

Comment from City and County of Denver

Thank you for the opportunity to provide comments in response to Notice 2022-50, pertaining to the elective payment of applicable credits § 6417 of the Inflation Reduction Act (IRA). The City and County of Denver (Denver) has ambitious goals pertaining to climate and equity. The IRA provision allowing certain taxpayers to elect to treat certain credits as a direct payment rather than a credit against their federal income tax liabilities stands to accelerate the attainment of Denver's goals.

TO: Internal Revenue Service
FROM: Denver Office of Climate Action, Sustainability, and Resiliency
SUBJECT: Comments in response to Notice 2022-50
DATE: November 4, 2022

Thank you for the opportunity to provide comments in response to Notice 2022-50, pertaining to the elective payment of applicable credits § 6417 of the Inflation Reduction Act (IRA). The City and County of Denver (Denver) has ambitious goals pertaining to climate and equity. The IRA provision allowing certain taxpayers to elect to treat certain credits as a direct payment rather than a credit against their federal income tax liabilities stands to accelerate the attainment of Denver's goals, which are documented in Denver's 100% Renewable Electricity Action Plan.¹

The city is well positioned to make use of § 6417 as soon as federal guidance is published on the process to do so. The people of Denver voted in favor of Ballot Initiative 2A in November 2020 to establish Denver's Climate Protection Fund, which is expected to raise up to \$40M per year to support Denver's climate and equity goals.² Denver's Climate Protection Fund creates a unique for the city to fund, operate, and maintain solar and battery storage systems on city property and in partnership with local non-profit human service providers such as affordable housing, food pantries, medical clinics, and homeless shelters.

Please accept the following select comments related to the request for comments in Notice 2022-50:

.01 Elective Payment of Applicable Credits (§ 6417)

5) With respect to the definition of the term "applicable entity" in § 6417(d)(1):

- a) What, if any, guidance is needed to clarify which entities are applicable entities for purposes of § 6417(d)(1)(A), and which taxpayers may elect to be treated as applicable entities under § 6417(d)(1)(B), (C), or (D) for purposes of § 6417?
 - It is Denver's understanding that there should be no doubt that a municipal entity such as Denver would qualify as an applicable entity for the purposes of §6417.
 - In 2022, Denver launched its Renewables & Resilience Incentive Program for non-profit human service providers.³ We require applicants to submit proof of their tax exempt status as part of the program. Applicants have provided either an IRS tax-exempt determination letter or an IRS Form 990 to affirm their eligibility. We hope and anticipate that these Denver non-profit organizations would be confirmed as applicable entities.

- b) What types of structures are anticipated to be used by applicable entities, and taxpayers who have elected to be treated as applicable entities under § 6417(d)(1)(B), (C), or (D), when seeking to apply § 6417(a)?

¹ "Denver's 100% Renewable Electricity Action Plan." City and County of Denver. August 2020.

www.denvergov.org/files/assets/public/climate-action/documents/denver100replan.pdf

² "Climate Protection Fund." City and County of Denver. www.denvergov.org/Government/Agencies-Departments-Offices/Climate-Action-Sustainability-Resiliency/Climate-Protection-Fund

³ "Renewables & Resilience Incentive Program." City and County of Denver. www.denvergov.org/Government/Agencies-Departments-Offices/Agencies-Departments-Offices-Directory/Climate-Action-Sustainability-Resiliency/Funding-Opportunities/Renewables-and-Resilience-Incentive-Program

- Denver anticipates using a variety of structures for its clean energy projects.
 - i. In the simplest structure, Denver plans to pay for eligible projects outright using Denver's Climate Protection Fund.
 - ii. Denver has explored but has not yet moved forward with the issuance of green bonds to help fund new clean energy projects. Our attorneys have expressed concerns pertaining to whether the use of tax-exempt bonds to invest in solar projects would create some form of legal complication for the City, and as such, have advised against doing so while we gather additional information. It would be extremely helpful for the IRS to publish guidance regarding the types of municipal bonds that could be used to pay for clean energy projects that would still qualify for direct payment under § 6417.
 - iii. Denver has also explored the use of capital leases to pay for the up-front cost of solar projects. Denver's attorneys are highly risk averse and again expressed concerns with the tax implications of municipal capital leases and solar. This has hindered our ability to use this mechanism and guidance from the IRS would be appreciated.

