

Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits

- Please confirm that a California Special District and Community Services District qualifies as a “Specified Tax-Exempt Entity” eligible for direct payment of Applicable Credits under Section 6417 of the Code enacted by Section 13801 (a) of the IRA.
- Is direct payment for “applicable credit” specified in Section 6417(b)(10) also applicable for qualifying tax-exempt entities for the full 30% Investment Tax Credit for a solar PV plus battery storage and microgrid project, or would this be reduced to the current 26% ITC for ongoing projects?
- Can the credit be elected for the tax year the equipment is placed in service, even if the funds were expended prior to the placed in-service year/date?
- Is the credit basis for the incentive the total project cost, or cost incurred by the tax-exempt public agency only, if a portion of the project cost is funded through reimbursement by a State or Federal grant/loan?
- If a portion of the total project cost is funded by a State grant, would the State agency funding the project be eligible to receive a direct payment credit for the amount of the grant (30% for ITC), or would the public agency owner of the qualified renewable energy project be eligible to receive the credit.
- Clarifying the applicable dates for a tax-exempt agency project to qualify for the energy credit and make an election to receive the energy credit under Section 48 of the Internal Revenue Code, along with associated construction start dates, and placed in service dates would be helpful and greatly appreciated. Section 6417(d)(3)(A)(i) appears to indicate earliest date election can be made would be February 12, 2023 (180 days after August 16, 2022).
- If Section 13801(g) of the IRA provides that Section 6417 applies to taxable years beginning after December 31, 2022, how does this correlate to the date the equipment is placed in service (after January 1, 2023), if payment for construction costs were made prior to the placed in service date during an earlier tax year (construction costs incurred 2022)?
- Additional guidance specific to government agency entities that are not accustomed to submitting tax documents would be helpful. An example of how the government agency elects to receive this payment for a hypothetical project that meets the minimum requirements for the ITC would be greatly appreciated.
- Clarify existing definition of placed in service per IRS Reg. Sec. 1.167(a)-(11)(e)(1) and IRS Reg. Sec. 1.46-3(d)(1)(ii) for the purpose of an investment tax credit. Is the definition left up to the interpretation of the government agency for establishing “state of readiness and availability”
- Clarify construction begins date. Does this include site clearing/demolition, equipment delivery, or actual installation date of eligible equipment (i.e. foundations for solar PV array is “work of a significant nature”)? Can multi-year construction projects receive credit for the portion of the project completed and/or costs incurred after the specified construction start date?
- Clarify tax incentive for ITC under Section 48 for projects currently underway. Is the tax incentive currently 6% or 30% for a municipality that is implementing a public works eligible renewable energy solar plus battery storage microgrid project using prevailing wages and required apprenticeship standards?