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In this article, the authors outline tax credit transferability rules under the Inflation Reduction Act, offering a practical perspective on key issues to ensure successful tax credit transfer transactions for potential credit purchasers.

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One of the most significant features of the landmark Inflation Reduction Act of 2022 is the set of rules authorizing certain tax credits to be sold for cash.[1] With the pre-IRA tax equity market largely at capacity, the IRA changed the landscape by making it significantly easier for project developers to benefit immediately from available clean energy tax incentives. Indeed, before the IRA passed, an average of $4.5 billion of new clean energy investment was being announced each month, whereas after passage the monthly average amount ballooned to $8 billion.[2] Treasury regulations proposed in June 2023 and made final in late 2024 provided eagerly awaited initial guidance regarding these new rules.[3]

New purchasers of credits are essential to the success of the tax credit transfer market (and the IRA writ large), and with these final rules in place, the tax credit transfer market has kicked into high gear. One major tax credit transfer platform determined that the volume of tax credit transfer deals in the first half of 2024 alone was between $9

[1] As with the so-called Tax Cuts and Jobs Act, the Senate's reconciliation rules prevented changing the act's name, so the law commonly referred to as the IRA is actually, "An Act to provide for reconciliation pursuant to title II of S. Con. Res. 14."

[2] Eric Van Nostrand and Matthew Ashenfarb, "The Inflation Reduction Act: A Place-Based Analysis, Updates From Q3 and Q4 2023," Treasury.gov (Mar. 13, 2024; last accessed on Dec. 12, 2024).

[3] T.D. 9993.

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and $11 billion, estimating that total 2024 deal volume would be between $20 and $25 billion.[4] As new purchasers enter this market, we find ourselves being asked the same questions (and typically delivering the same answers) about the myriad rules governing tax credits and transfers, and we wanted to share some initial lessons learned.

I. Tax Equity and the Transferability Alternative

Historically, the incentives for clean energy development, including the production tax credit (PTC) under section 45, the investment tax credit under section 48, and the carbon capture, sequestration, and utilization credit under section 45Q (the section 45Q credit), have generally been nonrefundable, presenting practical challenges for developers wanting to monetize available credits immediately.[5] Some larger sponsors and developers of wind, solar, and carbon capture projects were able to construct and hold the projects, making timely use of the tax credits and accelerated depreciation generated by the projects.

But many sponsors and developers lacked sufficient tax capacity to make full use of the available benefits in the current tax period, if ever, leaving them with a couple alternatives. They could either develop the project and then sell it to a strategic investor with sufficient tax capacity or partner with an investor (generally a large U.S. corporate investor) in a tax equity transaction.[6]

In a tax equity transaction, the primary source of the investor's return is tax benefits, principally credits and accelerated depreciation deductions.[7] Whether structured as a partnership or a lease, these arrangements must run the gauntlet of stringent code provisions, searching judicial doctrines, and broad antiabuse rules and regulations informed by more than a century of enforcement of taxpayer activity. Even though tax equity investor returns depend on tax incentives, the courts have repeatedly recognized that that Congress intended credits of the type made transferrable under the IRA to act as a pretax cashflow substitute.[8]

The IRA transferability regime did not provide a perfect substitute for traditional tax equity. Specifically, the IRA made some tax credits[9] transferable to some purchasers,[10] but Congress did not revisit its prior doomed attempt at making depreciation deductions transferable as well.[11] Thus, it is generally understood that monetization of depreciation deductions will occur, if at all, within the confines of a tax equity transaction, policed by rigorous due diligence by

[4] Crux Climate Inc., "Highlights From the 2024 Mid-Year Market Intelligence Report" (July 29, 2024) (last accessed Dec. 12, 2024).

[5] "Nonrefundable" refers to the inability of a taxpayer to receive a current cash refund for excess credits, with the result that excess credits must be carried back or forward (and may eventually expire) depending on applicable law. A brief period of ITC refundability started in 1978, but that ended with the passage of the Crude Oil Windfall Profits Tax Act of 1980. The 1603 Treasury Grant Program, created by Congress in 2009 as part of the American Recovery and Reinvestment Tax Act, made direct payments (in lieu of ITCs) to eligible applicants available for a limited period. American Recovery and Reinvestment Act of 2009 (2009).

