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INTEGRATING ELECTIVE PAY TAX CREDITS INTO GOVERNMENT PROCUREMENT AND RFPS

12/10/2024

AGENDA



SPEAKERS



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SPEAKERS



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IRA ELECTIVE PAY LIGHTHOUSE COHORT

A collaborative effort to demonstrate the viability and utilization of IRA elective pay as a pathway for local clean energy and electrification, supporting 60+ cities with “lighthouse projects” using elective pay. Lighthouse partners give targeted technical assistance across a cohort of early-adopter local governments and eligible entities.



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Electrification
Coalition



SOUTHEAST SUSTAINABILITY
DIRECTORS NETWORK



urban sustainability
directors network



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A BRIEF REVIEW OF ELECTIVE PAY

ELECTIVE PAY: A NEW PATHWAY FOR FUNDING PROJECTS

Previously, tax-exempt entities could not directly claim tax credits.

However, elective pay, also known as "**direct pay**," allows tax-exempt entities to receive certain clean energy and climate-related tax credits as **direct cash refunds from the IRS**.

Entities eligible for elective pay include:



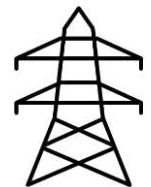
State, local, and tribal governments



Government instrumentalities



Any Section 501 tax-exempt entity (501c nonprofits, religious organizations, social clubs)



Public power utilities and rural electric cooperatives



TAX CREDITS & PROJECTS MOST COMMONLY USED BY LOCAL GOVERNMENTS

Example Projects:

EV Infrastructure in
non-urban or low-
income areas



Section 30C
Alternative Fuel Vehicle
Refueling Property
Credit

Section 45
Production Tax Credit
(PTC)



Example Projects:

- Microgrid/ Community Solar
- Storage deployed at distribution level
- Port electrification

Example Projects:

EV Fleet Transition – Fund
municipal vehicles, school
buses, public transit



Section 45W
Credit for Qualified
Commercial Clean
Vehicles

Section 48
Investment Tax Credit
(ITC)



Example Projects:

- Rooftop Solar or Wind on gov. buildings or affordable housing
- Geothermal HVAC



INVESTMENT TAX CREDIT (ITC) AND PRODUCTION TAX CREDIT (PTC)

Investment Tax Credit (ITC)

- Based on a percentage of eligible cost for a project
- Claimed and received once a project is placed in service
- As of 2023, equal to **30% of the total eligible costs** of a project **if prevailing wage and apprenticeship requirements are met.**

Production Tax Credit (PTC)

- Based on the amount of energy produced and sold by a system in a year
- Can be claimed every year for the first ten years of a system's life
- As of 2023, equal to 2.75 cents per kilowatt-hour (kWh) **if prevailing wage and apprenticeship requirements are met.**

Beginning in 2025 the Clean Electricity PTC and the Clean Electricity ITC will replace the traditional PTC / ITC. These tax credits will be **tech-neutral** and apply to all generation facilities with a greenhouse gas emissions rate of zero.

FOUR BONUS INCENTIVES AND DISCOUNTS

Domestic Content:

Can be a (+) (add 10%) or a (-) ('haircut' starts in 2024)

Prevailing Wage and Apprenticeship (PWA):
Only a (-); must meet to keep 30%

Energy Communities:

(+) Adds 10%

Low Income Communities Bonus (LICB):

(+) Can add 10-20% depending on who benefits and where it's located

Three questions to ask about each incentive:

1. Does it apply to my project?
2. Does it add or subtract?
3. How do I comply?
 - Does it require a separate application?
 - Are there exemptions or waivers?



QUALIFIED COMMERCIAL CLEAN VEHICLE CREDIT (45W)



Applies to electric, fuel cell, and qualifying hybrid vehicles **owned by** businesses or elective pay eligible entities

Amount depends on size of vehicle:

- 15% of cost up to \$7,000 for partially diesel or gasoline vehicles under 14,000 lbs;
- 30% of cost up to \$7,500 for fully electric or fuel cell vehicles under 14,000 lbs;
- 30% of cost to \$40,000 for larger vehicles over 14,000 lbs

Vehicle eligibility is **less restrictive** than the individual clean vehicle credit. There is a [list of eligible manufacturers](#) to determine credit eligibility.

