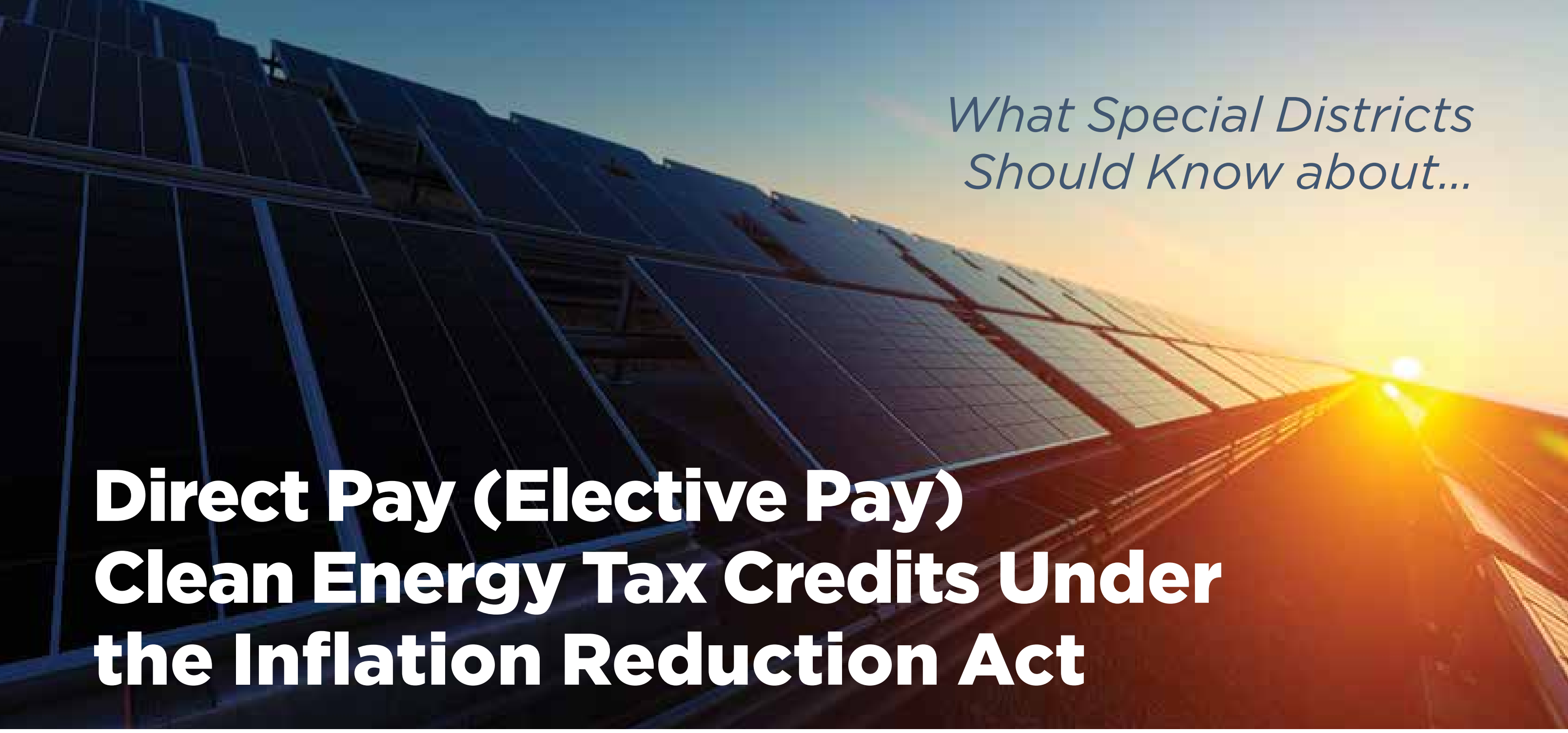

What Special Districts Should Know about…

Direct Pay (Elective Pay) Clean Energy Tax Credits Under the Inflation Reduction Act

Guest article by Ruth Becker from Green Credit Advisors, LLC

The Inflation Reduction Act (IRA) created transformative new funding opportunities for clean energy projects. Tax exempt entities, including special districts and local governments, can now qualify for valuable investment tax credits (ITCs) and production tax credits (PTCs) from the federal government. Special districts are eligible entities for Direct Pay (a/k/a Elective Pay) renewable energy tax credits. This means they can receive cash "refunds," sometimes called "refundable credits," from the IRS for the value of the tax credits. You no longer need a tax equity investor, partner, or other complex arrangement to benefit from federal tax credits, and you can avoid significant transactions costs by using Direct Pay. The IRA clean energy credits are a tremendous source of funding and can help you reach your clean energy goals. They are generous credits, but there are traps for the unwary. It's critical to understand the deadlines and documentation requirements to ensure your district receives refundable credits.*

