

**Energy Tax Savers, Inc.**

The EAct 179D Experts

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November 3, 2022

SUBMITTED ELECTRONICALLY

Internal Revenue Service

CC:PA:LPD:PR (Notice 2022-50)

Room 5203

P.O. Box 7604,

Ben Franklin Station Washington, DC 20044

Re: Request for Meeting and Comments on Regulatory Implementation of the Inflation Reduction Act and Sections 6417 & 6418 of the Code Pursuant to Notice 2022-50

To whom it may concern at the Office of Associate Chief Counsel (Passthroughs & Special Industries),

Energy Tax Savers, Inc. assists building owners and designers of government buildings with their paperwork required to qualify for the 179D Tax Deduction. The company was started in the Fall of 2005. We were part of the first industry group to meet in person with Jennifer Bernardini on 3/1/2007 to speak about 179D guidance. We have had multiple interactions with DOE including; early discussions in 2006 & 2007 with Dru Crawley of DOE as he was working on the energy simulation modeling software and technique for 179D. In 2011, Kristen Taddonio of DOE selected us to present at the "U.S. Department of Energy Financial Incentives Webinar" to speak specifically about 179D to the attendees. We were data providers to DOE in 2011 as we worked to change the 20%, 20%, 10% for lighting, HVAC and envelope to the current 25%, 15%, 10%. We were also selected as Beta testers of NREL's Michael Deru's on-line 179D calculator.

We are Steering Committee members of The Coalition for Energy Efficient Jobs & Investment (aka 179D Coalition) that has met with IRS and DOE to work on 179D items for the past several years.

We have a long history of providing tax advice for alternative energy projects and in particular for solar, geothermal, CHP and thermal storage.

Energy Tax Savers, Inc. respectfully submits this request for meeting and these comments to the U.S. Department of Treasury (“Treasury”) and the Internal Revenue Service (the “IRS”) regarding recently enacted Section 13303 of the Inflation Reduction Act (“IRA”) and pursuant to Notice 2022-50. Energy Tax Savers, Inc. would like to meet with individuals at Treasury, IRS, DOE and NREL to discuss the contents of this letter and practical issues of which the government should be aware in connection with issuing regulations and related guidance relating to Section 6417 & 6418. Please find our comments below, *interspersed by select Request for Comments posed by Notice 2022-50*.

### **.01 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?*

### **COMMENT:**

The election should be allowed starting immediately on the date the project was placed in service and ending 1 year after the date of placed in service. These election submissions should not be required to be made with other income tax filings. For entities governed by 6417(d)(3)(A)(i)(II) it should be the earlier of up to 1 year after the date of placed in service

or the due date including extensions for the return of tax for the taxable year the project was placed in service.

*(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?*

**COMMENT:**

Due to the likely wider usage of these incentives it would be beneficial to create plain language guidance which makes it clear that § 6417(d)(1)(A)(ii) includes, state universities, community colleges, instrumentalities, counties, municipalities, cities, towns, villages, school districts, fire districts, water districts, library districts etc.

*(7) Section 6417(d)(3)(A)(i)(I) 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), any election made by these applicable entities under § 6417(a) must be made no later than such date as is determined appropriate by the Secretary. What factors should the Treasury Department and the IRS consider when providing guidance on the due date of the election for these applicable entities?*

**COMMENT:**

The election should be allowed starting immediately on the date the project was placed in service and ending 1 year after the date of placed in service.

*(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 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?*

**COMMENT:**

In most cases this direct payment in lieu of tax credit will be instrumental in the justification of these projects. Treasury and IRS should do everything in their power to expedite payment and should commit to a 30 day turn around.

*(9) For purposes of preventing duplication, fraud, improper payments, or excessive payments under § 6417, what information, including any documentation created in or out of the ordinary course of business, or registration, should the IRS require as a condition of, and prior to, any amount being treated as a payment made by an applicable entity under § 6417(a)?*

**COMMENT:**

Depending on the size of the credit, Treasury and IRS should require certification of the tax credit by the 1. Representative of the Owner of the eligible Project, 2. Installing contractor, 3. Party governed by Circular 230(CPA, Enrolled Agent). For example, Tax Credits under \$10,000 only the Project Representative must certify, between \$10,000-\$50,000 the Project Representative and the Installing Contractor, Over \$50,000 the Project Representative, Installing Contractor and Circular 230 governed party. The certification will resemble those created for section 179D in IRS Notice 2006-52 Section 4 but will reflect the specific elements related to each tax credit. For example, for Section 48 tax credits a valid certification might require an attestation of the eligible 1. project cost, 2. Project size in MW, 3. meeting the Prevailing Wage and Apprenticeship requirement if

applicable, 4. Meeting the domestic content requirement if applicable, 5. Meeting the location requirements of the Energy Community Bonus if applicable, 6. Meeting the Low Income requirements etc.

*What factors should the Treasury Department and the IRS consider as to when documentation or registration should be required?*

**COMMENT:**

The requested amount of tax credit coupled with the nature of the particular credit should be the guiding factors for the level of documentation and/or registration required to submit for these direct payments in lieu of tax credit.

