MEMORANDUM

GOVERNMENT AFFAIRS
WASHINGTON, DC

To: NECA Chapters

CC: Marco Giamberardino, VP, Government and Public Affairs

RE: NECA Review of Budget Reconciliation: The Inflation Reduction Act of 2022

Executive Summary:

On July 27, Senator Manchin and Senator Schumer announced a new agreement on Budget Reconciliation package that will include addressing inflation, healthcare, climate/energy policy, and tax issues. This new agreement came to a surprise because of Senator Manchin's previous statements less than a month ago that he could not support a package outside of the healthcare provisions.

TAX SUMMARY:

Summary:

The current statutory corporate tax rate is 21%. However, some 200 or more large corporations use tax loopholes to avoid paying that rate and actually pay below 15%. The corporate alternative minimum tax (AMT) proposal would impose a 15 percent minimum tax on adjusted financial statement income for corporations with profits in excess of $1 billion. Corporations would generally be eligible to claim net operating losses and tax credits against the AMT and would be eligible to claim a tax credit against the regular corporate tax for AMT paid in prior years, to the extent the regular tax liability in any year exceeds 15 percent of the corporation's adjusted financial statement income. This provision would be effective for taxable years beginning after December 31, 2022.

Details:

Entities with new taxes: Any corporation (other than an S Corporation, regulated investment company, or a real estate investment trust) that meets the Statement Income Test is subject to the new 'tentative minimum tax'. Specially states, those not specifically stated the tentative minimum tax is 0%.

Statement Income Test: The average annual adjusted financial statement income for a 3-taxable-year period that exceed $1 billion

Exemptions: (1) If the corporation had a change in ownership. (2) has a specified number of consecutive taxable years, including the most recent year, in which the corporation does not meet the average annual adjusted financial statement income test as determined by the Secretary. (3) the Secretary determines that it would not be appropriate to continue to treat the corporation as an applicable corporation.

Existence of Corporation: If the corporation was in existence for less than 3 taxable years it will suffice to only account for those they do have. (2) if the corporation was less than 12 months than it shall be multiple to average out to 12 months.

Treatment of Dividends: adjusted financial statement income of the taxpayer with respect to such other corporation shall be determined by only taking into account the dividends received from such other corporation (reduced to the extent provided by the Secretary in regulations or other guidance) and other amounts which are includible in gross income or deductible as a loss.

Treatment of Partnerships: adjusted financial statement income of a partnership shall be the partnership's net income or loss set forth on such partnership's applicable financial statement.

Negative Adjustments: adjustment determined under this paragraph for the succeeding taxable year (determined with14
out regard to this paragraph) shall be reduced by an amount equal to the negative adjustment for such taxable year.

Mortgage Service income: Adjusted financial statement income shall be adjusted so as not to include any item of income in connection with a mortgage servicing contract any earlier than when such income is included in gross income.

Carried Interest:

One or more applicable partnership interests are held by a taxpayer at any time during the taxable year, the taxpayer's net applicable partnership gain for such taxable year shall be treated as short-term capital gain.

The taxpayer's net long-term capital gain is determined by only taking into account gains and losses with respect to one or more applicable partnership interests. It additionally includible in the gross income of the taxpayer with respect to one or more such applicable partnership interests

Holding period exception: (1) Shall be determined without regard to any amount which is realized after the date that is 5 years after the latest in which the taxpayer acquired all the applicable interest to the amount realized. (2) in which the partnership interest acquired sustainably all of the assets held. (3) the partnership owns, directly or indirectly interests in one or more other partnerships.

Exemptions to carried interest: If the taxpayer adjusted gross income is less than $400,000 and income with carried interest to real property trade or business.

Exemptions: If the income or gain to any asset held in a portfolio investment on behalf of third part investors.

IRS ENFORCEMENT:

Summary:

This provision appropriates 10-year funding for the IRS as follows:
- $3,181,500,000 for taxpayer services,
- $45,637,400,000 for enforcement,
- $25,326,400,000 for operations support, and
- $4,750,700,000 for business systems modernization.

These appropriated funds are to remain available until September 30, 2031, and no use of the funds is intended to increase taxes on any taxpayer with taxable income below $400,000. The provision also provides $15,000,000 of funds for the IRS to prepare and deliver a report to Congress on the cost of developing and running a free direct e-file tax return system. The provision permits the Secretary to exercise greater flexibility with respect to personnel, including certain "direct hire" authority.

