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Legal Update

Illinois Enacts Tax Incentives to Attract Electric Vehicle Manufacturing

In November 2021, Illinois Governor JB Pritzker signed the Reimagining Electric Vehicles Act (the "REV Act"), which, together with the recently enacted Climate and Equitable Jobs Act,[1] further incentivizes the production and sale of electric vehicles in Illinois.

The REV Act establishes the Reimagining Electric Vehicles in Illinois Program (the "REV Program") to provide certain tax incentives to eligible manufacturers of electric vehicles, electric vehicle components and electric vehicle power supply equipment. Projects that qualify for participation in the REV Program include new manufacturing facilities that are established in Illinois and existing manufacturing facilities that intend to convert or expand, in whole or in part, the existing facility from traditional manufacturing to one of the qualifying categorizations; however, a project does not qualify as "new" if an existing manufacturing facility and the corresponding jobs are simply relocated within the state. An eligible manufacturer will be required to submit to the Illinois Department of Commerce and Economic Opportunity ("DCEO") an application for its project to be included in the REV Program, and, if the manufacturer's project is selected, the manufacturer and DCEO will enter into an agreement establishing the amount of tax credits to be made available and the conditions for participation in the REV Program.

Tax credits made available to qualifying projects are designed to offset costs associated with the creation of permanent, new jobs created by the project; the retention of existing jobs; and the costs of construction wages associated with the project. Such tax credits are respectively identified as the "REV Illinois Credits" and the "REV Construction Jobs Credits." These tax credits are to be made available with respect to qualifying costs incurred on or after January 1, 2022, but the credits may only be used to offset taxes imposed for the taxable year beginning January 1, 2025. An investment tax credit related to property is also available, as discussed in more detail below.

Criteria to Qualify

To qualify under the REV Program, projects must satisfy criteria applicable to their proposed categorization (i.e., electric vehicle manufacturer, component manufacturer or power supply manufacturer). Depending on the categorization of the project, minimum thresholds for capital improvement investment, job creation and the date for placement into service will apply:

	Minimum Capital Improvement Investment	Full-Time Jobs Created	Placement Into Service (After Application Approval)
New Electric Vehicle Manufacturing Facilities	$1.5 Billion	500	60 Months
New Component Manufacturing Facilities (Option 1)	$300 Million	150	60 Months
New Component or Vehicle Power Supply Manufacturing Facilities (Option 2)	$20 Million	50	48 Months
Conversion or Expansion of Operations at Existing In-State Manufacturing Facilities	$100 Million	75 (or 10% of the applicant's statewide baseline)	60 Months

The US Department of Energy has established the Advanced Technology Vehicles Manufacturing Loan Program (the "ATVM Program") in order to provide manufacturers of "advanced technology" vehicles and their components with customizable financing options. The financing is intended to be used to construct new facilities or to equip, modernize or expand existing facilities. Qualifying "advanced technology" vehicles are defined as light-duty vehicles that meet or exceed a 25% improvement in fuel efficiency beyond a 2005 model year baseline of comparable vehicles and ultra-efficient vehicles that achieve a fuel efficiency of 75 miles per gallon or equivalent using alternative fuels. (There have been 3 previous recipients of loans under this program: Ford ($5.9 billion), Nissan ($1.45 billion) and Tesla ($465 million).) Manufacturers of electric vehicles and electric vehicle components interested in establishing or expanding operations in Illinois may be able to take advantage of both the REV Program's tax incentives and the ATVM Program for all of, or a portion of, the project financing.

Additional Requirements

Qualifying projects under the REV Program must also satisfy the following:

- A project cannot simultaneously receive credits under the REV Program and the Illinois Economic Development for a Growing Economy ("EDGE") program.
- Qualifying jobs created in connection with the REV Program must have a total compensation equal to or greater than 120% of the average wage paid to full-time employees in the county where the project is located, as determined by the US Bureau of Labor Statistics.
- Each applicant, within 24 months after its project is placed in service, must certify to DCEO that it is carbon neutral or has attained certification under 1 or more of the following green building standards:
  - BREEAM for New Construction or BREEAM In-Use;
  - ENERGY STAR;
  - Envision;

- ISO 50001 – Energy Management;
- LEED for Building Design and Construction or LEED for Building Operations and Maintenance;
- Green Globes for New Construction or Green Globes for Existing Buildings; or
- UL 3223.

- Each applicant must demonstrate a contractual or other relationship with a recycling facility or demonstrate its own recycling capabilities.

Tax Credits

The 3 primary tax benefits available to qualifying projects are the REV Illinois Credits, the REV Construction Jobs Credit and an investment tax credit. All such credits are available to offset income taxes or an obligation to remit income tax withholdings imposed by the State of Illinois for the taxable year beginning January 1, 2025, but qualifying expenditures used for determining eligibility under the REV Program may be counted beginning January 1, 2022. Specifically, the credits may offset income taxes imposed on individuals, corporates, trusts and estates pursuant to Section 201 of the Illinois Income Tax Act or be used to offset an obligation to pay withholdings under Section 704A of the Illinois Income Tax Act.

