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CERTIFIED PUBLIC ACCOUNTANTS

Inflation Reduction Act of 2022 and the Impacts to the Construction Industry

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The *Inflation Reduction Act of 2022* (IRA) includes several provisions that impact the construction industry. The IRA modifies and extends tax credits and deductions for energy efficiency and alternative energy. Many of the incentives are increased if prevailing wage and apprenticeship requirements are met. Additionally, the IRA extends the limitation on excess business losses of noncorporate taxpayers. This article will highlight selected provisions of the IRA relevant to the construction industry.

Investment Tax Credit IRC Section 48

The Energy credit is extended one year for projects that begin construction through the end of 2024. The Energy credit is intended to encourage the use and conversion of business equipment to energy sources other than oil or gas. The IRA reduces the credit rate previously at 30% down to 6% for large energy projects (net output of more than one megawatt). If certain prevailing wage and apprenticeship requirements are met, the 30% credit rate or more may still apply.

Energy Efficient Commercial Buildings Deduction IRC Section 179D

The Energy Efficient Commercial Buildings Deduction calculation is modified from a maximum of $1.88 per square foot to $1 per square foot or $5 per square foot if the prevailing wage and apprenticeship requirements are satisfied. Additionally, certain tax-exempt building owners (such as non-profits) can allocate 179D deductions to the person primarily responsible for designing the property. Previously, only governmental entities were able to allocate the deduction.

New Energy Efficient Home Credit IRC Section 45L

The new energy efficient home credit was modified and extended until 2032. The credit for each home or unit depends on a revised, two-tiered energy savings criteria summarized as follows:

Energy Star

- Single family homes: $2,500
- Multi-family units: $500

Zero Energy Ready

- Single family homes: $5,000
- Multi-family units: $1,000

For multi-family projects meeting the prevailing wage requirements, the credits are increased 500%. The requirement for multifamily projects that are three stories or less has been removed.

Limitation on Excess business Losses IRC Section 461(l)

The excess business loss limitation is extended for two years, applying to tax years beginning before January 1, 2029. Passthrough and self-employed taxpayers may deduct $270,000 ($540,000 married filing joint) of business losses against non-business income. Stated otherwise, business losses are limited to offset non-business income such as wages, interest, dividends and certain capital gains. Losses limited under 461(l) are eligible to be carried forward and the threshold is indexed for inflation.

Increased Credits and Deductions by Satisfying Prevailing Wage and Apprenticeship Requirements

Prevailing Wage

For increased credits and deductions subject to the prevailing wage requirements, a taxpayer must ensure that any laborers and mechanics employed by the taxpayer, or any contractor or subcontractor, are paid wages at rates not less than the prevailing wage rates, which is commonly known as the Davis-Bacon Act.

Apprenticeship Requirements

For increased credits and deductions subject to the apprenticeship requirements, the IRA provides that each taxpayer, contractor or subcontractor who employs four or more individuals to perform construction, alteration or

repair work with respect to a qualified facility must have an applicable percentage of total labor hours from a registered apprenticeship program. The applicable percentage of total labor hours to be performed by a qualified apprentice increases annually from 10% to 15%.

The effective date for most of the provisions of the IRA is January 1, 2023. Generally, the tax incentives are increased five-fold if applicable prevailing wage requirements and/or apprenticeship requirements are satisfied. Penalties for claiming the increased credit or deduction while not complying with the prevailing wage or apprenticeship requirements are significant. Due to the significant increase in tax incentives, contractors should anticipate developers, building owners, and energy projects requiring prevailing wages and apprentices on projects that could be impacted by these deductions and credits.

Closing

If you are interested in a more detailed discussion of how the Inflation Reduction Act of 2022 could affect your tax planning opportunities, please contact us to discuss further.

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