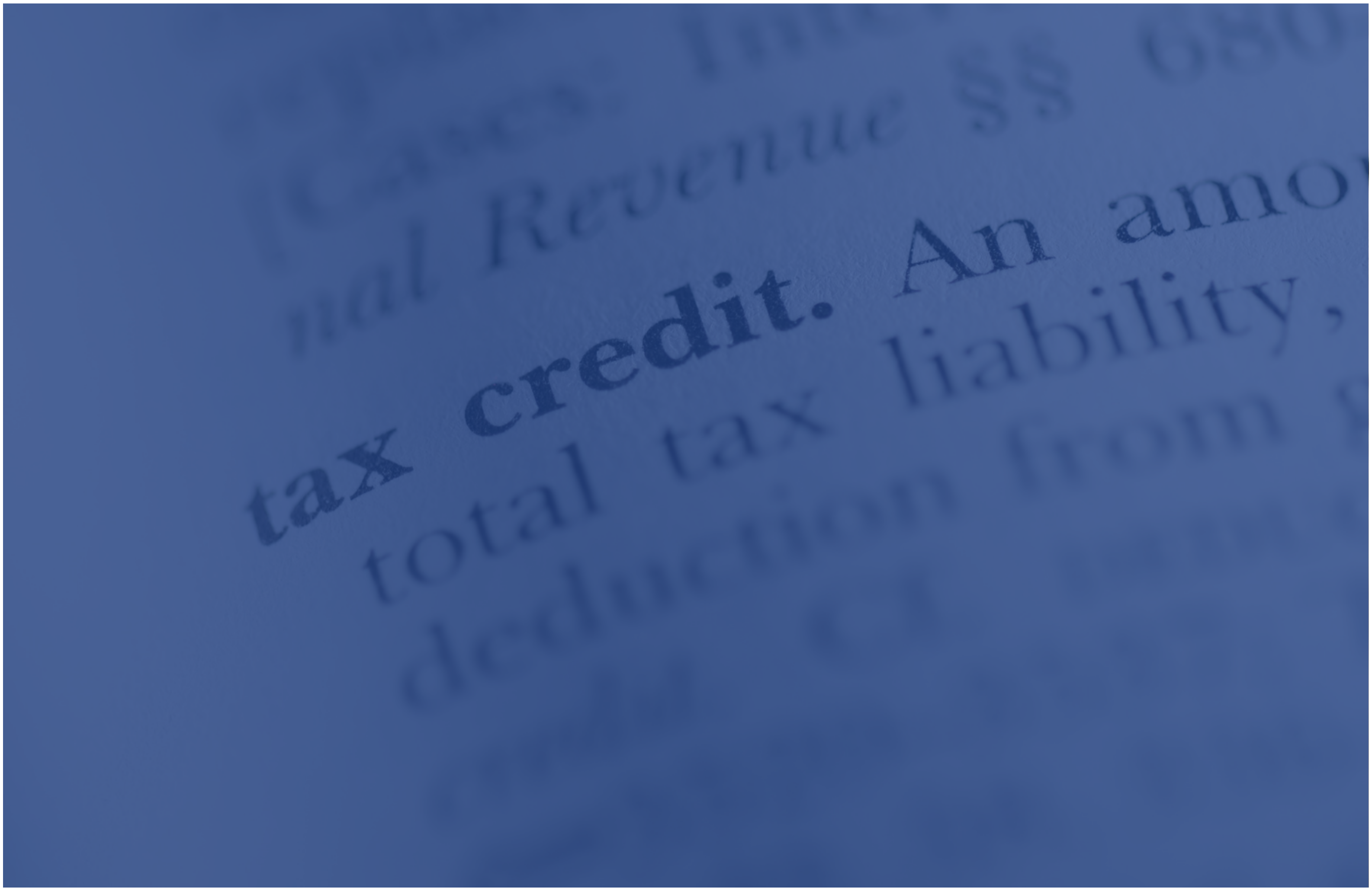

HANCOCK ASKEW & CO LLP
ACCOUNTANTS & ADVISORS

2023 YEAR-END GUIDE – FEDERAL TAX CREDITS

December 2023

INTRODUCTION

As the year-end approaches, businesses have the opportunity to maximize their credits with key opportunities in the evolving tax landscape. Now is the time for individuals, business owners and family offices to review their 2023 and 2024 tax situations and identify opportunities for reducing, deferring or accelerating their tax obligations. As your informed partner, Hancock Askew stands ready to assist businesses in navigating these opportunities and ensuring compliance with evolving regulations.

