/hour) to determine maximum capacity. For hydrogen storage and clean hydrogen production facilities, 3.4 mmBTU/hour is equivalent to 10,500 standard cubic feet per hour. Finally, for qualified biogas, taxpayers can convert 3.4 mmBTU/hour into a maximum net volume flow rate of 10,500 standard cubic feet/hour, after converting the gas output into a maximum net volume flow using the appropriate high heat value conversion factors found in an EPA table.

Electrochromic glass, fiber-optic solar, and microgrid controllers are not eligible for the one-megawatt exception because they do not generate electricity nor thermal energy.

3.4.4 Remedies

Prevailing wages

If a developer does not meet the PWA requirements, the tax credit does not automatically get reduced to the base rate. A developer can cure any deficiencies and will be deemed to satisfy the prevailing wage requirements if, within 180 days from when the IRS makes a final determination and sends a notice, they:

- **Pay back-wages with interest:** Pay the affected laborers or mechanics the difference between what they were paid and the amount they were required to have been paid (multiplied by three for intentional disregard), plus interest at the federal short-term rate (as defined in §6621[13]) plus 6%; *and*

[13] https://www.law.cornell.edu/uscode/text/26/6621

Pay a penalty: Pay a penalty to the IRS of $5,000 ($10,000 for intentional disregard14) for each laborer or mechanic who was not paid at the prevailing wage rate in the year. This penalty applies to each calendar year of the project. If, for example, a laborer is not paid the correct prevailing wage in two calendar years, the penalty is $10,000

The developer can waive the penalty if they make a corrective payment within the earlier of 30 days after the taxpayer became aware of the error or the date on which the tax return claiming the increased credit is filed, and either of two conditions is true:

1. Any laborer is not paid less than the prevailing wage for more than 10% of all pay periods of the calendar year
2. The correction payment is not greater than 2.5% of the prevailing wage

The November 2023 proposed regulations provide a further exception to the penalty payment: They penalty will not apply if work is done pursuant to a pre-hire collective bargaining agreement.

Apprenticeships

To cure a failure to meet the apprenticeship requirements, a developer must pay a penalty of $50 multiplied by the total labor hours for which the apprenticeship requirements were not met. The amount of the penalty with respect to the apprenticeship requirements is also increased to $500 per labor hour if the IRS determines the failure was due to intentional disregard.

The apprenticeship requirement can be satisfied if the developer made a good faith effort to comply.15 The developer must have requested qualified apprentices from a registered apprenticeship program and either:

[14] The November guidance clarify that intentional disregard is determined via the facts and circumstances test. The proposed regulations list factors the IRS will consider when making the facts and circumstances determination. These factors are also available on the IRS PWA FAQ page: https://www.irs.gov/credits-deductions/frequently-asked-questions-about-the-prevailing-wage-and-apprenticeship-under-the-inflation-reduction-act#prevailing

[15] https://www.irs.gov/credits-deductions/frequently-asked-questions-about-the-prevailing-wage-and-apprenticeship-under-the-inflation-reduction-act

- The request was denied for reasons other than the developer's refusal to comply with the program's standards and requirements
- The apprenticeship program failed to respond within five business days of receiving a request

To satisfy the good faith effort exception, the developer must make a written request to at least one registered apprenticeship program that has a geographic area of operation that includes the location of the facility, or that can reasonably be expected to provide apprentices to the location of the facility; trains apprentices in the occupation(s) needed by the developer performing construction, alteration, or repair with respect to the facility; and has a usual and customary business practice of entering into agreements with employers for the placement of apprentices in the occupation for which they are training, pursuant to its standards and requirements.

The good faith effort exception is limited to the request for apprentices made by the developer, including the number of apprentice hours for which the request for apprentices has been made to a registered apprenticeship program.

The good faith effort exception only applies to the specific portion of the request for apprentices that was not responded to or was denied. If a request was not responded to or was denied, the developer must submit an additional request(s) to a registered apprenticeship program after 120 days to continue to be eligible for the good faith effort exception.

Finally, if the construction work on a qualified facility is done pursuant to a qualifying project labor agreement, the apprenticeship payment penalty is not applicable. A qualifying project labor agreement is defined as a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project.

3.4.5 Guidance

- **Initial guidance (November 30, 2022):** IRS Notice 2022-61,[16] [17] Prevailing Wage and Apprenticeship Initial Guidance Under §45(b)(6)(B)(ii) and Other Substantially Similar Provisions
- **Proposed regulations (August 30, 2023):** Notice of Proposed Rulemaking,[18] Increased Credit or Deduction Amounts for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements
- **Proposed regulations (November 17, 2023):** Notice of Proposed Rulemaking[19], Definition of Energy Property and Rules Applicable to the [§48] Energy Credit. This guidance "withdraws and reproposes, for additional clarity, portions of previously proposed regulations"

