

## IRS Begins Issuing Guidance on Revised Tax Credit Provisions

December 5, 2022

The Inflation Reduction Act (the "IRA") is being hailed as one of the most significant legislative actions in recent history intended to incentivize investment in renewable energy technologies. The IRA generally achieves this through the extension and broadening of existing tax credit provisions that apply to investments in clean energy technologies such as solar, wind and geothermal. Since the IRA became law in August 2022, taxpayers have been eagerly awaiting regulations and other guidance on how to apply the new provisions and how to claim the tax credits. On November 30, 2022, the IRS issued the first item of guidance on these provisions in the form of IRS Notice 2022-61 (the "Notice").

The IRA introduced new prevailing wage and apprenticeship requirements for a facility to access the full amount of the investment tax credit and the production tax credit (and certain other energy tax credits). The prevailing wage and apprenticeship requirements generally require a facility to (i) pay workers a wage at least equal to the prevailing wage determined by the Department of Labor for a given job function and geographic area, and (ii) use apprentices for a specified portion of the construction of the facility. These requirements will only apply to facilities with a maximum net output of at least 1 megawatt.

The IRA provides that these prevailing wage and apprenticeship requirements will become effective 60 days after the IRS publishes guidance on those requirements. The Notice provides that its publication starts the running of this 60-day grace period, so that the prevailing wage and apprenticeship requirements will become effective on January 29, 2023.

The substantive guidance in the Notice is minor. For example, the Notice provides that, if the Department of Labor has published a prevailing wage determination for a particular job function and geographic area on the internet at [www.sam.gov](http://www.sam.gov), the taxpayer must use that determination. Otherwise, if no determination has been published, the taxpayer must contact the Department of Labor to request a new determination using the Department of Labor's procedures. Other provisions of the Notice provide that certain terms used in the tax credit provisions (such as "prevailing wage determination" and "apprentice-to-journeyworker ratio") have the same definitions as those terms are given in the labor regulations.<sup>1</sup>

The definitional and procedural issues addressed by the Notice are neither surprising nor controversial. This suggests that the IRS's main purpose in issuing the Notice was simply to start the countdown to the effective date of the prevailing wage and apprenticeship requirements. The IRS has indicated elsewhere that guidance under the IRA's tax credit provisions is currently a high priority. The publication of the Notice may be a reflection of the urgency with which the IRS is implementing these new rules.

### For More Information

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If you would like further information concerning the matters discussed in this article, please contact Heath Martin or the Chapman attorney with whom you regularly work:

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<sup>1</sup> Title 29 of the Code of Federal Regulations.

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