The information contained within this article is based on federal laws and policies in effect as of the publication date. This article discusses tax planning for federal taxes. Applicable state and foreign taxes should also be considered. Taxpayers should consult with a trusted advisor when making tax and financial decisions regarding any of the items below.

Contact your trusted Hancock Askew advisor to assist with year -end tax planning for your business.

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FEDERAL TAX CREDITS

Employee Retention Credit

The Employee Retention Credit (ERC) is a refundable payroll tax credit for wages and health plan expenses paid or incurred by an employer (1) whose operations were either fully or partially suspended due to a COVID-19-related governmental order; or (2) that experienced a significant decline in gross receipts during the COVID-19 pandemic.

Eligible employers can file a claim retroactively until the statute of limitations closes on April 15, 2024, for the 2020 ERC and April 15, 2025, for the 2021 ERC.

Employers should be certain that one of the two paths for eligibility is satisfied:

- Gross receipts in a calendar quarter were less than 80% of the gross receipts for the corresponding quarter in 2019; or
- Business operations were fully or partially suspended during the calendar quarter because of orders from a governmental authority due to COVID-19.

Hancock Askew can help you determine if you are eligible for an ERC.

Credit for Increasing Research Activities

The IRS released a preview of proposed changes to Form 6765, Credit for Increasing Research Activities, which taxpayers use to claim the research credit. The proposed changes, likely to become effective at the beginning of the 2024 tax year, include a new Section E with five questions seeking miscellaneous information and a new Section F for reporting quantitative and qualitative information for each business component.

Examination Environment

In response to ongoing concerns of improper claims of the research credit, the IRS has intensified its focus on reviewing these claims for nonconformities, including conducting a greater number of audits. Navigating the complexities of the research credit can be challenging, especially with the increased scrutiny, advancement of recent case law, and the newly implemented IRS compliance measures in place.

It is important for taxpayers to accurately determine eligibility, validate and properly record contemporaneous documentation to support research credit claims, and defend against examinations. Taxpayers should work with Hancock Askew to support compliance with IRS regulations and proper eligibility for the research credit.

Tax Credit Monetization

Overall, the Inflation Reduction Act, including provisions incentivizing the manufacturing of clean energy equipment and the development of renewable energy generation, modifies many of the current energy-related tax credits and introduces significant new credits and structures intended to facilitate long-term investment in the renewables industry. Capital investments in renewable energy or energy storage, manufacturing of solar, wind, and battery components, and the production and sale or use of renewable energy are activities that could trigger one of the over 20 new or expanded IRA tax credits.

The IRA also introduced new ways to monetize tax credits by making the tax credits transferable (sellable to other companies) and additional bonus credit amounts for projects meeting prevailing wage and apprenticeship, energy community, and domestic content requirements.

45X - Advanced Manufacturing Production Tax Credit

The 45X Advanced Manufacturing Production Credit is a new production tax credit meant to encourage the production and sale of energy components within the U.S., specifically related to solar, wind, batteries, and critical mineral components. To be eligible for the credit, components must be produced in the U.S. or a U.S. possession and sold by the manufacturer to unrelated parties.

48C - Qualifying Advanced Energy Project Tax Credit

The Inflation Reduction Act provided new funding for the 48C credit and expanded the definition of qualified advanced energy projects to include facilities that produce components used in carbon capture, utilization and storage, energy grid modernization, renewable fuel generation and refinement, components of electric vehicles, and recycling facilities for eligible components. Manufacturers investing to construct, re-equip, or expand a facility that meets the definition of a qualified advanced energy project can apply for an allocation of the 48C credit.

