

CLIENT ALERT

# Proposed Rules on Technology-Neutral Clean Energy Tax Credits

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## AUTHORS

**Robert Jacobson** | **Amanda Rosenberg** | **Eric Pogue** | **Niko Letsos**

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The U.S. Department of the Treasury and Internal Revenue Service recently proposed a set of rules (available at <https://public-inspection.federalregister.gov/2024-11719.pdf>) on the clean electricity production credit under Section<sup>1</sup> 45Y and the clean electricity investment credit under Section 48E that were established by the Inflation Reduction Act (IRA). The proposed rules specify the technologies that would currently qualify for the tax credits, and include solar, wind, hydropower, marine, geothermal, nuclear fission and fusion, and certain types of waste energy recovery techniques. However, the number of eligible technologies could be expanded. Under the proposed rules, to modify the technologies that are deemed to achieve net-zero greenhouse gas emissions that qualify for the credits, the Treasury would be required to publish an expert analysis prepared by one or more of the U.S. Department of Energy's National Laboratories, in consultation with other experts.

The credits under Sections 45Y and 48E generally replace Sections 45 and 48 of the Code, respectively. The proposed regulations would affect taxpayers that produce clean electricity and claim the clean electricity production credit with respect to a facility or the clean electricity investment credit with respect to a facility or energy storage technology, as applicable, that is placed in service after December 31, 2024. However, as long as construction begins on the relevant qualified facility or energy property before January 1, 2025, a taxpayer may be able to claim a Section 45 credit or Section 48 credit, respectively, in lieu of the Section 45Y credit or the Section 48E credit. While a taxpayer may be eligible for more than one of the credits under Sections 45, 48, 45Y or 48E, it can claim only one credit with respect to a particular project.

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<sup>1</sup> "Section" refers to a section of the Internal Revenue Code of 1986, as amended.

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## Proposed Rules on Technology-Neutral Clean Energy Tax Credits

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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**Robert Jacobson**

713 510 1713

[rjacobson@willkie.com](mailto:rjacobson@willkie.com)

**Amanda Rosenberg**

310 728 8313

[arosenberg@willkie.com](mailto:arosenberg@willkie.com)

**Eric Pogue**

212 728 8035

[epogue@willkie.com](mailto:epogue@willkie.com)

**Niko Letsos**

713 510 1768

[nletsos@willkie.com](mailto:nletsos@willkie.com)

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