

elliott davis

Recent Developments and Hot Topics

October 26, 2022

Disclaimer

This material was used by Elliott Davis during an oral presentation; it is not a complete record of the discussion. This presentation is for informational purposes and does not contain or convey specific advice. It should not be used or relied upon in regard to any particular situation or circumstances without first consulting the appropriate advisor. No part of the presentation may be circulated, quoted, or reproduced for distribution without prior written approval from Elliott Davis.

Agenda

- Inflation Reduction Act
- CHIPS Act
- Cryptocurrency Reporting
- Superfund Tax
- Bonus Depreciation
- Employee Retention Credit

Presenter



Bergin Fisniku
Senior Manager,
Tax Consulting Services

bergin.fisniku@elliottdavis.com

Inflation Reduction Act (IRA)



- 15% Alternative Corporate Minimum Tax
- Excise Tax on Corporate Stock Buybacks
- Research Credit Against Payroll Tax for Small Business
- Extension on Limitation on Excess Business Losses
- IRS Tax Enforcement
- Energy Security Provisions
 - Clean Electricity and Reducing Carbon Emissions
 - Clean Fuels
 - Clean Energy and Efficiency Incentives for Individuals
 - Clean Vehicle
 - Investment in Clean Energy Manufacturing and Energy Security
 - Incentives for Clean Electricity and Clean Transportation

Inflation Reduction Act

- On **August 16**, President Biden signed the IRA
- Total revenues expected from the package would be about **\$737 billion**, of which about **\$300 billion** would go toward deficit reduction
- **\$370 billion** would go toward energy and climate initiatives
- **\$64 billion** would go to support Affordable Care Act subsidies
- **\$4 billion** would go towards Western drought assistance



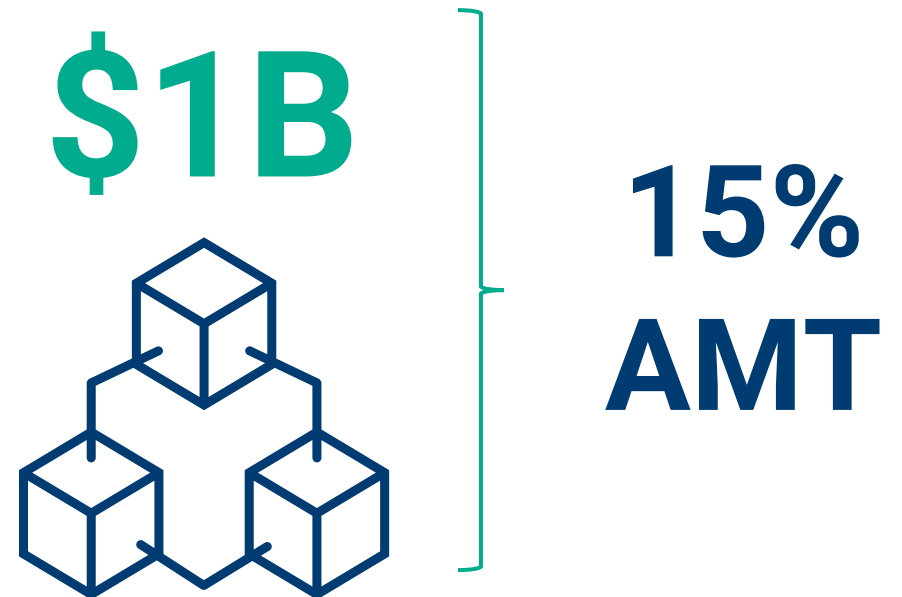
15% Alternative Corporate Minimum Tax (AMT)

Tax on book earnings or “adjusted financial statement income”

- Companies could generally still use net operating losses (NOLs) and credits
- Corporate AMT foreign tax credit
- Accelerated depreciation used for tax purposes would be allowed, rather than financial statement depreciation

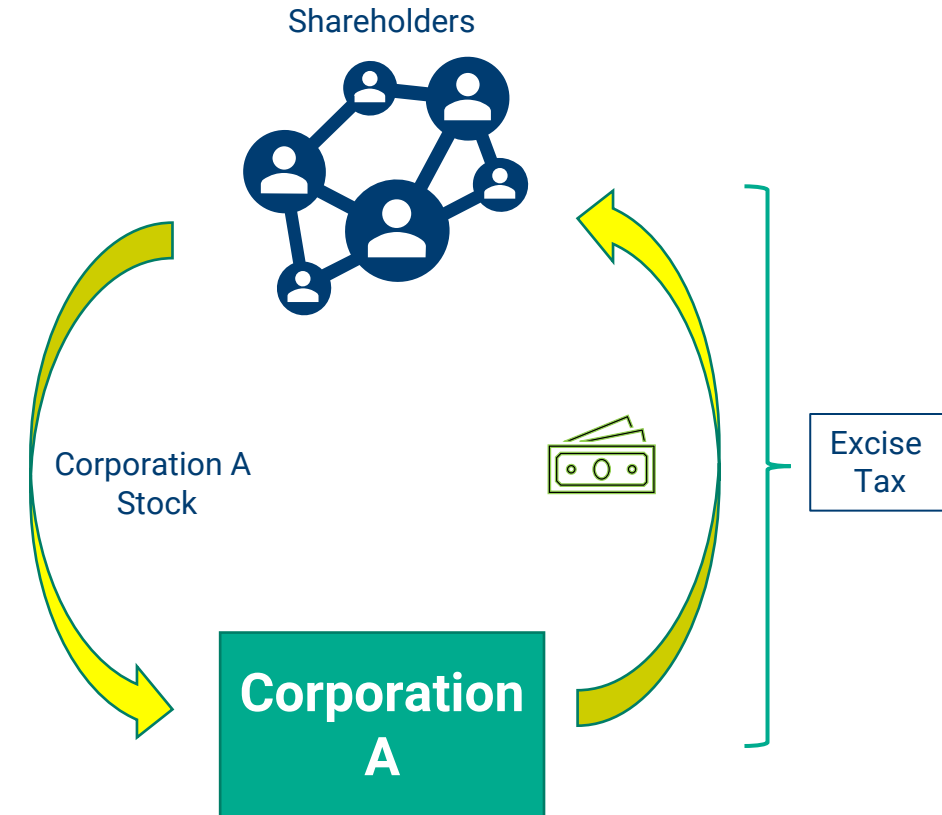
Large corporations only:

- Average annual adjusted financial statement income over **\$1 billion** for the three prior years
- **Special rule** for foreign-parented multinational groups, lowering the income threshold to **\$100 million for the domestic corporation** where the group exceeds the \$1 billion threshold