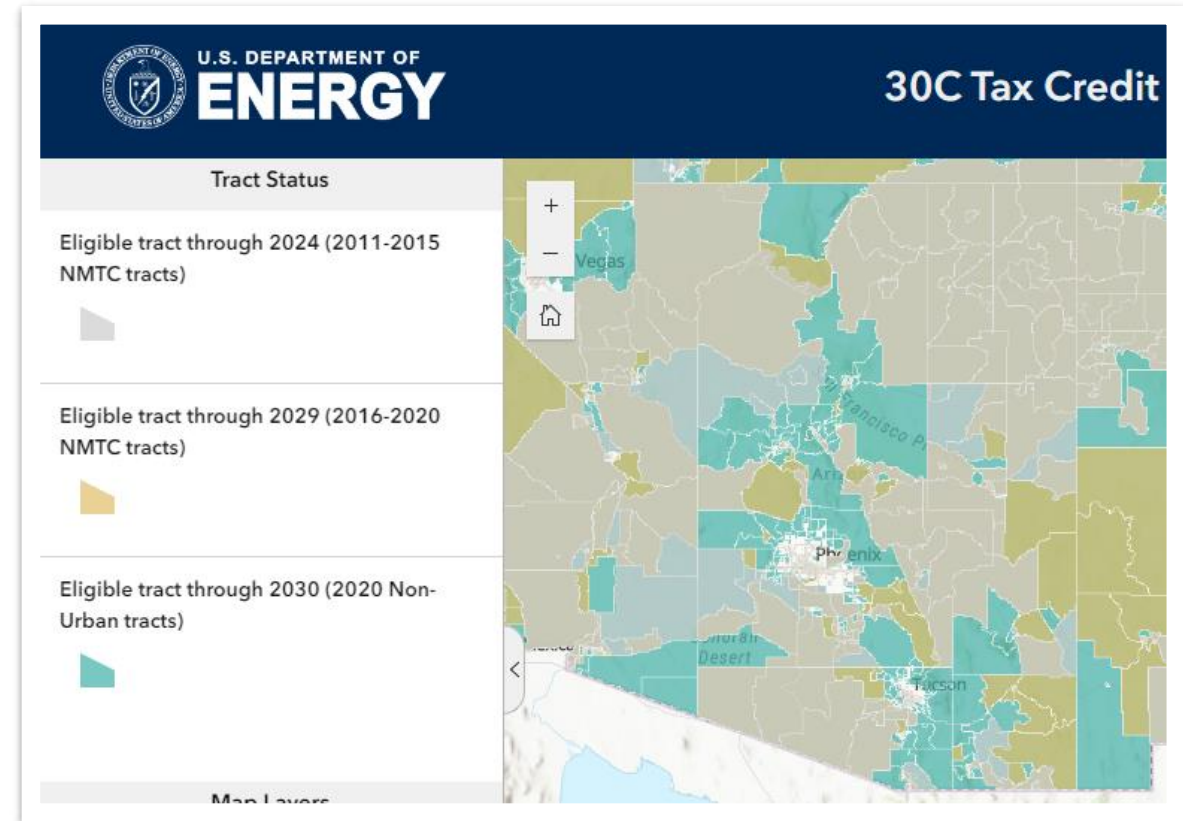
ALTERNATIVE FUEL INFRASTRUCTURE CREDIT (30C)

Applies to electric charging or fuel cell refueling infrastructure built in "non-urban" OR low-income census tracts under 45D(e):

- Where the poverty rate is at least 20%; or
- Metropolitan and non-metropolitan area census tract where the median family income is less than 80% of the state median family income level.

Equal to **30% of eligible costs per charging port** that meets **prevailing wage and apprenticeship** requirements, up to \$100,000 per charger.

