



SUBMITTED ELECTRONICALLY

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

November 4, 2022

Re: Notice 2022-50 / Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits

On behalf of Fervo Energy, I respectfully submit the attached comments to the Department of the Treasury and the Internal Revenue Service's Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits (Notice 2022-50).

We appreciate the opportunity to respond and would welcome the opportunity to participate in any stakeholder engagement as the agency further crafts this important guidance. Thank you for your time and your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Jewett", written in a cursive style.

Sarah Jewett, Director of Strategy

Background on Fervo Energy

Fervo Energy provides 24/7 carbon-free energy through development of next-generation geothermal power. Fervo's mission is to leverage innovation in geoscience to accelerate the world's transition to sustainable energy. Geothermal has a major role to play in the future electric grid and Fervo's key innovations bring a full suite of modern technology to make geothermal cost competitive. Fervo's innovations include technologies such as advanced computational models, horizontal drilling, and distributed fiber optic sensing that have been developed with partners including Schlumberger, ARPA-E, and the Lawrence Berkeley National Lab.

Fervo has an industry-leading development pipeline with projects with multiple partners including Google and East Bay Community Energy. Fervo's investors and financiers include leading venture capital firms Capricorn and Breakthrough Energy Ventures, industry leaders Helmerich and Payne and BHP, and research support through Activate, ARPA-E, and the Department of Energy Geothermal Technologies Office.

.02 Transfer of Certain Credits (§ 6418)

(1) What, if any, guidance is needed to clarify the meaning of certain terms in § 6418, such as eligible credit, eligible taxpayer, and excessive credit transfer? Is there any term not defined in § 6418 that should be defined in guidance? If so, what is the term and how should it be defined?

We are seeking two clarifications in guidance regarding the definition of "taxpayer" for the purposes of § 6418.

1. Does "a taxpayer" refer to a single taxpayer such that an eligible taxpayer can elect to transfer all or any portion of credits to a single transferee, or will multiple transferees qualify to receive credits from the eligible taxpayer in a specified election period?
2. If multiple transferees qualify, is there a limit to the number of transferees who may be selected?

(2) Section 6418(c)(1) provides that, in the case of any eligible credit determined with respect to any facility or property held directly by a partnership or S corporation, the Secretary determines the manner in which such partnership or S corporation makes an election under § 6418(a) with respect to such credit. (a) What, if any, issues could arise when a partnership or S corporation makes an election under § 6418(a) and what, if any, guidance is needed with respect to such issues? (b) What factors should the Treasury Department and the IRS consider in determining the time and manner for making the election?

We request that the Treasury Department issue guidance that clarifies any implications of providing transferees tax credits from a partnership that holds a facility or project. Specifically, we would prefer that liability for the tax credits to be limited to the specific project and not allowed to have claim to any other assets held by other partnerships.

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

We request that the Treasury Department issue guidance that clarifies transferee taxpayer's eligibility not be limited to only qualified investors.

(12) Please provide comments on any other topics that may require guidance.

Clarification from the Treasury Department on how the eligible basis is determined would be helpful. For example, will the basis be determined by capital expended on a facility, or by the fair market value of the assets? What limitations exist for wrapping tax credits with other federal tax incentives? For example, intangible drilling costs and depreciation are currently often bundled as part of tax equity. Does a similar structure exist for transferability, or will the taxpayer forfeit the benefits?