Excise Tax on Stock Buybacks (Stock Repurchases):

The measure would impose a 1% excise tax of the fair market value of any stock repurchase in a tax year by a publicly traded US corporation, including any subsidiary that has 50% or more of its stock owned by a corporation. Firms purchase their own shares as an alternative way to distribute income to shareholders, with a lower tax rate compared to divided distributions. The tax would also apply to stock repurchases of certain foreign corporations by subsidiaries and "expatriated entities."

The tax would take effect in 2023.

It would exempt stock repurchases that are:

- Less than $1 million.
- Contributed to an employer-sponsored retirement plan, stock ownership plan, or similar plan.
- Part of a reorganization with no gain or loss recognized.
- Made by a regulated investment company or a real estate investment trust.
- Treated as a dividend.

JCT estimated a similar provision in the House-passed bill would generate $124.2 billion in revenue over 10 years.

CLEAN ENERGY TAX PROVISIONS:

CLEAN ELECTRICITY PTC CREDIT:

Background:

The Inflation Reduction Act of 2022 reauthorizes and expands two existing tax credits the Sec. 45 and Sec. 48 or otherwise now as the Production Tax Credit (PTC) and the Investment Tax Credit (ITC). These are the two main sources of federal assistance that stimulated clean energy.

The renewable electricity production tax credit (PTC) is a per kilowatt-hour (kWh) federal tax credit included under Section 45 of the U.S. tax code for electricity generated by qualified renewable energy resources. The PTC provides a corporate tax credit of 1.3 cents/kWh for electricity generated from landfill gas (LFG), open-loop biomass, municipal solid waste resources, qualified hydroelectric, and marine and hydrokinetic (150 kW or larger). Electricity from wind, closed-loop biomass and geothermal resources receive as much as 2.5 cents/kWh. The PTC is phased down (40%) for wind facilities and expires for all renewable energy technologies commencing construction after December 31, 2021.

The Investment Tax Credit is a US federal income tax credit for certain types of renewable energy projects including solar, geothermal and fuel cell energy (IRC § 48). Under the ITC, owners of qualifying energy projects can claim a tax credit up to 30% of their project's capital costs. The ITC vests ratably over a five-year period. If a project is sold in that five-year period, the unvested portion of the ITC is subject to recapture.

Under current law, the amount of the ITC varies depending on the type of technology used in the project to generate energy and when that project begins construction. Namely, a taxpayer can claim:

- 26% of the ITC if they start construction on their eligible solar projects during 2021 and 2022.
- 22% of the ITC if they start construction on their eligible solar projects during 2023.
- 10% of the ITC if they start construction on their eligible solar projects after December 31, 2023.

Extends the PTC credit in which construction began and when it was placed in service to January 1, 2025 and reduces the base credit amount from 1.5 cents multiped by the kilowatt hours to 0.3 cents.

This subtitle structures various new and existing renewable energy and energy efficiency incentives within the tax code as two-tiered incentives, providing either a "base rate" or a "bonus rate." The bonus rate is equal to five times the "base rate" and is applied to projects which meet certain prevailing wage and apprenticeship requirements.

Prevailing wage requirements referred to throughout this subtitle require that, in order to claim the "bonus rate" with respect to a project, the taxpayer must ensure that any laborers and mechanics employed by contractors and subcontractors are paid prevailing wages during the construction of such project and, in some cases, for the alteration and repair of such project for a defined period after the project is placed into service.

In the event the taxpayer fails to satisfy these requirements, the taxpayer may cure the discrepancy by compensating each worker the difference between wages paid and the prevailing wage, plus interest, in addition to paying a $5,000 penalty to the Treasury for each worker paid below the prevailing wage during the taxable year. If the Secretary determines that such discrepancy is the product of intentional disregard, the taxpayer must compensate each worker three times the difference in wages and the penalty to the Treasury is increased to $10,000 per employee.

If the Secretary determines that a discrepancy occurred, the taxpayer must make payments to the employees and the Treasury within 180 days of the determination in order to remain in compliance with these requirements.