If PWA requirements are not met, the percentage of the credit **is reduced to 6%.**



Use the [30C Tax Credit Eligibility Locator](#) to determine eligibility.

CLAIMING ELECTIVE PAY

To claim and receive a tax credit through elective pay, entities must **pre-register their projects** and **file a tax return with the IRS.**

Tax credits are claimed on projects **completed in the previous fiscal year.**

Returns are due **4.5 months** after the end of the fiscal year.

Pre-filing registration

- Each project must be registered and approved by the IRS and receive a unique ID number

Filing

- Entities fill out all applicable tax forms along with supporting documentation and ID numbers

Tax funds received

- Entities receive the tax refunds as a check or a direct deposit.

ELECTIVE PAY PRESENTS CHALLENGES FOR GOVERNMENT PROCUREMENT

1. Each tax credit has **specific eligibility rules** that must be followed.
2. Elective pay refunds are received **after a project is completed**.
3. You must **own all or part** of the asset to receive a tax credit through elective pay recapture period (at least 5 years).
4. Some tax credits require **large amounts of documentation** that governments may not usually have on hand.
5. Filing requires **significant administrative capacity** and **internal coordination** between legal, financial, and programmatic offices.

TAX CREDITS ARE A NEW FRONTIER FOR GOVERNMENT DECISION-MAKERS

Many local governments have been working towards claiming tax credits on projects they placed in service in 2023 or 2024. These projects were largely not designed or undertaken with elective pay in mind. The elective pay program, however, is currently slated to be in place until 2032.

How do government entities actively integrate elective pay into procurement processes to ensure compliance and maximize benefits?



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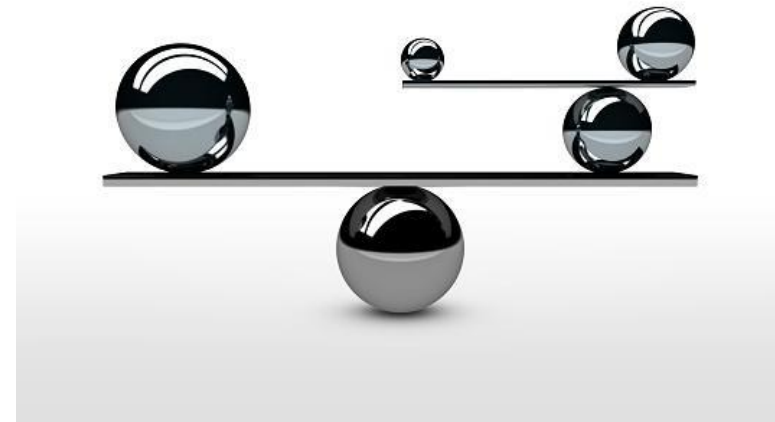


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GENERAL GOVERNMENT PROCUREMENT BEST PRACTICES

THE BALANCING ACT OF GOVERNMENT PROCUREMENT

- Compliance with laws and policies
- Competition / Price
- Improved Efficiency
- Risk Management
- Transparency
- Supplier Access and Fairness
- Opportunity



PROCUREMENT BEST PRACTICES IN GOVERNMENT

State and local procurement policies often mimic Federal Procurement Policies (2CFR200)

General best practices include:

- Procurement authority
- Make sure policies are documented
- Collaborate around contract risk management
- Focus on building a relationship





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A man in a black jacket and cap is plugging a charging cable into a yellow school bus at an electric charging station. Several other yellow school buses are parked in the background, and a row of white charging stations is visible on the right. The scene is outdoors on a paved lot with yellow bollards and a chain-link fence in the distance.

COMBINING ELECTIVE PAY WITH PROCUREMENT BEST PRACTICES

PROCUREMENT: WHY IS IT DIFFERENT?



Similar:

- [General Government best practices in procurement](#)
- [2CFR200 subpart D](#) and competitive bidding

Different:

- Governments are now [income tax filers](#)
- This is not a grant
- Reporting position responsibilities and internal controls for any additional add-on tracking

INTERNAL CONTROLS ARE EXTRA IMPORTANT IN ELECTIVE PAY

Why?

