IRA Implementation Part 2

Transferability & Elective Pay

Moderator: **John Ciovacco / *Aztech Geothermal & NY-GEO Board***

Panel: **Jacob Goldman / *Energy Tax Savers***
Derek Silverman / *Basis Climate*
Sara Ross / *UndauntedK12*
David Burton / *Norton Rose Fulbright*

Energy Tax Savers®
The EPAct 179D Experts

IRA Implementation Part 2

Mechanics of Tax Credit Transferability & Elective Pay Option

JACOB GOLDMAN, VP, ENERGY TAX SAVERS, INC.

Index

- IRA enhanced Alternative Energy Credits(§48 ITC)
- Elective Pay
- Elective Pay Haircuts
- Start of Construction
- Credit Transfer

jacob.goldman@energytaxsavers.com
Subject : “Please send the slides”

Alternative Energy Credits-§48, ITC (2022-…)

Technology	Base Credit	5x Bonus Credit (2022)	Domestic Content (2023)	Energy Community (2023)	Low Income (2023)	Range
Solar Technologies (2022)	6%	30%	2%/10%	2%/10%	10%/20%	6%-70%
Small Wind (2022)	6%	30%	2%/10%	2%/10%	10%/20%	6%-70%
Ground Source Heat Pump (2022)	6%	30%	2%/10%	2%/10%	0%	6%-50%
Microturbine	2%	10%	2%/10%	2%/10%	0%	2%-30%
CHP (2022)	6%	30%	2%/10%	2%/10%	0%	6%-50%
Microgrid Controller (2023)	6%	30%	2%/10%	2%/10%	0%	6%-50%
Standalone Energy Storage Systems (2023)	6%	30%	2%/10%	2%/10%	0%	6%-50%
Thermal Energy Storage Systems (2023)	6%	30%	2%/10%	2%/10%	0%	6%-50%
Fuel Cell (2022)	6%	30%	2%/10%	2%/10%	0%	6%-50%
Geothermal Electricity(2022)	6%	30%	2%/10%	2%/10%	0%	6%-50%
Biogas (2022)	6%	30%	2%/10%	2%/10%	0%	6%-50%
Waste Energy Recovery Electricity (2022)	6%	30%	2%/10%	2%/10%	0%	6%-50%
Interconnection Property (2023)	6%	30%	2%/10%	2%/10%	0%	6%-50%
Electrochromic Glass (2023)	6%	30%	2%/10%	2%/10%	0%	6%-50%

Elective Pay

(§6417 (2023-…)(Prop. Reg. §1.6417))

- **Entities Eligible for Elective Pay**
  - (i) any organization exempt from the tax imposed by subtitle A,
  - (ii) any State or political subdivision thereof, (**NOT FEDERAL PROJECTS**)
  - (iii) the Tennessee Valley Authority,
  - (iv) an Indian tribal government (as defined in § 30D(g)(9)),
  - (v) any Alaska Native Corporation or
  - (vi) Rural Electric cooperatives
- **Pre-registration REQUIRED – <u>Done after placed in service</u>** (Prop. Reg. §1.6417-5T)

Elective Pay - Haircuts

(§6417 (2023-…)(Prop. Reg. §1.6417))

- **Up to a 15% haircut for projects paid for with Tax-Exempt Financing** §48(a)(4) → §45(b)(3)
  - 30% → 25.5%, 40% → 34%, 50% → 42.5%
- **Domestic Content haircut 10%(2024), 15%?(2025), 100%?(2026)** §48(a)(13) → (§45(b)(10)) (§48E(d)(5) → (§45Y(g)(12))
  - 30% → 27%, 40% → 36%, 50% → 45%
  - Two ways to avoid the haircut
    1. <3.4 mmBTU/hr Heating and <284 Tons cooling
       - the aggregate maximum thermal output of all eligible individual heating or cooling elements within the building or buildings
       - the maximum thermal output that the entire eligible project is capable of delivering to a building or buildings at any given moment
    2. Meets Domestic Content
       - Increase Cost Exception(25%)
       - Non-Availability Exception

Start Of Construction

1. Physical Work Test

The Physical work test is the easier to meet. It can exist from physical work of a significant nature at the job site(Not including site prep, surveying, permitting etc) or if custom(Not off the shelf) equipment is being manufactured the start of that manufacturing need both a binding written contract signed before the work starts(could be a PO) and proof that your unit was actually being manufactured.

2. 5% Safe Harbor

The 5% safe harbor is tricky due to accounting rules. Most organizations use Accrual Accounting. They would need to Accrue at least 5% of the eligible cost(We recommend higher to avoid budget overruns). Simply paying out 5% does not necessarily Accrue 5%. Typically, items need to be received to be Accrued They would need to check with their tax advisors to see when they believe an expense was accrued for their organization.

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Credit Transfer

(§6418 (2023-…)(Prop. Reg. §1.6418))

- **Tax credit from commercial clients can be Transferred to other Commercial Clients**
  - This does **NOT** allow Gov't Buildings/Not-for-Profits to sell the credit
  - Credit receiver does not have tax capacity, they can sell the credit to a taxpayer that does
    - Real Estate Investment Trusts (REIT)
    - Entities with a current year tax loss or cannot absorb the entirety of the credit in a short time period
  - One and Only One Transfer allowed. Chained Transfers NOT allowed.
  - Pre-registration REQUIRED – Done after placed in service (Prop. Reg. §1.6418-5T)
  - Markets have been created

About Energy Tax Savers?

- First EPAct 179D service provider (founded 2005)
- Completed more EPAct projects than any other firm (16,000+)
- Diverse background of firm professionals
  - Attorney, CPA, MBA, LEED AP, Enrolled Agent, Big4 Accounting Experience
- Advisors to DOE, NEMA and NRDC for EPAct 179D extension and standards
- Over 150 published articles in various publications
  - *Corporate Business Taxation Monthly, Building Operating Management, IMARK Magazine, Retrofit Magazine, Parking Professional*

Energy Tax Savers®
The EPAct 179D Experts

Energy Tax Savers, Inc.

Recorded Webinar
https://www.youtube.com/watch?v=BQJqiq6NyII

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Basis

Derek Silverman / *Basis Climate*

NY-GEO Conference

Transferability Presentation

Basis Climate is a leader in the clean energy tax credit transfer market

$300M+ in tax credit transfers to date

>$2B in 2024/25 credits available now

Facilitated the sale of PTC, ITC, and 45X tax credits

SELECT SELLERS

WELLHEAD Avangrid acciona HELIENE WUNDER

We make it easy to find buyers and efficiently transact on clean energy tax credits of all sizes

West Hudson (NY 1)

This is a 536.40kW community solar project located in New York State.

TAX CREDITS	PROJECT STATUS
$513,967	In Construction

PURCHASE PRICE	TYPE
87c	Community Solar

Gideon

This is a 919.62kW solar project located in California.

TAX CREDITS	PROJECT STATUS
$955,829	In Construction

PURCHASE PRICE	TYPE
87c	Commercial Solar

Sterling I

This is a 2.30MW solar (rooftop) project located in AZ, NM, TX, IN.

