



July 31, 2024

Ms. Aviva Aron-Dine
Acting Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Ms. Marjorie A. Rollinson
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

RE: Comments on Notice 2023-38 and Notice 2024-41 – Domestic Content Bonus Credit Guidance under Sections 45, 45Y, 48, and 48E.

Dear Ms. Aron-Dine, and Ms. Rollinson:

The American Institute of CPAs (AICPA) appreciates the efforts of the Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS) in providing interim guidance in [Notice 2023-38](#) as modified by Notice [2024-41](#), describing certain rules that Treasury and the IRS intend to include in the forthcoming proposed regulations regarding the domestic content bonus credit (DCBC) requirements and related recordkeeping and certification requirements. The Notices also describe a safe harbor regarding the classification of certain components in representative types of qualified facilities, energy projects, or energy storage technologies.

The below comments and recommendations identify and provide additional information to Treasury and the IRS regarding Notice 2023-38 (updated by Notice 2024-41) in the following areas:

1. Adjusted Percentage Rule – AICPA recommends two approaches that would provide a better calculation of the adjusted percentage:
 - A. Allow taxpayers to provide support for the domestic direct costs, both material and labor, the manufacturer incurs to produce a manufactured product in the U.S. and include those amounts in the numerator regardless of whether there is a non-domestic manufactured product component.
 - B. An alternative approach could be to assume that the direct costs that are attributable to producing a manufactured product are incurred proportionately to the components’ costs. If there are two components that cost an equal amount and only one of the two components is domestically produced, then half of the direct costs to further produce the manufactured product is included in the numerator if the manufactured product is produced in the U.S.
2. Safe Harbor for Classifications of Certain Applicable Project Components – AICPA recommends that Treasury and the IRS could provide additional safe harbors on geothermal energy property, combined heat and power system property, waste energy recovery property, and qualified biogas property projects to reduce uncertainty and minimize the use of IRS

resources. Even if Treasury and the IRS cannot define all applicable project components, it would still be immensely helpful to have Treasury and the IRS define at least some of the applicable project components.

3. Retrofitted Projects – AICPA recommends that Treasury and the IRS to clarify that section 4 of Notice 2023-38 (updated by Notice 2024-41) only applies to projects that would amount to an improvement under section¹ 263(a) and not a new distinct project.
4. Certification Requirements – AICPA recommends that the proposed regulations bless the service provider as a lockbox. Alternatively, Treasury and the IRS could accept as substantiation of the DCBC a statement by the supplier as to the breakdown between domestic and non-domestic costs signed under penalties and perjury.

SPECIFIC COMMENTS

1. Adjusted Percentage Rule

Overview

Section 3.03(2)(a) of Notice 2023-38 (updated by Notice 2024-41) states that for purposes of the adjusted percentage rule, the percentage produced by dividing the domestic manufactured products and components cost (as described in section 3.03(2)(b) of the Notice) by the total manufactured products cost (as described in section 3.03(2)(c) of the Notice) is the domestic cost percentage.

In calculating the domestic manufactured products and components cost (“numerator”) only the direct costs as defined in Treas. Reg. § 1.263A-1(e)(2)(i) that are paid or incurred by the manufacturer to produce a U.S. Manufactured Product or by a Non-U.S. Manufactured Product’s manufacturer to produce or acquire a U.S. Component are included. This means that any labor incurred by a manufacturer manufacturing a manufactured product in the U.S. is excluded if the origin of one of the manufactured product components is foreign.

Recommendations

AICPA recommends two approaches that would provide a better calculation of the adjusted percentage:

- A. Allow taxpayers to provide support for the domestic direct costs, both material and labor, the manufacturer incurs to produce a manufactured product in the U.S. and include those amounts in the numerator regardless of whether there is a non-domestic manufactured product component.

¹ Unless otherwise indicated, references to a “section” are to a section of the Internal Revenue Code of 1986, as amended (the “Code”), and references to a “Treas. Reg. §” are to the Treasury regulations promulgated under the Code.

- B. An alternative approach could be to assume that the direct costs that are attributable to producing a manufactured product are incurred proportionately to the components' costs. If there are two components that cost an equal amount and only one of the two components is domestically produced, then half of the direct costs to further produce the manufactured product is included in the numerator if the manufactured product is produced in the U.S.