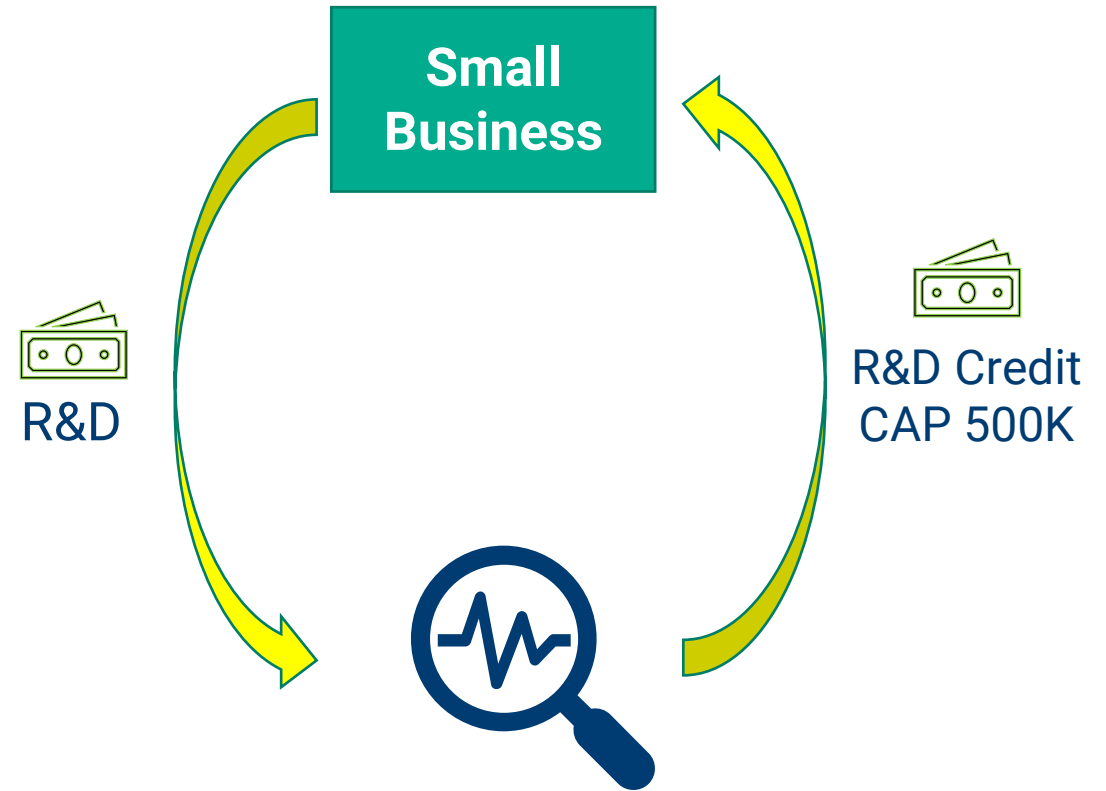
Excise Tax on Corporate Stock Buybacks

- **1% excise tax will be assessed on the value of stock buybacks for publicly traded U.S. corporations**
 - Local securities exchanges
 - Applicable foreign securities exchanges
 - Over-the-counter (OTC) securities markets (i.e., OTCQX, OTCQB, and Pink Markets)
- **Buybacks are reduced by the value of any stock issued during the tax year**
- **Not deductible for income tax purposes**
- **Exceptions**
 - Tax-free reorganizations
 - Employer-sponsored retirement plans, stock options, or similar plans
 - Total value of the stock repurchased during the year does not exceed \$1,000,000
 - Repurchases by a dealer in the ordinary course of business
 - Repurchases by a regulated investment company or a real estate investment trust
 - Repurchases treated as a dividend



Research Credit Against Payroll Tax

- Small businesses: Less than \$5 million in gross receipts and no gross receipts before the 5-taxable-year period ending with the current taxable year
- Currently, research & development (R&D) credits are capped at \$250,000 of the employer portion of the Social Security tax
- Now the amount eligible for the payroll tax credit is increased by an **additional \$250,000**
- Effective date: **1/1/2023**



Limitation on Excess Business Losses

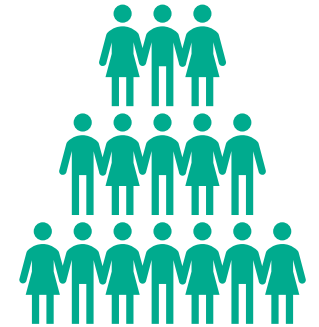
- Tax Cuts and Jobs Act (2017) imposed the limitation for deducting excess business losses for non-corporate taxpayers.
- The original limitation was set to expire in 2026.
- The IRA extended the limitation through **2028**



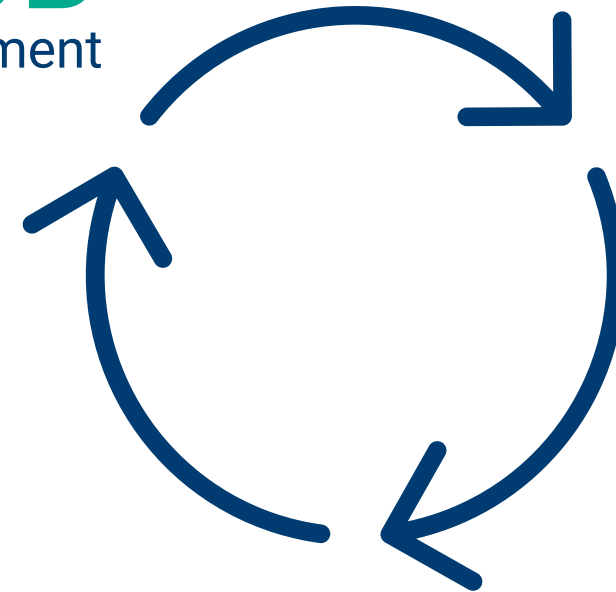
IRS Tax Enforcement

- Additional **\$80 Billion** towards improving enforcement (mainly corporations and high-income individuals) and customer service
- Additional **80,000** IRS employees
- Expected to generate **\$146 billion** in additional revenue
- New enforcement resources should not result in additional audits for taxpayers making less than **\$400,000**

\$80B
Enforcement



80K New
Employees



\$146B
Additional Revenue

Energy Security Provisions

- **Clean Electricity and Reducing Carbon Emissions**
 - Credit for Electricity Produced from Certain Renewable Sources
 - Energy Credit
 - Solar and Wind Facilities Placed in Service in Connection with Low-Income Communities
 - Credit for Carbon Oxide Sequestration
 - Zero-Emission Nuclear Power Production Credit
- **Clean Fuels**
 - Alternative Fuels
 - Sustainable Aviation Fuel Credit
 - Clean Hydrogen Credit
- **Clean Energy and Efficiency Incentives for Individuals**
 - Energy Efficient Home Improvement Credit
 - Residential Clean Energy Credit
 - Energy Efficient Commercial Buildings Deduction
 - New Energy Efficient Home Credit
- **Clean Vehicle**
 - Clean Vehicle Credit
 - Alternative Refueling Property Credit



Energy Security Provisions (cont'd)

