

November 4, 2022

Internal Revenue Service  
Department of Treasury  
Ben Franklin Station  
P.O. Box 7604, Room 5203  
Washington, D.C., 20044

**Re: Request for Comments on Elective Payment of Applicable Credits and Transfer of Credits – Notice 2022-50**

Dear Secretary Yellen and Commissioner Rettig:

We write on behalf of Central Coast Community Energy, Clean Power Alliance, East Bay Community Energy, MCE, San Jose Clean Energy, and Silicon Valley Clean Energy to comment on the Treasury Department and Internal Revenue Service's Notice 2022-50.

We are a collection of California-based Community Choice Aggregators (CCAs), collectively serving 4,345,215 customers across 14 counties. In California, CCAs serve more than 200 communities, more than 11 million customers, and represent 33% of the load in the state. CCAs are public agencies formed by one or more local governments to procure electricity and advance clean energy on behalf of our customers. CCAs reinvest in our communities through a wide variety of programs, with many focused on decarbonizing buildings and transportation. The Joint CCAs are also committed to providing renewable, affordable, and accessible power to our local communities, and accelerating the decarbonization of the grid in California. We are pleased to offer the following comments on the Notice:

**Credit Monetization**

*.01 Elective Payment of Applicable Credits (§ 6417)*

1. What, if any, guidance is needed to clarify which entities are applicable entities for purposes of § 6417(d)(1)(A), and which taxpayers may elect to be treated as applicable entities under § 6417(d)(1)(B), (C), or (D) for purposes of § 6417?

We would like to request explicit clarification from the IRS that CCAs qualify as “political subdivisions” for the purposes of qualifying for the direct pay provisions in the IRA. Some CCAs are formed by one local government entity and others are Joint Powers Authorities (JPA) of several cities and/or counties. Since CCAs are public agencies formed solely by units of local government and are non-taxable entities, CCAs should explicitly be eligible entities for direct pay.

The IRS should further clarify that governmental entities not subject to taxation, like CCAs, are within the definition of eligible entities. Given the broad range of governmental organizations and instruments in existence, this clarification will help ensure all such entities will be deemed eligible as intended by Congress.

4(d). Are there specific issues that the Treasury Department and the IRS should address for applicable entities that are subject to non-tax legal requirements or other rules that may affect such entities’ ability to make an election under § 6417(a)?

The IRS should also clarify that tax credits may be pledged by eligible entities as security for the payment of debt service on bonds issued to finance the project. This will allow eligible entities to rely on the tax credits under similar structures as taxable entities with confidence. It will provide issuers with greater financing flexibility and investors with greater confidence, any savings from which could be passed through to customers. Without this clarification, there will be uncertainty with respect to the possible determination that the pledge of the tax credits constitutes a Federal guarantee on the repayment of the debt. For clarity, it is not contemplated at this time that the tax credits would be pledged as the sole security for any debt issued to finance the same qualified project.

We recommend the IRS apply the Code of Federal Rules Section 1.148-6 allocation and accounting rules for determining the use of proceeds for the 15% reduction in the value of the tax credits when projects are financed with tax-exempt debt.

Finally, the IRS should establish a “look-through” rule with respect to sales of energy to related parties. Two examples of related parties include: (1) a bond issuer created by a member for the purpose of prepaying electricity, or (2) a joint purchasing authority (*e.g.* a JPA) on behalf of multiple CCAs. CCAs have formed such entities to reduce costs, the savings from which ultimately benefit consumers. The look-through rule should clarify that the

energy sold at the retail level to the public should count as the initial sale of energy. As such, sales from one eligible entity to a related party should not count as the initial sale under the IRS rules. This approach is used under the IRS rules related to Clean Renewable Energy Bonds, and for the same reason we request it here.

8. Section 6417(d)(4)(A) provides that, in the case of any government, or political subdivision described in § 6417(d)(1), and for which no return is required under § 6011 or 6033(a), the payment described in § 6417(a) is treated as made on the later of the date that a return would be due under § 6033(a) if such government or subdivision were described in § 6033(a) if such government or the date on which such government or subdivision submits a claim for credit or refund at such time and in such manner as the Secretary provides. What factors should the Treasury Department and the IRS consider when providing guidance to clarify the timing and manner of a payment made by these governments or political subdivisions?

We request that direct pay is implemented in a way that is easy and clear for users. For example, the IRS should consider developing a simple tax form intended for use by tax-exempt entities pursuing direct pay. Additionally, we would like clarity on the timeline of direct pay, including how long it will take for the IRS to provide direct pay payments, so we can plan accordingly. Direct pay returns should be subject to the same speed and level of scrutiny as tax credit returns. The timing for direct pay elections should be as late as possible, as numerous factors can impact the finances and operation of any project up to the date it is actually placed in service. We also request that if the entire output of a facility is under a long-term contract (greater than 10 years) to an applicable entity (such as a CCA) but is not owned by the applicable entity, that the receipt of the direct pay can be made directly to the applicable entity (the purchaser of the output).

Thank you for considering our comments. We look forward to continuing to work with the Treasury and IRS on implementation of this historic investment in clean energy and decarbonization.

Sincerely,

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