

Treasury and IRS Release Updated Guidance on Energy Communities

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On June 7, the Treasury Department (Treasury) and the Internal Revenue Service (IRS) issued [Notice 2024-48](#). This notice includes lists of information that taxpayers may use to determine whether they meet certain requirements for energy communities under the Statistical Area Category or the Coal Closure Category, each as described in [Notice 2023-29](#). The IRS also updated the [Frequently Asked Questions for Energy Communities](#) (FAQs) on June 7.

Notice 2023-29 provides rules for determining what constitutes an energy community, organized in three categories (the Brownfield Category, Statistical Area Category, and the Coal Closure Category). We described each of these in our previous alert on [Notice 2023-29](#). Treasury and the IRS intend to include these rules in forthcoming proposed regulations concerning energy communities. The regulations will apply to taxable years ending after April 4, 2023. Until the issuance of the proposed regulations, taxpayers may rely on the rules in Notice 2023-29, as modified by [Notice 2023-45](#), [Notice 2023-47](#), [Notice 2024-30](#), and Notice 2024-48.

Notice 2024-48

Notice 2024-48 provides two new appendices that taxpayers may use to determine whether they meet certain requirements under the Statistical Area Category or the Coal Closure Category, each as described below.

- The appendices in Notice 2024-48, as well as the previous appendices published with Notices 2023-39, 2023-45, 2023-47, and 2024-30, apply only to the energy community bonus applicable to the production tax credits and investment tax credits available under Sections 45, 45Y, 48, and 48E of the Code. They may not be used for purposes of the qualifying advanced manufacturing credit under Section 48C.

Appendix 1

The Statistical Area Category includes each Metropolitan Statistical Area (MSA) and non-Metropolitan Statistical Area (non-MSA) that (1) has (or had at any time after December 31, 2009), 0.17% or greater direct employment (Fossil Fuel Employment) or 25% or greater local tax revenues (Fossil Fuel Tax Revenue) related to the extraction, processing, transport, or storage of coal, oil, or natural gas and (2) has an unemployment rate at or above the national average unemployment rate for the previous year, in each case as determined by the Secretary of the Treasury. MSAs and non-MSAs that meet the Fossil Fuel Employment test were previously published in

Appendix B to Notice 2023-39, Appendix 1 to Notice 2023-47, and Appendix 1 to Notice 2024-30.

[Appendix 1](#) to Notice 2024-48 is a list of MSAs and non-MSAs that qualify as energy communities under the Statistical Area Category because they meet the Fossil Fuel Employment threshold and have an unemployment rate at or above the national average unemployment rate for calendar year 2023. The list in Appendix 1 uses 2023 calendar year county unemployment rates released on April 19, 2024, by the Local Area Unemployment Statistics (LAUS) program of the Bureau of Labor Statistics (BLS). The energy community status of the MSAs and non-MSAs listed in Appendix 1 is applicable as of June 7, 2024, and will continue until Treasury and the IRS issue an updated list based on unemployment rates for calendar year 2024.

- The June 7 applicability date is consistent with Notice 2023-29, which indicated that the first Statistical Area Category appendix would apply for the period beginning on January 1, 2023, and ending with the subsequent annual release (which in turn would apply for the period beginning with such annual release). This approach, which is based on the somewhat arbitrary date of the publication of guidance rather than the beginning of a calendar or taxable year, has caused some confusion in the industry and raises the possibility that, for example, a facility placed in service in March 2024 (before the update occurred) could be treated differently from a facility placed in service in July 2024 (after the update occurred), a consequence that does not seem to be intended by the statute.

Appendix 2

The Coal Closure Category includes census tracts, and census tracts directly adjoining such census tracts: (1) in which a coal mine has closed after December 31, 1999, or (2) in which a coal-fired electric generating unit has been retired after December 31, 2009. Appendix C to Notice 2023-29 provided a list of census tracts that satisfied the Coal Closure Category and was subsequently updated by Appendix 3 to Notice 2023-47.

[Appendix 2](#) to Notice 2024-48 lists the newly identified census tracts with either a coal mine closure or a coal-fired electric generating unit retirement, and census tracts that directly adjoin the census tracts with coal closures, using the Mine Safety and Health Administration's (MSHA) Mine Data Retrieval System data and the U.S. Energy Information Administration's EIA Form 860 and EIA Form 860M data as of April 1, 2024, and historical extracts from the MSHA's Mine Data Retrieval System that enumerate each status change for a mine. Appendix 2 to Notice 2024-48 should be combined with Appendix C to Notice 2023-29 and Appendix 3 to Notice 2023-47 to provide the full list of census tracts satisfying the Coal Closure Category.

- New Question 10 of the "Timing and Location" FAQs addresses a scenario where MSHA or EIA revises or corrects a dataset, and the revision or correction is not yet reflected in an IRS appendix. The IRS states that mine closures and generating unit retirements added to the list of eligible census tracts in Appendix 2 to Notice 2024-48 confer eligibility to energy community projects placed in service after December 31, 2022. For example, if MSHA corrects location data for a mine closure that occurred in 2012 and adds it to their dataset between the release of Notice 2023-47 and Notice 2024-48, the census tract that had the mine closure would be an energy community from January 1, 2023, rather than after the release of Notice 2024-48. Census tracts newly added to Appendix 2 but not listed in the previously published appendices are not distinguished according to whether the additions are the result of mines closing or generating units retiring since December 31, 2022, or if they are the result of updates to location information since the publication of the previous appendices. Although not entirely clear, this FAQ can be read to suggest that if a mine in a census tract closes in 2024, the census tract would be treated as an energy community beginning in 2023.

Brownfield Category

Notice 2024-48 does not address the Brownfield Category. However, new Question 11 in the “Determining Brownfield status” FAQs addresses what sites count as “previously assessed through federal, state, territory, or federally recognized Indian tribal Brownfield resources as meeting the definition of a Brownfield site under 42 U.S.C. § 9601(39)(A),” for purposes of one of the Brownfield Category safe harbors addressed in Notice 2023-29. The IRS states that a site qualifies for the safe harbor if a federal, state, territory, or federally recognized Indian tribal program that supports the evaluation of potential contamination at sites by collecting and reviewing existing information has determined that the site qualifies as a brownfield site under the definition in 42 U.S.C. § 9601(39)(A) and is not excluded under 42 U.S.C. § 9601(39)(B). The IRS further clarifies that a previously assessed site may include a site that has planned or ongoing remediation activities, engineering or institutional controls, or long-term operations and maintenance monitoring, or a site where a determination of “no further action” has been made.

Conclusion

Taxpayers have been eagerly awaiting the updated Statistical Area Category Appendix following the release of the calendar year 2023 unemployment data in April. Notice 2024-48 should provide certainty for developers and financing parties regarding projects whose qualification depends on their locations being included in the appropriate IRS appendix on the placed-in-service date. In addition, because sponsors can secure future energy community status by beginning construction on a project during a period in which it is located in an energy community, the release of Notice 2024-48 should allow developers to begin physical work or satisfy the 5% safe harbor with respect to projects located in MSAs and non-MSAs currently included on Appendix 1 of Notice 2024-48.

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