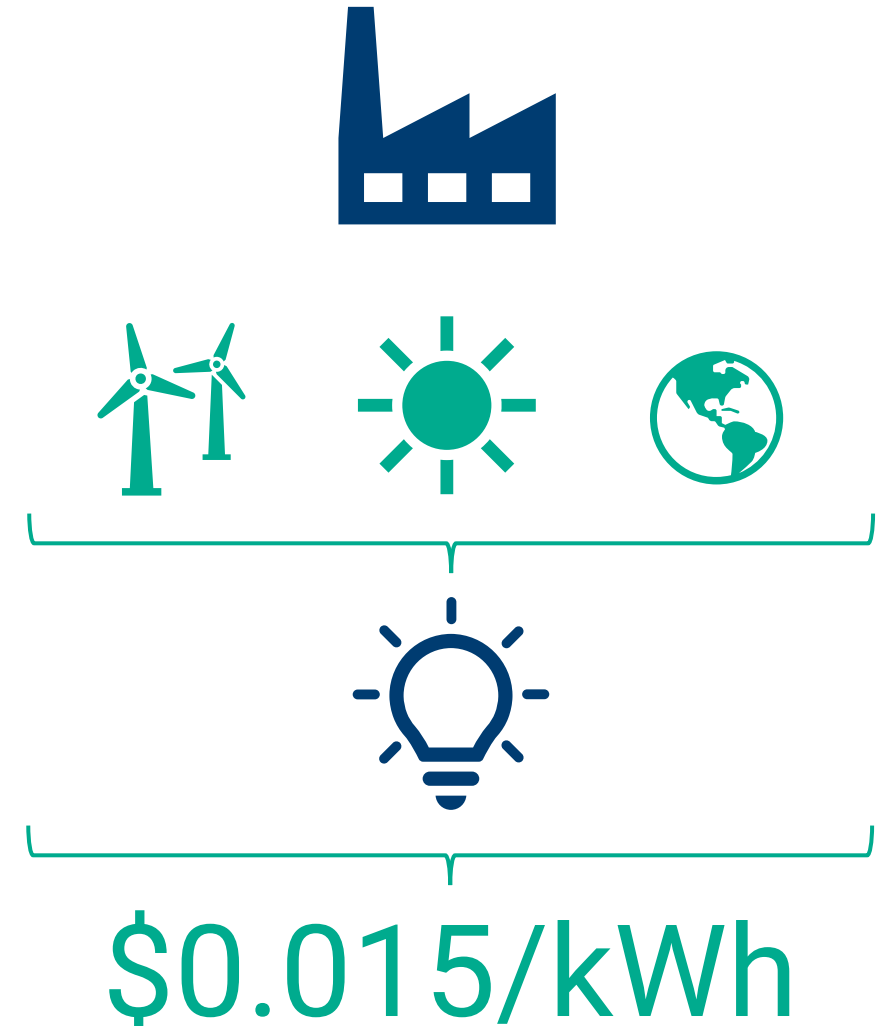
- **Investment in Clean Energy Manufacturing and Energy Security**
 - Advanced Energy Project Credit
 - Advanced Manufacturing Production Credit
- **Incentives for Clean Electricity and Clean Transportation**
 - Clean Energy Production/Investment Credit
 - Cost Recovery for Qualified Facilities, Qualified Property, and Energy Storage Technology
 - Clean Fuel Production Credit



Clean Electricity and Reducing Carbon Emissions

Credit for Electricity Produced from Renewable Sources

- The act extends the **timeline** for beginning the construction of a **wind, solar, or geothermal** facility to **January 1, 2025**
- “Qualified facility” for Section 45 renewable resources credit
- Credit amount: **\$0.015/kWh**
- Prevailing wage and apprenticeships requirements
 - If not met, credit of **\$0.003/kWh**
 - Laborer and mechanic employees to be paid salaries at least of the local prevailing rates
 - Minimum number of apprentices
- Credit boosters of **10%**
 - Components of the facility produced in the US
 - Energy community



Clean Electricity and Reducing Carbon Emissions

Energy Credit

- The act extends the timeline to place in service certain property to qualify for the **Section 48 Energy Credit**, to **January 1, 2025**
- Prevailing wage and apprenticeships requirements for an increased credit
- New – Geothermal energy property: **30% credit (6%)**
- New – Energy storage technology, qualified biogas property, and microgrid controllers: **10% credit (2%)**

§48 Energy Credit



30%



10%

Clean Electricity and Reducing Carbon Emissions

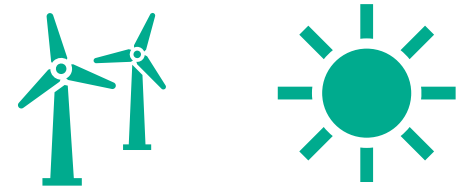
Solar and Wind Facilities Placed in Service in Connection with Low-Income Communities

- Section 48 credit enhanced
- Extra **10%** solar and wind facilities placed in service in a low-income community
- **Additional 10%** (20% total) if the facility is part of a low-income residential building project or economic benefit project

Credit for Carbon Oxide Sequestration

- Extended for 7 years
- Property for which construction begins before **January 1, 2033**
- Prevailing wage and apprenticeships requirements

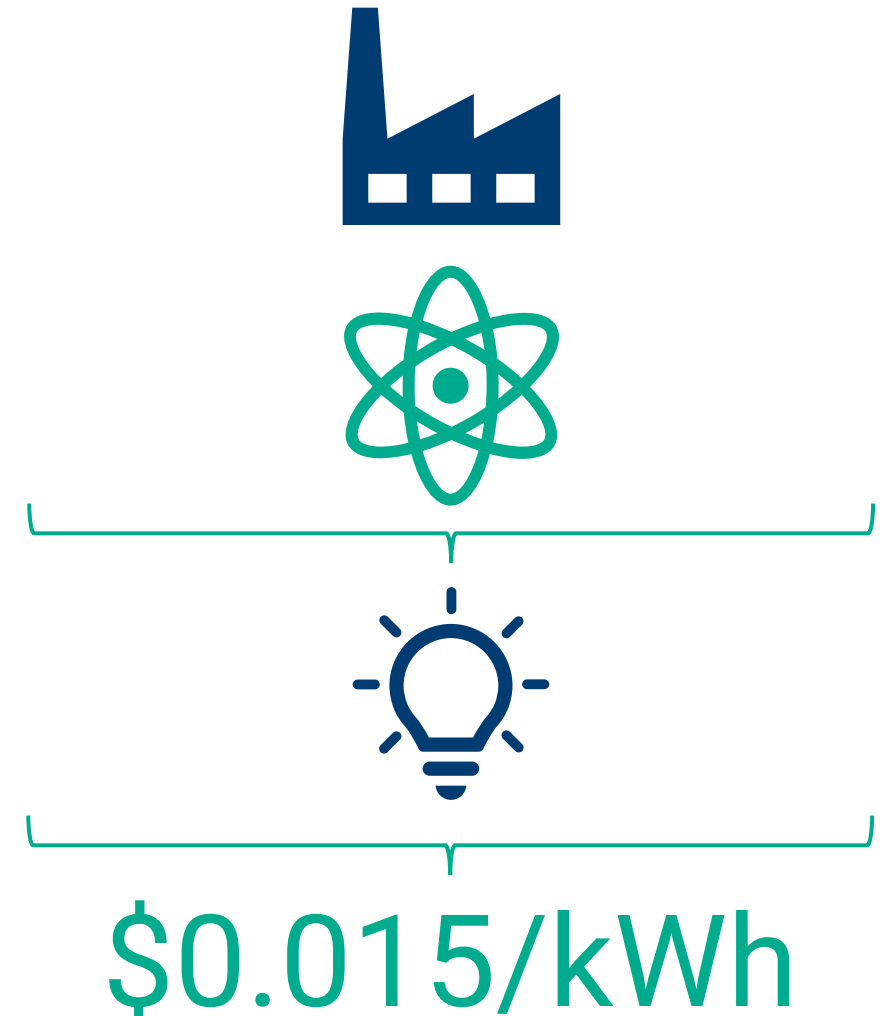
§48 Energy Credit



Clean Electricity and Reducing Carbon Emissions

Zero-Emission Nuclear Power Production Credit

- New credit
- **\$0.015/kWh**
- Qualified nuclear power facility



Clean Fuels

Alternative Fuels

- Extension of the termination date of credits until **December 31, 2024**
- Extension of credit for **second generation biofuel** produced before **January 1, 2025**

