

Rincon Band of Luiseño Indians

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VIA: Federal eRulemaking Portal
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November 4, 2022

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

RE: NOTICE 2022-50: REQUEST FOR COMMENTS ON ELECTIVE PAYMENT OF APPLICABLE CREDITS AND TRANSFER OF CERTAIN CREDITS

The Rincon Band of Luiseño Indians (“Rincon” or the “Tribe”) is pleased to submit these comments on a government-to-government basis regarding the guidance that the Treasury Department and Internal Revenue Service are preparing to help implement provisions of the Inflation Reduction Act. Rincon is a federally recognized Indian tribe that occupies a 4,665-acre reservation in northeastern San Diego County within the San Luis Rey Watershed. Established in 1875, the Rincon Band is one of six federally recognized Southern California tribes comprised of Luiseño people, which are considered one of the groups of the California Mission Indians.

The Rincon Band has established a series of strategic energy and resiliency goals, addressing the Band’s energy sovereignty, self-sufficiency, sustainability, resiliency, and affordability. The Rincon Strategic Energy and Resiliency Plan describes a series of planning objectives that guide the Band’s progress toward reliance on renewable energy for 80 percent of its requirements, half of which is to be from energy sources located on the Rincon Reservation.

Pursuant to its strategic energy and resiliency goals and Strategic Energy and Resiliency Plan, the Tribe is working to develop and implement several solar and energy storage microgrids that will serve several buildings and drinking water wells owned and operated by the Tribe on the Rincon Reservation and that help it serve its Tribal members. Because of its work in developing and implementing these clean and resilient energy projects for the benefit of its members, Rincon has a strong interest in ensuring that the guidance prepared under the Inflation Reduction Act adequately reflects its concerns as a federally recognized tribe that is attempting to cost-effectively implement these important projects.

To that end, when developing guidance related to the Inflation Reduction Act, the Treasury Department and IRS should be mindful of what the US Supreme Court calls the “undisputed existence of a general trust relationship between the United States and the Indian people” and the “distinctive obligation of trust incumbent upon the Government in its dealings” with them. *United*

Bo Mazzetti
Chairman

Tishmall Turner
Vice Chair

Laurie Gonzalez
Council Member

John Constantino
Council Member

Joseph Linton
Council Member

States v. Mitchell, 463 US 206, 225 (1983). In Section 3 of the Tribal General Welfare Exclusion Act of 2014, P.L. 113-168, Congress explicitly recognizes that the obligation to uphold the federal government's "unique legal treaty and trust relationship with Indian tribal governments" extends to the IRS. Tribal General Welfare Exclusion Act of 2014, Pub. L. No. 113-168, § 3. The Treasury Department and IRS guidance should reflect that trust obligation.

For convenience and clarity, below are Rincon's comments related to Notice 2022-50: Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits. By separate letter, the Tribe is also submitting comments on Notice 2022-49 and Notice 2022-51.

.01 Elective Payment of Applicable Credits (§ 6417)

Question (5)(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?

The guidance should clarify whether subdivisions of Indian tribal governments (as defined in Section 30D(g)(9)) are eligible entities under Section 6417(d)(1)(A)(iv). If such subdivisions are not considered eligible entities under Section 6417(d)(1)(A)(iv), the guidance should clarify whether such subdivisions are otherwise considered to be eligible entities under Section 6417(d)(1)(A)(i) as organizations exempt from the tax imposed by subtitle A. Since Sections 6417 and 6418 collectively apply to all persons (in that a person not eligible for direct payment under Section 6417 is eligible to transfer tax credits under Section 6418), subdivisions of tribal governments need certainty as to whether they are eligible for direct payment under Section 6417 or eligible to transfer tax credits under Section 6418.

Question (5)(d): Are there specific issues that the Treasury Department and the IRS should address for applicable entities that are subject to non-tax legal requirements or other rules that may affect such entities' ability to make an election under § 6417(a)?

The guidance should confirm that an applicable entity that elects to receive a direct payment will be treated as having made a payment in the amount of the credit and sought a refund of such deemed payment amount consistent with Section 6417(a). Thus, the guidance should confirm that payment of the applicable credit under Section 6417 will be treated as a refund of the eligible entity's own funds that were deemed to be paid by it for all purposes.

Question (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?

The guidance should confirm that in the case of governments or political subdivisions (including Indian tribal governments and their political subdivisions) seeking a direct payment of an

investment tax credit under Section 48, the election to receive the direct payment may be made at any time after the date on which the facility is placed in service within the meaning of Section 48 and no later than a date specified by the Secretary. Allowing these eligible entities to make the election immediately after the placed in-service date will ensure that entities relying on direct payments as part of their financing structure will not need to wait an unduly long time to receive the direct payments.

Question (8): Section 6417(d)(4)(A) 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), the payment described in § 6417(a) is treated as made on the later of the date that a return would be due under § 6033(a) if such government or subdivision were described in § 6033 or the date on which such government or subdivision submits a claim for credit or refund at such time and in such manner as the Secretary provides. What factors should the Treasury Department and the IRS consider when providing guidance to clarify the timing and manner of a payment made by these governments or political subdivisions?

Consistent with the comment immediately above for question (7), the guidance should confirm that in the case of governments or political subdivisions (including Indian tribal governments and their political subdivisions) seeking a direct payment of an investment tax credit under Section 48, the eligible entity may be treated as having made the deemed payment as early as the date on which the facility is placed into service within the meaning of Section 48. These types of eligible entities, which do not file income tax returns, should not be required to wait until a fictional tax return due date to file such elections for direct payment. Rather, these types of eligible entities should be permitted to file elections immediately after the placed in-service date, and the deemed payment shall be treated as being made on the date the election is filed.

Thank you for your consideration of these comments, which are very important to the Tribe's clean energy and resiliency efforts on its Reservation.

Sincerely yours,

RINCON BAND OF LUISEÑO INDIANS



Bo Mazzetti
Tribal Chairman

cc: Denise Turner Walsh, Attorney General, Rincon Band of Luiseno Indians
John Clancy, Attorney, Godfrey Kahn S.C.