7) Section 6417(d)(3)(A)(i)(I) provides that, in the case of any government, or political subdivision, described in § 6417(d)(1), and for which no return is required under § 6011 or 6033(a), any election made by these applicable entities under § 6417(a) must be made no later than such date as is determined appropriate by the Secretary. What factors should the Treasury Department and the IRS consider when providing guidance on the due date of the election for these applicable entities?

- Denver does not expect that it is unique in saying that municipal government processes and procedures take time. Additionally, the deployment of solar projects can twelve months or more from initial permitting until 'permission to operate' has been granted by the local utility. We request that the Secretary provide an appropriate window of time after a project has been granted 'permission to operate' to submit an application.
- Denver anticipates most readily applying for the clean electricity investment credit determined under § 48E. In this case, we anticipate having all of the necessary documentation readily available within a few months of receiving 'permission to operate' from our local utility. However, we recommend at least a 12-month period for projects to submit an application, following achievement of their 'in-service date'. This will allow for appropriate project commissioning, sufficient time to identify and correct any initial operational issues, and closeout of final invoices.

9) For purposes of preventing duplication, fraud, improper payments, or excessive payments under § 6417,

- a) what information, including any documentation created in or out of the ordinary course of business, or registration, should the IRS require as a condition of, and prior to, any amount being treated as a payment made by an applicable entity under § 6417(a)?
 - Denver anticipates that each of its projects will have documentation in the ordinary course of business that include but are not limited to energy system sizing and production attributes, invoices from contractors and subcontractors, affirmation of system attributes and interconnection by the local utility, documentation of permitting from the local authority having jurisdiction, and dates of major project milestones including the system in-service date.
- b) What factors should the Treasury Department and the IRS consider as to when documentation or registration should be required?

- It seems appropriate that documentation and registration should be required when the applicable entity submits its election under § 6417 no later than such date as is determined appropriate by the Secretary.
- c) Should the IRS require the same documentation or registration as a condition of, and prior to, any amount being treated as a payment made by both an applicable entity as well as a taxpayer who is treated as an applicable entity after making an election under § 6417(d)(1)(B), (C), or (D)?
 - Denver does not have a comment on this part of the question.
- d) Should the IRS require the same documentation or registration for all applicable credits? If not, how should the information or registration differ between applicable credits?
 - No. The applicable credits defined in § 6417(b) are nuanced and in many cases have metrics or attributes that are specific in nature to those credits. Where possible, documentation should be organized into similar categories (e.g., cost documentation, system attributes, permitting approval, affirmation of in-service date, etc.).
 - Additionally, the IRS should consider whether the same documentation is required for each of the applicable entities identified in § 6417 (d)(1)(A). It is Denver's experience working with local non-profit organizations in our renewable energy incentive program that these organizations have extremely limited staff capacity to navigate administrative processes. Non-profit organizations have consistently required support from Denver staff, or from their solar vendors, to complete applications and provide the documentation necessary to obtain approvals for their clean energy projects. The documentation requirements should be sufficient to prevent fraud and improper payments, but not too onerous so as to discourage applicable entities from seeking to deploy clean energy projects.
- e) What other processes could be implemented by the IRS to prevent duplication, fraud, improper payments, or excessive payments under § 6417?
 - One option would be to implement an audit program as part of § 6417. In addition to a typical random selection process, the IRS could screen for what one would expect to be unique project identifiers, such as the address of a particular project type, and flag projects accordingly for supplemental review.

Thank you again for your consideration of the above comments related to Notice 2022-50.

Best,



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