[6] Pre-IRA, both the PTC and the ITC were nonrefundable (other than the brief period mentioned in the preceding footnote); after the passage of the IRA, both are refundable in some circumstances for specific tax-exempt and governmental entities. Section 6417. The IRA extended the carryback period from one to three years for most transferrable credits. Section 39(a)(4).

[7] For a more detailed discussion of some common tax equity structures, please see Michael Q. Cannon, "The Clean Energy Revolution: Renewable Energy Tax Incentives and Issues," *Tax Notes Federal*, Apr. 12, 2021, p. 209; *see also* Thomas W. Giegerich, "The Monetization of Business Tax Credits," 12 *Fla. Tax Rev.* 709 (2012).

[8] *See, e.g.*, *Cross Refined Coal LLC v. Commissioner*, 45 F.4th 150 (D.C. Cir. 2022); *Sacks v. Commissioner*, 69 F.3d 982 (9th Cir. 1995).

[9] Credits eligible for transfer are the alternative fuel vehicle refueling property credit determined under section 30C to the extent treated as a credit listed in section 38(b), the renewable electricity production credit under section 45(a), the credit for carbon oxide sequestration under section 45Q(a), the zero-emission nuclear power production credit under section 45U(a), the clean hydrogen production credit under section 45V(a), the advanced manufacturing production credit under section 45X(a), the clean electricity production credit under section 45Y(a), the clean fuel production credit under section 45Z(a), the energy credit under section 48, the qualifying advanced energy project credit under section 48C, and the clean electricity investment credit under section 48E.

[10] Eligible transferees are generally C corporations and people with substantial passive income. This is because the passive activity rules of section 469 apply to transferees in respect of transferred credits. Under those rules, which do not generally apply to C corporations (subject to limited exceptions), purchased tax credits are treated as passive tax credits that are only available to offset passive income.

[11] For a discussion of how "safe harbor" leases were used to transfer credits and depreciation deductions, see Alvin C. Warren and Alan T. Auerbach, "Transferability of Tax Incentives and the Fiction of Safe Harbor Leasing," 95 *Harv. L. Rev.* 1752 (1982); Emil Sunley, "The Analytics of Safe-Harbor Leases," *Tax Notes*, Nov. 23, 1981, p. 1219. Many transactional issues addressed in this article (*e.g.*, audit cooperation and seller-triggered ITC recapture risk) were issues that needed to be addressed in safe harbor leasing transactions. *See* Frederic L. Hahn, "Transferring Deductions and Credits Under the Economic Recovery Tax Act of 1981 — The Special Rule of Leases," 59 *Taxes* 963 (Dec. 1981).

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tax equity investors and their advisers.[12] Nevertheless, because traditional tax equity can efficiently monetize both credits and depreciation deductions, such arrangements continue to play a significant role in clean energy project finance.[13]

At this point, a question that exasperated clients (tired at the thought of needing to rely on a tax lawyer to get a deal done) ask is: "Why is this even a tax rule? Why can't the government just write me a check?"[14] There is no quick or completely satisfying answer to this policy question, especially now that some credits are refundable in limited circumstances.[15] The answer likely has to do with concerns about administrability and inappropriate claims.[16]

II. Tax Credit Purchases — What Could Go Wrong?

The pitch for a credit transfer deal is straightforward ("buy a credit at a discount and save [x] cents for every dollar of tax you would otherwise pay"), but the execution remains unfortunately complicated.[17]

Potential purchasers must navigate various tax rules and avoid pitfalls to ensure purchases are successful. Below are highlighted some of the most important considerations for new entrants (and even seasoned practitioners) relating to initial credit eligibility, tax credit transferability, and (when relevant) recapture of previously claimed credits.

A. Tax Credit Eligibility Issues

After the passage of the IRA, a wide variety of tax credits are now eligible to be transferred, each of which has its own eligibility requirements. However, there is one common requirement to all credit transfers: A potential transferee must ensure that a tax credit transferor has met the criteria for generating a particular credit.