Added Audit and Contract Responsibilities

What?

Written Policies and Procedures

How?

Coordinated Efforts Between Major Partners, Added Procedures

Who?

Solidifying Relationships Across Finance, Sustainability, Legal and Procurement



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STRATEGIES FOR ELECTIVE PAY INTEGRATION INTO CONTRACTS AND RFPS

POTENTIAL PENALTIES FROM AUDITS

Know Your Risk:

- Do you understand the risks associated with the tax code?
 - Recapture, excess payments, penalties, reductions in direct pay from tax-exempt bonds
- Safe harbor provisions
- How do you mitigate this risk?
 - Tax Liability Insurance; appropriate representations and indemnities and documentation of bonus credits

Takeaway:

Elective pay is a huge opportunity to advance clean energy. IRS rules are complex. Be sure to plan ahead and get contractor help to document your project appropriately to establish compliance!

IRC 6417:

6) Excessive Payment

(A) In general

In the case of any amount treated as payment which is made by the applicable entity under subsection (a), or the amount of the payment made pursuant to subsection (c), which the Secretary determines constitute an excessive payment, the tax imposed on such entity by chapter 1 (regardless of whether such entity would otherwise be subject to tax under such chapter) for the taxable year in which such determination is made shall be increased by an amount equal to the sum of—

- (i) the amount of such excessive payment, plus
- (ii) an amount equal to 20 percent of such excessive payment.**

NECESSARY DOCUMENTATION:

Generally Applicable Documents Substantiating:

Costs

- Invoices - clearly break out individual eligible costs per project
 - Do not allow block billing - require itemized costs for each project
- Purchase Agreements
- Records of Expenditures (receipts, bank statements)

Ownership

- Generally the same as documents that substantiate costs
- For EVs, may include titles and registration documents

Energy Communities

- Location documents and [DOE Map](#) data

[Low Income Communities Bonus](#) (“LICB”)

- LICB Award documentation from DOE

PREVAILING WAGE AND APPRENTICESHIP RECAP: WHAT MUST BE SUBSTANTIATED?

- **Prevailing Wage**

- All Laborers and Mechanics working on the project are paid at a rate at least equal to the prevailing wage in the geographic area in which the project is located for the work they perform.

- **Apprenticeship**

- At least 15% of all hours of construction, alteration, or repair on the project must be worked by apprentices from certified apprenticeship programs.
- Each Contractor and Subcontractor employing 4 or more laborers and/or mechanics to perform construction, alteration, or repair work on the project must employ at least one apprentice to perform a portion of such construction, alteration, or repair work.
- WAIVED IF:
 - Fewer than 4 persons are employed to perform construction, alteration, or repair on the property.
 - There are no apprentices available from certified apprenticeship programs.

NECESSARY DOCUMENTATION (PREVAILING WAGE AND APPRENTICESHIP)

Generally Applicable Documents Substantiating:

Prevailing Wage and Apprenticeship (PWA)

- SAM.gov printout of wage determination (include date of the wage determination)
- Records of the facility's location to demonstrate that the wage determination is geographically appropriate
- Payroll records from contractors/subcontractors showing employee names, classifications, hours worked, and wages paid for work on the project
- Business records (e.g. memos to file) showing periodic inspection of contractor/subcontractor payroll records (for longer duration projects)
- Records of any correction payments made to laborers and mechanics by contractor/subcontractors
- Communication (e.g., E-mail) with apprenticeship programs (if no apprentices available)

DOMESTIC CONTENT RECAP: WHAT MUST BE SUBSTANTIATED?

