



# Request for Comment on IRS-2022-0050

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Internal Revenue Service, CC:PA:LPD:PR (Notice 2022-50), Room 5203  
P.O. Box 7604  
Ben Franklin Station, Washington, DC 20044

Attention: Office of Associate Chief Counsel (Passthroughs & Special Industries)

Blue Rock Renewables, LLC appreciates the opportunity to submit the following comments with respect to IRS Notice 2022-0050, with respect to the implementation of Sec. 6418. Our view is that Sec. 6418 is a transformative change to the renewable energy marketplace in the United States, which we expect will result in lower transaction costs and increased adoption of renewable energy technologies. Our intent in providing these comments is to ensure the implementation of Sec. 6418 provides renewable energy project developers and taxpayers with a clear understanding of the new rules that will govern this critical new portion of the tax code. Thank you for your consideration.

Regards,

Blue Rock Renewables, LLC

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• **(2)(b) What factors should the Treasury Department and the IRS consider in determining the time and manner for making the election [by the transferor, whether a Partnership, S Corporation, or C Corporation]?**

o Factor 1: For Production Tax Credits, wherein credits are produced throughout each year, can the election be so that the Buyer of the credit can use the credits as-generated quarterly to reduce estimated tax payments? If this is the case, funds will transfer from Buyer to Seller quarterly (versus annually), making the sale of the credit more efficient for the Seller.

o Factor 2: For Investment Tax Credits, wherein the credit is generated once the facility is placed into service, can the election be so that the Buyer of the credit can use the credit on their next quarterly estimated tax payment? Similar to above, this will ensure funds will transfer from Buyer to Seller within the quarter the facility becomes operational, making the sale of the credit for more efficient for the Seller.

• **(4) What, if any, guidance is needed with respect to parameters or limitations on a transferee taxpayer's eligibility to claim the credit?**

o Confirm: The eligible credits under Sec. 6418(f)(1)(A) are general business credits within the context of Sec. 38, and that these credits can reduce the Corporate Minimum Tax.

• **(5) For purposes of § 6418(d), what, if any, guidance is required to determine the proper taxable year in which to claim any credit that was transferred pursuant to an election made under § 6418(a)?**

o Guidance Required: How quickly can the Buyer of the credit apply such credit to reduce their estimated tax payment? The shorter the gap in timing, the more efficient capital can flow to Sellers.

• **(7) Is guidance needed to clarify how any other Code provision applies to an eligible taxpayer or a transferee taxpayer when an election is made under § 6418? If so, what is the Code provision and what clarification is needed?**

o Guidance Needed 1: Does the Buyer of the tax credit recognize federal taxable income for the difference between the purchase price paid and the face value of the credit?

o Guidance Needed 2: Is a partnership an eligible transferee taxpayer? If so, does (1) each member of the partnership receive basis in an amount equal to their capital contribution into such partnership, and (2) is an allocation of transferred credits a second transfer?

• **(8) For purposes of preventing duplication, fraud, improper payments, or excessive credit transfers under § 6418, what information, including any documentation created in or out of the ordinary course of business, or registration, should be required by the IRS as a condition of, prior to, or after any transfer of any portion of an eligible credit pursuant to § 6418(a)?**

o Documentation required should vary by credit type. Investment tax credits are tied to costs incurred, whereas production tax credits are tied to electricity generated. As such, documentation for investment tax credits should include a cost segregation report compiled by an independent third-party accounting firm, documenting costs incurred and allocating between eligible and ineligible expenses. Documentation for production tax credits should include data from each facility's revenue energy meter demonstrating actual electricity generation for the applicable time period.

**o      What factors should the Treasury Department and the IRS consider as to when documentation or registration should be required?**

o      Documentation should be required when the Buyer files their federal tax return for the year in which they claim the credit as a reduction in federal income tax expense.

**o      Should the IRS require the same documentation or registration for all eligible credits? If not, how should the information or registration differ between eligible credits?**

o      No, see above.

**o      What other processes could be implemented by the IRS to prevent duplication, fraud, improper payments, or excessive credit transfers under § 6418?**

o      For investment tax credits, documentation provided by accredited public accounting firms. For production tax credits confirmatory diligence from third-party hosted data acquisition systems.