Here, we make an unfortunate observation: PTC deals are easier than ITC deals. PTCs generally have fewer initial eligibility requirements and (as discussed below) are not subject to the ITC's pernicious and head-scratching recapture rules. Immediately after IRA passage, experienced advisers scanning the horizon expressed concern that Congress's failure to harmonize the ITC rules' eligibility and recapture rules with the PTC rules would eventually create downward pressures on ITC prices, resulting in a needless waste of taxpayer money. Early evidence suggests that their forecasting was accurate.[18]

Many of the transferable credits are subject to a common IRA-mandated requirement to pay prevailing wages and employ apprentices.[19] Briefly, the "prevailing wage" rules focus on

[12] *See*, *e.g.*, section 7701(o); reg. section 1.704-1(b)(2)(iii); Rev. Proc. 2001-28, 2001-1 C.B. 1156.

[13] New entrants to the tax credit market may find themselves curious about these more lucrative (albeit more complex and economically riskier) tax equity deals — if so, developers and their advisers stand at the ready for their calls.

[14] As validation for this question, one of the authors teaches a law school "tax" class on these IRA transfer deals for which no federal income tax class is a prerequisite.

[15] In general, the IRA limits refundability to some tax-exempt and governmental entities. A few specific tax credits (the credits provided for in section 45Q (carbon oxide sequestration credit), section 45V (clean hydrogen), and section 45X (advanced manufacturing production credit)) are refundable for a broader range of taxpayers but not for the entire tax credit period.

[16] As support for the administrability explanation, one can look at the mountain of cases dealing with the section 1603 grant program from 2009-2011 (which converted the ITC briefly into a Treasury-issued cash grant) that are still making their way through the federal courts. For background regarding the scope of the cash grant program, see Treasury, "Final Overview of the Section 1603 Program" (Mar. 1, 2018) (last accessed on Dec. 12, 2024). One good example of ongoing litigation related to the section 1603 grant program is the *Alta Wind* litigation, which began in 2013; for a description of the procedural history of the case, see *Alta Wind I Owner Lessor C v. United States*, 169 Fed. Cl. 1 (Dec. 23, 2023). As support for an explanation based on potential concerns regarding inappropriate claims, one can look at the "tsunami" of fraud that the IRS reported it was fending off from the COVID-19-era refundable employee retention tax credit. *See* Jonathan Curry and Lauren Loricchio, "IRS Halts ERC Claims Processing Amid 'Tsunami' of Fraud," *Tax Notes Federal*, Sept. 18, 2023, p. 2139 (explaining that IRS Commissioner Daniel Werfel had cited a "tsunami" of ERC claims in imposing a moratorium on ERC claims processing).

[17] Many market participants are hopeful that tax credit transfer transactions will become commoditized over time, but in light of the evolving market and the fact that tax credit eligibility issues can vary significantly between projects, the goal of standardization remains elusive. It is worth observing that there can be significant cost and time savings when the same parties engage in a series of transactions.

[18] *See* "2024 Mid-Year Market Intelligence Report," *supra* note 4 (estimating that pricing for PTC transfers averaged over 95 cents, whereas pricing for ITC transfers averaged 92.5 cents).

[19] Tax credits with a prevailing wage or apprenticeship requirement include those credits provided for under sections 30C, 45, 45L (this credit is not transferable under section 6418), 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, and 48E. Failure to comply results in a very significant (*i.e.*, 80 percent) reduction in the credit amount available, not complete disallowance. Given the size of the reduction, however, we have never seen anyone affirmatively choose not to satisfy the requirements.

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ensuring that all laborers and mechanics on a project are paid wages for construction, alteration, or repair of a facility that are not less than the prevailing wage for the type of work performed; the apprenticeship rules require a portion of the total labor hours to be performed by supervised apprentices. The IRS and Treasury have issued detailed guidance that typically requires a fulsome compliance process.[20] Small missteps can have a substantial, negative effect on the availability of credits or can trigger credit recapture, so it is critical that tax credit purchasers understand, appropriately diligence, and put in places adequate contractual protection related to compliance with the requirements.[21]

Also, several credits can be increased by "bonus" credits (or credit "adders"): the "domestic content" bonus, the "energy community" bonus, and the "low-income communities" bonus. Each of these bonus credits has detailed requirements that must be satisfied, and although they are referred to as bonus "credits," they cannot be sold separately from the base credit.[22] Tax credit purchasers must understand whether their purchased credits include any "adder" components[23] and, if so, ensure that the special requirements applicable to the relevant "bonus" credits have been satisfied.[24]

B. Transferability Requirements

Treasury and the IRS have provided a set of helpful procedures that must be followed to ensure a successful credit transfer. A few key requirements are highlighted below.