Sustainable Aviation Fuel Credit

- New credit
- Aviation fuel produced, sold, and transferred in the US
- **\$1.25 per gallon** produced and sold

Clean Hydrogen Credit

- New credit
- Production of clean hydrogen during **10-year period** after the place in service of the hydrogen production facility
- Credit equal to kilograms of hydrogen produced by a certain percentage of \$0.60 (depending on the emissions rate)
- Prevailing wage and apprenticeships requirements for an increased credit



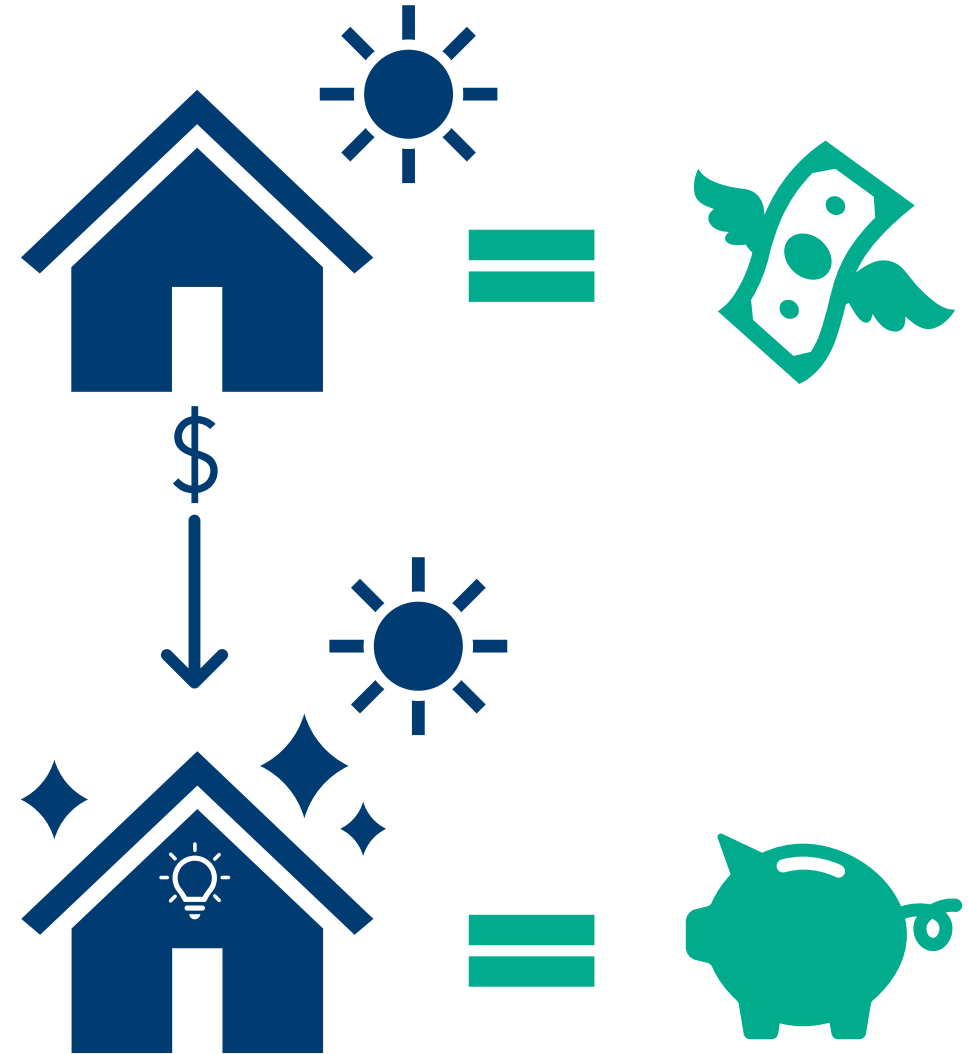
Clean Energy and Efficiency Incentives for Individuals

Energy Efficient Home Improvement Credit

- Extension to **December 31, 2032**
- Credit rate of **30%** (previously 10%)
- Increase credit to energy efficiency **improvements and expenditures** to residential property
- Annual limitation instead of a lifetime limitation

Residential Clean Energy Credit

- Extension to **December 31, 2034**
- Additional credit for expenditures related to installing battery storage technology



Clean Energy and Efficiency Incentives for Individuals

Energy Efficient Commercial Buildings Deduction

- The act increases the deduction for property constructed following the prevailing wage and apprenticeship requirements from \$1.80/sq ft to **\$2.50/sq ft**
- **Alternative deduction for energy efficient building retrofit property (new)**
 - Property modified to **reduce building's energy use by at least 25%**
 - Property installed as part of interior lighting systems, heating, cooling, ventilation, and hot water systems, or the building envelope
 - Placed in service after December 31, 2022



\$2.50/sq ft

Clean Energy and Efficiency Incentives for Individuals

New Energy Efficient Home Credit

- Extension to houses acquired through December 31, 2032
- Credit to purchasers of new construction that meets the energy efficiency requirements
- Credit has more than doubled
- Credit is modified to apply—at a lower rate—to purchases of a unit within a building that qualifies for the credit, but doesn't meet the energy efficiency requirements
- Prevailing wage requirement

5K ↔ 2.5K

Energy Star Residential New Construction Program
Or
Energy Star Manufactured New Homes Program



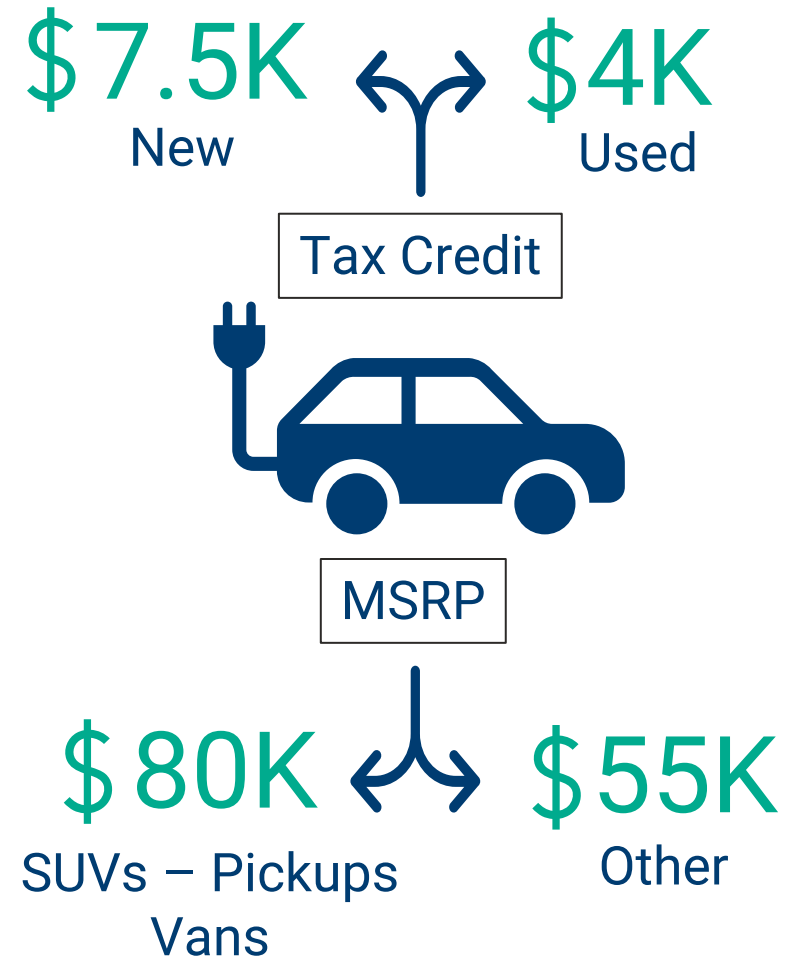
Energy Star Multifamily New Construction Program

