

75 Charter Oak Avenue, Suite 1 - 103, Hartford, CT 06106
T 860.563.0015
ctgreenbank.com



Submitted electronically on November 4, 2022
By Connecticut Green Bank
75 Charter Oak Avenue, Suite 1-103
Hartford, CT 06106
legal@ctgreenbank.com

RE: Connecticut Green Bank Comments - IRS Notice 2022-50

Connecticut Green Bank (“Green Bank”) respectfully submits the following comments in response to IRS 2022-50 and the changes made to the Internal Revenue Code by the Inflation Reduction Act of 2022 (the “IRA”). As the nation’s first green bank, Green Bank leverages the limited public resources it receives to attract multiples of private investment to scale up clean energy deployment. Since its inception, the Green Bank has mobilized \$2.14 billion of investment into Connecticut’s clean energy economy at a 7.4 to 1 leverage ratio of private to public funds, supported the creation of 25,612 direct, indirect and induced jobs, reduced the energy burden on over 63,000 families and businesses, deployed over 494 MW of clean renewable energy, helped avoid 9.9 million tons of CO2 emissions over the life of the projects, and generated \$107.4 million in individual income, corporate, and sales tax revenues to the State of Connecticut.

Green Bank was authorized pursuant to Connecticut General Statutes Section 16-245n as “a body politic and corporate, constituting a public instrumentality and political subdivision of the State of Connecticut established and created for the performance of an essential public and governmental function. The Connecticut Green Bank shall not be construed to be a department, institution or agency of the state.” Green Bank is granted powers which it may use in furtherance of or in carrying out its purposes, including but not limited to, the ability to:

1. invest in, acquire, lease, purchase, own, manage, hold, sell and dispose of real or personal property or any interest therein, and
2. form subsidiaries, and transfer to any such subsidiary any moneys and real or personal property of any kind or nature. Any subsidiary may be organized as a stock or nonstock corporation or a limited liability company. Each such subsidiary shall have and may exercise such powers of said bank and such other powers provided to it by law.

The IRA contains a number of provisions that are intended to encourage investments in clean energy and that could significantly improve Green Bank’s ability to satisfy its statutory mandate, including the elective payment of applicable credits pursuant to Section 6417 of the Code. Allowing a political subdivision of a State and other tax-exempt entities to benefit from the applicable tax credits could allow the Green Bank to continue to deploy clean energy especially to underserved markets. As the Treasury Department considers additional guidance regarding these provisions we urge you take into account the considerations described below.

Notice 2022-50

1 Elective Payment of Applicable Credits (§ 6417).

(2) With respect to the Secretary’s discretion to determine the time and manner for making an election under § 6417(a):

(a) What, if any, issues could arise when an applicable entity described in § 6417(d)(1)(A) makes an election under § 6417(a) and what, if any, guidance is needed with respect to such issues?

(b) What factors should the Treasury Department and the IRS consider in determining the time and manner for making the election?

Green Bank is a political subdivision of the State of Connecticut and qualifies as an applicable entity within the meaning of § 6417. As a political subdivision, Green Bank does not file a federal tax return. Therefore, Green Bank seeks guidance on which IRS return form and submission process it would need to follow to make an election under § 6417(a). The submission process should have clear deadlines and there should be certainty and clarity regarding the processing time to make the applicable payments once forms are received. The submission process and timing for the elective payment to be issued has implications on the financing structure for tax exempt entities and will affect rate of return and viability of projects. Uncertainty regarding timing of payments could create significant barriers for entities like Green Bank who are seeking to finance construction of projects based on the expectation of receiving payment with respect to applicable credits. Green Bank encourages the Treasury Department to provide as much certainty as possible regarding the timing of those payments.

(5) With respect to the definition of the term “applicable entity” in § 6417(d)(1):

(a) 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?

Consistent with prudent business practices, Green Bank may form subsidiaries (stock or nonstock corporations or a limited liability companies) to own and operate projects. A limited liability company that is wholly owned by Green Bank is classified as a disregarded entity for federal tax purposes. Please confirm that a disregarded entity owned by an applicable entity would be considered an applicable entity for purposes of § 6417(d)(1)(A).

(b) What types of structures are anticipated to be used by applicable entities, and taxpayers who have elected to be treated as applicable entities under § 6417(d)(1)(B), (C), or (D), when seeking to apply § 6417(a)?

Green Bank and other applicable entities could be on more equal footing with taxable developers if we were allowed to benefit from increases in tax basis in projects and depreciation deductions on the same basis as taxable entities. This often involves formation of partnerships to hold and operate clean energy projects. We would encourage IRS to provide guidance that would allow Green Bank and similarly situated applicable entities to benefit from payments for applicable credits using these common financing structures. For example, if Green Bank were a partner in a partnership that owned a qualified project, Green Bank should be able to cause the partnership to elect to receive a payment for applicable credits.

(11) For purposes of § 6417(g), what, if any, guidance is needed to clarify the application of § 50 for credit recapture and basis adjustments to investment credit property?

Under current recapture authority there is no exception to recapture if a project is destroyed by circumstances beyond the taxpayer's control (e.g. fire or flood). Considering general financing and budgeting concerns relevant to applicable entities, and the potential difficulty raising funds to pay any recapture, Green Bank suggests that IRS provide an exemption to recapture if project for which a payment in lieu of tax credits is received is destroyed by circumstances beyond the applicable entity's control.