Investment Tax Credit/Section 48: Internal Revenue Service Proposed Regulations Defining Energy Property

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The Internal Revenue Service ("IRS") has issued proposed regulations addressing certain issues arising under Section 48 of the Investment Tax Credit ("ITC") for companies planning clean energy projects.

The stated intent of the proposed regulations is to update the type of energy projects eligible for the Section 48 ITC.

The regulations have not been updated since the mid-1980's.

The rationale for the update is:

- Changes in the energy industry
- Technological advances
- Addressing new provisions established by the Inflation Reduction Act of 2022 ("IRA")
- Provide clarity regarding eligibility of components of certain projects

Key issues addressed in the proposed regulations include:

- Eligibility of standalone battery storage
- Addressing costs of interconnection-related property for lower-output clean energy installations (such as the cost of upgrades to local transmission/distribution networks connecting to clean energy)
- Eligibility of power conditioning/transfer equipment (such as certain power conditioning equipment located in onshore substations or subsea export cables used in offshore wind projects)
- Various technical definitions/rules
- Prevailing wage and apprenticeship requirements

Examples of definitions provided included:

- Solar process heat
- Fiber-optic solar property
- Combined heat and power system property
- Qualified fuel cell property
- Qualified microturbine property

Technologies that were added to the ITC as energy property pursuant to the provisions of the IRA are addressed, such as:

- Electrochromic glass
- Energy storage technology

- Microgrid controllers
- Biogas property

A link to the proposed regulations can be found here.