1K ↔ \$500

Clean Vehicle

Clean Vehicle Credit

- **\$7,500** credit for new electric vehicles and **\$4,000** for used electric vehicles
- Manufacturer limitation on electric vehicles sold (which was fully phased-in for Tesla and GM) is eliminated for cars sold after **December 31, 2022**
- Manufacturer's suggested retail price limitation (MSRP)
 - **\$80,000** for SUVs, pickups, and vans
 - **\$55,000** for other vehicles
- No additional credit is provided for autos manufactured in union shops
- North American final assembly requirement effective for vehicles sold after the date of enactment
- Separate requirements for the source country for battery components and the critical minerals in the battery, which would phase in from 50% in 2023 to **100% in 2029**



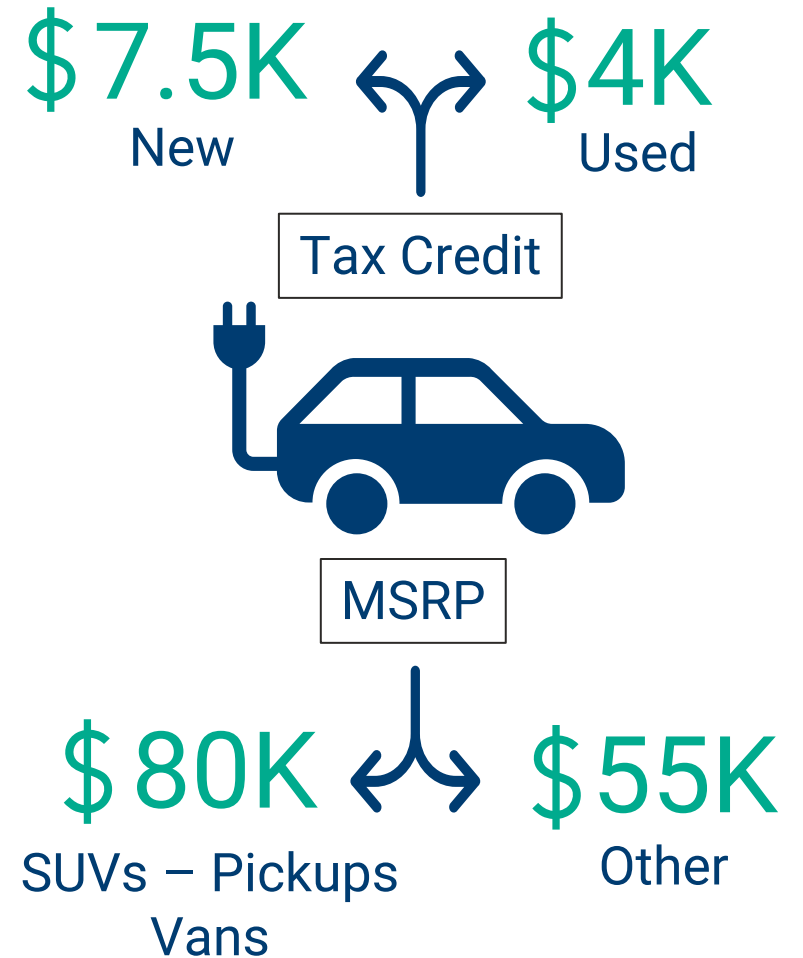
Clean Vehicle

Clean Vehicle Credit (cont'd)

- Limits in adjusted gross income to claim the credit
 - Married filing jointly: \$300,000
 - Head of household: \$225,000
 - Other taxpayers: \$150,000
- Limits for used cars (model year is at least two years earlier)
 - Married filing jointly: \$150,000
 - Head of household: \$112,500
 - Other taxpayers: \$75,000

**Observation:*

- Energy Department list of only **21 vehicles** that would be eligible for the credit under the act, taking into consideration the North American assembly requirement (based upon 2022 data)
- Around **70%** of the EV and plug-in hybrids currently sold in the U.S. would no longer qualify for the credit



Clean Vehicle

Alternative Refueling Property Credit

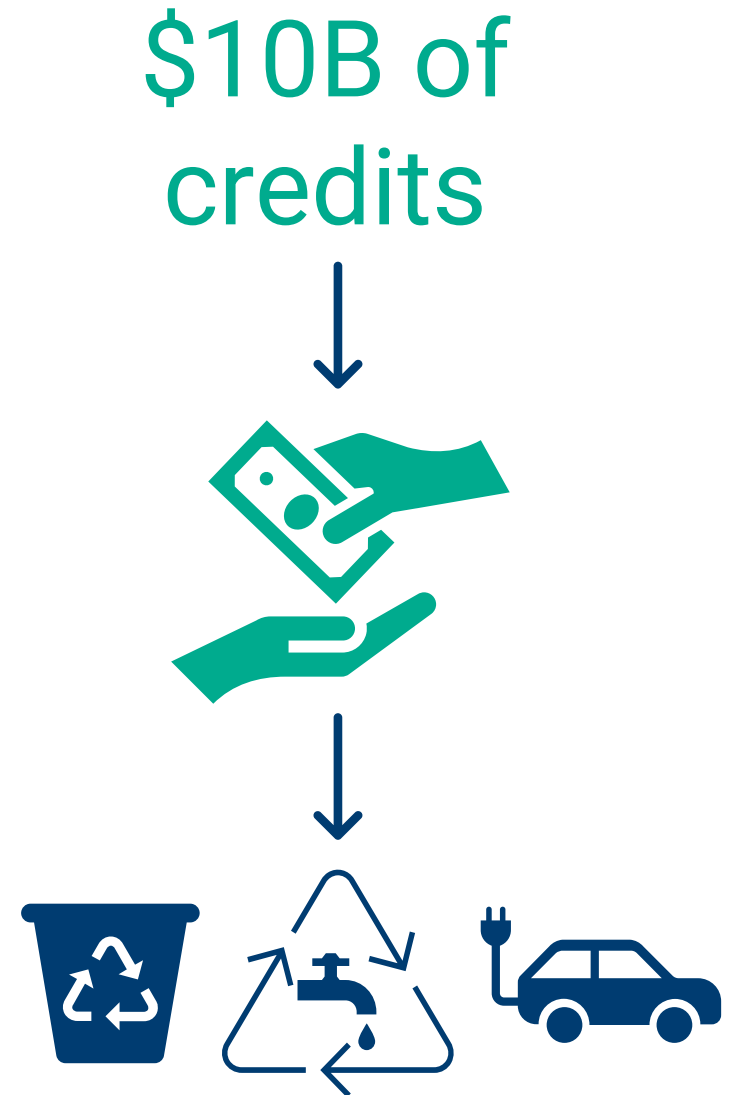
- Credit was extended for 10 more years to **January 1, 2033**.
- When the property is used for business/investment, the prevailing wage and apprenticeship requirements must be met in order to receive full credit
- Credit of 30%, but 6% in case of property subject to depreciation



