



## Inflation Reduction Act of 2022 Fact Sheet

### “Clean Energy” Tax Incentives Relevant to U.S. Real Estate

August 16, 2022



After passing the Senate and House on August 7 and August 12, respectively, the [Inflation Reduction Act of 2022 \(IRA\)](#) was signed into law by President Biden on August 16, 2022. The legislation will invest almost \$370 billion over the next 10 years to tackle the climate crisis.

Subtitle D of the bill, entitled “Energy Security,” provides a suite of tax credits and deductions intended to spur private sector investments in clean energy technologies—and reduce CO<sub>2</sub> emissions by roughly 40% by 2030. ([Senate Finance Committee breakdown](#) of Subtitle D).

A number of the IRA’s proposed revisions to the federal tax code can be significant in helping the U.S. real estate sector reduce its “carbon footprint,” particularly:

- A deduction to help make commercial and multifamily buildings more energy efficient (Section 179D);
- A credit to encourage investments in renewable energy generation and other “clean energy” technologies sited at buildings and other facilities (Section 48);
- A credit to incentivize the installation of EV charging stations (Section 30C); and
- A credit to incentivize energy-efficient new residential construction, including multifamily (Section 45L).

The Real Estate Roundtable (RER) has [encouraged Congress](#) for a [number of years](#) to make clean energy tax incentives more usable for building owners, managers, and financiers—and more impactful to help meet national GHG reduction goals. Below is our summary of key IRA provisions.

**NOTE: This Fact Sheet will be updated as RER’s review of Subtitle D continues.**

## 179D Tax Deduction For Energy Efficient Buildings<sup>1</sup>

### Amount of Deduction

- The 179D deduction amount is on a “sliding scale.”
  - Amount increases with higher levels of building efficiency.
  - Minimum efficiency gain eligible for the deduction: 25%, pegged to a minimum deduction amount of 50 cents per building ft<sup>2</sup>.
  - Each percentage point increase in building efficiency correlates to a 2 cents increase in the deduction amount. (See table below).
- 179D deduction amount increases **even more** if the building project meets “labor standards” that: (1) pay “prevailing wages” to laborers that “install” equipment; and (2) satisfy “apprenticeship” hiring requirements.
  - General approach throughout the IRA: Projects meeting heightened labor standards are eligible for “Bonus” incentives that are 5 times more than “Base” incentives.
- Building efficiency projects that can move really quickly after enactment can also take advantage of higher incentive amounts (and not comply with labor standards)—as long as “installation begins” no later than 60 days after the IRS publishes implementing guidance.

<sup>1</sup>IRA § 13303, p. 346, line 19



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Efficiency Gain Over Baseline	Deduction Amount “Base Rate”	Labor Standards “Bonus Rate”
25% (minimum)	50 cents per ft <sup>2</sup>	\$2.50 per ft <sup>2</sup>
30%	60 cents per ft <sup>2</sup>	\$3.00 per ft <sup>2</sup>
35%	70 cents per ft <sup>2</sup>	\$3.50 per ft <sup>2</sup>
40%	80 cents per ft <sup>2</sup>	\$4.00 per ft <sup>2</sup>
50% (maximum)	\$1.00 per ft <sup>2</sup>	\$5.00 per ft <sup>2</sup>

### Eligible Energy Efficient “Property”

- Projects to achieve efficiency gains through installations of high performance:
  - Interior lighting (not “exterior”)
  - HVAC and hot water systems
  - Envelope (roof, windows)

### Timing

- Energy efficient property must be “placed in service” after December 31, 2022.
- No sunset for this deduction. 179D became a [permanent part of the tax code](#) in legislation passed in December 2020.

### Eligible Building Types

- Any building within the scope of the [ASHRAE 90.1 energy standard](#) for commercial and larger (not “low-rise”) multifamily buildings.

### General 179D Baseline

- Efficiency improvements as measured over the “most recent” version of ASHRAE 90.1 (same as current law). [Most recent version of 90.1 is from 2019.](#)
- For example: New construction must “model” at least 25% more efficient over the ASHRAE 90.1 (2019) baseline to qualify for an incentive on the sliding scale.

### Specific Baseline For Retrofits—“Alternative Deduction”<sup>2</sup>

- A positive change for “retrofits” that renovate and rehab existing buildings.
- Retrofit baseline: The building’s **own** specific level of pre-retrofit site energy usage intensity (EUI).
  - Departs from current law’s “one-size-fits-all” ASHRAE 90.1 “general” baseline.
  - **Post**-retrofit site EUI reductions are measured against the **pre**-retrofit baseline to determine the “sliding scale” incentive amount.

