

# MOAPA BAND OF PAIUTES

MOAPA RIVER INDIAN RESERVATION

BOX 340

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Internal Revenue Service  
CC:PA:LPD:PR (Notice 2022-50)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

RE: Comments of the Moapa Band of Paiute Indians Tribe on IRS Notice 2022-50

To Whom It May Concern:

On behalf of the Moapa Band of Paiute Indians, I hereby submit these written comments in response to IRS Notice 2022-50, 2022-43 IRB 1, related to request for comments on anticipated guidance to be issued regarding elective payments for applicable credits under Internal Revenue Code §6417.

The Moapa Band of Paiutes is located in Moapa, Nevada, on the Moapa River Indian Reservation, approximately 1 hour northeast of Las Vegas, Nevada. With over 80,000 acres of land, the Reservation is abundant with solar energy resources. The Tribe was the first tribe in the United States to deploy a commercial-scale solar energy project on Indian lands - the 250 MW Moapa Solar - in 2012. Over the decade since then, the Tribe has continued to develop commercial-scale solar projects. As of today, three projects for almost 700 MW have been constructed, and six projects for almost 1.3 GW are under development. Up until now, all of the projects have been owned entirely by third-party developers and investors who have leased land from the Tribe.

With the newly enacted Inflation Reduction Act (IRA), the Tribe now has the opportunity to itself develop, deploy, own and control clean energy projects on the Reservation that will allow the Tribe to meet its clean energy and economic development goals, as well as contribute to our nation's overall clean energy goals. The Tribe is especially interested in taking full advantage of these new authorities, tax benefits, and opportunities included in the IRA for tribes.

## **Specific Comments**

### Sec. 3.01 Elective Payments

Q.(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?

Response: Treasury should explicitly and clearly define the term "applicable credit." It's important to remember that tribal governments have less familiarity with the tax code, its terms and the IRS' interpretation of terms that other entities do. To be fair to the Tribe, the IRS should clearly state what tax credits are included in the term "applicable credit", how those tax credits are calculated and any specific terms and conditions for qualifying for such credits. Simple cross-references (such as those included in this Notice) to credit provisions in the Code are not helpful.

Q.(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?

Response: For tribal governments, the primary issues that are likely to arise relate to tribal government's unfamiliarity with the Code and lack of access to tax attorney and accountancy services to ensure understanding and compliance with the Code. Thus, any process for making the election should be relatively simple, with easy to understand forms and instructions.

Q.(2)(b) What factors should the Treasury Department and the IRS consider in determining the time and manner for making the election?

Response: Some factors for consideration in determining time and manner of election might include:

- timing of completion of the project and allowing claims within 90 days of completion, regardless of timing of completion during the year
- the type of entity that is making the election (i.e., tax-exempt, utility or cooperative, governmental entity) since the timing of the elective payment may be relevant based on entity type.

Q.(4)(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?

Response: The primary issues that will arise with the election made by a partnership are related to tribal limited liability companies that are organized and owned, in whole or in part, by tribal governments or tribal entities. Guidance should acknowledge that many tribes structure economic activities under tribal LLCs, and some use the structure for various financial and risk purposes. Such tribal LLCs or partnerships should be treated the same way similarly situated partnerships are treated under the Code.

Q.5(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?

Response: The term "Indian tribal government" should be defined to include political or economic subdivisions of a tribe (such as a utility, housing authority, energy division or authority, or other enterprise) regardless of how the entity is formed (whether by federal, tribal or state law).

Q.5(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)?

Response: Tribal governments could create multiple types of structures for purposes of owning and controlling clean energy projects that could benefit from the IRA tax benefits. For example, many tribes have federally chartered corporations (Section 17 companies) or tribally-chartered enterprises that own and control energy assets (such as utilities). Tribes might also form limited liability companies, either wholly-owned or as a joint venture with a developer, as a special purpose vehicle (a typical industry standard structure) to own clean energy projects.

Q.5(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?

Response: To the extent the partnership provisions of the Code are relevant to the treatment of tribal LLCs, the IRS should treat tribal LLCs consistently and equitably with other taxpayer partnerships. For example, tribal LLCs should be able to partner with investors, developers, utilities, other tribes or governments, or non-profits and employ the distributive share rules for allocating the "applicable credit" to each partner.

Q.7/8 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?

(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?

Combined Response: Factors the Treasury could consider related to the due dates to make an election and make a claim for a credit or refund include:

- need for simplicity and clarity
- use of a single form, such as Form 3468, to make the election and claim the credit

Q.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?

Response: Treasury should not require any additional information than what is already required to file Form 3468. Tribal governments should be instructed to retain any documentation necessary to support its filing, such as construction agreements, appraisals, interconnection agreements, or other evidence to support the cost basis of the "applicable credit." But, these documents should not have to be submitted to either make the election, submit the claim, or qualify for the payment. Tribal governments should be treated in the same manner as any taxpayer that is also submitting Form 3468 for a tax credit.

#### Other Comments

The Tribe has relied in the past on federal grants or other federal financial assistance to develop and deploy clean energy projects. Treasury should clarify that the use of federal grant funding for clean energy projects will not result in the loss of tax credit eligibility. The Tribe would support an approach that the "cost basis" of the tax credit will be reduced by the grant amount, but that the tax credit would be available for any remaining non-federal cost share. For example, if the clean energy project costs \$10 million to construct and the Tribe receives a \$2 million federal grant, then the cost basis could be reduced to \$8 million (the non-federal cost share amount) and the tax credit applied to the \$8million.

Again, thank you for the opportunity to present comments on behalf of the Moapa Band of Paiute Indians.

Sincerely,



Laura Parry  
Chairwoman  
Moapa Band of Paiutes