Investment in Clean Energy Manufacturing and Energy Security

Advanced Energy Project Credit

- Up to **\$10B of credits** for qualifying advanced energy credit sponsors
- New definition of “**qualifying advanced energy project**”, now including facilities for recycling, water as an applicable renewable resource, components of various systems rather than just the system, electric and hybrid vehicles, and projects which re-equip facilities with equipment designed to reduce greenhouse gas emissions



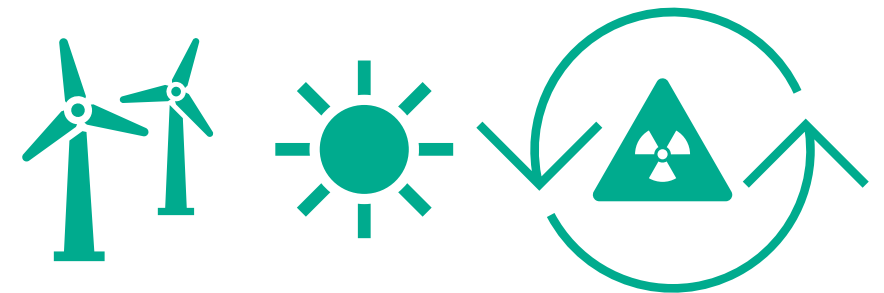
Investment in Clean Energy Manufacturing and Energy Security

Advanced Manufacturing Production Credit

- General business credit equal to the **applicable rate depending on the type of component** produced and sold
- Eligible components range from wind and solar energy to chemical inverters
- Credit is phased out for components sold after December 31, 2029:

Date of sale	% of Credit
Before December 31, 2029	100%
After December 31, 2029	75%
After December 31, 2030	50%
After December 31, 2031	25%
After December 31, 2032	0%

COMPONENTS



Sold to an unrelated party

Incentives for Clean Electricity and Clean Transportation

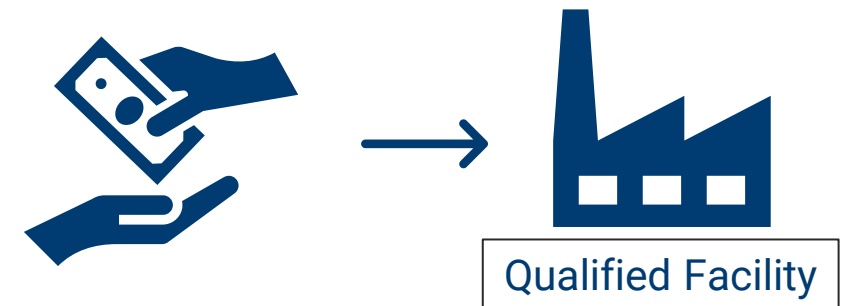
Clean Energy Production Credit / Clean Energy Investment Credit (NEW)

- Credit of **\$0.03/kWh** for the **production credit**, based on kilowatt hours of electricity produced at a qualified facility and sold to an unrelated person
- A **qualified facility** is used for generation of electricity, placed in service after December 31, 2024, and with anticipated greenhouse gas emissions rate of zero
 - Qualification last **10 years**
- For the **investment credit**, the credit is **30% of the basis in qualified facilities or energy storage technologies** placed in service after December 31, 2024
- Prevailing wage and apprenticeship requirement
- Credit phase-out:

Year of beginning of the construction of qualified facility	% of Credit
1 year after 2033	100%
After 2034	75%
After 2035	50%
After 2036	0%



\$0.03/kWh



30% of basis

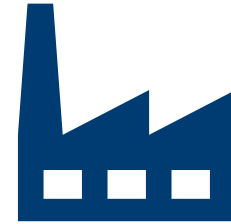
Incentives for Clean Electricity and Clean Transportation

Cost Recovery for Qualified Facilities, Qualified Property, and Energy Storage Technology

- New definitions included into the **accelerated depreciation provisions**
- The act changed the **recovery period** of such property to **5 years** (normally 39 for the facilities and not bonus eligible)

Clean Fuel Production Credit (NEW)

- Credit for clean fuel produced and sold in the US, suitable for use as a fuel in a highway vehicle or aircraft
- **\$1.00 per gallon** produced at a qualified facility multiplied by an emissions factor
- **\$1.75 per gallon** in the case of sustainable **aviation fuel**
- Prevailing wage and apprenticeship requirement



Qualified Facility
Qualified Property
Energy Storage Technology

5 Years



\$1 per gallon



\$1.75
per gallon

What Was Not Included in the Act?

There are a few matters that were not included in the act that were in earlier bills:

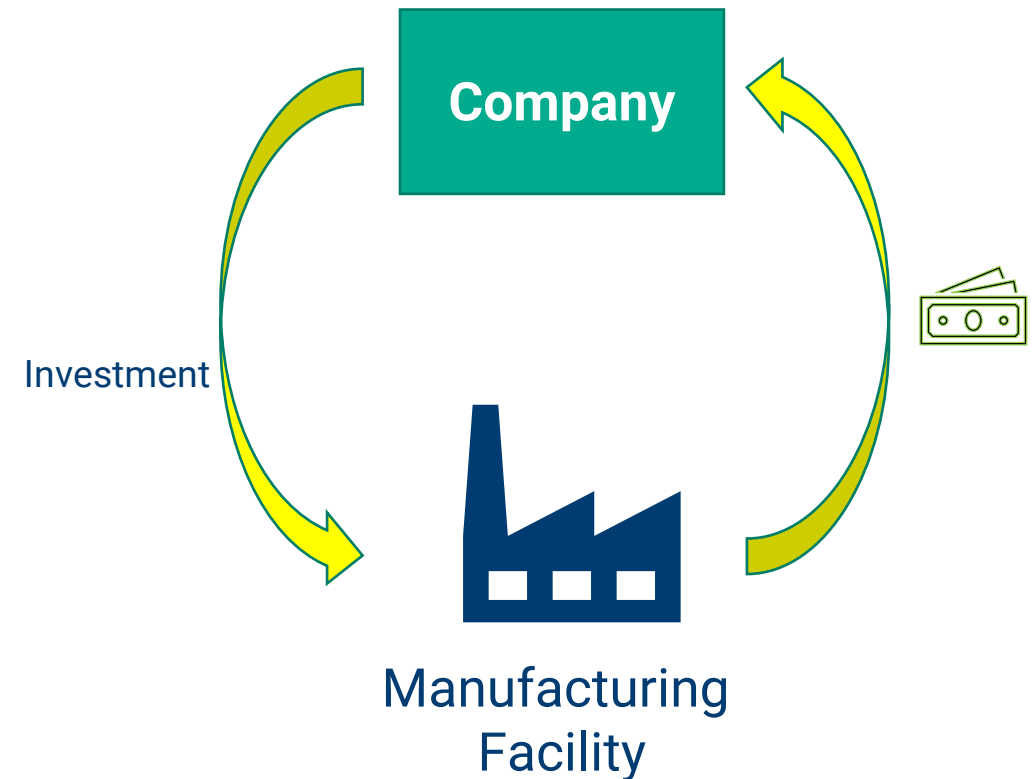
- Carried interest limitation that would have extended the required holding period from 3 years to 5 years
- Elimination or increase in the state and local tax (SALT) deduction limitation of \$10,000
- Applying the Net Investment Income (NII) Tax of 3.8% on all income from passthrough entities, regardless of whether a passive or active investment
- Delay of the bonus depreciation phase-out due to begin 1/1/23
- Higher income tax on individuals with more than \$10 million in income
- Increase in corporate income tax rate from the current 21%
- Reinstating the current expensing of R&D expenditures
- Delay Section 163(j) interest limitation changes from EBITDA to EBIT

