



# BOSS

Black Owners of Solar Services

November 4, 2022

**VIA WWW.REGULATIONS.GOV  
AND FIRST-CLASS MAIL**

Internal Revenue Service  
CC:PA: LPD:PR (Notice 2022-51)  
Room 5203  
P.O. Box 5203, Ben Franklin Station  
Washington, D.C. 20044

The Honorable Lily L. Batchelder  
Assistant Secretary for Tax Policy  
Department of the Treasury  
1500 Pennsylvania Ave., NW  
Washington, D.C. 20220

Mr. William M. Paul  
Principal Deputy Chief Counsel and Deputy Chief Counsel (Technical)  
Internal Revenue Service  
1111 Constitution Ave., NW  
Washington, D.C. 20224

**Re: Request for Comments on Certain Energy Generation Incentives  
Notice: 2022-51**

---

Black Owners Of Solar Services (BOSS) is pleased to provide comments to U.S. Department of the Treasury (“Treasury”) and the Internal Revenue Service (“IRS” or “the Service”) pertaining to the prevailing wage, apprenticeship, domestic content, and energy community requirements for increased or bonus credit (or deduction) amounts under those respective provisions of the Code.

BOSS is qualified under Section 501(c)(3). BOSS members constitute the largest community of African American professionals working in the solar photovoltaic (PV) space. BOSS members are entrepreneurs, financiers, veterans, attorneys, engineers, contractors, developers, and other peer partners. BOSS members possess deep knowledge, experience, and strategic access to the multi-trillion dollar emerging solar and clean energy technology marketplace that is fast reshaping sustainability, infrastructure resilience, and livelihoods in our country and across the globe. BOSS and its members have established roots and relationships in all communities, and particularly those disproportionately impacted by climate change—in the United States and



# BOSS

Black Owners of Solar Services

abroad. Our collective efforts are making communities more resilient, sustainable, and economically powerful.

The mission of BOSS is to combine and leverage our collective power to lead actionable solutions for sustained access to equitable opportunities in clean energy production, distribution, and storage for Black-owned businesses. BOSS was launched in the Fall of 2020 after an inaugural Solar Equity Summit (SES) on September 29, 2020. A common theme throughout the SES was the importance of policy in shaping markets to enable accessibility for Black-owned businesses to thrive in the clean energy sector. Energy equity is a key policy enabler to manifesting the mission of BOSS and plays a critical role in our endeavor to highlight unfair practices and provide recommendations for common actions to address them.

The comments below address two areas on which the agencies requested information: elective payments under § 6417 and § 6418 including partnerships permitted to make elections under § 6417 and § 6418, and the meaning of applicable entities.

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?*

Both Section 6417 of the Internal Revenue Code of 1986, as amended (the “Code”), relating to the elective payment of applicable credits, and Section 6418 of the Code, relating to the transfer of certain credits, were newly enacted by the Inflation Reduction Act. Both of these Code sections (at Section 6417(c) and Section 6418(c), respectively) contemplate the ability of partnerships and S corporations to make elections under those sections. However, neither provision addresses the extent to which a partnership (or a limited liability company that is treated as a partnership for U.S. federal income tax purposes) that has both for-profit entities and tax-exempt organizations as partners (or members) may make elections under Code Sections 6417 or 6418. Nor, should a partnership between for-profit entities and tax-exempt organizations be eligible to make an election under Code Section 6417, does that section clarify how such an election would work in terms of the allocations as between the for-profit and tax-exempt partners.

We believe that these are key points for Treasury and the IRS to clarify, because partnerships are very commonly used in clean energy projects, and it is often the case that there may be both for-profit entities and tax-exempt organizations participating as partners in such projects. The vitality of this clarification is underscored by the fact that for-profit enterprises and tax-exempt organizations are treated disparately under both Code Section 6417 and Code Section 6418. For example, the elective payment under Section 6417 of the Code is available to tax-exempt entities with respect to a considerably larger group of credits than it is for for-profit entities, which may elect direct payment only for the clean hydrogen production credit under



# BOSS

Black Owners of Solar Services

Code Section 45V, the carbon oxide sequestration credit under Code Section 45Q, and the advanced manufacturing production credit under Code Section 45X. Contrariwise, the credit transfer regime under Section 6418 of the Code is not available to tax-exempt organizations but is available to for-profit enterprises.

Given the frequency with which for-profit entities and tax-exempt organizations participate together in clean energy projects through partnerships, clarity is vitally needed on the extent to which such partnerships are eligible to make elections under Sections 6417 and 6418 of the Code, and, if so, the mechanics of how such elections (and the appropriate allocations) are to operate.

*(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?*

Specific guidance is needed to address non-profit wealth-building ventures such as small- to medium-scale Community Solar infrastructure projects. Permitting community organizations to partner with minority-owned and women-owned businesses (MWOB) in the solar energy space to make an election under § 6417(b)(8), would achieve the IRA – and agency - goals of appropriately expanding the entities that could qualify for elective payment to benefit low- or moderate-income (LMI) people or communities and the entrepreneurs who support those communities. Single-point solar installation can be cost-prohibitive for LMI communities, additionally, MWOBs struggle with gaining access to financial services to help them initiate or scale up their businesses in the solar energy industry. By permitting partnerships between for-profit MWOBs and community organizations to make elective payments for small- to medium-scale solar infrastructure installations, Treasury would help LMI households and communities with the cost-savings associated with solar energy, and provide the necessary resources and financial services for MWOBs in this sector to create jobs and train individuals for the myriad of career opportunities available in the renewable energy sectors and the services which support that sector. Otherwise, such elective payments and credits would only be available to those with resources to become producers and create a permanent divide between rate payers and producers of renewable energy.

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?*

The current definition of Applicable Entity under § 6417(d)(1)(A) of the IRA, should be expanded to include subsection (vii) any minority- or women-owned corporation which is engaged in a partnership with a for-profit entity to furnish community solar through small- to medium solar infrastructure projects, producing less than 1.5 megawatts of electricity in communities that rely on a disproportionate amount of Federally assisted programs such as:



# BOSS

Black Owners of Solar Services

- o Social Security
- o Supplemental Security Income (SSI)
- o School Nutrition Assistance Programs (SNAP)
- o Temporary Assistance for Needy Families (TANF)
- o Medicaid
- o Low Income Housing Tax Credits (LIHTC) and
- o Low Income Housing Energy Assistance Program (LIHEAP)

*(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)?*

As mentioned in response to Question 4(a), for-profit entities and tax-exempt organizations frequently participate together in clean energy projects through partnerships. As such, clarity is vitally needed on the extent to which such partnerships are eligible to make elections under Sections 6417 and 6418 of the Code, and, if so, the mechanics of how such elections (and the appropriate allocations) are to operate. For example, Subchapter-K partnership structures would be used by entities included in the proposed expanded definition of Applicable Communities listed above.

### Section 3.02 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?*

Please see response to Question 5(a). Eligible taxpayer as defined in § 6418 refers to applicable entity in § 6417(d)(1)(A). We recommend expanding that definition in our response to Question (5)(a) above.

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?*

See responses to Questions(4)(a) and (4)(b).



**BOSS**

Black Owners of Solar Services

Thank you for the opportunity to respond to this request for Comments and your consideration in these issues.

Sincerely,

*Ajulo E. Othow*

Ajulo E. Othow  
President, Board of Directors  
Black Owners of Solar Services (BOSS)