3.4.6 Resources

- The IRS maintains a prevailing wage and apprenticeship requirements FAQ.[20] The page addresses the August 2023 and November 2023 proposed regulations
- The Department of Labor determines and maintains prevailing wages[21]
- To request a wage determination, developers can email iraprevailingwage@dol.gov with project and labor information
- Apprenticeship.gov[22] provides resources for finding qualified apprentices

[16] https://www.federalregister.gov/documents/2022/11/30/2022-26108/prevailing-wage-and-apprenticeship-initial-guidance-under-section-45b6bii-and-other-substantially

[17] https://www.federalregister.gov/documents/2022/11/30/2022-26108/prevailing-wage-and-apprenticeship-initial-guidance-under-section-45b6bii-and-other-substantially

[18] https://www.federalregister.gov/documents/2023/08/30/2023-18514/increased-credit-or-deduction-amounts-for-satisfying-certain-prevailing-wage-and-registered

[19] https://public-inspection.federalregister.gov/2023-25539.pdf

[20] https://www.irs.gov/credits-deductions/frequently-asked-questions-about-the-prevailing-wage-and-apprenticeship-under-the-inflation-reduction-act

[21] https://www.dol.gov/agencies/whd/IRA

[22] https://www.apprenticeship.gov/inflation-reduction-act-apprenticeship-resources

4 Technical credit considerations

4.1Who can sell credits?

Eligible credits (as detailed in Section 3.3) can be transferred by taxpayers only (including individuals, C-corporations, trusts, estates, partnerships, and S-corporations) beginning on January 1, 2023.

Tax-exempt entities, including municipal and rural electric co-ops, state and local governments, and tribal entities, are not able to transfer credits, but can use the elective pay election under §6417[23]. (We discuss elective pay in appendix C.)

For property held by a partnership, the transfer is made at the partnership level. However, each partner may direct the partnership to sell its respective share of credits without affecting the any other partner's allocation of credits.

4.2 Who can buy credits?

The credit must be transferred to an unrelated taxpayer. Related parties are defined in the IRC under §267(b)[24] and §707(b)(1).[25] The credit can be transferred in whole or in part (e.g., credits from a single project can be sold to multiple transferees).

Partnerships may purchase credits from unrelated taxpayers. Such credits are allocated to its partners and treated as nondeductible expenditures and reduce each partner's capital account and tax basis in its partnership interests.

4.3 Tax treatment

The purchase price of the tax credits is not included in the gross income of the seller and is not deductible by the buyer. Buyers also do not recognize gross income on the discount portion of the credit.

If a partnership is the owner of the credit property, the tax credits are sold by the partnership, and the amount of cash consideration received by the transferee is treated as tax exempt

[23] https://www.law.cornell.edu/uscode/text/26/6417
[24] https://www.law.cornell.edu/uscode/text/26/267
[25] https://www.law.cornell.edu/uscode/text/26/707

income. This tax-exempt income is allocated to the partners on the same proportionate manner as the original credit would have been allocated.

4.4Other restrictions

There are other restrictions that buyers and sellers need to be aware of. These include:

- **Cash only consideration**: Buyers must purchase transferable credits with cash – U.S. dollars, check, cashier's check, money order, wire transfer, ACH transfer, or other bank transfer of immediately available funds. A disguised consideration, such as a buyer receiving a discount on services from the seller from whom they are purchasing credits, could cause the transfer election to be disallowed

- **Prohibition against resale**: Credits may only be transferred once. Once a buyer has purchased tax credits, they cannot resell them. If a buyer is unable to fully utilize the tax credits that they purchased in a given year, they can carry the unused credits back three years and forward for up to 22 years

- **No progress expenditures**: Investment credits that are realized as progress expenditures may not be transferred

- **Lessees may not transfer credits**: To the extent that a lessee claims a credit pursuant to a lease passthrough structure, the lessee may not subsequently transfer the credit. However, lessors in a sale-leaseback transaction may elect to transfer the credits to a third party

- **At-risk rules**: Transferors that are partnerships or S-corporations are subject to the at-risk rules of §49.[26] The rules apply an at-risk calculation to determine the amount of tax credits that the taxpayer is allowed to realize, based on each partner's or shareholder's amount of nonqualified nonrecourse financing related to the credit

[26]https://www.law.cornell.edu/uscode/text/26/49

property.[27] To the extent that such the at-risk rules apply, the amount of credit that a transferor can claim and transfer may be limited

- **Passive activity loss rules:** Generally, individuals, estates, trusts, closely held C-corporations, and personal service corporations are subject to passive activity loss rules, under §469[28]. The passive activity loss rules require any taxpayers subject to such rules to only apply tax credits to passive income, and not active income, such as wage income, or portfolio income, such as capital gains or dividends

4.5 Excessive credit transfers

If a credit transfer is deemed by the IRS to constitute an "excessive credit transfer," the purchaser of the credit would be liable for an increase in tax by the amount of the excessive credit transfer plus a penalty 20% of such amount. The penalty would not be applied to the extent the excessive credit transfer is due to reasonable cause. Circumstances that indicate reasonable cause include:

- Review of the eligible taxpayer's records with respect to the determination of the eligible credit (including documentation evidencing eligibility for bonus credit amounts)
- Reasonable reliance on third party expert reports
- Reasonable reliance on representations from the eligible taxpayer that the total specified credit portion transferred does not exceed the total eligible credit determined with respect to the eligible credit property for the taxable year
- Review of audited financial statements

Because the transferee is directly liable for excessive credit transfers, and not the transferor, it is important for purchasers to negotiate seller indemnifications carefully and consider other risk mitigants including tax credit insurance.