CHIPS Act

- CHIPS (Creating Helpful Incentives to Produce Semiconductors) and Science Act of 2022
- On **August 9**, President Biden signed the CHIPS Act
- Purpose: Development of domestic manufacturing of semiconductors critical to U.S. competitiveness and national security
- **\$57 billion** to fund the development of domestic semiconductor manufacturing and the accompanying research and development
- **25%** Advanced Manufacturing Investment Credit (“AMIC”)
- **\$500 million** for an international secure communications program
- **\$200 million** for worker training
- **\$1.5 billion** for public wireless supply-chain innovation

Advanced Manufacturing Investment Credit (AMIC)

- Nonrefundable, general business tax credit
- Credit equal to 25% of a taxpayer's **qualified investment** in an **advanced manufacturing facility**
- Qualified investment is equal to the basis of any **qualified property** placed in service by the taxpayer and that is part of an advanced manufacturing facility
- Qualified property is any property that is:
 - Tangible
 - Depreciable / amortizable
 - Constructed, reconstructed, erected, or acquired
 - Integral to the operation of the advanced manufacturing facility
- Advanced manufacturing facility a facility for which the primary purpose is the manufacturing of semiconductors or semiconductor manufacturing equipment



AMIC (continued)

Elective Payment Provision

- Option to elect to be treated as having made payments directly against the tax liability in an amount equal to the credit
- Election bypasses the normal general business credit limitation (25% of a taxpayer's tax liability in excess of \$25,000)

Excessive Payment Provision

- Downside of the Elective Payment Provision: Tax of 20% on the amount of AMIC in excess of tax liability
- AMIC reduced to zero for general business credit purposes

Reduction of basis of the qualified property by the amount of the credit

Potential recapture of a certain amount of the credit in the sale of the qualified property

- Depends on the time lapsed from the placed in-service date to the date of disposition
- Recapture period phased out over 5 years
- Recapture of 100% of the credit in some cases (for example, material expansion of semiconductor manufacturing capacity in China)

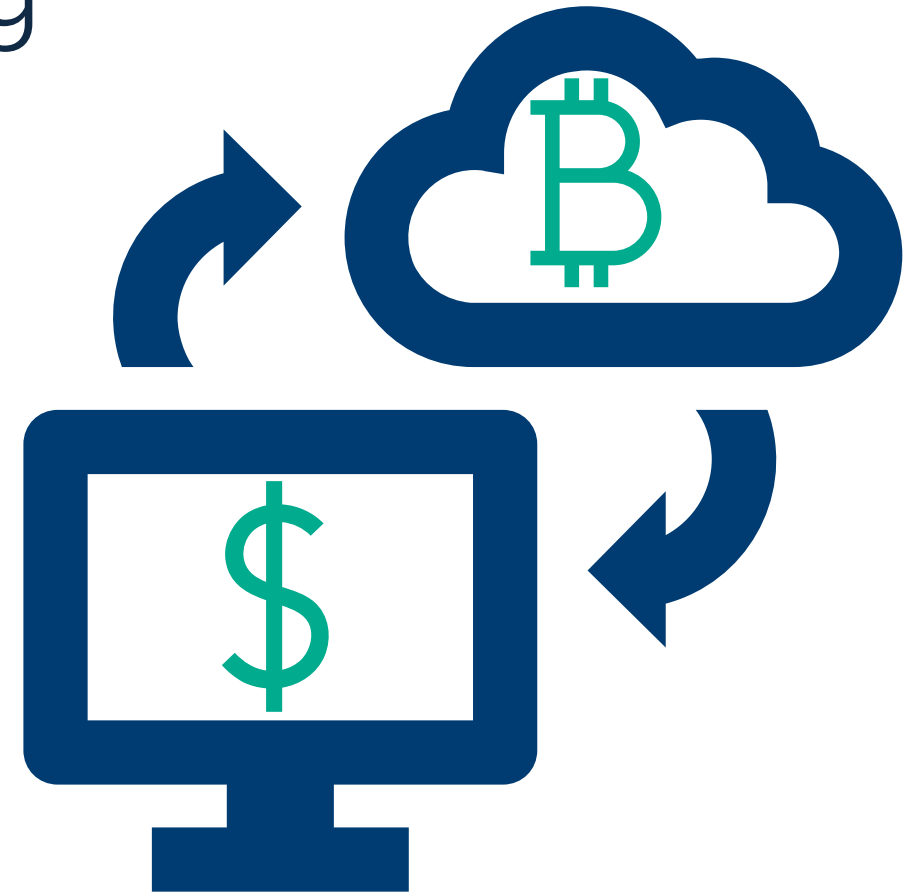
AMIC (Example)

Elective Payment		No Elective Payment	
AMIC	1,000,000	AMIC	1,000,000
Tax liability before credits	800,000	Tax liability before credits	800,000
Excess Payment	200,000		
20% Excess Payment	40,000	GBC limitation $[(800k-25k)*25\%]$	193,750
Tax liability before credits	800,000	Usable AMIC	606,250
New tax liability before credits	1,040,000	Tax liability	193,750
Less: AMIC	(1,000,000)		
Tax liability	40,000	AMIC carryforward	393,750
AMIC carryforward	-		