TAX CREDITS	PROJECT STATUS
$1,638,750	In Construction

ASKING PRICE	TYPE
89c	Commercial Solar

Redwood

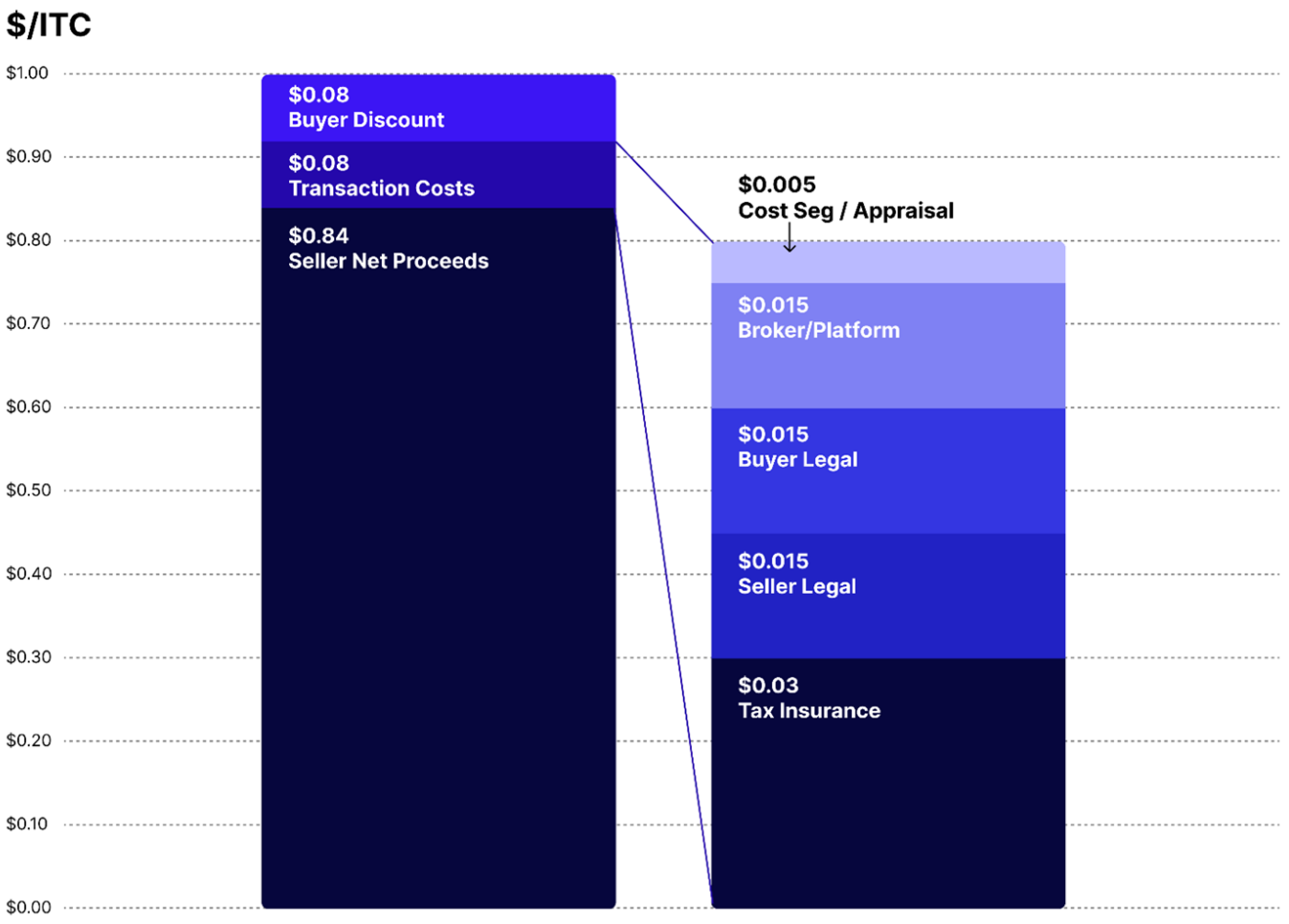
This is a 1.29MW community solar portfolio located in California, New York.

TAX CREDITS	PROJECT STATUS
$1,437,962	In Construction

ASKING PRICE	TYPE
88c	Community Solar

Breaking down the transaction costs

For example, a $5M sold at 92c/ITC will land around 84 cents on the dollars in net proceeds



Example transaction costs of a $5m solar ITC transfer

Cost comparison: $1M vs. $5M ITC transfer

Cost structure of smaller tax credits impacts net proceeds

Cost Center	Cost on $1M Transaction	Cost on $5M Transaction	Notes
Buyer Discount	$110,000 (12%)	$400,000 (8%)	
Cost Segregation	$20,000 (1.0%)	$25,000 (0.5%)	A pre-transaction cost
Broker/Advisor Fee	$20,000 (2%)	$75,000 (1.5%)	
Buy-side Legal	$25,000 (2.5%)	$75,000 (1.5%)	Assuming no tax opinion, seller pays up to a hard cap
Sell-side Legal	$25,000 (2.5%)	$75,000 (1.5%)	Assuming no tax opinion
Tax Insurance	Not viable, buyer must be comfortable with a guaranty	$150,000 (3%)	Tax insurance is not always required (or viable). If the seller can provide a satisfactory guaranty to backstop contractual indemnities in the purchase agreement then it can be avoided.
Total Costs	**$200,000 (20%)**	**$800,000 (16%)**	

Additional Potential Costs:

- PWA Wage Consultant/Report
- ITC Eligibility Memo / Tax Opinion

Market observations

- It’s a more liquid spot market in Q3/Q4 of each year once buyers have more confidence in their tax position for the year.
- Buyers aren’t eager to sign forward commitments unless it’s with existing partner and/or a very large credit.
- Non fiscal tax year ends make transactions more challenging.
- Less familiar technologies like geothermal, fuel cells, RNG trade at slightly greater discount.
- However, most geothermal projects are owned and operated by the real estate firm, the motivation and structure is not in place to effectuate a step-up in valuation, which remove that risk vector. Furthermore, heat is a core building system that needs to remain placed-in-service, which in theory reduces recapture risk.

Basis

Get in touch!

derek@buildwithbasis.com

Transferor (seller) taxpayer must include the following in their tax filing:

(i) Completed Form 3468, Investment Tax Credit for the taxable year that the eligible credit was determined, including the **registration number** received during the required pre-filing registration related to the eligible credit property;

(ii) Completed Form 3800, General Business Credit (or its successor), including reductions;

(iii) A schedule attached to the Form 3800 (or its successor) showing the amount of eligible credit transferred for each eligible credit property except as otherwise provided in guidance;

(iv) A transfer election statement; and

(v) Any other information related to the election specified in guidance.