Apprenticeship requirements referred to throughout this subtitle require that, in order to claim the "bonus rate" with respect to a project, the taxpayer must ensure that no fewer than the applicable percentage of total labor hours of the project are performed by qualified apprentices. The applicable percentage for purposes of this requirement is 10% for projects for which construction begins in 2023. This rate is increased to 12.5% in 2024, and 15% in 2025.

This provision requires that each contractor and subcontractor who employs 4 or more individuals to perform construction on an applicable project shall employ at least one qualified apprentice to perform such work. In the event a taxpayer fails to satisfy these requirements, the taxpayer may cure the discrepancy by paying a penalty to the Treasury equal to $50 multiplied by the total labor hours for which the requirements are not satisfied. This penalty is increased to $500 per hour in the event the Secretary determines that such discrepancy was the product of intentional disregard.

Inflation Reduction Act of 2022:

Under a new two-tier rate structure, the Act only permits projects that satisfy prevailing wage and apprenticeship requirements to claim the full credit. Otherwise, the credit rate is 20 percent of the full rate. For example, if an eligible solar project does not satisfy the requirements, the ITC rate would be 6 percent rather than 30 percent. The full rate applies until 60 days after the Secretary publishes regulations. This rate structure applies to the ITC, PTC, and most other energy tax credits. This subtitle structures various new and existing renewable energy and energy efficiency incentives within the tax code as two-tiered incentives, providing either a "base rate of 6 percent" or a "bonus rate of 30 percent." The bonus rate is equal to five times the "base rate" and is applied to projects which meet certain prevailing wage and apprenticeship requirements.

Prevailing wage requirements referred to throughout this subtitle require that, in order to claim the "bonus rate" with respect to a project, the taxpayer must ensure that any laborers and mechanics employed by contractors and subcontractors are paid prevailing wages during the construction of such project and, in some cases, for the alteration and repair of such project for a defined period after the project is placed into service.

In the event the taxpayer fails to satisfy these requirements, the taxpayer may cure the discrepancy by compensating each worker the difference between wages paid and the prevailing wage, plus interest, in addition to paying a $5,000 penalty to the Treasury for each worker paid below the prevailing wage during the taxable year. If the Secretary determines that such discrepancy is the product of intentional disregard, the taxpayer must compensate each worker three times the difference in wages and the penalty to the Treasury is increased to $10,000 per employee.

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This provision requires that each contractor and subcontractor who employs 4 or more individuals to perform construction on an applicable project shall employ at least one qualified apprentice to perform such work.

In the event a taxpayer fails to satisfy these requirements, the taxpayer may cure the discrepancy by paying a penalty to the Treasury equal to $50 multiplied by the total labor hours for which the requirements are not satisfied. This penalty is increased to $500 per hour in the event the Secretary determines that such discrepancy was the product of intentional disregard. This provision provides for an exception by which taxpayers may be deemed as having made a good faith effort to hire qualified apprentices with respect to the construction of such project and thus be eligible for the bonus rate. These requirements shall apply to projects which begin construction 60 days after the Secretary has published guidance with respect to these requirements.

The Act makes available a 10 percent bonus credit when domestic content requirements are satisfied. In some cases, the Act provides a separate 10 percent bonus credit for qualifying facilities located in enhanced energy or low-income communities.

Domestic content requirements can be met if at least 40% (20% for offshore wind projects) of the total cost of manufactured products of the project is attributable to products and components that were produced or manufactured in the U.S.

It is worth noting that the Bill does not include an ITC for transmission assets, which was part of the proposed (but never enacted) Build Back Better Act.

Extension of the production tax credit under I.R.C. Section 45 (the “PTC”)[2] for eligible wind, solar, geothermal, biomass, hydropower, municipal waste, and marine and hydrokinetic projects that start construction before January 1, 2025. The extension includes a renewal of the PTC for solar, which had previously expired.

Extension of the Section 48 energy investment tax credit (the “ITC”) for solar, combined heat and power, qualified fuel cell, microturbine, waste energy, small wind, biogas, storage technology, and microgrid controllers projects that start construction before January 1, 2025. This new development will allow for significant expansion of storage projects in geographic areas where energy storage is needed for grid reliability, but which may otherwise not be appropriate locations for a solar PV system. Energy storage technology is defined broadly to include property that receives, stores and delivers energy for conversion to electricity (or, in the case of hydrogen, that stores energy) and has a nameplate capacity of not less than five kilowatt hours and thermal energy storage property.