Cryptocurrency Reporting

Cryptocurrency Reporting

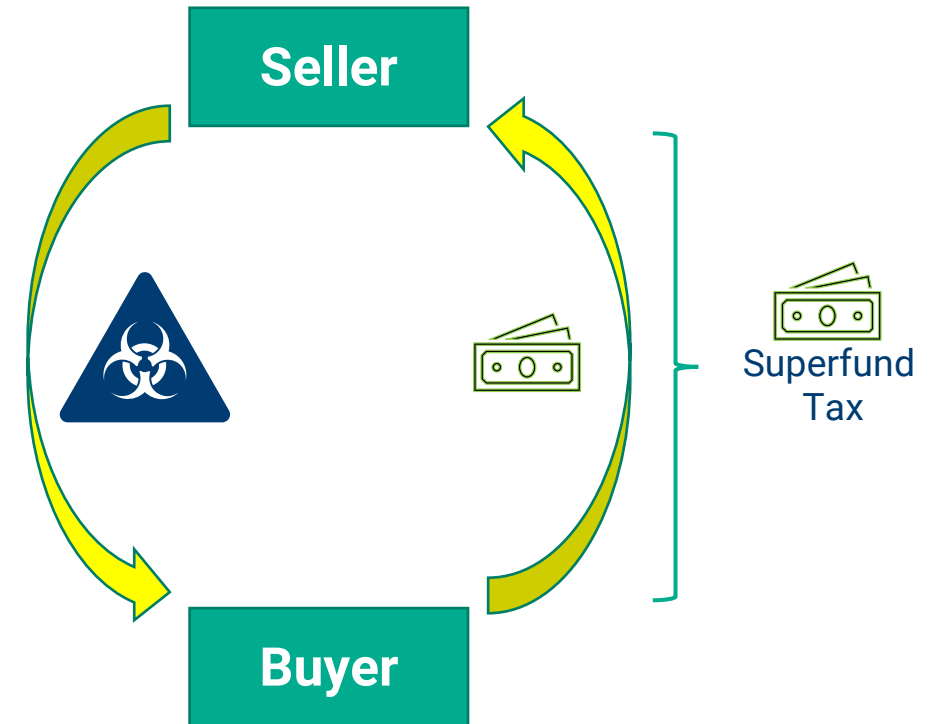
- Barclays Plc. Estimates that crypto investors are collectively paying **less than half the taxes they really owe**. The current tax gap would be about **\$50 billion per year** which is about 10% of all unpaid taxes.
- In response, the IRS has started a major crack-down. Beginning next year, brokers will **report all transactions worth at least \$10,000 to the IRS**, which was part of last year's infrastructure bill. Some crypto companies are eyeing more friendly less bureaucratic countries, like Bermuda.
- Cryptocurrency investment losses likely to be subject to the annual \$3,000 **capital loss limitation**.
- In the newly released **draft of the 2022 individual income tax return**, the IRS clarified that "receiving" cryptocurrency includes digital assets earned through "**rewards, awards or compensation**".



Superfund Tax

Superfund Tax – New for 2022

- Small chemical companies and importers may not be prepared for the return of an excise tax on chemicals they produce or import that was last in existence decades ago.
- Effective **July 1, 2022**, the Infrastructure, Investment and Jobs Act (the IIJA; PL 117-58) reinstated and modified two Superfund excise taxes:
 - A tax on taxable chemicals sold by a manufacturer, producer, or importer (Section 4661).
 - A tax on taxable substances sold or used by an importer (Section 4671).
- Affected taxpayers were required to begin tracking and making bi-monthly deposits of the taxes beginning July 1, 2022.
- The IRS has announced a relief provision that will relieve some taxpayers of penalties for not paying in the full amount of their superfund tax liability so long as certain conditions are met, including having timely filed and paid their original reported liabilities.



Bonus Depreciation

- Bonus Depreciation in a nutshell
- Bonus Depreciation vs. Section 179 expensing
- Some caveats

Bonus Depreciation in a Nutshell

- Tax Cuts and Jobs Act (TCJA) boosted deduction to **100%** in the year qualified property is placed in service through **2022**
- Bonus depreciation drops each subsequent year by **20%** until **2027**
- Placed-in-service requirement is critical

Year	% of Bonus Depreciation
2022	100%
2023	80%
2024	60%
2025	40%
2026	20%
2027	0%

Bonus Depreciation in a Nutshell



- Purchase of property with a useful life of **20 years or less**
 - Computer systems, software, certain vehicles, machinery, equipment, and office furniture
- New and used property
- Used property qualifies if it wasn't:
 - Used by the taxpayer or a predecessor before acquiring it
 - Acquired from a related party
 - Acquired as part of a tax-free transaction
- Qualified improvement property (interior improvements to nonresidential property, excluding elevators, escalators, interior structural framework, and building expansion) is eligible for bonus depreciation.
- Buildings **NOT** eligible for bonus depreciation
 - Cost segregation studies

Bonus Depreciation: Some Caveats

- Not necessarily advisable in every situation
- Tax breaks that depend on taxable income
 - Qualified business income (QBI) for pass-through businesses
 - Expiring NOLs
 - Charitable contributions
 - Credit carryforwards
- Deduction acceleration strategies

Employee Retention Credit

- Qualification and credit amounts
- Eligible wages
- Pandemic relief exploitation
- ERC audits

Employee Retention Credit

Qualification & Credit Amounts

Eligible employers can receive a credit on \$10,000 of qualifying wages for up to:

- 50% of qualifying wages paid from March 13, 2020, until December 31, 2020, for a maximum credit of \$5,000 per eligible employee, per year
- 70% of qualifying wages paid from January 1, 2021, until September 30, 2021, for a maximum credit of \$7,000 per eligible employee, per quarter

Qualifying wages include wages paid and certain health care plan costs

To qualify, eligible employers must either:

- Have business fully or partially suspended by government order due to COVID-19 (only federal, state or local orders, proclamations or decrees)
- OR-**
- In 2020 –have gross receipts in any quarter that are below 50% of the same quarter in 2019
 - In 2021 –have gross receipts in any quarter that are below 20% of the same quarter in 2019



Employee Retention Credits

Eligible Wages

In 2020:

- Employers with **less than 100** full time employees, on average, in 2019 – credit is based on wages paid, whether or not employees are performing work
- Employers with **more than 100** full time employees, on average, in 2019– credit is based only on wages paid to employees who did **NOT** work

In 2021:

- Employers with **less than 500** full time employees, on average, in 2019– credit is based on wages paid, whether or not employees are performing work
- Employers with **more than 500** full time employees, on average, in 2019– credit is based only on wages paid to employees who did **NOT** work



Employee Retention Credits

Pandemic Relief Exploitation

Government Order

- Cannot be guidance or strong recommendations. Must be mandatory
- OSHA and CDC guidance does NOT qualify
- Having employees wear masks, wash hands, temperature checks, or perhaps even social distancing does NOT qualify
- Going remote does NOT qualify
- Supply chain breakdown that is caused by foreign orders, is due to market forces alone, or supplier could have been replaced does NOT qualify
- A reduction in margins does NOT qualify
- Nominal test is REQUIRED

Affiliation is Required

- Cannot separate out business units to conduct the analysis
- International affiliates DO count

Potential liability

- Claw back of credit amount
- Penalties
- Interest – 6%/quarter
- False Claims Act penalties – Double the total from #1-3

Q&A



Thank You!

About Elliott Davis

Elliott Davis LLC is a leading business solutions firm offering a full spectrum of services in the areas of tax, comprehensive assurance, and specialized consulting services to diverse businesses, organizations, and individuals. The firm, which has been providing innovative solutions since its founding in 1920, leverages a network of nearly 800 forward-thinking professionals in major domestic markets and alliance resources across the globe.

Visit elliottdavis.com for more information.