Transferee (buyer) taxpayer must include the following in the tax filing:

(i) Completed Form 3800, General Business Credit (or its successor), including reductions;

(ii) A schedule attached to the Form 3800 (or its successor) showing the amount of eligible credit transferred for each eligible credit property except as otherwise provided in guidance;

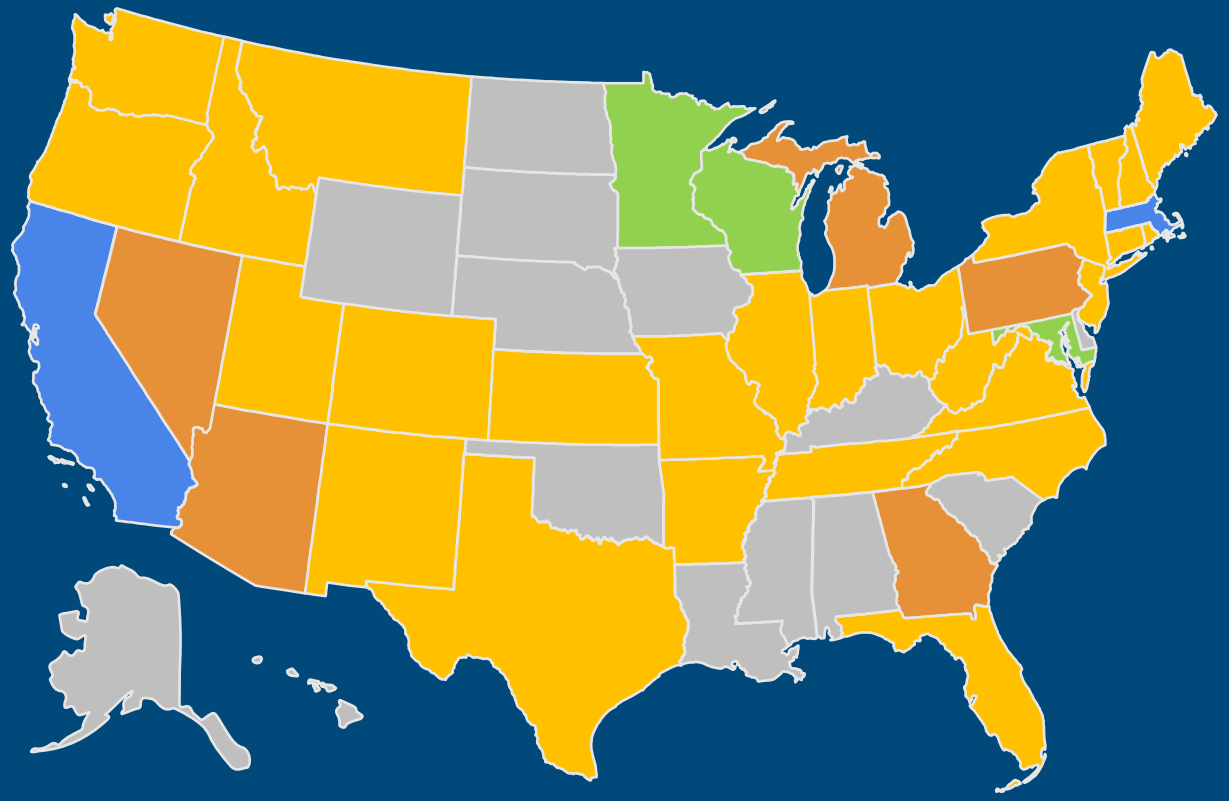
(iiI) The transfer election statement described in paragraph (b)(5) of this section attached to the return.

Schools and the Inflation Reduction Act

UNDAUNTEDK12

Sara Ross, Co-founder
sara@undauntedk12.org

The national campaign for a generational federal investment in healthy, resilient, equitable school infrastructure



1 in 6
Americans visit a school every day

$114B
annual spend on K-12 school buildings

54
MMT CO2e from K-12 buildings and buses

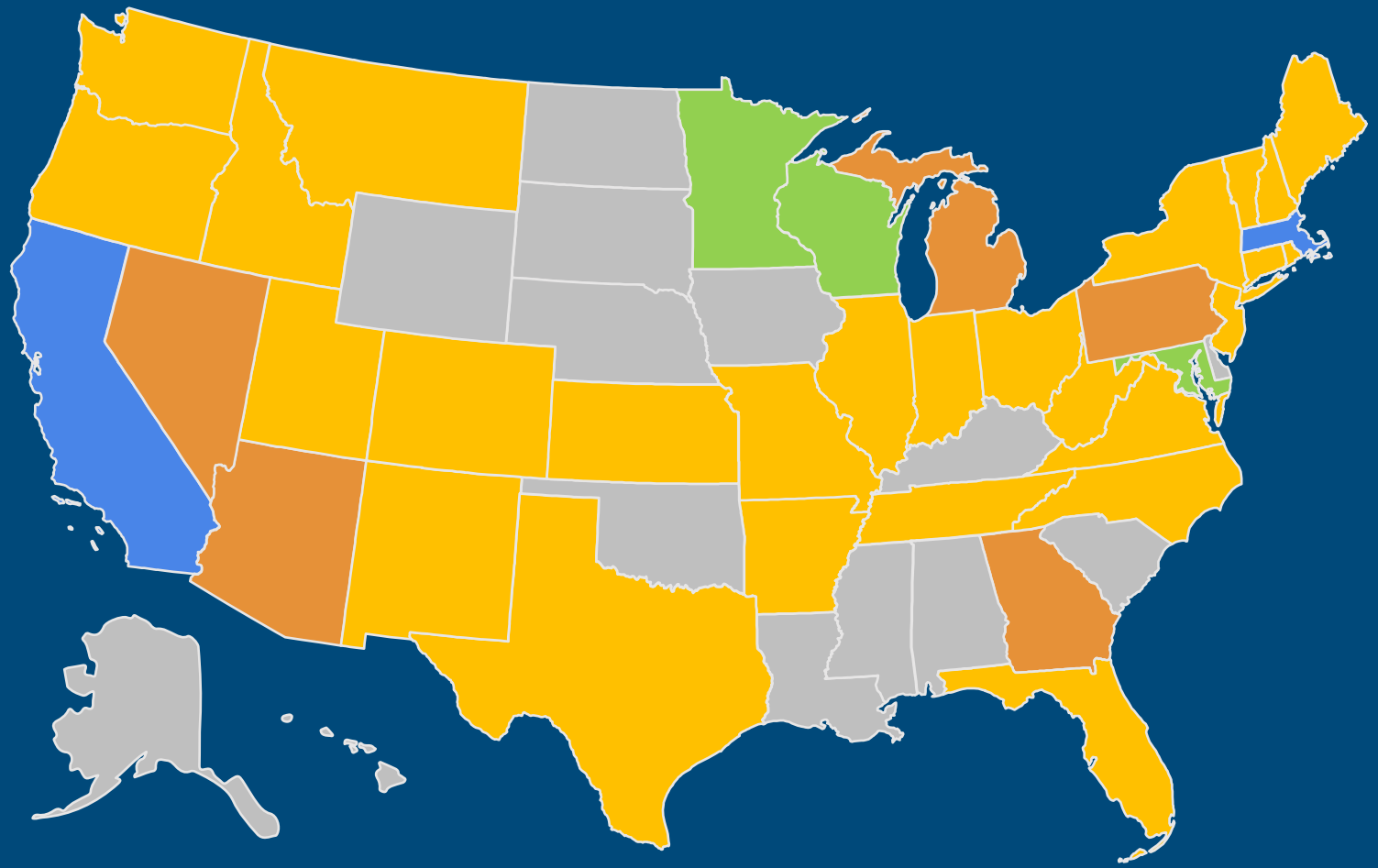
Schools and the Inflation Reduction Act

Campaign Goal: Leverage **billions** toward healthier, more resilient school buildings for our most vulnerable students – and make a massive dent in the greenhouse gas emissions that school buildings are responsible for annually.