TO COMPLY:

- Part 1: Iron and Steel: 100% must be produced in the U.S. - Structural in function
- Part 2: Manufactured Product (applicable share):
 - 40% total cost of all “manufactured products” produced in the U.S.
 - Increases over 3 years to 55%
 - Offshore wind - starts at 20% instead of 40%, but still increases over time

REQUIREMENT WAIVED IF:

- Inclusion of domestic content increases overall construction costs by 25%
- Provisions or products needed to meet the standard are not produced in the U.S. in sufficient quantities or quality

NECESSARY DOCUMENTATION (DOMESTIC CONTENT)

Generally Applicable Documents Substantiating:

Domestic Content

- Attestations from vendors regarding their products' compliance
- Waivers/Exemptions
 - Design documents showing output less than 1 megawatt
 - Generating property documents showing nameplate capacities
 - Cost comparisons showing use of US iron, steel, or manufactured products would increase construction costs by over 25%
 - Attestations by industry experts showing that US iron, steel, or manufactured products are not available in sufficient quantity or quality
- Involve City legal and tax counsel early to update procurement forms, and other contracts to incorporate appropriate representations and indemnities and bonus credit compliance information (e.g., domestic content); properly value your tax credit basis.

BEST PRACTICES

- **Documenting Project Cost**

- Include requirement to breakdown project cost and other [documentation requirements](#) in contractor service agreement and include necessary documentation.

- **Include Ability to Meet Bonus Requirements in RFP / RFQ**

- Language indicating that the project is intended to qualify for the desired credits and any bonus adders.
- Request representations that the Contractor or Vendor will provide necessary documentation of compliance with PWA/DC requirements.

- **Include Contractor / Vendor Liability for Failure to Meet Requirements**

- In additions to the representations in the RFP/RFQ, the contract should include language imposing liability on the Contractor for failure to meet any applicable credit or bonus requirements

Q+A





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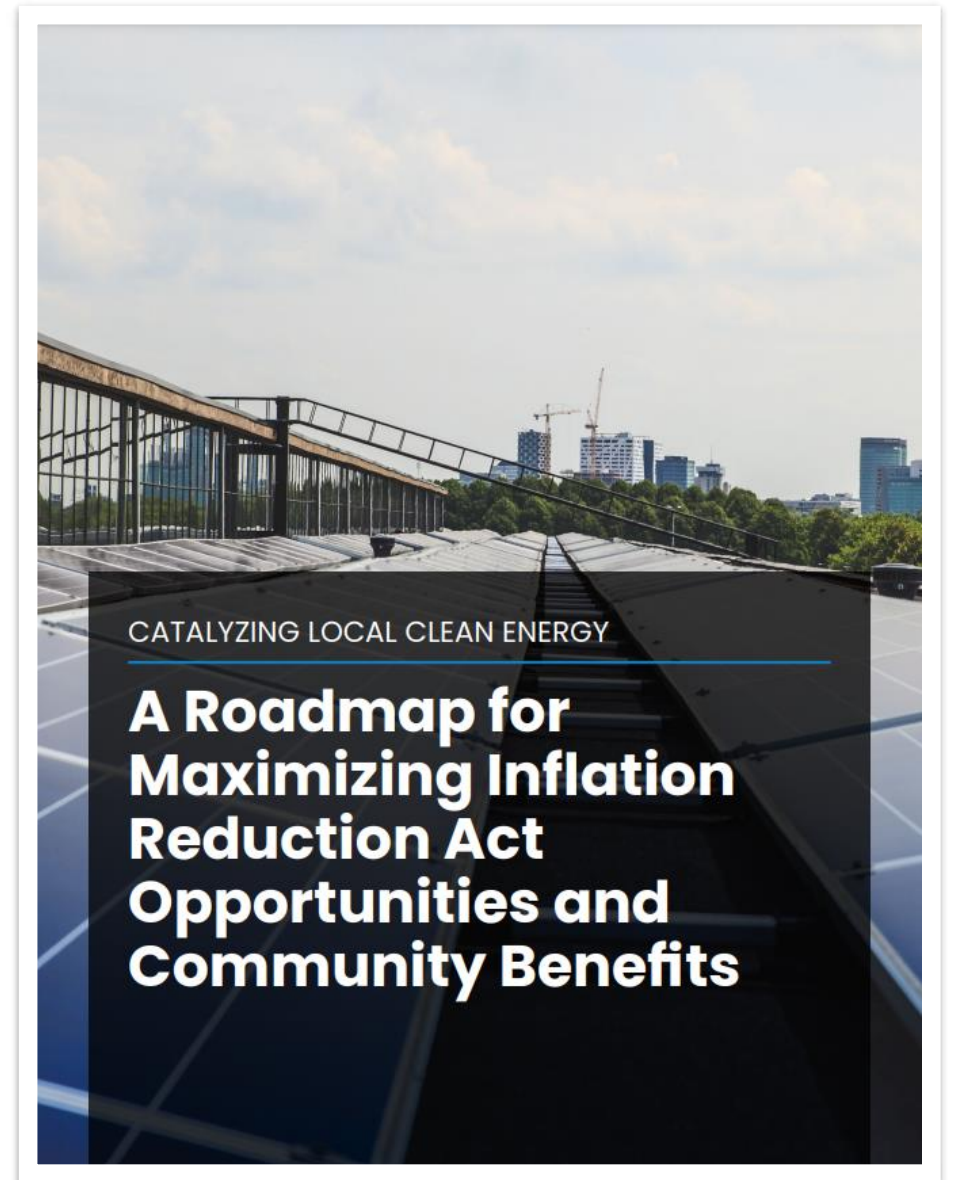
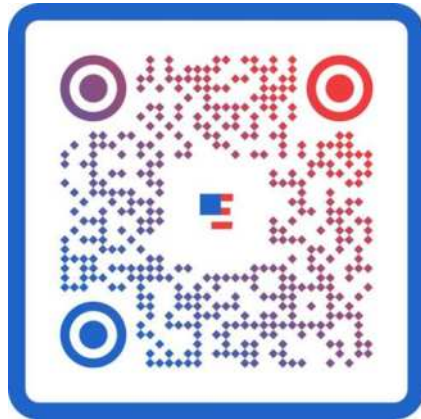
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RESOURCES