For geothermal, the Act extends the ITC for projects that start construction before January 1, 2035.

Significantly, the Act makes stand-alone storage eligible for the ITC. The inclusion of biogas and microgrid controllers as ITC-eligible property is also new. Further, for installations of energy property with a maximum net output not greater than 5 megawatts, the Act permits the ITC-eligible basis to include certain expenditures on upgrades to a utility's interconnection system.

Subject to a new two-tier rate structure (discussed below), the Act restores the full ITC rate of 30 percent and full PTC rate of 1.5 cents per kWh (subject to inflationary adjustments).

The Act, in effect, extends the ITC and PTC at full rates under new tax credits available for electricity produced by zero-emissions projects placed in service in 2025 or later, which start construction before 2033.

Carbon Sequestration

Extension of the Section 45Q carbon capture credit for projects that start construction before January 1, 2033. In addition, the Act reduces the minimum carbon capture requirement and includes an enhanced credit for certain direct air capture facilities.

The Bill extends the deadline for commencing construction on carbon sequestration projects to the end of 2032 to be eligible for carbon sequestration credits. The Bill also significantly increases the amount of tax credits for projects that meet certain wage and apprenticeship requirements as follows:

	Current Law	Bill*
$/Metric Ton (Carbon Utilized, e.g., enhanced oil recovery)	Up to $35	$60
$/Metric Ton (Carbon Not Utilized)	Up to $50	$85
Direct Air Capture (Carbon Utilized)	Up to $35	$130
Direct Air Capture (Carbon Not Utilized)	Up to $50	$180

*These rates will continue to adjust for inflation after 2025.

The Bill also relaxes the annual capture requirements for credit eligibility. The minimum annual carbon capture requirement is 1,000 metric tons for a direct air capture facility, 18,750 metric tons for an electricity generating facility with a capture capacity of at least 75% of the total carbon emissions from such facility and 12,500 metric tons for all other facilities.

Clean Hydrogen

The Act adds a new production tax credit for clean hydrogen produced after December 31, 2022 at a qualifying facility that starts construction before January 1, 2033. Taxpayers also have the option to elect to claim the ITC in lieu of the new production tax credit.

The Bill creates a new 10-year PTC in an amount of up to $3/kg of qualified clean hydrogen produced after 2022, subject to meeting the same wage and apprentice requirements that apply to the ITC and PTC. To claim the full $3/kg, the hydrogen production must result in a lifecycle greenhouse gas emissions1 rate of less than 0.45kg of carbon dioxide equivalent ("CO2e") per kilogram of hydrogen. However, qualified clean hydrogen that produces up to 4kg of CO2e per kilogram of hydrogen is still eligible for a partial credit, meaning blue hydrogen — hydrogen produced from natural gas but the emissions of which have been captured and stored through carbon capture and sequestration — may qualify for the credit as well. Existing facilities placed in service before 2023 that did not produce qualified clean hydrogen can be modified to produce qualified clean hydrogen and claim the credits. Taxpayers may also elect the ITC in lieu of the PTC. No credit will be allowed for any qualified clean hydrogen produced at a facility that includes carbon capture equipment for which a Section 45Q credit was claimed for any taxable year.

Exception-The Bill treats the use of electricity generated from renewable resources (claiming a PTC) for producing clean hydrogen as if it was sold to an unrelated party. This is significant because many developers have been considering utilizing their wind projects to power electrolyzers to produce "green hydrogen" — the term commonly used to refer to hydrogen produced by splitting water into hydrogen and oxygen using a renewable energy-powered electrolyzer. Under current law, however, the wind project would lose its eligibility for the PTC because the electricity would not be sold to an unrelated party, which is a requirement to claim the PTC.

The Act adds a new tax credit (the Advanced Manufacturing Production Credit) to incentivize domestic production and sale of components used in solar, wind, and storage projects (e.g., solar modules, solar-grade polysilicon, inverters, battery cells, blades, and towers) and critical minerals.

The Act expands the Section 48C credit to include facilities that equip or expand certain manufacturing facilities in the clean energy sector.

The Act also includes new tax credits for zero-emissions nuclear power production and transportation fuels with lower emissions rates.

