



# LUMMI INDIAN BUSINESS COUNCIL

2665 KWINA ROAD • BELLINGHAM, WASHINGTON 98226 • (360) 312-2000

Friday, November 4, 2022

Office of Associate Chief Counsel  
Internal Revenue Service  
United States Department of Treasury  
Submitted Electronically via: [www.regulations.gov](http://www.regulations.gov)

RE: Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits  
Dear Office of Associate Chief Council:

On behalf of the Lummi Nation, a federally recognized American Indian Tribal government, under the 1855 Treaty of Point Elliot, we submit these comments in response to the Treasury Department and IRS Notice [IR-2022-172](#) that was issued on October 5, 2022 to provide guidance on implementation of the new programs authorized under the Inflation Reduction Act of 2022 (IRA). The Lummi Nation recognizes the importance to respond to requests for comments, but also looks forward to upcoming Tribal Consultation.

Announced through [IR-2022-172](#), the Treasury Department and IRS had issued [Notice 2022-50 Requests for Comment on Elective Payment of Applicable Credits and Transfer of Certain Credits](#). Furthermore, the Treasury Department announced via Dear Tribal Leader Letter (DTLL) upcoming dates for Tribal Consultation and provide guidance to the Treasury Department from Tribal Leaders. The Lummi Nation looks forward to: 1) Participating in the virtual consultation, and 2) providing guidance to the Treasury Department, as it implements programs related to the IRA.

## Treasury Department Questions and LIBC Responses:

- 1) 01(2)(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?
  - a. As a project comes on board, gets funded by the applicant, one issue that can arise, is how the tax credits work in alignment with the other project financing components. Not all entities would have the ability to "float" the funds until the actual tax credits are received. Treasury should consider this when allocations are made for projects. Whether it can be an upfront payment, once approved, and allow the applicant (not grantee), report on the use of funds on a date that is mutually agreeable.
  
- 2) 01(2)(b) What factors should the Treasury Department and the IRS consider in determining the time and manner for making the election?
  - a. The Treasury Department and IRS should consider a dashboard that is like what the US Department of Energy, Loan Programs Office has for its newly enacted programs from the Inflation Reduction Act, Bipartisan Infrastructure Law, etc. This would help inform potential applicants on the availability of funds when considering a project. This would help because the renewable energy projects, typically include grant funds, which may require a letter certifying the match. Having a central dashboard of this information will

be key to ensure successful implementation and use of the programs. Additionally, the Treasury and IRS should transfer the funds for application as early as possible to ensure the project can have the cashflow necessary to complete construction and interconnection to realize the benefits for the community it intends to serve.

- 3) 1(05)(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)(A), (B), (C), or (D) for purposes of §6417?
  - a. The Treasury Department and the IRS should broaden the definition of tribal governments to include the following: Tribal Entities, (whether wholly or majority owned), Tribal Energy Development Organizations (including Tribal Utility Districts), or a Tribal Political Subdivision of any of the entities listed above. This would ensure that Tribal Governments, who have not been eligible before, can clearly participate based on their organizational structure.
  
- 4) 1(05)(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)?
  - a. Tribal Governments, in their constitutional and treaty powers, have the authority to govern themselves, including the types of organizational structures they undertake to fulfill their governmental services to community Members. These entities can include Tribal Energy Development Organization, Tribal Utility District, Tribal Section 17 Corporation, or Tribal Political Subdivision of Tribal Government.
  
- 5) 1(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?
  - a. Tribal Governments, like other potential governments or political subdivisions, may be required to post an audit to a clearing house. This can be a lengthy process after the close of a fiscal year. So, this may not be necessary to ensure timely: 1) recognition of credit available to grantee, 2) revenue or anticipated revenue for expenditure, 3) draw down of necessary credits to implement program/projects. The Treasury Department and IRS should require a financial award agreement to be signed by an authorized representative of said government, to execute this agreement prior to disbursement of funds. Once the agreement is dually executed, should be disbursed to the governments bank account within 15 days. If the agreement is longer in duration, such as the production or manufacturing tax credits, this agreement should be renewed at least annually with data provided by the applicant to determine the amount of credit to be received. This should tie with the eligible governments' fiscal year.
  
- 6) 1(8) Section 6417(d)(7)(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 date of that a return would be due under §6033(a) if 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?

- a. Tribal Governments, like other potential governments or political subdivisions, may be required to post an audit to a clearing house. This can be a lengthy process after the close of a fiscal year. So, this may not be necessary to ensure timely: 1) recognition of credit available to grantee, 2) revenue or anticipated revenue for expenditure, 3) draw down of necessary credits to implement program/projects. The Treasury Department and IRS should require a financial award agreement to be signed by an authorized representative of said government, to execute this agreement prior to disbursement of funds. Once the agreement is dually executed, should be disbursed to the governments bank account within 15 days. If the agreement is longer in duration, such as the production or manufacturing tax credits, this agreement should be renewed at least annually with data provided by the applicant to determine the amount of credit to be received. This should tie with the eligible governments' fiscal year. The Treasury Department and IRS should provide prospective applicants a flyer that clarifies the timeline for review and approval of credit application, including the payment schedule, whether it be one time or annually.
- 7) 1(9) For the 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?
- a. The Treasury Department and the IRS should require organic documents related to the formation of a business, or registration for the consideration of an application for credit. When it comes to a tax-exempt entity, there should be flexibility and a determination, such as a letter from the authorized representative, that a government, such as a Tribal Government, Entity or Political subdivision is organized as such. Additionally, as other Departments have required, it may be of interest of the Treasury Department and IRS to consider providing training to applicants/awardees on ways to prevent duplication, fraud, improper payments, or excessive payments. This training should focus on how to identify a situation, who to report to, and how to report it, if the issue is suspected.

The Lummi Indian Business Council has made great strides to deliver meaningful services, including the promotion, utilization and benefits generated from a clean energy economy to our Government, Agencies, Businesses, and ultimately our membership and community. We have much work left to do as we continue to leverage technology and renewable energy as an additional means to enhance and protect the lives of the Lummi community, families, and membership.

In conclusion, thank you for the opportunity to provide written comments and recommendations. If you have questions, please contact me directly at [AnthonyH@lummi-nsn.gov](mailto:AnthonyH@lummi-nsn.gov) or (360) 312-2000.

Respectfully,



Anthony Hillaire, Chairman  
Lummi Indian Business Council