Analysis

The example in the Notice 2023-38 in Table 1 - Direct Costs of Manufactured Products 1 and 2, takes an approach that does not directly reward domestic job creation and could be detrimental to taxpayers. The example (included below) indicates that \$100 of Manufactured Product 1 is domestically sourced and \$80 of Manufactured Product 2 is domestically sourced and therefore are included in the numerator.

Table 1 – Direct Costs of Manufactured Products 1 and 2

<u>Asset</u>	<u>Cost</u>
<u>Manufactured Product 1</u>	<u>\$100</u>
<u>Component 1A</u>	<u>30</u>
<u>Component 1B</u>	<u>45</u>
<u>Manufactured Product 2</u>	<u>\$200</u>
<u>Component 2A</u>	<u>30</u>
<u>Component 2B</u>	<u>50</u>
<u>Component 2C</u>	<u>100</u>

The example seems to indicate that the difference between the manufactured product component costs and the manufactured product costs are the direct costs as defined in Treas. Reg. § 1.263A-1(e)(2)(i) that are paid or incurred within the meaning of section 461 of manufacturing the manufactured products. This is illustrated in the example as the total costs of producing the manufactured products are included in the denominator regardless of the origin of the components. The failure to include the direct costs of producing the manufactured product domestically when one or more components are foreign does not incentivize domestic job creation. For example, if Manufactured Product 1 had an additional component 1C that was not domestically sourced, the taxpayer would not be able to include the direct costs paid or incurred by the manufacturer in producing Manufactured Product 1 in the numerator. See below for an example:

Table 1 – Direct Costs of Manufactured Products 1 and 2

<u>Asset</u>	<u>Cost</u>
<u>Manufactured Product 1</u>	<u>\$100</u>
<u>Component 1A</u>	<u>30</u>
<u>Component 1B</u>	<u>45</u>
<u>Component 1C</u>	<u>1</u>
<u>Manufactured Product 2</u>	<u>\$200</u>
<u>Component 2A</u>	<u>30</u>
<u>Component 2B</u>	<u>50</u>
<u>Component 2C</u>	<u>100</u>

Applicable Project A’s Domestic Manufactured Products and Components Cost consists of the cost of Component 1A (\$30), Component 1B (\$45), Component 2A (\$30), and Component 2B (\$50) for a total of \$155. Applicable Project A’s Total Manufactured Products Cost consists of the cost of Manufactured Product 1 (\$100) and Manufactured Product 2 (\$200) for a total of \$300. Applicable Project A’s Domestic Cost Percentage is 51 percent (\$155 divided by \$300). Adding one dollar of a non-domestic component to Manufactured Product 1 reduces the adjusted percentage by 9 percent.

The AICPA is not sure what policy is advanced by treating the direct costs of producing a manufactured product manufactured in the U.S. as not domestically sourced if one manufactured product component is not domestically sourced. This approach punishes taxpayers for the direct costs that further domestic production for manufactured products with a foreign component.

2. Safe Harbor for Classifications of Certain Applicable Project Components

Overview

Section 3.04 of Notice 2023-38 (updated by Notice 2024-41) provides for a safe harbor for classifications of certain applicable project components of qualified facilities, energy projects, or energy storage technologies. The Applicable Projects and Applicable Project Components described in Table 2 of Notice 2023-38 (updated by Notice 2024-41) must meet the statutory requirements for the relevant credit under section 45, section 45Y, section 48, or section 48E to be eligible for such credit and a DCBC amount.

Recommendation

AICPA recommends that Treasury and the IRS could provide additional safe harbors on geothermal energy property, combined heat and power system property, waste energy recovery property, and qualified biogas property projects to reduce uncertainty and minimize the use of IRS resources. Even if the IRS cannot define all applicable project components, it would still be immensely helpful to have Treasury and the IRS define at least some of the applicable project components. AICPA applauds Notice 2024-41 inclusion of hydropower and pumped hydropower storage facilities into the safe harbor under section 3.04 of Notice 2023-38 (updated by Notice 2024-41). AICPA recommends that updates, perhaps as a revenue procedure, could be published as needed after collaboration with the IRS, Treasury, and appropriate industry representatives.

