

CITY UTILITIES

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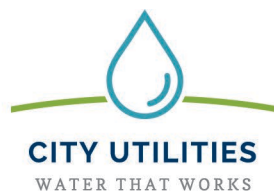
November 4, 2022

Internal Revenue Service, CC:PA:LPD:PR (Notice 2022-49)
Room 5203
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

Subject: Response to Request for Comments on Elective Payment of Applicable Credits and Transfer of Credits, Notice 2022-50

Dear Sir/Madam:

The City of Fort Wayne is pleased to submit this response to the Department's Request for Information regarding Notice 2022-50. The RFI questions are included with responses highlighted in yellow.



Notice 2022-50

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

- (1) What, if any, guidance is needed to clarify the meaning of certain terms in § 6417, such as applicable credit and excessive payment? Is there any term not defined in § 6417 that should be defined in future guidance? If so, what is the term and how should it be defined?

'Placed in service' – the date/year of which the project achieves 'substantial completion'.

How does excessive payment relate to tax-exempt entities?

Partnership is discussed, but not defined in any legal sense.

- (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?

This ties in with the definition of 'placed in service', as the project could be fully functional and ready to operate but has not produced any wattage and therefore the applicable entity would have to wait another year to claim the credit if the deadline for election is too restrictive. The Treasury and IRS should therefore allow elections of the credit up to December 31st of the taxable year.

- (3) In determining the amount treated as making a payment against tax under § 6417(a), is guidance needed to clarify the application of any other Code provision? If so, what is the Code provision and what clarification is needed?

- (4) With respect to an election under § 6417(a) made by a partnership or S corporation pursuant to § 6417(c)(1) for any applicable credit determined with respect to any facility or property held directly by a partnership or S corporation:

(a) What, if any, issues could arise when a partnership or S corporation makes an election under § 6417(a) and what, if any, guidance is needed with respect to such issues?

Clarification on what 'partner' refers to in the context of 6417(c) (2), as in an individual partner cannot make the election? Guidance on how to legally demonstrate the decision is made by the partnership and not an individual partner or shareholder

(b) Is guidance needed to clarify the treatment of a payment made pursuant to § 6417(c)(1)(A) to the electing partnership or S corporation? If so, what clarification is needed?

Yes, are there any guidelines or restrictions on how the payment shall be treated after it is given to the partnership or S corporation?

- (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?

If the project is owned by a department within a city, are they still an applicable entity? Or would the election be made by the city itself?

(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)?

Not sure what 'structures' refers to. The type of project? The tax structure? If this means the type of project, the microgrid controller or solar panels being installed.

(c) Is guidance needed to clarify the application of any Code provision other than § 6417 to an applicable entity, or a taxpayer electing to be treated as an applicable entity, that makes an election under § 6417(a)? If so, what is the Code provision and what clarification is needed?

(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)?

If the IRS is aware of any non-tax legal requirements or rules that may affect an entity's election ability, they should be outlined.

(6) With respect to the elections under § 6417(d)(1)(B), (C), or (D):

(a) What, if any, issues could arise when an entity makes an election under § 6417(d)(1)(B), (C), or (D) 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?

(c) What, if any, issues could arise when an entity revokes an election made under § 6417(d)(1)(B), (C), or (D) and what, if any, guidance is needed with respect to such issues?

(d) Is guidance needed to clarify the prohibition of a transfer described in § 6418(a) by a taxpayer who has made an election under § 6417(d)(1)(B), (C), or (D)? If so, what clarification is needed?

(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?

If the project should be considered 'placed in service' when there is substantial completion of the project or when electricity is being produced.

The average fiscal year of most cities/states.

(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?

The average fiscal year of most cities/states.

Consider that most capital improvement projects go into bidding during the fall and spring, therefore having more available funding during those times would be advantageous.

(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)? What factors should the Treasury Department and the IRS consider as to when documentation or registration should be required? 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)? Should the IRS require the same documentation or registration for all applicable credits? If not, how should the information or registration differ between applicable credits? What other processes could be implemented by the IRS to prevent duplication, fraud, improper payments, or excessive payments under § 6417?

