



TaxNewsFlash

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Treasury and IRS release guidance on direct pay and transferable tax credits

The U.S. Treasury Department and IRS today released for publication in the Federal Register four guidance documents relating to direct pay and transferable tax credits available under the “Inflation Reduction Act of 2022” (IRA) and the “The CHIPS and Science Act of 2022” (CHIPS Act).

Background

IRA

Very generally, under section 6417 as enacted by the IRA, for tax years beginning after December 31, 2022, applicable entities can choose to make an elective payment election (“direct pay election”), which will treat certain credits as a payment against their federal income tax liabilities rather than as a nonrefundable credit. This payment will first offset any tax liability of the entity and any excess will be refundable.

Applicable entities generally include tax-exempt organizations, state and local governments, Indian tribal governments, Alaska Native Corporations, the Tennessee Valley Authority, and rural electric cooperatives. All other taxpayers may elect to be treated as an applicable entity for a limited number of credits.

Also, for tax years beginning after December 31, 2022, certain eligible taxpayers (generally taxpayers that are not applicable entities) can make an election to transfer all or a portion of an eligible credit to unrelated taxpayers for cash payments under section 6418.

The unrelated taxpayers are then allowed to claim the transferred credits on their tax return. The cash payments are not included in gross income of the eligible taxpayer and are not deductible by the unrelated taxpayers.

CHIPS Act

The CHIPS Act created a new advanced manufacturing investment tax credit under section 48D which for which a direct pay election is also available for all taxpayers eligible to claim the section 48D credit.

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Direct pay

Proposed regulations issued today provide guidance on various aspects of the section 6417 direct pay election for IRA credits. The guidance provided includes clarity around issues including (but not limited to):

- The definition of applicable entity
- Partnerships making a direct pay election
- Limitations on amount of direct pay available
- Interaction with estimated payments
- Timing for election and refunds

Proposed regulations issued today also provide rules applicable to the direct pay election for the section 48D credit.

Both sets of direct pay election proposed regulations state they are applicable to tax years ending on or after the date of publication of final rules.

Both sets of proposed regulations provide that comments must be received by August 14, 2023.

A hearing date for the section 6417 IRA direct pay proposed regulations has been set for August 21, 2023. A hearing date for section 48D direct pay proposed regulations has been set for August 24, 2023.

Transferability

Proposed regulations issued today also provide guidance on various aspect of the section 6418 transferability election. The guidance provided includes clarity around issues including (but not limited to):

- Credit limitations applicable to transferors and transferees
- Definition of cash consideration including timing of payment
- Special considerations for transferor and transferee partnerships
- Interaction with estimated payments
- Manner and timing for election to transfer

These proposed regulations state that they are applicable to tax years ending on or after the date of publication of final rule.

Comments are due by August 14, 2023. A hearing date has been set for August 23, 2023.

Pre-filing registration process

Also issued to are temporary regulations (and concurrently released identical proposed regulations) setting forth mandatory information and registration requirements for making a direct pay election under section 6417 or under section 48D. The documents also contain mandatory information and registration requirements for making an election to transfer credits under section 6418.

The temporary regulations apply to tax years ending on or after their publication in the Federal Register. Comments on the proposed regulations are due by August 14, 2023. For hearing dates, the document references the hearing dates provided in the direct pay and transferability proposed regulations.

“Frequently asked questions” (FAQs)

In connection with today’s release, the IRS has issued [FAQs](#) relating to the rules.

KPMG observation

These rules provided eagerly awaited guidance on some of the most transformative incentive related provisions in the IRA, and also applicable to CHIPS. In many cases transactions and structuring decisions around the relevant tax credits have been waiting on, and conditioned around, the rules announced today. Tax professionals are currently digesting and analyzing this guidance and a more comprehensive report with in-depth observations will be forthcoming.

Documents

- Temporary regulations [\(T.D. 9975\)](#) [PDF 294 KB] on pre-filing registration requirements for certain tax credit elections
- Notice of proposed rulemaking and notice of public hearing [\(REG-105595-23\)](#) [PDF 315 KB] on elective payment of advanced manufacturing investment credit. Read a related IRS release— [IR-2023-117](#) (June 14, 2023)
- Notice of proposed rulemaking and notice of public hearing [\(REG-101607-23\)](#) [PDF 452 KB] on section 6417 elective payment of applicable credits
- Notice of proposed rulemaking and notice of public hearing [\(REG-101610-23\)](#) [PDF 498 KB] on section 6418 transfer of certain credits

Read a related IRS release— [IR-2023-116](#) (June 14, 2023)

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