



ELEVATE

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

Thank you for this opportunity to comment on these important issues related to implementation of the Inflation Reduction Act. [Elevate](#) is an Illinois-headquartered nonprofit that works nationwide, with extensive projects in disinvested communities in the Midwest and West Coast states. We design and implement clean energy, clean water, and workforce development programs that lower costs, protect the environment, and ensure that program benefits reach those who need them most. We help owners and tenants of affordable rental apartment buildings, public housing authorities, and home-based childcare centers to manage their energy use and remove the lead in their buildings. We are also a partner in the philanthropy funded [Justice40 Accelerator](#) which is helping community-based organizations grow their capacity so that they may participate fully in federally funded programs.

Issues For Which Guidance Is Needed Most Quickly

Elevate believes it would be most helpful to have guidance most quickly on the timing of applications and payments, as described more fully in our comments below.

Most Important Issues on Which Guidance is Needed

From Elevate's perspective, the most important issue is the treatment of third-party ownership models, as described more fully in our comments below.

.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):



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(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?

Elevate recommends that guidance be provided on the following topics:

- How does a tax-exempt organization establish their qualification as an applicable entity? For example, will nonprofits or public agencies use their Federal Employer Identification Number (EIN) and establish eligibility once? Once recognized as an eligible organization, do they need to establish eligibility again in subsequent years for separate applications?
 - To reduce administrative burden, Elevate recommends that nonprofits and public agencies be able to use their EIN and, once deemed eligible, remain eligible as long as the EIN is valid.
- If a qualified energy system is installed with the help of a third-party, how does financing and third-party ownership impact the applicable entity's ability to claim the credit? For example, when a third party designs the system and manages construction on behalf of a nonprofit or government agency, can the third-party claim the credit on the nonprofit's behalf? Similarly, if a third party finances, constructs and maintains a qualified system, and leases the equipment to the applicable entity, will the third-party or the applicable entity be able to claim the credit? And finally, does the applicable entity need to pay for and own the qualified systems to be eligible for the direct payments or can a third-party demonstrate that the value of the energy from the qualified system is going to the applicable entity?
 - Third-party mechanisms are often critical to accelerating deployment. Even when applicable entities have access to tax credits or other incentives, the ability to capitalize projects and keep them on their balance sheets is often a barrier to building the project. Consequently, Elevate recommends flexibility to allow a variety of third-party models where applicants can clearly demonstrate that the applicable entity sees monetary benefit, such as at least 50% savings on the cost of the energy produced by the qualified system or a contractual path to ownership of the project after a defined period.



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

Applicable entities such as community-based organizations and affordable housing developers are often under-capitalized. Consequently, any delay in receiving funds for energy projects creates a barrier that is too difficult to overcome and dooms the project before it starts, further exacerbating inequities in the way clean energy projects are distributed. To ensure deployment, these entities need the ability to capture the credit as soon as possible.

Consequently, Elevate recommends that, for “applicable entities” that are tax exempt, Treasury should consider the anticipated timing for making elections under § 6417, and ideally make a determination that results in the tax credit flowing to the applicable entity as quickly as possible, and preferably in the calendar year in which the system is energized.

(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?

Guidance should address whether all nonprofits and public entities are considered applicable entities. Elevate recommends that at a minimum, a subset of applicable entities should always be eligible, including affordable housing developers, community-based organizations, or any nonprofit or public entity that resides within or directly serves low- and moderate-income communities.

(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)?

Elevate anticipates that a variety of nonprofits and public entities will seek to be applicable entities, such as affordable housing developers, community-based organizations, and nonprofits and public entities that are located in or serve low- and moderate-income communities.



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

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

As noted above, applicable entities such as community-based organizations and affordable housing developers are often under-capitalized and delays in receiving funds for energy projects will result in projects that never get off the ground, further exacerbating inequities in the installation of clean energy project. To ensure deployment, these entities need the ability to capture the credit as soon as possible.

Consequently, Elevate recommends that, for applicable entities that are tax exempt, Treasury should consider the anticipated timing for making elections for direct payment and make a determination that results in funding flowing to the applicable entity as quickly as possible, and preferably in the calendar year in which the system is energized.

(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?

Similar to our recommendations for the timing of payments to nonprofits, Elevate is concerned that delays in receiving direct payment present an insurmountable barrier to the installation of many clean energy projects. Consequently, we recommend that for direct payment to applicable entities, there be an option to allow for submitting the election at any time during the calendar year and not wait for the tax submission window. This would mean that the direct payment be made immediately, accounting for a reasonable processing time.

(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



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IRS consider when providing guidance to clarify the timing and manner of a payment made by these governments or political subdivisions?

As with nonprofits and community-based organizations in low- and moderate-income communities, government agencies also face significant barriers to installing successful projects because of delays in receiving payments or tax credits. As noted above, we recommend that these entities be able to receive payments in the year that the system is energized, instead of waiting until the tax filing period of the following year.

.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?

Elevate recommends that Section 6418 be clarified to ensure that any applicable entity or any taxpaying entity with insufficient tax liability to fully capture the credit in a single year, be allowed to transfer credits under § 6418.

Thank you,

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