First, the *only* consideration that may be provided in exchange for a transferred credit is "cash," and this cash must be paid within a prescribed window of time.[25] Any consideration that does not satisfy these requirements will render a tax credit transfer invalid.[26] It is particularly important that taxpayers be aware of these rules in forward commitments to acquire tax credits (such as PTCs that will be generated over a multi-year period).

Second, it is the credit seller's tax year that determines the tax period in which the credit buyer can report the purchased credit, and therefore tax credit buyers need to pay special attention to the tax year of the credit seller.[27] Fiscal-year credit buyers are often especially disadvantaged by this rule. For example, a September 30 fiscal-year taxpayer buying credits generated in June 2024 would be allowed to report the purchased credits on its return for its tax year ending September 30, 2024, if the credit seller is also a September 30 fiscal-year taxpayer; however, if the seller is a calendar-year taxpayer, the credit buyer would be allowed to report the purchased credits only on its return for its tax year ending September 30, 2025.

Third, potential tax credit buyers are often surprised to learn that they will have the burden of demonstrating credit eligibility to the IRS on audit. One can imagine the difficulty a credit buyer would have answering detailed information document requests regarding, for example, a geothermal project they never owned and perhaps only vaguely remember. Treasury and the IRS addressed this issue in their transfer regulations by putting the onus on the buyer: If a credit buyer does not possess the "required minimum documentation" (a relatively vague term that generally means the information sufficient for the IRS to perform its audit), the transfer is simply invalid.[28] Thus, credit buyers must take their diligence responsibility seriously

[20] Reg. sections 1.45-7 through 1.45-12.

[21] Some projects are excused from compliance with these requirements based on their size or the time when these projects began construction.

[22] Reg. section 1.6418-1(h). If a buyer has concerns regarding an adder, one potential strategy is to purchase less than all of the credit and mandate that the seller not sell the remainder of the credit. Although it is not possible to separate the adder from the base credit, the transferability rules provide that the tax credit buyer receives the "healthiest" part of the credit. Reg. section 1.6418-5(b)(1).

[23] One important item of caution for buyers: Even if not claimed on an original tax return, an adder can be claimed on an amended return. *See* reg. section 1.6418-2(b)(4)(ii).

[24] One important tool for credit buyers to mitigate credit eligibility risks is tax insurance. It is fair to say that tax insurance is ubiquitous in tax credit transfer transactions. For a fee, tax insurers are willing to provide coverage against nearly all the risks described in this article. Many friendly knowledgeable brokers are standing by to assist.

[25] Payments in cash are payments in United States dollars made by cash, check, cashier's check, money order, wire transfer, automated clearing house transfer, or another bank transfer of immediate available funds. Reg. section 1.6418-1(f)(1). Payments must be made within the timing window prescribed in reg. section 1.6418-1(f)(2).

[26] Reg. section 1.6418-2(a)(4)(ii).

[27] Reg. section 1.6418-2(f)(1).

[28] Reg. section 1.6418-2(b)(5).

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and should negotiate comprehensive audit cooperation covenants.

Finally, the effectiveness of a tax credit transfer is conditioned on the seller completing a prefiling process with the IRS to obtain one or more registration numbers for the credits that will be transferred and then filing a transfer election to actually transfer the tax credits.[29] A transfer election must satisfy substantive requirements (for example, including an applicable source form for the credit at issue) as well as procedural requirements concerning how to file the election (on an originally filed return, including a superseding return or any revisions made on a superseding return) and when (no later than the tax return due date, including extensions of time).[30] Tax credit purchasers should obtain contractual assurances from sellers that those registration and credit transfer requirements will be satisfied.

C. Recapture Risk

Both the section 45Q credit and ITCs are subject to potential recapture after the project has been placed in service. Section 50(a)-(b) includes the most commonly confronted recapture rules, which trigger recapture with respect to ITC property if it "is disposed of, or otherwise ceases to be investment credit property with respect to the taxpayer, before the close of" the recapture period.[31] The portion of the ITC that is subject to recapture decreases annually by one fifth on each anniversary of the date the project was placed in service (which is why the ITC is commonly known as "vesting" over that period).[32] The recapture period in section 50 ends five years after the ITC property is placed in service.[33]

The recapture risks are not new — legacy tax equity investors have long been aware of them — but we have found that the new tax credit purchasers are generally unfamiliar with the rules (or even the concept) and are often surprised to learn that actions or inactions of an ITC seller can trigger recapture. New advisers (and junior associates) are often absolutely bewildered by the state of guidance from Treasury and the IRS concerning the section 50 rules, which have not been updated in any meaningful way since 1972 (when the rules were located in former section 47).[34] The appendix summarizes the legislative history of the ITC provisions, which informs the odd state of the recapture regulations.

