



November 4, 2022

Office of the Associate Chief Counsel (Passthroughs and Special Industries)
U.S. Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-50)
Room 5203, P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

Via Federal eRulemaking Portal at: www.regulations.gov (IRS-2022-0050)

Re: Comments of Energy Keepers, Inc. on Elective Payment of Applicable Credits and Transfer of Certain Credits (Notice 2022-50)

Dear Sir/Madam:

This letter is submitted on behalf of Energy Keepers, Inc. (“EKI”) in response to the publication of Notice 2022-50 seeking comments on issues related to elective payment of applicable credits and transfer of certain credits. EKI is a corporation wholly owned by the Confederated Salish and Kootenai Tribes (“CSKT”) and chartered by the U.S. Department of Interior pursuant to section 17 of the Indian Reorganization Act, 25 U.S.C. § 5124 (formerly 477). CSKT is the sole shareholder, holding the one- share of non-transferable stock on behalf of the entire membership of CSKT. The Tribal Council of CSKT functions as the Shareholder’s Representative for all purposes regarding EKI. EKI’s business affairs are managed under the direction of a Board of Directors, consisting of Directors appointed by the Shareholder’s Representative in the manner provided in and subject to the provisions of the corporate bylaws. Corporate activities of EKI are performed by the Board of Directors and management pursuant to an annual operating plan that is developed by the Board of Directors and approved by the Shareholder’s Representative.

The Confederated Salish and Kootenai Tribes is a federally recognized Indian tribal government established pursuant to Section 16 of the Indian Reorganization Act, 25 U.S.C. § 5123 (formerly 476).¹ CSKT is comprised of the Salish, the Pend d’Oreille, and the Kootenai Tribes. The Salish, Pend d’ Oreille, and Kootenai people have lived in the Flathead, Clark Fork, and Bitterroot River basins of Montana since time immemorial. Those tribes memorialized their sovereign status and the fundamental nature of their government-to-government relationship with the United States by signing the Hellgate Treaty on July 16, 1855.² The Tribes’ headquarters is located in Pablo, Montana. CSKT is governed by a 10-member Tribal Council. The CSKT have an established

¹ Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 87 Fed. Reg. 4636 (Jan. 28, 2022). Link: <https://www.federalregister.gov/documents/2022/01/28/2022-01789/indian-entities-recognized-by-and-eligible-to-receive-services-from-the-united-states-bureau-of>

² 12 Stat. 975 (ratified Mar. 8, 1859, proclaimed Apr. 18, 1859).

and federally recognized Constitution and Bylaws that were ratified on October 4, 1935 in accordance with section 16 of the Indian Reorganization Act, 25 U.S.C. § 476.

EKI distributes its net revenues to CSKT to aid it in performing the Tribes' inherent government functions. Revenue generated by EKI will decrease the need for CSKT to receive federal funding, thus promoting one of Congress' "over-riding goals" to encourage "Tribal self-determination and economic independence." In general, EKI is to "promote and facilitate the development and utilization of energy resources for the benefit of members of CSKT." EKI's purpose is to acquire, construct, manage, operate, and maintain the Séliš Ksanka Q'íispé Hydroelectric Project, FERC Project No. 5 ("SKQ Project")³ on behalf of CSKT and develop other energy facilities as authorized by its Board of Directors so as to generate a profit and accrue income that will be disbursed to CSKT in the form of net revenue for subsequent use by CSKT to support the government functions of the tribes.

(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?

Section 6417(d)(1)(A) as added by the Inflation Reduction Act defines the term "applicable entity" to include "an Indian tribal government (as defined in section 30D(g)(9))." That paragraph defines an Indian tribal government as "Indian tribal government. -- For purposes of this subsection, the term "Indian tribal government " means the recognized governing body of Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of this subsection pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Under Section 17 of the Indian Reorganization Act, 25 U.S.C. § 5124 (formerly 477), the Secretary of the Interior is authorized to issue a charter of incorporation to an Indian tribe, provided such charter is ratified by the Indian tribal governments. These corporations, known as Section 17 corporation, own and operate businesses as an extension of and controlled by the Indian tribal government. As is the case for EKI, the net revenues generated by those corporations are used to support the government functions of the tribes.

As wholly-owned entities of Indian tribal governments that assist those governments in performing their inherent governmental functions, federally chartered, Section 17 corporations should be classified as an Indian tribal government eligible to be an "applicable entity" under Section 6417 of the Internal Revenue Code (26 US.C. 6417).

.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):

³ The Séliš Ksanka Q'íispé Hydroelectric Project, FERC Project No. 5 ("SKQ Project") is co-licensed to the CSKT and EKI, and it is the first major hydropower facility fully owned and operated by a federally recognized Native American Tribe in the United States.

(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?

For Indian tribal governments and related entities, guidance will be necessary on how an entity that is not required to file a federal income tax return will make the election and compute the available tax credit. Treasury and the IRS should develop the forms to provide for the election and compute the tax credit that can be filed as simple as possible and a standalone document that is not part of a larger tax return. The time for filing this information should be within a reasonable period of time after the calendar year in which the tax credit is earned and the elective payment should be made within 90 days of filing the applicable forms.

Thank you for the opportunity to provide these comments and I would appreciate the opportunity to respond to any questions you may have.

Sincerely,



Brian E. Lipscomb, CEO Energy Keepers Inc.