



TaxNewsFlash

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Treasury and IRS issue final regulations, other guidance on direct pay of certain tax credits under IRA and CHIPS

The U.S. Treasury Department and IRS today issued final regulations and other guidance relating to direct pay of certain tax credits available under the “Inflation Reduction Act of 2022” (IRA) and the “The CHIPS and Science Act of 2022” (CHIPS Act). Both sets of final regulations describe the rules for the elective payment election, including special rules applicable to certain types of entities, excessive payment penalties, basis reduction and recapture, denial of double benefit, and the pre-filing registration process.

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 certain credits (Sections 45Q, 45V, and 45X).

CHIPS Act

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

Final regulations

The Treasury Department and IRS in June 2023 released two sets of proposed regulations providing guidance on various aspects of the direct pay election under section 6417 for IRA credits and for the section 48D CHIPS credit, as well as temporary regulations setting forth mandatory information and registration requirements for making a direct pay election under section 6417 or under section 48D. Read [TaxNewsFlash](#)

Today's final regulations finalize those proposed regulations, and remove the temporary regulations, effective as of May 10, 2024.

- Final regulations ([T.D. 9988](#)) [PDF 635 KB] on section 6417 elective payment of applicable credits
- Final regulations ([T.D. 9989](#)) [PDF 353 KB] on section 48D elective payment of advanced manufacturing investment credit

Both sets of final regulations are applicable to tax years ending on or after March 11, 2024.

The June 2023 guidance also included proposed regulations providing guidance with respect to the election available to certain eligible taxpayers to transfer all or a portion of an eligible credit to unrelated taxpayers for cash payments under section 6418. However, those proposed regulations were not finalized today.

Proposed regulations

Comments received in response to the section 6417 proposed regulations requested that the Treasury Department and the IRS provide additional guidance as to the types of credit property co-ownership arrangements that could validly elect under section 761(a) to be excluded from the application of subchapter K, and therefore not be treated as partnerships ineligible to make an elective pay election.

In response, proposed regulations (REG-101552-24) were also issued today regarding these types of arrangements.

The [proposed regulations](#) [PDF 251 KB] would provide certain exceptions to the existing regulations for those organizations and would allow such entities to make an elective payment election.

Comments on the proposed regulations must be received by May 10, 2024.

A public hearing on the proposed regulations is scheduled for May 20, 2024, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed must be received by May 10, 2024. If no outlines are received by that date, the public hearing will be cancelled.

Notice 2024-27

In addition, the IRS issued [Notice 2024-27](#) [PDF 118 KB] that requests additional comments on any situations in which an elective payment election under section 6417 could be made for a clean energy credit that was purchased in a transfer for which an election under section 6418 is made, which is referred to as chaining.

“Frequently asked questions” (FAQs)

Finally, the IRS updated the elective payment [FAQs](#) based on the final regulations.

Read IRS releases—[IR-2024-61](#) and [IR-2024-62](#) (March 5, 2024)

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