Under section 6418(a) and reg. section 1.6418-5(d)(3)(i), the tax credit buyer is subject to the general recapture rules of section 50 (for example, if the property is taken out of service or otherwise ceases to be ITC eligible), meaning that failings by a seller (for example, failing to pay debt, resulting in foreclosure on ITC property) can drastically affect a tax credit purchaser. Tax credit buyers must make sure to do all they can to protect themselves against the risk that the relevant property is taken out of service or sold as part of a foreclosure or similar proceeding.[35]

Contractual tools to guard against those risks include covenants requiring sellers to take steps to make sure projects continue operating and forbearance agreements that limit foreclosure rights of lenders. These issues are among the most challenging to navigate with tax credit transfer transactions, in part because lenders and their counsel may be unfamiliar with the applicable technical tax rules.

[29] Reg. section 1.6418-4 (providing rules related to prefiling registration); reg. section 1.6418-2 (providing rules for making transfer elections).

[30] *See generally* reg. section 1.6418-2.

[31] Although outside the scope of this article, it is worth noting that some failures to comply with the prevailing wage and apprenticeship rules can result in recapture. Section 48(a)(10)(C); prop. reg. section 1.48-13(c)(3)(ii). The low-income community "adder" is also subject to recapture. Reg. section 1.48(e)-1(n). And the new, tech-neutral ITC in section 48E is subject to emissions-rate-based recapture in some circumstances. Section 48E(g).

[32] Section 50(a)(1)(B).

[33] *See id.*

[34] Part of the problem stems from Congress reassigning code section numbers to wholly new provisions. To give a flavor of the type of confusion that can result, see Rev. Rul. 88-96, 1988-2 C.B. 27, the sole purpose of which was to explain to taxpayers that reference to "section 49" in reg. section 1.47-3(h) referred to section 49 as it existed for tax years 1971 to 1978, not to section 49 as it existed in the code in 1988 (and, even more confusingly, that a regulation that purports to apply to property placed in service "after April 18, 1969," in fact does not apply to property placed in service after December 31, 1978). The same issues plague interpretation of current section 48.

[35] Another risk that tax credit buyers should guard against is the risk that the owner (as determined for tax purposes) of the ITC eligible project will cease to be the owner during the recapture period. *See* reg. sections 1.47-1 to -3. For example, if the tax credit seller is a partnership, a liquidation of the partnership (for tax purposes) would also cause tax credit recapture. *See, e.g.*, *Siller Brothers v. Commissioner*, 89 T.C. 256 (1987).

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ITC purchasers must also be aware of various ownership-based restrictions, which are described below.

Dispositions. Dispositions of ITC property can trigger recapture. Nixon-era regulations spell out the circumstances in which triggering dispositions can occur (as well as important exceptions) and provide rules addressing dispositions of direct and indirect interests in partnerships holding ITC property (including those resulting from changes in partnership allocations).[36] Thankfully, Treasury and the IRS offered helpful guidance in the section 6418 regulations, providing that, in the case of recapture-triggering dispositions of interests in partnership sellers, recapture will be assessed against the selling partner and not the ITC buyer.[37] But that rule does not end an ITC buyer's exposure to recapture from partner-level dispositions on the sell side of the transaction.[38]

Cessations and Tax-Exempt Use Property. Section 50 provides that the ITC is recaptured if the property "ceases" to be ITC property, which can occur if impermissible tax-exempt[39] owners acquire an interest in the ITC property during the recapture period.[40] Special look-through rules apply to ITC property owned by partnerships with tax-exempt partners.[41] The continuing application of these rules is especially confounding because elsewhere the IRA itself treats these prohibited tax-exempt owners *as if they were taxpayers for purposes of these very credits*, with the result that an investment by a tax-exempt entity via a partnership or lease can spoil an ITC but a similar economic arrangement that provides the tax-exempt entity direct ownership of the ITC property may have no effect on the ITC amount.[42]

Based on how these rules operate, some or all of a partnership's property could easily (and unexpectedly) become tax-exempt use property in connection with a transfer of an interest in the partnership, depending on the identity of the transferee and the economic arrangement of the partners. Thus, despite those rules, buyers acquiring ITCs from partnership sellers continue to be exposed to consequences of direct and indirect transactions in the partnership's equity.