[27] There are a few exceptions to the at-risk rules that make the basis reductions pursuant to §49 rare in energy transactions. Primarily, the at-risk rules do not apply where there is "qualified commercial financing", where the taxpayer does not acquire the property from a related party, the financing does not cover more than 80% of the cost of the property, and the lender is a commercial lender or a lender through a federal, state, or local government program. Nonetheless, buyers should ensure that sellers are not subjection to the at-risk rules as part of their diligence.

[28] https://www.law.cornell.edu/uscode/text/26/469

4.6 Carrybacks and carryforwards

§39(a)(4)[29] generally allows a three-year carryback period in the case of any applicable credit (as defined in §6417(b)). However, this is not straightforward to utilize.

Take the example of a tax credit buyer seeking tax credits from a clean energy project for the 2023 tax year. The project falls behind on construction and is placed in service on 1/1/2024. This results in tax credits for the 2024 tax year; however, these credits cannot easily be applied to the originally desired tax year of 2023. The buyer must first apply those credits against its 2024 liability. Only to the extent that there are unused credits after application against 2024 liability can the buyer carryback the credits. But it must first carryback the credits to the earliest possible date applicable, or 2021; any unused credits would then be applied to 2022; then finally to 2023. Buyers do not have the discretion to pick and choose which years to apply carryback credits.

Practically speaking, carrying back credits would require a buyer to amend one or more of its prior year returns, which could lead to complexities such as increased audit risk, or review from the Joint Committee on Taxation.

4.7 Buyers and sellers with different tax years

The year that a buyer recognizes transferable tax credits depends on both the buyer and seller tax year. Pursuant to §6418(d), "a transferee taxpayer takes the transferred eligible credit into account in its first tax year ending with, or after, the eligible taxpayer's tax year with respect to which the transferred eligible credit was determined."

For transactions where both the buyer and seller have a 12/31 tax year-end dates, the credits simply apply to the tax year in which they were generated.

For a transaction where the buyer tax year ends before that of the seller – e.g., the buyer has a 6/30 tax year, and the seller has a 12/31 tax year – any credits generated in the same calendar year are pushed into the next tax year for the buyer.

[29]https://www.law.cornell.edu/uscode/text/26/39

Finally, for a transaction where the seller tax years ends before that of the buyer, credits generated prior to the end of the seller tax year will apply to the current tax year, but credits generated *after* the end of the seller tax year will push into the next tax year.

Seller Tax Year End	Buyer Tax Year End	Credit Determination Date	Buyer Credit Year
12/31	12/31 (concurrent with seller)	Any day in 2024	2024
12/31	6/30 (before seller)	Any date in 2024	2025
6/30	12/31 (after seller)	2024 (on/before 6/30) 2024 (after 6/30)	2024 2025

4.8 Transfer mechanics

Several processes need to be completed to effectuate a valid credit transfer.

4.8.1 Step 1: Negotiate tax credit transfer agreement

First, the buyer and seller should enter into a contractual agreement to transfer the credits. A summary of a typical tax credit transfer agreement is provided in Section 6. This agreement is a private agreement between the buyer and seller and is not a public document that would be filed with the IRS.

4.8.2 Step 2: Complete credit source forms and Form 3800

The seller of the credit must complete a source credit form and IRS Form 3800[30]. The forms determine how many registration numbers the seller needs to generate in the IRS pre-filing registration tool.

Below are links to available source credit forms for transferable tax credits. Some forms, like 7213, are in draft as of January 1, 2024:

[30] https://www.irs.gov/forms-pubs/about-form-3800

TYPES OF CREDITS

§30C	Alternative fuel vehicle refueling property	891131
§45	Renewable electricity production credit	883532
§45Q	Carbon oxide sequestration credit	893333
§45U	Zero emission nuclear power production credit	721334 (draft)
§45V	Clean hydrogen production credit	721035 (draft)
§45X	Advanced manufacturing production credit Clean	720736
§45Y	electricity production credit	7211 (form pending)
§45Z	Clean fuel production credit	883537 (pending future revision)
§48	Energy credit	
§48C	Qualifying advanced energy project credit Clean	
§48E	electricity investment credit	
		346838

Secondly, the seller of the credit needs to fulfill the pre-filing registration requirements with the IRS, which is done electronically through an IRS pre-filing registration tool39, and receive a registration number for each eligible credit property. As part of this registration process, the seller will include information about the transferor taxpayer and the credit property, including addresses and coordinates, supporting documentation relating to the construction or acquisition of the credit property, beginning of construction date, and placed in service date.