WRI IRA ROADMAP

- Fundamentals of IRA tax credits
- Key takeaways specifically for local governments
- Solar finance case studies:
 - 100 kW on affordable housing in Milwaukee, WI
 - 2-MW on a convention center in Phoenix, AZ
 - 5-MW project for a municipal utility in Charlotte, NC
- Roles and strategies for local governments



PARTNERS WHO CAN HELP

IRS has put out resources to help folks understand the [registration process](#), including an [overview for local governments](#), [FAQs](#) and a [pre-filing registration user guide](#).

World Resources Institute coordinates [trainings and technical assistance](#) on elective pay and IRA implementation for local governments.

Lawyers for Good Government (L4GG) provides extensive information, fact sheets, and worksheets on their [Elective Pay and IRA Tax Incentives Resources](#) page that can help you plan and prepare for elective pay filing. L4GG also provides an ability to [ask a legal question](#) of its large expert attorney network and publishes all previous answers. Use L4GG's [Clean Energy Tax Navigator](#).

The Government Finance Officers Association (GFOA) aggregates information on finance-oriented questions including portal submissions; timing of IRS, financial statement and audit processes; financial statement recognition of credits, and strategic financial planning. GFOA has [best practices](#) and [IRA implementation resources](#) for states, localities and instrumentalities that you may find helpful in planning.

