

Airport Electrification – Latest IRS Guidance

Legal Alert

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The Department of the Treasury and Internal Revenue Service continue to issue guidance regarding the Inflation Reduction Act of 2022 (IRA), which modified and extended the clean energy investment tax credit (ITC) under Section 48 of the Internal Revenue Code to provide incentives for certain investments in renewable energy projects. This ongoing program impacts airports as they strive to electrify more of their operations and to power that electricity through renewable sources. The latest installment in this regulatory program was a notice of proposed rulemaking to amend the existing ITC regulations which was issued by Treasury on November 17, 2023 (the NPRM). The existing regulations have not been revised since the 1980s.

For airports, one of the most important proposals in the NPRM involves microgrids. The NPRM would allow the costs of the electrical system of a microgrid to be eligible for the ITC even if the grid is not connected to a larger electrical grid.

Another important issue for airports concerns “dual use” equipment. Under the current regulations, energy property may be eligible for the ITC even though 25% of the power derived with respect to that property comes from “nonqualifying auxiliary equipment” rather than a “qualified” source during an annual measuring period. The NPRM would require an energy property to derive a minimum of 50% of energy from a qualifying source during the measuring period to be ITC-eligible; if less than 50% of the energy used is from qualifying sources, the property is not eligible for the ITC. The benefit of adopting this rule is that it would eliminate the “all or nothing” dynamic of the current scheme. With regard to energy storage facilities, the IRA expanded the ITC so that dual use property limitations no longer preclude a standalone energy storage facility from claiming the ITC. The IRA also ended restrictions or prohibitions on grid-charging an energy storage facility integrated into an ITC-eligible solar or wind generation facility (with the ITC being claimed on the energy storage facility).

This is complicated and technical stuff, but it is important for any airport figuring out how it will structure and finance its new energy facilities – including potentially microgrids. Thus it is important for the airport to engage the proper professional assistance that can guide it through the process and to do so as early in the process as possible. This will maximize the options for the airport in structuring the ownership, financing and delivery method of the proposed energy project.

ATTORNEYS MENTIONED

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