Direct Pay Basics

There are 12 categories of renewable energy technologies that are eligible for Direct Pay. They include solar, electric vehicle fleets, alternative fuel recharging stations (in low income and non-urban areas), battery storage, wind, and more. ITCs start at 30% of the cost of the clean energy project, if eligibility is satisfied. Bonus credits can increase the ITCs to 70% of the cost basis of the clean energy project. Bonus credits are available for projects located in Energy Communities, Low Income Communities, and projects that meet Domestic Content (USA made component) requirements. PTCs are paid per kilowatt-hour produced over the first 10 years of the clean energy project's life. Electric vehicle credits are up to $40,000 per vehicle and $100,000 per charging station. Credits are available after a project is placed in service.

You May Be Eligible for Credits for Clean Energy Projects Placed in Service in 2023

If you installed solar, battery storage, EV charging stations, purchased electric vehicles for your fleet, or made other clean energy investments in 2023, your district may be eligible for significant tax refunds in 2024. These could be windfalls if you weren't expecting the funds and needed reimbursements if you are anticipating the refunds. Applications must be filed in 2024, and processing times may

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be long. The IRS requires entities to obtain a pre-filing registration number before filing a tax return. **To obtain a Direct Pay refundable credit, be sure to apply ASAP to begin the IRS process.**

Domestic Content Phase Out Rules and Exceptions for Tax Exempt Entities

Domestic content rules provide that 100% of the steel and iron and 40% of the manufactured products (increasing to 55% in 2027) must be US made for clean energy projects. Unlike for-profit entities, tax exempt entities are subject to a phase out of credits if they fail to satisfy the domestic content regulations or one of the exceptions. Current regulations provide for the reduction of Direct Pay tax credits to 90% of the eligible basis if construction begins in 2024, 85% of the eligible basis if construction begins in 2025, and 0% for projects beginning in 2026. There are, however, several ways to avoid the phase out. Projects of less than one megawatt are exempt from the domestic content rules. In addition, projects that satisfy the Increased Cost Exception or the Non-Availability Exception are also exempt from the phase out. To qualify for the Increased Cost Exception, the entity must attest that using domestic content would increase the overall cost of the project by more than 25 percent. To qualify for the Non-Availability Exception, the entity must attest that US made products of satisfactory quality are not reasonably available for the project. These exceptions are currently available for projects that begin construction before January 1, 2025. There are efforts underway to extend the exceptions.

Other Planning Considerations

The size of your facility and construction start date are critical factors as you plan. Projects with a maximum net output of less than one megawatt are exempt from prevailing wage and apprenticeship requirements, as well as the domestic content phaseout described above. If you exceed the one-megawatt size, you will need systems in place to track prevailing wage and apprenticeship requirements, which are like Davis Bacon wages with an overlay of obligations to hire apprentices. Be sure that your contracts include provisions obligating your contractors to provide documentation needed to support your eligibility for tax credits, including maintaining detailed records of wages paid, apprentices hired, and domestic content of materials used in your construction.

Conclusion

The IRA can help you meet your clean energy goals. With Direct Pay, you can now own your district projects and receive the full value of tax refunds, without having to share the tax benefits with for profit entities. This area of the law, however, is evolving rapidly. Be sure to consult with a tax advisor who specializes in Direct Pay to secure your refundable credits.

*These credits are in addition to the IRA Home Energy Rebates discussed in the April 2024 issue of *SDA News*.

Editor's Note: Green Credit Advisors specializes in Direct Pay (Elective Pay) renewable energy tax credits for tax exempt entities. They can help you navigate the process to get tax refunds directly from the IRS. Contact ruth@greencreditadvisors.com or visit www.greencreditadvisors.com for more information.

It's June...Is Your Audit Report Complete?

Unless your district is exempt, hopefully your auditor has finished or is close to finishing your audit and delivering the audit report to the district Board. If not, then he or she only has until June 30 to complete it. The district, in turn, has 30 days from receipt to file a copy of the audit and audit report with the Colorado Office of the State Auditor.

One more thing, if your district had, as of December 31, 2023, any authorized but unissued general obligation debt, then you also need to submit a copy of your audit report (or application for exemption from audit, if applicable) to the Board of County Commissioners or the governing body of the municipality.