



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

June 14, 2023

via Email

Dear Tribal Leader:

As the Point of Contact for Tribal Consultation for the U.S. Department of the Treasury (Treasury), I invite you to a consultation on the Elective Payment of Applicable Credits under the Inflation Reduction Act of 2022 (IRA), codified as Section 6417 of the Internal Revenue Code (Section 6417). This consultation will be held virtually on Monday, July 17, 2023, 1pm-4pm EDT.

Background

The IRA represents the most significant legislation to invest in clean energy and address climate change in our nation's history. Under Section 6417, a new provision called an elective payment election will allow for the first time certain tax-exempt and governmental entities to access specified clean energy tax credits as payments from the Internal Revenue Service (IRS). Section 6417 generally applies to tax-exempt organizations, State and local governments, Indian tribal governments ("Tribes"), Alaska Native Corporations, the Tennessee Valley Authority, and rural electric cooperatives, which are referred to as "applicable entities". Section 6417 allows applicable entities to make an elective payment election with respect to twelve (12) "applicable credits,"¹ which include the major clean/green energy production tax credits and investment tax credits, as well as the credit for qualified clean commercial vehicles, the credit for alternative fuel vehicle refueling property, and the credit for carbon oxide sequestration. If an applicable entity makes an elective payment election, the applicable entity will be treated as making a payment in the amount of the applicable credit to the IRS to pay its federal income tax liability (if any), which would result in the applicable entity receiving a refund from the IRS if the applicable entity does not have any or sufficient federal income tax liability to otherwise use the credit.

On October 24, 2022, Treasury and the IRS published [Notice 2022-50](#) to request feedback from the public on the elective payment election provisions under section 6417. The notice outlines components of Section 6417 and also Section 6418 of the Internal Revenue Code related to an election to transfer certain credits.² The notice requested feedback on necessary clarifications and guidance on implementation of Section 6417.

¹ See [Guidebook to the Inflation Reduction Act's Clean Energy and Climate Investments in Indian Country](#), pp. 20-22.

² Generally, Section 6418 permits partnerships and other entities, but not applicable entities, to transfer all or part of eleven (11) "eligible credits" to any unrelated transferee taxpayer for cash.

On [November 28 and 29, 2022](#), Treasury hosted Tribal consultations on the IRA. Commenters expressed significant feedback on and interest in IRA elective payment provisions. Treasury and the IRS considered the consultation and feedback as well as other stakeholder input in developing today's Notices of Proposed Rulemaking (NPRM) regarding elective payment under section 6417. The proposed elective pay regulations can be found [here](#) and transferability [here](#). In addition to the Treasury [press release](#), you can find [FAQs](#) and a [Tribal Fact Sheet](#) that outline key information contained in the proposed guidance. You can find more information on the [IRS elective pay landing page](#) and on [CleanEnergy.gov/directpay](#).

- [Pre-Filing Registration Requirements for Certain Tax Credit Elections](#)
- [Section 6417 Elective Payment of Applicable Credits](#)
- [Section 6418 Transfer of Certain Credits](#)
- [Elective Payment of Advanced Manufacturing Investment Credit](#)

The NPRM describes proposed rules for the elective payment of these credit amounts in a taxable year. Specifically, the NPRM defines applicable entities; provides rules for making the elective payment election; clarifies the timing of the payment; and explains how to determine the credit amount.

Importantly, with regard to Indian Tribal governments as applicable entities, proposed regulation §1.6417-1(k) defines "Indian tribal government" as the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of §30D(g) (that is, August 16, 2022) pursuant to § 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131). Proposed §1.6417-1(c)(7) further provides that applicable entities include any agency or instrumentality of any State, the District of Columbia, Indian tribal government, U.S. territory, or political subdivision thereof.

Registration Process

The proposed regulations describe rules related to an IRS pre-filing registration process that are being issued as temporary regulations under §1.6417-5T and request comments on the temporary regulations. The pre-filing registration process is necessary to complete before making an elective payment election. Section 1.6417-5T(a) provides an overview of this process and requires an applicable entity to satisfy the pre-filing registration requirements as a condition of, and prior to, making an elective payment election. Specifically, it requires an applicable entity to:

1. use the electronic pre-filing registration process to register itself as intending to make the elective payment election,
2. list all applicable credits it intends to, but may not eventually choose to, elect to

- treat as an elective payment to the IRS, and
3. list each applicable credit property that contributed to the determination of such credits as part of the pre-filing submission (or amended submission).

An applicable entity that does not obtain a registration number from the IRS and report the registration number on its annual tax return with respect to an applicable credit property would be ineligible to make an elective payment election.

Consultation Content

Pursuant to Executive Order 13175, President Joseph R. Biden's Presidential Memorandum for Tribal Consultation and Strengthening Nation to Nation Relationships; the Presidential Memorandum on Uniform Standards for Tribal Consultation; and Treasury's Action Plan for Tribal Consultation and Collaboration, Treasury is commencing Tribal consultation to inform the development of final guidance to implement the Elective Payment of Applicable Credits under the Inflation Reduction Act of 2022 (section 6417).

Specifically, Treasury requests the assistance of Tribal leaders in addressing the following questions:

- A. What questions and/or comments do Tribal governments have with regard to eligibility under §1.6417-1(c)(7), which treats any agency or instrumentality of any Indian tribal government or political subdivision thereof as an applicable entity? Treasury and the IRS further request comments on whether the proposed definitions encompass the entity structures that Indian tribal governments employ in activities that would give rise to applicable credits for which elective payment elections may be made, including activities of entities with partial Indian tribal government ownership.
- B. What questions and/or comments do Tribal governments have with regard to the temporary regulations for the pre-filing registration process under §1.6417-5T, including the electronic filing requirements?
- C. What other questions or comments, if any, do Tribal governments have regarding any of the remaining regulations in the NPRM?

[Register here](#) for the consultation.

We respectfully request that each Tribe register one person to participate in the consultation. All others are welcome to register as listen-only participants.

In addition to a Tribal consultation, Treasury is accepting written or electronic comments received by August 18, 2023, 11:59 p.m. Alaska Time. Submit written comments at tribal.consult@treasury.gov.

Please note that consultations are off the record and not for press purposes.

We will send out an Agenda and a list of registered speakers before or on July 14, 2023.

We hope that you will be able to join us for this important discussion and value your participation.

Sincerely,

Chief Lynn Malerba
Treasurer
Point of Contact for Tribal Consultation
U.S. Department of the Treasury