III. Conclusion

The tax credit transferability rules are transforming how clean energy incentives are being monetized — unlocking new sources of capital — but potential tax credit buyers and advisers must be aware of technical rules and risks to ensure that a transaction is successful. Well-advised buyers who are mindful of and guard against those risks will be best positioned to benefit from the incentives.

[36] Reg. section 1.47-6(a)(2) provides that if the basis (or cost) of partnership property is taken into account by a partner in computing the partner's qualified investment, and the partner's interest is reduced, during the recapture period, below 66.66 percent of the partner's "proportionate interest in the general profits" of the partnership (or in the particular item of property) for the year in which such property was placed in service, then on the date of such reduction, the partner suffers recapture to the extent of the actual reduction in such partner's "proportionate interest in the general profits" of the partnership (or in the particular item of property). Reg. section 1.6418-3(a)(6) (explicitly incorporating the regulations under section 47).

[37] Reg. section 1.6418-3(a)(6)(i)(A)-(B).

[38] ITC *recapture* cannot be mitigated on the buy side by having the selling partnership retain some portion of the ITC, which, as described above, would help mitigate risks related to ITC *disallowance*. *Compare* reg. section 1.6418-5(a)-(b) (describing the rules that apply to determine whether there has been an excessive credit transfer, including in connection with a disallowance) *with* reg. section 1.6418-5(d) (describing the rules that apply in a scenario involving recapture). However, if the recapture is caused by the changes in the sell-side equity holders' nonqualified nonrecourse financing under section 49, the section 6418 regulations provide helpful rules for credit buyers that compel the IRS to pursue a selling partnership's (or selling S corporation's) equity holders for the associated recapture. Reg. section 1.6418-3(a)(6)(ii).

[39] This term sweeps broadly and can include foreign investors, governmental investors, and even some U.S.-domiciled C corporations (depending on the ownership of those entities).

[40] For a more detailed discussion of these rules, see Cannon, "The 100 Percent Tax-Exempt Use Property Trap: Funds Beware," *Tax Notes*, Sept. 3, 2018, p. 1403. It is unfortunate that these rules continue to apply at all, given that many tax-exempt owners are eligible to receive direct payments associated with ownership of credit-eligible property under the rules of section 6417, suggesting there is no policy reason to penalize ownership by tax-exempt owners.

[41] *See id.*

[42] Section 6417(d)(2); *see* Matthew J. Donnelly, "Observations on Certain Investment Tax Credit Provisions in the Inflation Reduction Act of 2022," 75 *Maj. Tax Planning* 5-1 (2023). Although we acknowledge that the rules for claiming section 6417 refunds differ in some ways, including the stricter domestic content requirement, the stricter requirements do not have their genesis in the tax-exempt use property rules of section 168(g)-(h).

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Appendix

- October 16, 1962: Sections 38 and 46-48 of the Internal Revenue Code of 1954 (the 1954 code) were added effective for tax years ending after 1961.[43]
- November 8, 1966: Section 48 of the 1954 code was suspended from October 10, 1966, to December 31, 1967 (that is, the "suspension period" in the terms of the 1954 code).[44]
- June 13, 1967: Section 48 of the 1954 code was restored effective March 10, 1967.[45]
- December 30, 1969: Section 48 of the 1954 code was terminated effective beginning after April 18, 1969.[46]
- December 10, 1971: Section 48 of the 1954 code was restored.[47]
- November 9, 1978: Section 48(l) of the 1954 code (that is, the energy credit — the predecessor to current section 48) was enacted.[48]
- October 22, 1986: Subject to exceptions and transition rules in former section 49, the "regular investment tax credit" of former section 48 (that is, the ITC other than the one for energy property and qualified rehabilitation expenditures) was terminated for property placed in service after December 31, 1985.[49]
- November 5, 1990: Subpart E of Part IV of chapter A of chapter 1 of the code was restructured to eliminate expired or obsolete ITC provisions (that is, the "regular investment tax credit" provisions),[50] which resulted in the relocation of operative code provisions (but not the corresponding regulations) as they exist today:
  - Former section 48(g) was moved to section 47.
  - Former section 46(b)(2) was moved to section 48(a)(1)
  - Former section 46(b) was moved to section 48(a)(2), and former section 48(l) was moved to 48(a)(3), in each case, subject to revisions for technologies and credit rates.