Desired Campaign Outcomes

Reduced greenhouse gas emissions from K-12 sector	Reduced operating costs for schools through clean energy investments
Increased resilience for communities through climate-smart investments in school infrastructure	Increased opportunities for clean energy career pathways using the school campus as a teaching tool
Improved student health and learning outcomes among vulnerable populations	Increased public awareness of the benefits of clean energy and the success of the IRA by showcasing leading schools

Our campaign has reached leaders in 38 states and counting



- Deep Engagement
- Active Campaign
- Early Collaboration / Active Outreach
- Awareness Building

UNDAUNTEDK12

As of Oct 2024

The IRA could be among the largest federal investments in school facilities. How?

GEO-THERMAL

Typical credit
$3M

$15BN
if 5,000 schools install

SOLAR ENERGY

Typical credit
$500k

$5BN
if 10,000 schools install

ENERGY STORAGE

Typical credit
$300k

$3BN
if 10,000 schools install

ELECTRIC VEHICLES

$40k per bus

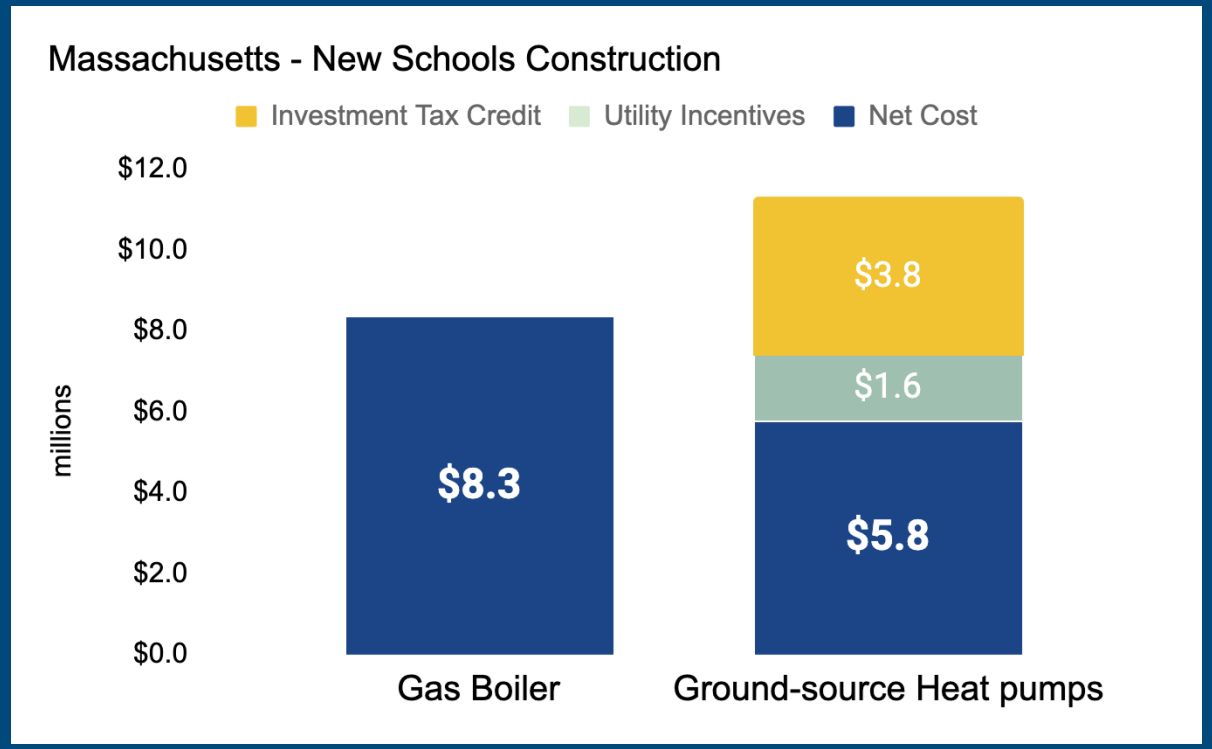
$1.9BN
if 48,000 buses deploy

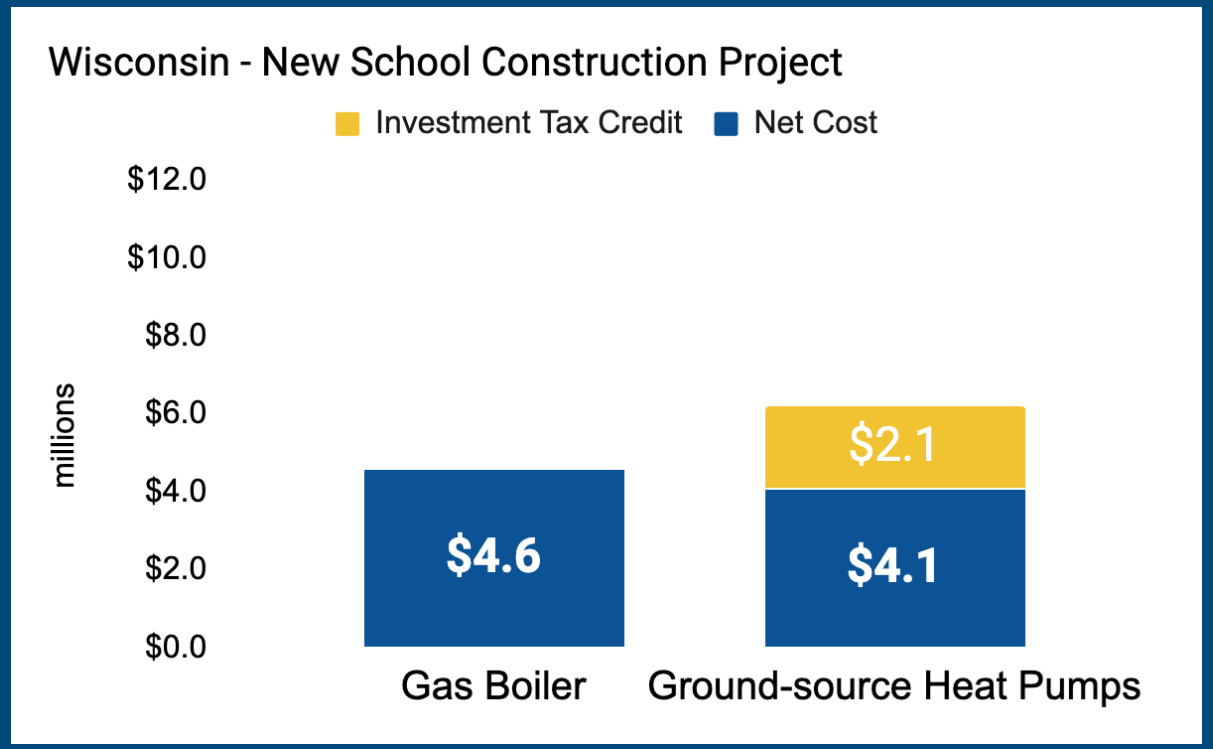
EV CHARGING

$10k per station

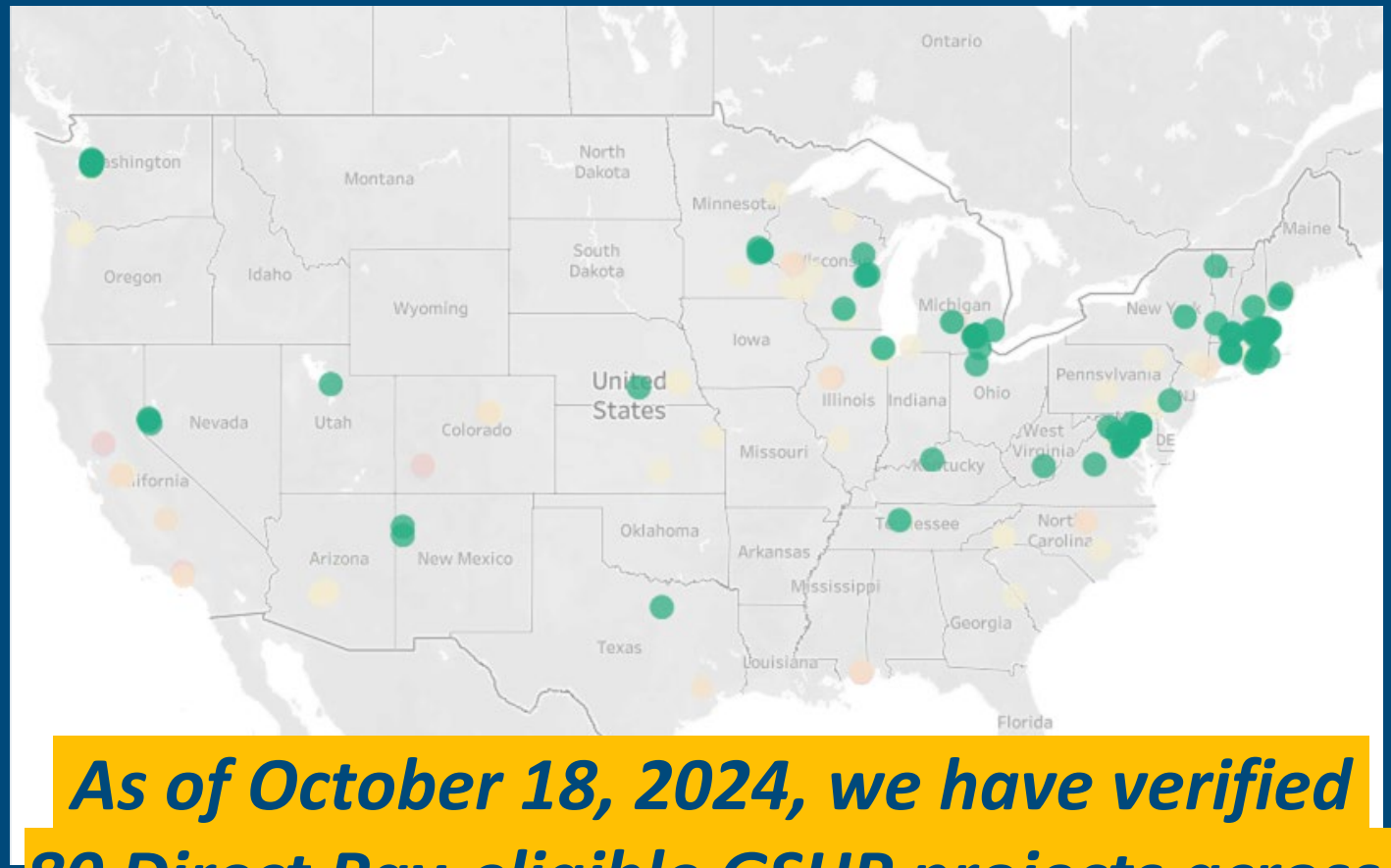
$0.4BN
if 40,000 installed

Elective Pay is making clean energy options irresistibly affordable

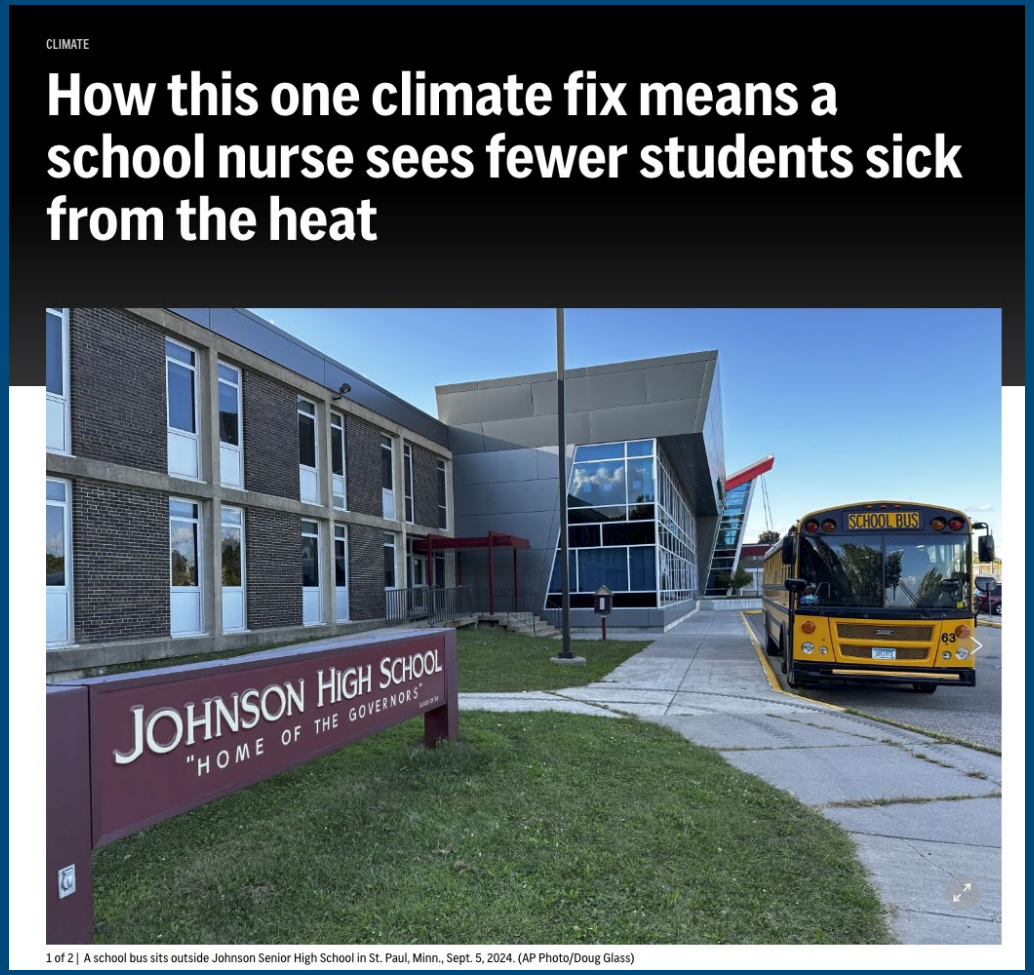




Tracking deployment of GHP in schools with Direct Pay & celebrating benefits



As of October 18, 2024, we have verified 80 Direct Pay-eligible GSHP projects across 58 school districts in 26 states.