REV ILLINOIS CREDITS

REV Illinois Credits have 3 component values: (i) the incremental income tax attributable to new employees, (ii) the income tax attributable to retained employees and (iii) the cost of training employees. Certain of these components have a default ceiling that may be increased if the project is developed in an underserved area[2] or an energy transition area.[3] The value of REV Illinois Credits will be determined on an annual basis.

The duration of REV Illinois Credits may not exceed 15 taxable years when awarded to electric vehicle manufacturers, component manufacturers with investments of at least $300 million ("Option 1" in the chart above) and existing in-state manufacturers with investments of at least $100 million. The duration of REV Illinois Credits may not exceed 10 taxable years when awarded to component manufacturers with investments of at least $20 million but less than $300 million ("Option 2" in the chart above).

With respect to the incremental income tax attributable to new employees, the applicable portion of the REV Illinois Credits will not exceed 75% of such incremental income tax. If the project is developed in an underserved area or an energy transition area, the value may be increased to an amount not to exceed 100% of such incremental income tax.

If a project hires the minimum number of new employees and retains employees, the project may also receive additional REV Illinois Credits with a value of not more than 25% of the income tax attributable to retained employees unless developed in an underserved area or an energy transition area, in which case the value may be increased to an amount not to exceed 50% of the income tax attributable to retained employees. The income tax attributable to a new or retained employee appears to be the amount withheld from the compensation of that employee during the taxable year.

With respect to training costs, the applicable portion of the REV Illinois Credits will not exceed 10% of such training costs, plus certain escalators. If new employees are recent (2 years or less) graduates of an Illinois-based institution of higher learning or apprenticeship program, the value of REV Illinois Credits attributable to training may be increased by an additional amount not to exceed 15% of such costs (for a maximum total of 25%). A project may also receive additional REV Illinois Credits with a value of not more than 10% of the costs to train/upskill retained employees to meet the operational needs of the project.

REV CONSTRUCTION JOBS CREDIT

Similar to the REV Illinois Credit, the value of the REV Construction Jobs Credit sets a default ceiling that may be increased if the project is developed in an underserved area or energy transition area. The value of the REV Construction Jobs Credit equals 50% of the incremental income tax attributable to construction wages paid in connection with the construction of the project facilities. This value may be increased to not more than 75% of the income taxes on such construction wages if the project is developed in an underserved area or energy transition area.

INVESTMENT TAX CREDIT

Projects may also qualify for an investment tax credit if an investment is made in qualified property that is placed in service at the site of a project. The value of this investment tax credit will be equal to 0.5% of the basis for such property. The credit will be allowed only in the year in which the property is placed into service, but any unused credit may be carried over into future tax years.

Tax Exemptions and Deductions

Finally, the REV Act authorizes several tax exemptions, abatements and deductions for which certain projects and material supplies may qualify.

Projects may qualify for the following tax abatements and exemptions:

- Abatement of property tax (if approved by the governing body of a local taxing district) for the duration of the project's participation in the REV Program
- Exemption from electricity and gas excise taxes

Additionally, most retailers that sell building materials that will be incorporated into a qualifying project may deduct receipts from such sales when calculating any state or local use and occupation taxes; however, to prevent double counting, this deduction is not available to retailers that sell building materials to projects that are developed in enterprise zones or that have a High Impact Business Designation.

For more information about the topics raised in this Legal Update, please contact any of the following lawyers.

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Endnotes

[1] A recent Mayer Brown Legal Update on the Climate and Equitable Jobs Act includes a discussion of tax incentives for the purchase of electric vehicles.

[2] An "underserved area" meets 1 of the following 4 tests: (i) the poverty rate is at least 20%; (ii) 75% or more of the children in the area are eligible to participate in the federal free lunch or reduced-price meals program for a period of at least 2 consecutive calendar years preceding the date of the application; (iii) at least 20% of the households in the area receive assistance under the Supplemental Nutrition Assistance Program (SNAP) for a period of at least 2 consecutive calendar years preceding the date of the application; or (iv) the average unemployment rate is more than 120% of the national unemployment average for a period of at least 2 consecutive calendar years preceding the date of the application. The State of Illinois maintains a map of currently identified underserved areas, which is available here: https://www2.illinois.gov/dceo/ExpandRelocate/Incentives/Pages/UnderservedAreas.aspx

[3] " Energy Transition Area" means a county with less than 100,000 people or a municipality that contains 1 or more of the following: (i) a fossil fuel plant that was retired from service or has significantly reduced service within 6 years before the time of the application or will be retired or have service significantly reduced within 6 years following the time of the application or (ii) a coal mine that was closed or had operations significantly reduced within 6 years before the time of the application or is anticipated to be closed or have operations significantly reduced within 6 years following the time of the application.