Other positive changes for promoting clean energy include (i) transferability of most energy tax credits; (ii) a direct pay option generally available only to governmental agencies and certain other tax-exempt entities; and (iii) a 3-year carryback period for energy credits.

179D changes:

The 179D commercial buildings energy efficiency tax deduction primarily enables building owners to claim a tax deduction for installing qualifying systems in buildings. Tenants may be eligible if they make construction expenditures. A tax deduction shown in the table below (up to $1.88 per square foot) is available to owners of new or existing buildings who install (1) interior lighting; (2) a building envelope; or (3) heating, cooling, ventilation, or hot water systems that reduce the energy and power cost of the interior lighting, HVAC, and service hot water systems by 50% or more in comparison to a building meeting minimum requirements set by ASHRAE Standard 90.1.

The proposed changes include a significant increase in tax deductions of up to $5 per qualified square foot, up from the current rate of $1.88 in 2022. Currently, architects, engineers, and designers are eligible to be allocated these tax deductions when designing energy efficient government owned buildings & improvements. In addition to nearly tripling the maximum tax benefit, the bill further expands the potential for architects, engineers, and other designers by making them eligible for 179D tax deductions when designing energy efficient building systems and improvements for tax-exempt entities. These can include:

1. charitable organizations,
2. churches & religious organizations,
3. private schools & universities,
4. private foundations,
5. political organizations,
6. other non-profits,
7. Native American tribal governments, and
8. Alaska Native Corporations

SUMMARY OF 179D TAX DEDUCTIONS

Compliance Path		Savings Requirement*	Tax Deduction**			
			taxable years before 2021	taxable year beginning 2021	taxable year beginning 2022	IRA
Fully Qualifying Property		50%	$\$1.80/\text{ft}^2$	$\$1.82/\text{ft}^2$	$\$1.88/\text{ft}^2$	$\$5.00/\text{ft}^2$
Partially Qualifying Property	Envelope	10%	$\$0.60/\text{ft}^2$	$\$0.61/\text{ft}^2$	$\$0.63/\text{ft}^2$	$\$5.00/\text{ft}^2$
	HVAC and HW	15%				$\$5.00/\text{ft}^2$
	Lighting	25%				$\$5.00/\text{ft}^2$
Interim Lighting Rule		25%–40% lower lighting power density (50% for warehouses)	$\$0.60/\text{ft}^2$***	$\$0.61/\text{ft}^2$***	$\$0.63/\text{ft}^2$***	$\$5.00/\text{ft}^2$

EV Vehicles:

The Inflation Reduction Act offers up to $7,500 toward the purchase of a new electric vehicle or up to $4,000 toward the purchase of a used electric vehicle. Eligibility is capped so that these credits are not available to the wealthiest families—those earning more than $300,000 per year for new vehicles or $150,000 per year for used vehicles.

Rooftop Solar:

The Inflation Reduction Act provides for 30 percent off the cost of rooftop solar. The bill also offers 30 percent off the cost of home batteries for the first time.

Consumer Rebates:

Switching to electric appliances: The Inflation Reduction Act offers homes up to $14,000 in rebates to switch over to electric appliances—covering up to 50 percent of the costs for moderate-income households and 100 percent of the costs for low-income households. The total program is capped at $4.5 billion. This includes up to:

- $8,000 for a heat pump, which serves as an air conditioner in the summer and heater in the winter
- $1,750 for a high-efficiency, all-electric heat pump water heater
- $840 for an electric induction cooktop
- $840 for a high-efficiency all-electric heat pump clothes dryer
- Up to $9,100 for enabling improvements to the electric panel, wiring, and home insulation

The bill provides a total of $9 billion in consumer home energy rebate programs, focused on low-income consumers, to electrify home appliances and for energy efficient retrofits. The bill allows up to 10 years of consumer tax credits to make homes energy efficient and run-on clean energy, making heat pumps, rooftop solar, electric HVAC and water heaters more affordable.

Multifamily Rental and Affordable Housing:

The Inflation Reduction Act's investment incentives provides rebates of up to $400,000 for whole-building energy efficiency retrofits in large multifamily apartment buildings as well as grants and loans worth $1 billion in total for improving efficiency and installing zero-emission equipment in affordable housing units.