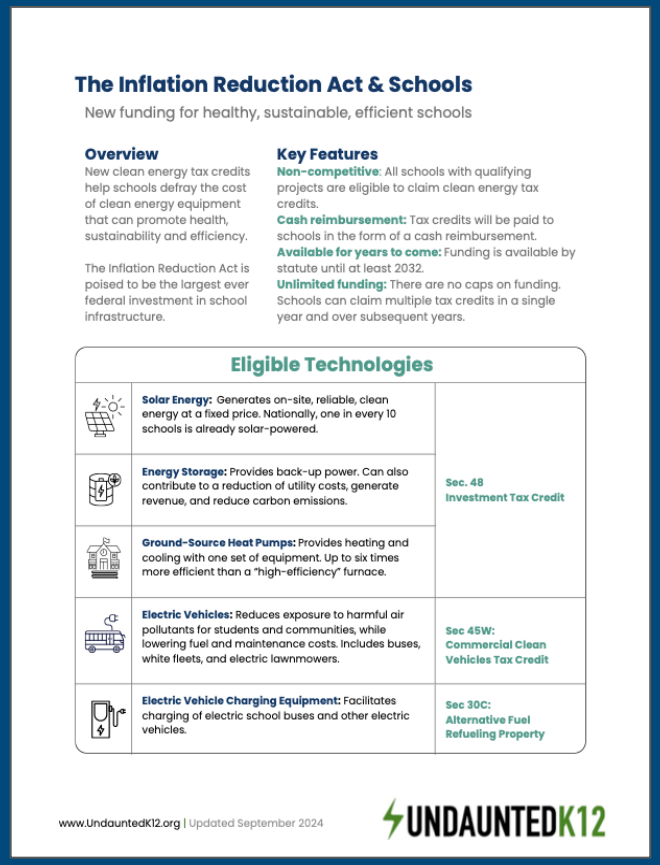


What are common points of friction?

- Lack of familiarity/exp. with GHP
- Negative residue from previous GHP projects
- Drilling capacity in the region
- Direct Pay proceeds - supporting or supplanting?
- Risk-taking w Direct Pay
- "Single Energy Property" & 1 MW threshold
- Meeting PWA and DC provisions
- "Domestic Content Cliff" for Direct Pay

Resources for Direct Pay & schools

Schools and IRA Overview



The Inflation Reduction Act & Schools

New funding for healthy, sustainable, efficient schools

Overview

New clean energy tax credits help schools defray the cost of clean energy equipment that can promote health, sustainability and efficiency.

The Inflation Reduction Act is poised to be the largest ever federal investment in school infrastructure.

Key Features

Non-competitive: All schools with qualifying projects are eligible to claim clean energy tax credits.
Cash reimbursement: Tax credits will be paid to schools in the form of a cash reimbursement.
Available for years to come: Funding is available by statute until at least 2032.
Unlimited funding: There are no caps on funding. Schools can claim multiple tax credits in a single year and over subsequent years.

Eligible Technologies

Solar Energy: Generates on-site, reliable, clean energy at a fixed price. Nationally, one in every 10 schools is already solar-powered.	Sec. 48 Investment Tax Credit
Energy Storage: Provides back-up power. Can also contribute to a reduction of utility costs, generate revenue, and reduce carbon emissions.	
Ground-Source Heat Pumps: Provides heating and cooling with one set of equipment. Up to six times more efficient than a "high-efficiency" furnace.	
Electric Vehicles: Reduces exposure to harmful air pollutants for students and communities, while lowering fuel and maintenance costs. Includes buses, white fleets, and electric lawnmowers.	Sec 45W: Commercial Clean Vehicles Tax Credit
Electric Vehicle Charging Equipment: Facilitates charging of electric school buses and other electric vehicles.	Sec 30C: Alternative Fuel Refueling Property

www.UndauntedK12.org | Updated September 2024

UNDAUNTEDK12

5 Actions for District Leaders

Getting Started with the Inflation Reduction Act

5 steps that districts can take to maximize non-competitive, uncapped federal funding to support healthy, resilient, cost-effective schools

Overview

The Inflation Reduction Act (IRA) offers school districts federal reimbursement via Elective Pay across a range of eligible technologies: solar, energy storage, ground source heat pump HVAC systems, electric vehicles, and electric vehicle charging infrastructure.

This guide outlines the steps school districts can take to install clean energy equipment and maximize their Elective Pay reimbursment.

CLICK HERE
Visit Schools and the IRA for more information.

1 Put IRA on the Agenda

- ☐ Put IRA on the agenda for your next meetings with other district leaders (CFO, CBO, Facilities Director, Superintendent, School Board Members, etc.).
- ☐ Share our one-pager about the IRA opportunity at an upcoming district cabinet or staff meeting.
- ☐ Task someone on the team with assesing the size of the opportunity for your district.
- ☐ Consider convening a team of district decision-makers, facilities and sustainability experts, utility representatives, and private sector partners to make a plan.

2 Claim Credits for Completed Projects

- ☐ Review recent work to identify eligible clean energy equipment placed in service after Dec 31, 2022.
- ☐ For each piece of qualifying equipment, gather relevant documentation.
- ☐ Complete a pre-filing registration using the IRS Elective Pay portal.
- ☐ File Form 990-T and other applicable forms.
- ☐ Receive payment from IRS after submission is approved.