Specifically for tax-exempt entities who make an election, submitted projects should be assigned a unique identification code to prevent fraud, as well as a complete inventory of installed applicable components to prevent future credit claims on the same facility.

(10) What, if any, guidance is needed to clarify the application of the excessive payment provisions of § 6417? What factors should be taken into account in determining whether reasonable cause exists for purposes of § 6417(d)(6)(B)? What, if any, guidance is needed to calculate the excessive payment amount under § 6417(d)(6)(C)?

In general, does the excessive payment provisions apply in any way to tax-exempt entities?

(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?

(12) The advanced manufacturing investment credit under § 48D also contains an elective payment provision under § 48D(d). The Treasury Department and the IRS seek comments on whether the elective payment provisions of § 6417 should operate similarly or differently than the elective payment provision under § 48D.

(13) Please provide comments on any other topics that may require guidance.

How will the credit amount be determined for tax-exempt entities such as cities? What will the process and payment look like for entities that have not previously paid taxes?

.02 Transfer of Certain Credits (§ 6418).

- (1) What, if any, guidance is needed to clarify the meaning of certain terms in § 6418, such as eligible credit, eligible taxpayer, and excessive credit transfer? Is there any term not defined in § 6418 that should be defined in guidance? If so, what is the term and how should it be defined?

To clarify, in 6418 (f)(2), those entities described in 6417(d)(1)(A) are not permitted to transfer credits at all?

- (2) Section 6418(c)(1) provides that, in the case of any eligible credit determined with respect to any facility or property held directly by a partnership or S corporation, the Secretary determines the manner in which such partnership or S corporation makes an election under § 6418(a) with respect to such credit.

- (a) What, if any, issues could arise when a partnership or S corporation makes an election under § 6418(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?

- (3) Section 6418(c)(2) provides that, in the case of any facility or property held directly by a partnership or S corporation, no election by any partner or shareholder is allowed under § 6418(a) with respect to any eligible credit determined with respect to such facility or property. If the election is made, what issues should be considered regarding the transfer of any portion of an eligible credit and what, if any, guidance is needed with respect to such issues? Further, what, if any, guidance is needed on allocating any amount received as consideration for transferring any portion of an eligible credit?

- (4) What, if any, guidance is needed with respect to parameters or limitations on a transferee taxpayer's eligibility to claim the credit?

- (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)?

- (6) In determining the amount of eligible credit transferred under § 6418(a), is guidance needed to clarify the application of any other Code provision? If so, what is the Code provision and what clarification is needed?

- (7) Is guidance needed to clarify how any other Code provision applies to an eligible taxpayer or a transferee taxpayer when an election is made under § 6418? If so, what is the Code provision and what clarification is needed?

- (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)? What factors should the Treasury Department and the IRS consider as to when documentation or registration should be required? Should the IRS require the same documentation or registration for all eligible credits? If not, how should the information or registration differ between eligible credits? What other processes could be implemented by the IRS to prevent duplication, fraud, improper payments, or excessive credit transfers under § 6418?

(9) What, if any, guidance is needed to clarify the application of the excessive credit transfer provisions of § 6418? What factors should be taken into account in determining whether reasonable cause exists for purposes of § 6418(g)(2)(B)? What guidance is needed to calculate the excessive credit transfer amount?

(10) For purposes of § 6418(g)(3), what, if any, guidance is needed to clarify the application of § 50 for purposes of credit recapture, basis adjustments, and eligibility related to § 50(b)(3)? Pursuant to § 6418(g)(3)(B)(i), an eligible taxpayer must notify the transferee taxpayer if, during any taxable year, the applicable investment credit property is disposed of, or otherwise ceases to be investment credit property with respect to the eligible taxpayer, before the close of the recapture period. What factors should be considered in determining the form and manner of this notice? Likewise, pursuant to § 6418(g)(3)(B)(ii), the transferee taxpayer must notify the eligible taxpayer of the recapture amount. What factors should be considered in determining the form and manner of this notice?

(11) Is guidance needed to clarify the application of § 6418(g)(4) regarding progress expenditures? If so, what clarification is needed?

(12) Please provide comments on any other topics that may require guidance.