<sup>2</sup>IRA § 13303, p. 353, line 6 (creating new 26 USC § 179D(f)).



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- That is, the more energy use saved from a retrofit, the greater the deduction.
- Building must be 5 years or older to qualify for “retrofit” 179D path.
- Project must be set forth in a “qualified retrofit plan” certified by a professional engineer or registered architect.
  - No requirement that the government review or approve the qualified retrofit plan.
- Retrofit deduction can only be claimed by the taxpayer after the equipment is in service for one year **and** the project results in anticipated site EUI reductions.
  - The retrofit deduction is **not** claimed in the year that the building owner makes the capital expenditure for the equipment.
  - Architect/engineer must make a “final certification” of site EUI one year after the retrofit plan is implemented to show the efficiency gain.

#### **Retrofit Deduction Amount And Cap**

- Uses the same sliding scale in the table on page 2.
- The greater the efficiency gains proved out in the retrofit plan’s “final certification,” the greater the deduction amount, but...
- ...The deduction amount is capped at the plan’s cost (i.e., “aggregate adjusted basis...of energy efficient building retrofit property placed in service”).

#### **Deduction Reset**

- The 179D deduction can apply to a specific building every 3 years (or every 4 years in the case of a building owned by a governmental or tribal body, or a non-profit organization).

#### **REITs**

- Includes earnings and profits (E&P) “conformity” accounting fix.
- 179D deduction amount reduces E&P in the year that the energy efficiency components are installed (not ratably over a 5-year period, as current law requires).
- REITs and their shareholders can thus receive a fuller and more immediate financial benefit by claiming the 179D deduction.

## Section 48 Investment Tax Credit<sup>3</sup>

#### **Types Of Projects**

- “Energy Property” covered by current law: solar to generate electricity for heating or cooling; fiber-optic solar to illuminate the inside of a structure; “small wind” and microturbines; geothermal used to produce electricity; geothermal heat pumps to heat or cool a structure; fuel cells; waste recovery; and combined heat and power.
- IRA adds: energy storage (including thermal energy storage); dynamic glass; microgrid controllers; biogas property; and linear generators.

<sup>3</sup>IRA § 13102, p. 254, line 5.



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#### Credit Amount

- 6% of the cost of the Energy Property (“Base Rate”).
- Can scale up to 30% of cost (“Bonus Rate”) if project pays prevailing wages and meets apprenticeship requirements for the duration of the project’s “construction.”
  - Except for microturbines: 2% “Base Rate” and 10% “Bonus Rate.”
- Credit amount can be increased by 2%/10% if project meets “domestic content requirements” (i.e., materials are made in the USA).
- Credit amount can be increased by 2%/10% if project is located in an “energy community” (i.e., Brownfield site, census tract—or immediately adjacent tract—where a coal mine closed after Dec. 31, 1999, or coal-fired electric plant was retired after Dec. 31, 2009).

#### Timing And Switch To “Technology Neutral” Tax Credits

- Generally: Section 48 project construction must commence in 2023 or 2024.
  - Except for geothermal heat pumps: Construction must commence through 2034.
  - Tax credit starts to scale down for geothermal heat pumps constructed in 2033 and 2034.
- For Section 48 projects constructed **after** Jan 1, 2025:
  - Transition to the technology neutral “Clean Electricity Production Credit” (Section 45Y)<sup>4</sup> or the “Clean Electricity Investment Credit” (Section 48D).<sup>5</sup>
    - Taxpayer to opt for either the 45Y PTC or the 48D ITC.
    - Credits start to phase out by 2032 or when the electric power sector emits 75% less carbon than 2022 levels (whichever comes later).
  - Section 45Y PTC or Section 48D ITC is available for any “zero carbon” electricity facility or technology.
    - 45Y PTC = tax credit per kWh of “zero carbon” electricity produced and sold in the 10-year period after the facility is placed in service.
      - Base Rate of .5 cents per kWh.
      - Bonus Rate of 2.5 cents per kWh (if prevailing wage/apprenticeship standards are met).
    - 48D ITC = tax credit based on same Base Rate and Bonus Rate structure discussed above.
      - Base Rate: 6% of the cost investment in the “zero carbon” facility.
      - Bonus Rate: 30% of the cost of investment in the facility (if prevailing wage/apprenticeship standards are met).
    - 5-year depreciation for any qualifying “zero carbon” 45Y facility or 48D property.