Eligible Technologies:

- Solar Energy
- Energy Storage
- Ground-Source Heat Pumps
- Electric Vehicles
- Electric Vehicle Charging Equipment

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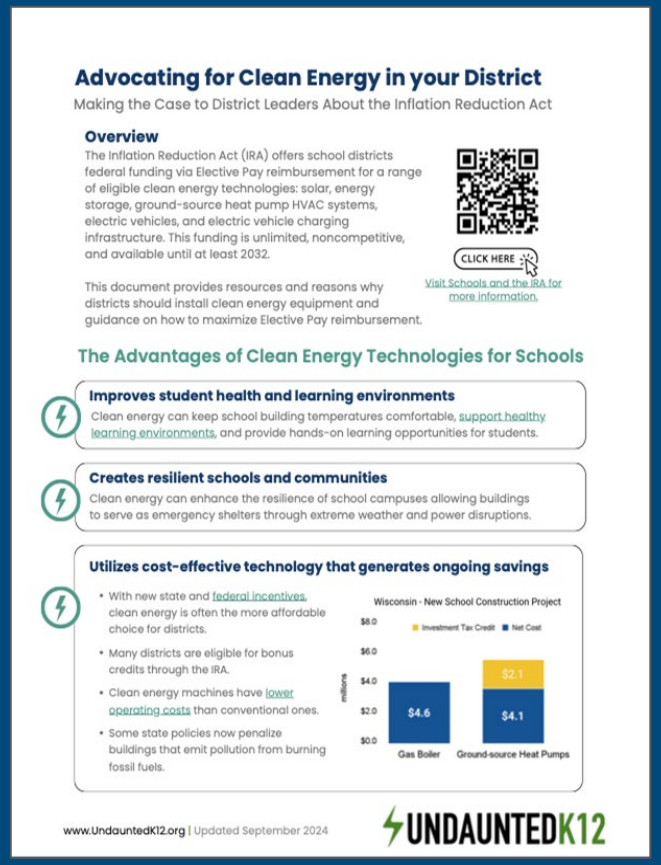
Getting Started for Advocates



Advocating for Clean Energy in your District

Making the Case to District Leaders About the Inflation Reduction Act

Overview

The Inflation Reduction Act (IRA) offers school districts federal funding via Elective Pay reimbursement for a range of eligible clean energy technologies: solar, energy storage, ground-source heat pump HVAC systems, electric vehicles, and electric vehicle charging infrastructure. This funding is unlimited, noncompetitive, and available until at least 2032.

This document provides resources and reasons why districts should install clean energy equipment and guidance on how to maximize Elective Pay reimbursement.

CLICK HERE
Visit Schools and the IRA for more information.

The Advantages of Clean Energy Technologies for Schools

Improves student health and learning environments
Clean energy can keep school building temperatures comfortable, support healthy learning environments, and provide hands-on learning opportunities for students.

Creates resilient schools and communities
Clean energy can enhance the resilience of school campuses allowing buildings to serve as emergency shelters through extreme weather and power disruptions.

Utilizes cost-effective technology that generates ongoing savings

- With new state and federal incentives, clean energy is often the more affordable choice for districts.
- Many districts are eligible for bonus credits through the IRA.
- Clean energy machines have lower operating costs than conventional ones.
- Some state policies now penalize buildings that emit pollution from burning fossil fuels.

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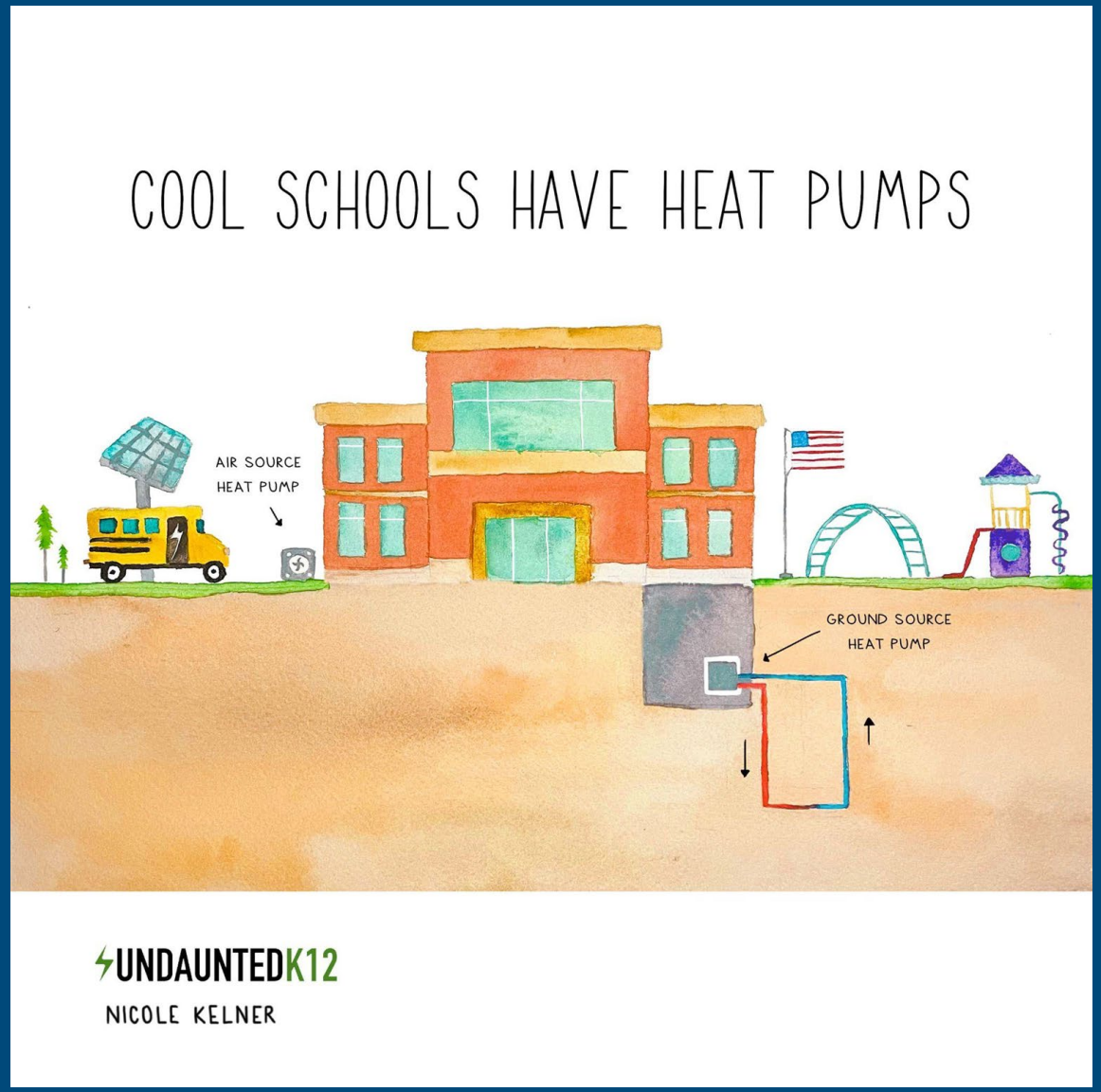
National and State Fact Sheets to share

https://www.undauntedk12.org/iraprojects



Questions?

Sara Ross, Co-founder
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Stay in touch

@UndauntedK12

Thank you!

