DATE: June 22, 2023
UPDATED: June 28, 2023

Guidance to Accessing Clean Energy Credits Included in the Inflation Reduction Act

Background

On June 14, the U.S. Department of Treasury and Internal Revenue Service issued guidance on accessing the clean energy tax credits included in the Inflation Reduction Act (IRA). The IRA created two delivery mechanisms, "elective pay" (or direct payment) and "transferability" that allow tax-exempt entities to access the energy tax credits included in the law.

Historically, tax-exempt entities, such as state and local governments and other public agencies like special districts, rural electric cooperatives, etc., could not benefit from tax incentives as they do not pay taxes. However, new direct pay and transferability provisions within the IRA allow tax-exempt entities to benefit from these tax credits for the first time.

The IRA's direct pay allows eligible tax-exempt entities to receive payment equal to the full value of tax credits for building qualifying clean energy projects. Also, eligible entities can transfer certain tax credits through a process known as transferability to other parties.

Tax credits eligible for direct payment or transferability include projects that generate clean electricity through solar, wind, and battery storage projects; installing electric vehicle (EV) charging infrastructure; and purchasing clean vehicles for state or city vehicle fleets. Note, as of December 2022, the tax credit for commercial EVs is up to $7,500 for vehicles under 14,000 pounds and up to $40,000 for vehicles over 14,000 pounds. Only certain vehicles are eligible for the credit, as there are manufacturing and final assembly requirements. Entities receiving direct payment will elect to receive compensation on a tax filing.

June 15 Information Session on Elective Pay

On Thursday, June 15, 2023, the White House and U.S. Department of Treasury held the first of two scheduled information sessions on the proposed guidance to access clean energy tax credits. The presentation's focus was on elective pay/direct payment.

- Elective pay and transferability will be "gamechangers" for governments and nonprofits by enabling clean energy projects to be built quickly and affordably. With "elective pay", tax-exempt and governmental entities that do not owe Federal income taxes will be able to receive a payment equal to the full value of tax credits for making qualified investments when building qualifying clean energy projects.

- Applicable entities can use elective pay for the following tax credits included in the IRA:
  - Energy Generation and Carbon Capture
    - Production Tax Credit for Electricity from Renewables
    - Clean Electricity Production Tax Credit
    - Investment Tax Credit for Energy Property
    - Clean Electricity Investment Tax Credit
    - Low-Income Communities Bonus Credit
    - Credit for Carbon Oxide Sequestration
    - Zero-Emission Nuclear Power Production Credit
  - Manufacturing
    - Advanced Energy Production Credit
    - Advanced Manufacturing Production Credit
  - Vehicles
    - Credit for Qualified Commercial Vehicles
    - Alternate Fuel Vehicle Refueling Property Credit
  - Fuels
    - Clean Hydrogen Production
    - Clean Fuel Production Credit
- Entities interested in elective pay/direct payment should follow the steps provided on the IRS website.

The next webinar on elective pay and transferability will be held on Thursday, June 29 at 3:00 pm ET - Webinar Registration

June 27 Webinar for Rural Stakeholders

On Tuesday, June 27, John Podesta, the White House Advisor on Clean Energy Innovation and Implementation hosted rural stakeholders for **Rural Clean Energy Funding Opportunities Across Federal Agencies**, a virtual event co-hosted by U.S. Department of Agriculture (USDA), Department of Energy (DOE), Environmental Protection Agency (EPA), and Department of Treasury. The purpose of the webinar was to introduce a wide array of new and existing clean energy funding opportunities across federal agencies that are eligible to rural stakeholders, including farmers, homeowners, businesses, local governments, manufacturers, and nonprofits.

Administrator Andy Berke of the USDA's Rural Utility Service discussed two of the office's newest programs: the Powering Affordable Clean Energy (PACE) program and the Empowering Rural America (New ERA) program. Created by the IRA, these programs will distribute $9.7 billion to predominantly rural communities across the country to deploy clean and renewable energy infrastructure. The Renewable Energy for America Program (REAP), which provides low-interest financing and grant funding for rural agriculture and small business, was also highlighted.

A wide variety of DOE programs were presented, including the Grid Resiliency and Innovation Partnership (GRIP) program, Weatherization Assistance Program (WAP), the Energy Improvements in Rural and Remote Areas (Fixed ERA) program, and more. DOE representatives confirmed that the next round of GRIP funding will open in Q4 of 2023, between October and December.

The EPA's most notable responsibility arising from the IRA, the Greenhouse Gas Reduction Fund, was the focus of the next segment. A framework to organize and expend the $27 billion under this fund is still under development but is broadly being divided into three "competitions" with the following allocations:

- The National Clean Investment Fund ($14 billion)
- Clean Communities Investment Accelerator ($6 billion)
- Solar For All ($7 billion) **Notice of Funding Opportunity released June 28, 2023

The EPA's objective in obligating these funds will be to reduce emissions, benefit American communities, especially low-income and disadvantaged communities, and to mobilize private capital and financing in alignment with these goals.

Finally, Treasury representatives discussed the framework through which they will implement elective pay mechanisms, and how elective pay will interact with clean energy funding administered elsewhere in the federal government. Treasury representatives emphasized that elective pay tax credits can be co-mingled with other clean energy financing and grant programs. Elective pay will enable tax-exempt entities such as non-profits, local governments and state political subdivisions, tribal governments, and more, to access tax incentives for clean energy investments. Further, certain "bonuses" for investments, such as prevailing wage compliance, apprenticeship investments, and domestic content compliance can elevate the amount of tax credit received. No concrete timeline was provided for when entities could expect to receive direct pay funds. Payments would be made as soon as an eligible return was accepted and processed.

USDA also expects to release a "pocket guide" on cross agency clean energy financing sometime this summer.

Public Comment Opportunity

The Notice of Proposed Rulemaking for Elective Pay and Transferring Credits are each open for public comment for 60 days. The deadline to submit comments is Monday, August 14, 2023.

Additional Resources

Elective Pay and Transferability | Internal Revenue Service (irs.gov)

Credits and Deductions Under the Inflation Reduction Act of 2022 | Internal Revenue Service (irs.gov)

Direct Pay | Clean Energy | The White House

Frequently Asked Questions from the IRS on elective pay and transferability. Frequently Asked Questions from the IRS on elective pay and transferability.

A link to the Department of Energy's website detailing the EV credit can be found here.