*Should the IRS require the same documentation or registration as a condition of, and prior to, any amount being treated as a payment made by both an applicable entity as well as a taxpayer who is treated as an applicable entity after making an election under § 6417(d)(1)(B), (C), or (D)?*

**COMMENT:**

No Comment

*Should the IRS require the same documentation or registration for all applicable credits?*

**COMMENT:**

It is likely the risks of duplication, fraud, improper payments, or excessive payments is different across the various credits, and therefore the level of documentation should vary across the credits.

*If not, how should the information or registration differ between applicable credits?*

**COMMENT:**

We recommend the use of certifications. The certification will resemble those created for section 179D in IRS Notice 2006-52 Section 4 but will reflect the specific elements related to each tax credit. Parties appropriate to each credit would be required to certify compliance with the credit. At minimum the following three parties could be utilized 1. Representative of the Owner of the eligible Project, 2. Installing contractor, 3. Party governed by Circular 230(CPA, Enrolled Agent). Depending on the credit other eligible parties could be substituted.

*What other processes could be implemented by the IRS to prevent duplication, fraud, improper payments, or excessive payments under § 6417?*

**COMMENT:**

No Comment

**.02 Transfer of Certain Credits (§ 6418)**

**GENERAL COMMENT:**

Irrevocable filing of forms to commit to a transfer to another taxpayer should be allowed to be made at any time after the project is placed in service and prior to the transferring taxpayers tax filing deadline with allowed extensions. The Commit to Transfer Form does not need to be filed with the transferring taxpayers tax return it can be filed separately prior to their eventual tax return filing. This will give the transferor the maximum amount of time to locate a transferee and will not hold up the transferee's tax filing. Transferee must include the Commit to Transfer Form in their tax return filing.

*(5) For purposes of § 6418(d), what, if any, guidance is required to determine the proper taxable year in which to claim any credit that was transferred pursuant to an election made under § 6418(a)?*

**COMMENT:**

No additional guidance is necessary. The transferee is allowed to take the tax credit as early as the year the project is placed in service or any subsequent tax year.

*(8) For purposes of preventing duplication, fraud, improper payments, or excessive credit transfers under § 6418, what information, including any documentation created in or out of the ordinary course of business, or registration, should be required by the IRS as a condition of, prior to, or after any transfer of any portion of an eligible credit pursuant to § 6418(a)?*

**COMMENT:**

Depending on the size of the credit, Treasury and IRS should require certification of the tax credit by the 1. Taxpayer, 2. Installing contractor, 3. Party governed by Circular 230(CPA, Enrolled Agent). For example, Tax Credits under \$10,000 only the Taxpayer must certify, between \$10,000-\$50,000 the Taxpayer and the Installing Contractor, Over \$50,000 the Taxpayer, Installing Contractor and Circular 230 governed party. The certification will resemble those created for section 179D in IRS Notice 2006-52 Section 4 but will reflect the specific elements related to each tax credit. For example, for Section 48 tax credits, a valid certification might require an attestation of the eligible 1. project cost, 2. Project size in MW, 3. meeting the Prevailing Wage and Apprenticeship requirement if applicable, 4. Meeting the domestic content requirement if applicable, 5. Meeting

the location requirements of the Energy Community Bonus if applicable, 6. Meeting the Low Income requirements etc.

*What factors should the Treasury Department and the IRS consider as to when documentation or registration should be required?*

**COMMENT:**

The requested amount of tax credit coupled with the nature of the particular credit should be the guiding factors for the level of documentation and/or registration required to submit for these direct payments in lieu of tax credit.

*Should the IRS require the same documentation or registration for all eligible credits?*

**COMMENT:**

It is likely the risks of duplication, fraud, improper payments, or excessive payments is different across the various credits, and therefore the level of documentation should vary across the credits.

*If not, how should the information or registration differ between eligible credits?*

**COMMENT:**

We recommend the use of certifications. The certification will resemble those created for section 179D in IRS Notice 2006-52 Section 4 but will reflect the specific elements related to each tax credit. Parties appropriate to each credit would be required to certify compliance with the credit. At minimum the following three parties could be utilized 1. Taxpayer 2. Installing contractor, 3. Party governed by Circular 230(CPA, Enrolled Agent). Depending on the credit other eligible parties could be substituted.



*What other processes could be implemented by the IRS to prevent duplication, fraud, improper payments, or excessive credit transfers under § 6418*

**COMMENT:**

No Comment

Thank you for the opportunity to submit these comments. We request the opportunity to meet with Treasury and IRS to discuss these issues in greater detail and to answer any questions that you may have.

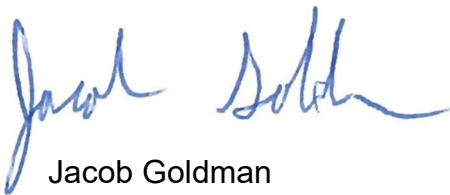
Respectfully submitted,



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