



TaxNewsFlash

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Final regulations: Guidance on transfer of certain tax credits under IRA

The U.S. Treasury Department and IRS today issued [final regulations](#) (T.D. 9993) concerning the election under section 6418 to transfer certain tax credits under the “Inflation Reduction Act of 2022” (IRA).

The final regulations affect eligible taxpayers who elect to transfer eligible credits and the transferee taxpayers and describe rules for the election to transfer eligible credits in a tax year, including definitions and special rules applicable to partnerships and S corporations and regarding excessive credit transfer or recapture events, as well as rules related to a required IRS pre-filing registration process. The Treasury Department and IRS in June 2023 released [proposed regulations](#) (REG-101610-23) providing guidance with respect to the section 6418 election to transfer eligible credit, as well as [temporary regulations](#) (T.D. 9975) (and concurrently released identical proposed regulations) setting forth mandatory information and registration requirements for making an election to transfer credits under section 6418. Read [TaxNewsFlash](#)

Today’s final regulations finalize those proposed regulations and remove the temporary regulations.

The final regulations are effective on July 1, 2024.

Read a related IRS release—[IR-2024-120](#) (April 25, 2024)

Background

The IRA provides two monetization options for credits generated and claimed in tax years beginning after December 31, 2022.

First, as provided in these final regulations, certain eligible taxpayers (generally taxpayers that are not applicable entities as defined in section 6417) 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.

Second, 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).

For more information, contact a tax professional with KPMG Washington National Tax:

Hannah Hawkins | hhawkins@kpmg.com

Katherine Breaks | kbreaks@kpmg.com

Julie Chapel | jchapel@kpmg.com

Kelsey Latham | kcurcio@kpmg.com

kpmg.com/socialmedia



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