NORTON ROSE FULBRIGHT

IRA Implementation

Part 2: Transferability

NY-GEO — NYC Conference

David Burton
david.burton@nortonrosefulbright.com
October 23, 2024

Norton Rose Fulbright US LLP

Price data from NRF deals

- Range of prices: **$0.83 – $0.97**
- Average price: **$0.931**
- Average weighted price: **$0.937**
- Haven’t yet handled any transfers from of geothermal heat pump projects

Transfer-Eligible Taxpayers

- Section 6418(f)(2) defines what taxpayer (an "eligible taxpayer") can make a one-time transfer election as "any taxpayer which is not defined" in the direct pay rules under Section 6417(d)(1)(A).
  - Thus, tax-exempt organizations, state or political subdivisions thereof, the Tennessee Valley Authority, Indian tribal governments, Alaska Native Corporations, and corporations operating as a cooperative that furnishes electricity to persons in rural areas *cannot* elect to transfer credits

Prop. Treas. Reg. § 1.6418-1(b): defines "taxpayer" by reference to Section 7701(a)(14)

Any person subject to internal revenue tax, unless included in Section 6417(d)(1)(A) (i.e., tax-exempt organizations, Indian tribes, etc.)

Credit Transfer Steps/Requirements

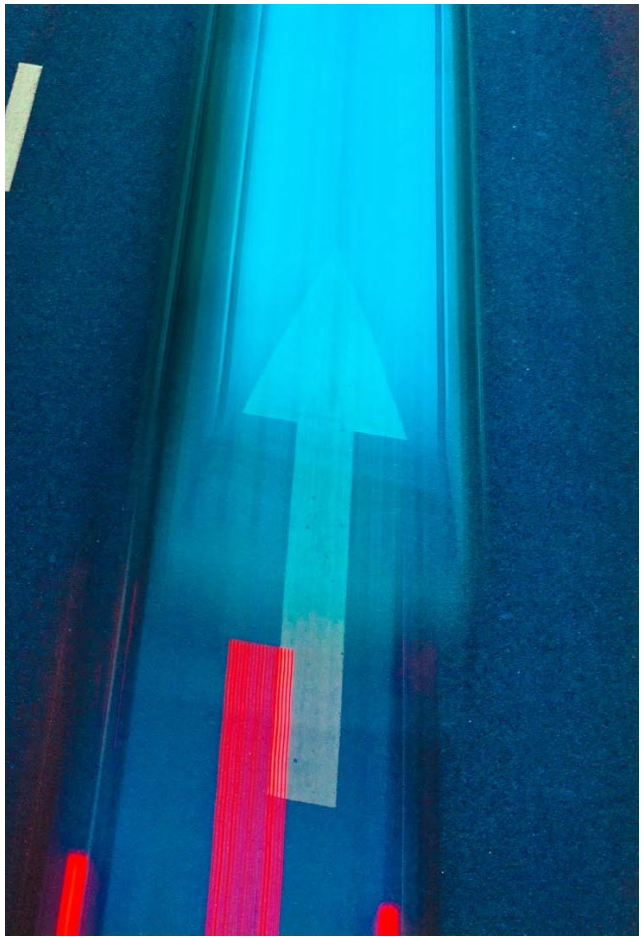
- Pre-filing requirements: Before filing, taxpayer must register through an IRS electronic portal, providing information about the taxpayer and each eligible property for which they intend to transfer a specified credit portion
  - Then, taxpayer will receive a unique registration number for each eligible credit property
- Transfer election procedures:
  - Must be made for each eligible credit property (must be consistent with pre-filing registration)
  - Must be made on an original return not later than the due date (including extension) for the original return
  - Must provide the following with each election:

❑Source credit form for the eligible credit;
❑IRS Form 3800, General Business Credit, including registration number;
❑Schedule showing amount of eligible credit transferred for each eligible credit property; and
❑Transfer election statement

Prop. Treas. Reg. § 1.6418-4 and Treas. Reg. § 1.6418-4T
Prop. Treas. Reg. § 1.6418-2(b)

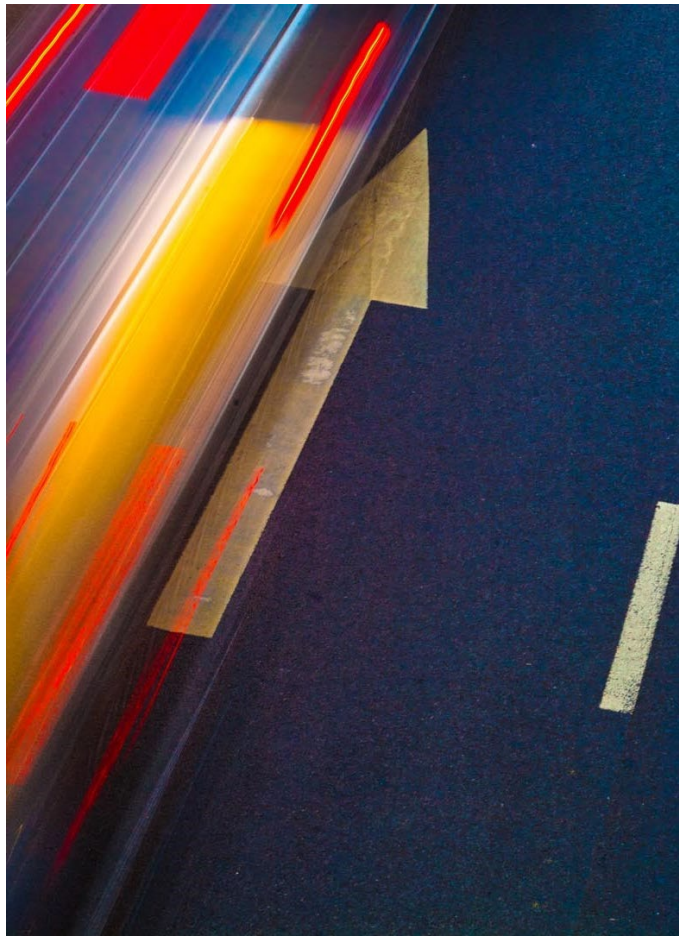
One-Time Transfer Requirement; Other Req'ts

- Buyer/Transferee cannot transfer specified credit portion a second time.
  - However, one can break up a credit into "specified credit portions" and make transfers of those portions to multiple taxpayers. Prop. Treas. Reg. § 1.6418-2(a)(2)
- What about electing direct pay for some credits and transfer election for other credits?
  - See Prop. Treas. Reg. § 1.6417-3(e)(4)
- What about electing direct pay on credits that are received via transfer?
  - See Prop. Treas. Reg. § 1.6417-2(c)(4)



Paid-in-Cash Requirement

- Prop. Treas. Reg. § 1.6417-1(f) – a payment in United States Dollars that:
  - Is made by cash, check, cashier's check, money order, wire transfer, automated clearing house transfer, or other bank transfer of immediately available funds
- Payment has to:
  - Directly relate to the specified credit portion; and
  - Be made within the period beginning on the first day of the eligible taxpayer's taxable year during which a specified credit is determined and ending on the due date for completing a transfer election
- Payments made in connection with a transfer are not includable in gross income



Additional Resources on Transferring Tax Credits

Article on Final Transferability Regulations

Article on Proposed Transfer Regulations (Overview)

Checklists for Tax Credit Transfers Diligence

Article on OECD's Favorable International Tax Treatment of Transferable Tax Credits

Please see our blog TaxEquityNews.com for more information about the IRA, tax credits, tax equity and tax credit transfers.

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Transferability & Elective Pay

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