<sup>4</sup>IRA Part 7, § 13701, p. 442, line 10 (creating new 26 U.S.C. § 45Y).

<sup>5</sup>IRA Part 7, § 13702, p. 463, line 21 (creating new 26 U.S.C. § 48D).



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#### Credit Transfers Allowed To Third Parties<sup>6</sup>

- Companies with little or no tax liability that cannot typically benefit from tax credits—like REITs—have the option to “transfer” credits to another taxpaying entity that can use them.
- Transferability can be for the full or partial amount of a credit.
  - Transferability allowed for credits under Section 48, Section 48D, Section 45Y—and Section 30C credit for EV recharging stations (discussed below).
  - Transferability **not** allowed for the Section 179D deduction (except state/local governments, tribes, and non-profit organizations can transfer 179D deduction amounts to architects and designers responsible for the building project).
- The recipient of the credit (the “transferee taxpayer”) must pay for the credit “in cash.”
- The “transferee taxpayer” must be unrelated to the company making the transfer.
- Transferred credit amounts are not “income” to the company making the transfer.
- Transferred credit amounts are not deductible by the “transferee taxpayer.”
- REITs can transfer the full amount of the credit.
  - REIT transfers are not subject to outdated “retained income” restrictions that would otherwise limit the value of credits eligible for transfer.

#### 30C Tax Credit For EV Charging Stations<sup>7</sup>

- Extended through 2032.
- Same Base Rate (6%) and Bonus Rate (30%) structure discussed above.
- Credit is capped at \$100K for each charging station or refueling pump installed at a property.
- Third party “transferability” applies.
- Significant new geographic limitations—Charging station must be located in either:
  - A low-income or high-poverty Census tract under New Markets Tax Credit (NMTC) criteria ([see NMTC tracking tool](#)); or
  - A rural area.

<sup>6</sup>IRA Part 8, § 13801, p. 514, line 23 (creating new 26 U.S.C. § 6418).

<sup>7</sup>IRA § 13404, p. 398, line 10.



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## Section 45L “New Energy Efficient Home” Tax Credit<sup>8</sup>

### Duration and Building Eligibility

- Extended through 2032.
- Pertains to new construction.
- Can include “substantial reconstruction and rehabilitation” (current law). All residential buildings—single family and multifamily—are eligible for the Section 45L credit.
- “High-rise” multifamily and apartment buildings can also qualify for the Section 179D tax deduction discussed above (if they are in the scope of the ASHRAE 90.1 standard).
  - ASHRAE 90.1 (and hence, Section 179D application) covers multifamily buildings of four stories or more.
  - Neither current law nor the IRA clearly address overlap of multifamily buildings that may be eligible for **both** the Section 45L credit and the Section 179D deduction.

### Primary Use of Building<sup>9</sup>

- Must be “residential.”
- Mixed-use buildings: “Dwelling” units and common space (excluding parking garages) must exceed 50% of the building’s square footage.

### For Multifamily Homes

- Credit applies to “dwelling units” in a “building” [eligible for EPA’s ENERGY STAR “Multifamily New Construction Program.”](#)
- “Dwelling unit” must meet both:
  - EPA’s most recent [National Program Requirements](#); and
  - Any applicable EPA [regional program requirements](#) (e.g., [California](#)).

### Credit Amounts

- Credits are “per unit” in a qualifying multifamily building.
- Increased amount if the unit meets [U.S.-DOE’s Zero Energy Ready Home Multifamily Program](#) (in development).
  - For single family: Increased credit amount if the home is [certified by U.S.-DOE](#) as a “Zero Energy Ready Home.”
- “Bonus Rate” if prevailing wage requirements are met.
  - No apprenticeship hiring requirement for multifamily “Bonus Rate.”
  - No prevailing wage “Bonus Rate” for single family.

<sup>8</sup>IRA § 13304, p. 375 line 9..

<sup>9</sup>Not set forth in the IRA, but based on [EPA ENERGY STAR Single Family and Multifamily “New Construction” Program building eligibility criteria](#).



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	Base	Base Zero Energy	Bonus	Bonus Zero Energy
Multifamily	\$500	\$1,000	\$2,500	\$5,000
Single Family	\$2,500	\$5,000	n/a	n/a

### Low Income Housing

- Any 45L credit amounts do not reduce the “adjusted basis” of buildings supported by Section 42 Low Income Housing Tax Credits (LIHTCs).

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