The IRS and Department of Energy will award $10 billion in 48C credits via a two-step application process, with $4 billion reserved for projects located in energy communities. The base amount of the 48C credit is 6%, but the total credit can be as high as 30% if applicants meet prevailing wage and apprenticeship requirements.

Taxpayers applying for 48C allocation must submit an initial concept paper as well as a full application to be reviewed by the IRS and DOE. The first round of 48C allocation will award $4 billion by March 31, 2024. While the current round's concept paper deadline has already passed, there will be additional rounds for the remaining $6 billion of funding in 2024 and beyond.

CLEAN ENERGY CREDITS

Section 30C - Credit for Alternative Fuel Refueling Property

Section 45Q - Carbon Capture Credit

Section 45V - Clean Hydrogen Production Credit

Section 45Y - Clean Electricity Production Credit

Section 45Z - Clean Fuel Production Credit

6418 - Transferability

Under IRC Section 6418, certain renewable energy tax credits can now be transferred by companies generating eligible credits to any qualified buyer seeking to purchase tax credits. Through credit transfers, taxpayers have the option to sell all or a portion of their credits in exchange for cash as part of their overall renewable energy goals if they are not able to fully utilize the benefit. Companies are able to purchase these credits at a discount, with the sale proceeds improving the economics of clean energy development.

Bonus Credits

The Inflation Reduction Act not only introduced new and expanded credits for investment in and production of renewable energy and its related components, it also included provisions for bonus credit amounts subject to meeting specific requirements. The prevailing wage and apprenticeship requirement is a 5x multiplier for certain credits that can bring the credit rate from 6% to 30% by paying prevailing wages to all labor related to the construction, installation, alteration, and repair of eligible property. Additionally, taxpayers must ensure that a certain percentage of these labor hours are performed by a qualified apprentice. Other common credit adders available for taxpayers that meet energy community and domestic content requirements provide a 10% adder to the base rate of the credit. Taxpayer documentation will be required to substantiate the claim of these bonus credit amounts and will need to be presented to a buyer in the event that these credits are transferred under 6418.

New Markets Tax Credits

The U.S. Treasury's CDFI Fund recently released its annual allocation of New Markets Tax Credits (NMTCs). The federal NMTC program was established to subsidize capital investments in eligible low-income census tracts. The subsidy provides upfront cash in the form of NMTC-subsidized loans fixed at below-market interest (2.5-3.5%). The loan principal is generally forgiven after a seven-year term resulting in a permanent cash benefit. Funding for these subsidized loans is highly competitive and expected to be depleted quickly. Taxpayers across many industries can be good candidates to participate in the NMTC program.

Recipients are evaluated based on the community impact derived from the investments (e.g., job creation, community services provided, etc.). Ideal projects have at least $7 million in capital expenditure. These initial questions will help interested parties assess if a project is viable for NMTC.

- Address of proposed project
- High-level project description
- Status of construction/timeline of CAPEX (midstream projects are permitted)
- Estimate of direct jobs to be created by project (within 3 years of PIS)

Taxpayers with ongoing or planned capital investments for early 2024 that are eligible to receive NMTC financing should begin reaching out to community development entities.

Work Opportunity Tax Credit

The Work Opportunity Tax Credit (WOTC) is a tax credit that may be claimed by any employer that hires and pays or incurs wages to certain individuals who are certified by a designated local agency (sometimes referred to as a state workforce agency) as being a member of one of 10 targeted groups. In general, the WOTC is equal to 40% of up to $6,000 of wages paid to, or incurred on behalf of, an individual who:

- Is in their first year of employment;
- Is certified as being a member of a targeted group; and
- Performs at least 400 hours of services for that employer.

Thus, the maximum tax credit is generally $2,400. A 25% rate applies to wages for individuals who perform fewer than 400 but at least 120 hours of service for the employer. Up to $24,000 in wages may be taken into account in determining the WOTC for certain qualified veterans. In general, taxable employers may carry the current year's unused WOTC back one year and then forward 20 years.

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