Analysis

The AICPA appreciates that Treasury and the IRS provided safe harbors for applicable project components for solar, wind, and battery storage. This has provided much needed clarity on how taxpayers should identify and classify applicable project components as steel/iron as well as manufactured products and manufactured product components (as applicable) when determining the adjusted percentage to claim the DCBC.

3. Retrofitted Projects

Overview

Section 4.02 of Notice 2023-38 provides that an applicable project that is placed in service after December 31, 2022, and meets the 80/20 rule is eligible for a DCBC amount if the new property in the applicable project meets the domestic content requirement and the taxpayer complies with the requirements described in the Notice.

The AICPA appreciates the guidance that an unsubstantial amount of existing property will not disqualify a taxpayer from qualifying for the energy credit and the DCBC on retrofitted projects.

Recommendation

AICPA recommends to state as part of the proposed regulations that this rule applies to projects that would amount to an improvement under section 263(a) and not a new distinct project.

Analysis

As an example, if a taxpayer was adding a second solar project that qualified as a distinct energy project, next to an existing solar project installed in a previous year, the taxpayer would not be

retrofitting a facility, would judge the new facility on its own and the existing facility, and would not include the other distinct project in applying the adjusted percentage rule.

4. Certification Requirements – Section 6 – Substantiation

Overview

A taxpayer must meet the general recordkeeping requirements under section 6001 to substantiate that the domestic content requirement has been met. Section 6001 provides that every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records as the Secretary may from time to time prescribe.

Recommendations

- A. AICPA recommends that the proposed regulations expressly permit the service provider to act as an intermediary between the supplier and customer.
- B. Alternatively, Treasury and the IRS could accept as substantiation of the DCBC a statement by the supplier as to the breakdown between domestic and non-domestic costs signed under penalties and perjury.

Analysis

The approach adopted by Notice 2023-38 (updated by Notice 2024-41) pits suppliers against their customers. To qualify for the DCBC, customers will need to know the exact amount of the manufactured product and components costs and which components are domestically produced. By looking through the direct cost of the manufactured products and components, it allows customers to see sensitive supply chain information. This allows customers to know what their suppliers paid for components cost, how much direct costs the supplier incurs to produce or acquire the components, and the profit margin on the manufactured product. As you can imagine, suppliers are not going to willingly give up that information. Otherwise, customers may have enough data to bypass their suppliers and acquire the components directly to cut out the supplier.

This has caused significant pressure on taxpayers who need the DCBC to make the economics of an energy project viable. Service firms have begun acting as a lockbox so to speak where the service firm verifies the inputs to the adjusted percentage rule without directly disclosing the inputs to the customers. To allow the DCBC to work as intended and spur the creation of good paying domestic jobs, it is imperative to provide a solution to the customer/supplier dilemma. The benefit of this approach is that the service provider could furnish the substantiating documentation to the IRS upon information disclosure request during an IRS exam without providing that information to the customer.

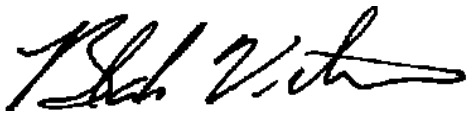
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We appreciate your consideration of our recommendations and welcome the opportunity to further discuss our comments. If you have any questions, please contact Christian Wood, AICPA ESG Tax Task Force Notice Working Group Chair, at (703) 336-6400, or Christian.Wood@rsmus.com, Ning Yim, Senior Manager - AICPA Tax Policy & Advocacy, at (713) 824-4245, or Ning.Yim@aicpa-cima.com; or me at (830) 372-9692 or bvickers@alamo-group.com.

Sincerely,



Blake Vickers, CPA, CGMA
Chair, AICPA Tax Executive Committee

cc: The Honorable Daniel I. Werfel, Commissioner, Internal Revenue Service
Mr. Krishna Vallabhaneni, Tax Legislative Counsel, Department of the Treasury
Ms. Holly Porter, Associate Chief Counsel (Passthroughs & Special Industries), Internal Revenue Service
Mr. Jeremy Milton, Senior Attorney, Office of the Associate Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service
Mr. James Holmes, Attorney, Office of the Associate Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service
Ms. Lani M. Sinfield, Attorney, Office of the Associate Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service