[43] P.L. 87-834, section 2, 79 Stat. 960, 962.

[44] P.L. 89-800, 80 Stat. 1508. The suspension was effected by the enactment of section 48(h) and (j) of the 1954 code, which defined "suspension period property" to mean ITC property "the physical construction, reconstruction, or erection of which begins either during the suspension period or pursuant to an order placed during such period, or which is acquired by the taxpayer either during the suspension period or pursuant to an order placed during such period" and in section 48(h)(3) excluded property constructed, reconstructed, erected, or acquired "pursuant to a contract which was, on October 9, 1966, and at all times thereafter, binding on the taxpayer."

[45] P.L. 90-26, 81 Stat. 57. The restoration was effected by an amendment to section 48(j) of the 1954 code that shortened the suspension period to end on March 9, 1967. Suspension period property was also extended to include property "the physical construction, reconstruction, or erection of which (i) [was] begun during the suspension period, or (ii) [was] begun, pursuant to an order placed during such period, before May 24, 1967," or "which (i) [was] acquired by the taxpayer during the suspension period, or (ii) [was] acquired by the taxpayer, pursuant to an order placed during such period, before May 24, 1967." A transition rule provided that the suspension applied only to that portion of the ITC basis that was properly attributable to construction, reconstruction, or erection before May 24, 1967.

[46] P.L. 91-172, section 703, 83 Stat. 487, 660-661. The act added new section 49 of the 1954 code to effect the termination, which provided that section 48 of the 1954 code was inapplicable to property "the physical construction, reconstruction, or erection of which is begun after April 18, 1969," or "which is acquired by the taxpayer after April 18, 1969," other than property "constructed, reconstructed, erected, or acquired pursuant to a contract which was, on April 18, 1969, and at all times thereafter, binding on the taxpayer." Former section 49(d) of the 1954 code further provided that ITC was unavailable for property placed in service after December 31, 1975.

[47] P.L. 92-178, section 101, 85 Stat. 497, 498. The restoration was effected via the addition of new section 50 of the 1954 code, which provided that section 49(a) of the 1954 code did not apply to property "the construction, reconstruction, or erection of which [was] completed by the taxpayer after August 15, 1971 or . . . begun by the taxpayer after March 31, 1971," or which was acquired by the taxpayer "after August 15, 1971, or . . . after March 31, 1971, and before August 16, 1971, pursuant to an order which the taxpayer establishes was placed after March 31, 1971." A transition rule limited ITC basis (for property the construction, reconstruction, or erection of which was begun before April 1, 1971) to that portion that is properly attributable to construction, reconstruction, or erection after August 15, 1971, and section 49(d) of the 1954 code was repealed. On November 6, 1978, the qualified rehabilitation expenditure credit (*i.e.*, the historic tax credit) was added at section 48(g) of the 1954 code and sections 48(h)-(j), 49, and 50 of the 1954 code were repealed (as obsolete) effective for tax years ending after Dec. 31, 1978. P.L. 95-600, sections 312(c)(1), 315, 92 Stat. 2763, 2826, 2828.

[48] P.L. 95-618, section 301(b), 92 Stat. 3174, 3195.

[49] P.L. 99-514, section 211, 100 Stat. 2085, 2166-70. Note that this is the second provision labeled "section 49" and that neither section 49 of the 1954 code nor former section 49 (of the Internal Revenue Code of 1986) bears any relation to the current section 49.

[50] P.L. 101-515, section 11813, 104 Stat. 1388, 1388-536-56.

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- Former section 46(c)(4) and (d) were moved to section 48(a)(5) (and in 2005 to section 48(b)) by cross-reference.
- Former sections 46(c)(8) and 47(d) were moved to section 49.
- Former section 47 (other than former section 47(d)) was moved to section 50(a).
- Former section 48(a)(2)-(5) were moved to section 50(b)(1)-(4).
- Former section 48(q) was moved to section 50(c).
- Several other provisions in former sections 46 and 48 were preserved in section 50(d) by cross-reference. ■

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