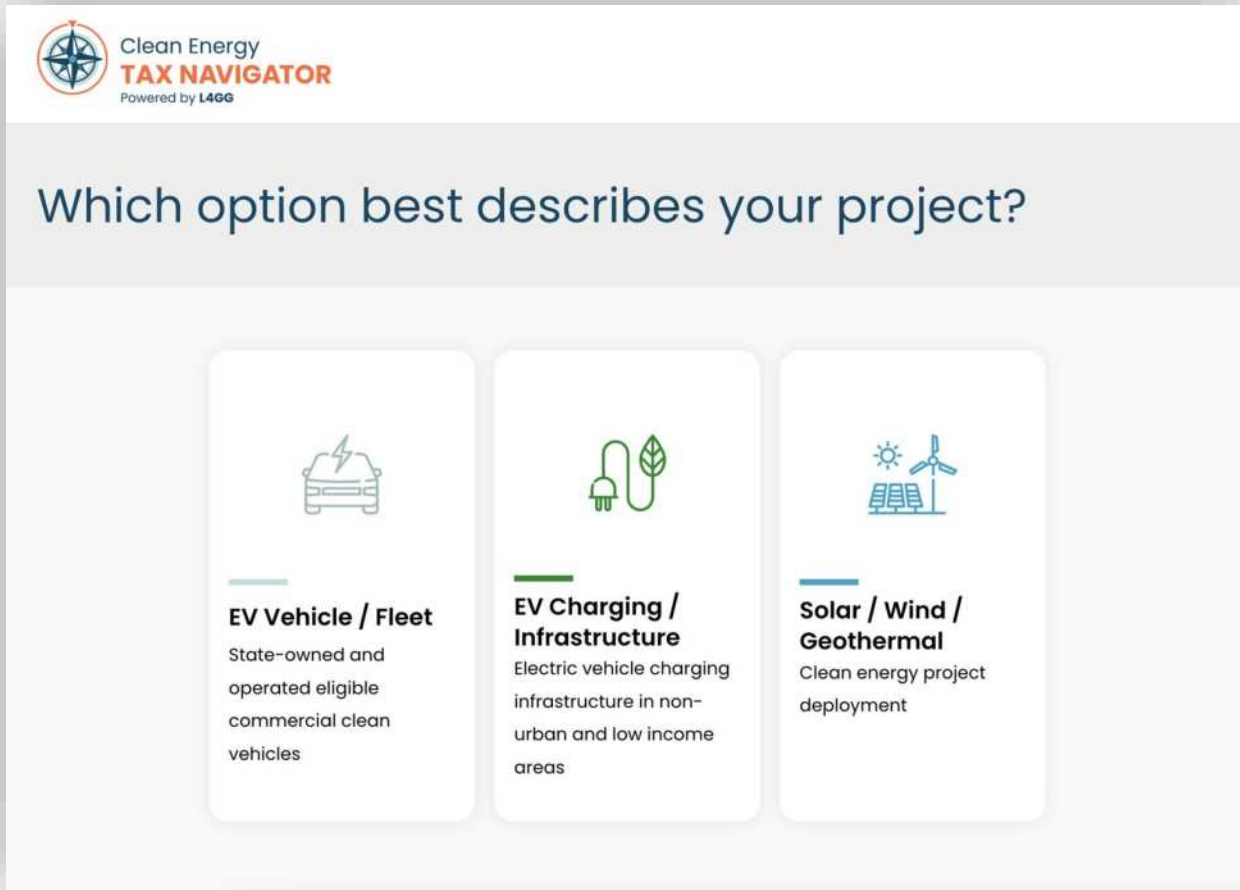
Electrification Coalition provides [technical assistance and resources](#) for vehicle elective pay credits.

ANNOTATED TAX FORMS

These annotated tax forms can explain how to actually fill out the tax forms:

- [Form 3468](#) - **Section 48/Investment Tax Credit (ITC)** - from GFOA & L4GG
- [Form 8936](#) & [Schedule A](#) - **Section 45W/EV purchases** - from Electrification Coalition
- [Form 8911 & Worksheet 1](#) - **Section 30C/EV infrastructure** - from Electrification Coalition
- [Form 3800](#) - **General Business Income** - from GFOA & L4GG
- [Form 990-T](#) - **Exempt Org. Business Tax Return** - from GFOA & L4GG

L4GG's CLEAN ENERGY TAX NAVIGATOR



An easy to use framework and interactive form that walks through the process of determining eligibility for these tax credits, offering technical resources and, in certain cases, direct pro bono services to level the playing field for communities that cannot otherwise afford a tax advisor or legal counsel.

Link: [Clean Energy Tax Navigator](#)



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THANK YOU!

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