



November 4, 2022

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

The Honorable Lilly Batchelder
Assistant Secretary
Department of Treasury
Washington, DC 20220

The Honorable Charles Rettig
Commissioner
Internal Revenue Service
Washington, DC 20224

Re: Notice 2022-49: Notice 2022-50: Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits

Dear Assistant Secretary Batchelder and Commissioner Rettig:

The Sacramento Municipal Utility District (SMUD) appreciates the opportunity to provide comments in response to the Department of Treasury (“Treasury”) and the Internal Revenue Service (“IRS”) Notice 2022-50. The forthcoming guidance to be developed by the Treasury and IRS on the implementation of the clean energy tax incentives in the Inflation Reduction Act (“IRA”) will help greatly inform SMUD’s decision-making in clean energy infrastructure investments.

SMUD is the nation’s sixth-largest municipally-owned electric utility, serving over 1.5 million people who live and work in the capital city of Sacramento, California on a not-for-profit basis. Our service territory is nearly 900 square miles and includes California’s capital city, most of Sacramento County, and small slices of Placer and Yolo counties. As a community-owned utility, SMUD is governed by a seven-member Board of Directors elected by voters to serve four-year terms.

Below are SMUD’s comments to the selected questions to the Request for Information on Elective Payment of Applicable Credits and Transfer of Certain Credits (Notice 2022-50).

.01 Elective Payment of Applicable Credits (§ 6417).

(2) With respect to the Secretary's discretion to determine the time and manner for making an election under § 6417(a):

(b) What factors should the Treasury Department and the IRS consider in determining the time and manner for making the election?

Pursuant to Treasury Regulation § 1.148-6(d)(i)(iii), the allocation of tax-exempt bond proceeds does not have to match the direct expenditure of tax-exempt proceeds and the final allocation may not occur in some cases until as late as 5 years and 60 days after bond issuance. Presumably, for purposes of consistency between the tax-exempt bond rules and the tax credit rules, the best policy will be for the tax-exempt bond rules regarding the allocation of proceeds to determine the extent to which a project is bond-financed.

For example: If the initial plan is not to allocate any bond proceeds to the renewable project and then four years after bond issuance, the issuer decides to allocate bond proceeds all of the costs of the renewable project, how then is the haircut applied? What are recapture rules under direct pay?

Or alternatively, if bond proceeds are directly spent on all of the costs of a renewable project but, within the time limits of Treasury Regulation § 1.148-6(d)(i)(iii), the issuer reallocates such proceeds to a different asset, the issuer should not be subject to 15% haircut and should be able to claim any direct payments lost to a past haircut.

Any other approach could result in scenarios as follows that are too good to be true or unduly harsh:

- Issuer spends tax-exempt bond proceeds on Asset #1, which is not eligible for an investment tax credit. At approximately the same time, the issuer uses its own funds to pay for the construction of Asset #2, which is eligible for the investment tax credit. On date 1, the issuer files for the direct payment for the investment tax credit with respect to Asset #2 and shortly thereafter receives a direct payment without a haircut. Subsequent to that date and prior to the deadline for reallocation of bond proceeds under Treasury Regulation § 1.148-6(d)(i)(iii), the issuer reallocates all of the tax-exempt bond proceeds spent on Asset #1 to Asset #2. Accordingly, for all purposes of the tax-exempt bond rules, Asset #2 is treated as a tax-exempt bond financed and Asset #1 is not. SMUD acknowledges that it would not be equitable for the issuer to not rebate a portion of the late payment equal to the required haircut for tax-exempt financed facilities.
- Issuer uses its own funds on Asset #1, which is not eligible for an investment tax credit. At approximately the same time, the issuer uses its tax-exempt bond proceeds to pay for the construction of Asset #2, which is eligible for the investment tax credit. On date 1, the issuer files for the direct payment for the investment tax credit with respect to Asset #2 and shortly thereafter receives a direct payment with a 15% haircut. Subsequent to that date and prior to the deadline for reallocation of bond proceeds under Treasury Regulation § 1.148-6(d)(i)(iii), the issuer reallocates all of the tax-exempt bond proceeds spent on Asset #2 to Asset #1. Accordingly, for all purposes of the tax-exempt bond rules, Asset #1 is treated as a tax-exempt bond financed and Asset #2 is not. Equity and principles of consistency require that the issuer now receive a direct payment in the amount of the haircut previously taken.

(6) With respect to the elections under § 6417(d)(1)(B), (C), or (D):

(a) What, if any, issues could arise when an entity makes an election under § 6417(d)(1)(B), (C), or D) and what, if any, guidance is needed with respect to such issues?

SMUD is preparing to invest in a variety of clean energy technologies and facilities over the next decade and intends to claim the direct payment of applicable credits under § 6417. To do so, SMUD and other tax-exempt entities will need to have confidence on how to claim and receive the direct payment as well as certainty on the amount of the direct payment.

SMUD recommends that the Treasury follows a similar timeline as the cash grant program Section 1603 of the American Recovery and Reinvestment Act of 2009 for the § 48 credit. SMUD strongly urges that a request for supplemental/supporting information, once received by the applicant from Treasury, should be addressed by Treasury within 45 days (Section 1603 Guidance was 90 days to provide requested supplemental information). SMUD requests that the Treasury's final review be completed within 30 days after receipt of the supplemental information. SMUD recommends the addition of an appeal process be incorporated into the § 48 credit process if Treasury rejects the application for payment.

SMUD requests the Treasury and the IRS to issue guidance clarifying the ownership structure allowed for municipal (tax-exempt) entities to partner with tax-paying entities. SMUD strongly urges that the 15% haircut if the tax-exempt debt is used be adjusted to reflect the ownership structure (percent municipal reduction).

(b) What factors should the Treasury Department and the IRS consider in determining the time and manner for making the election?

The direct payment of applicable credits under § 6417 is intended to place qualifying tax-exempt entities on equal footing as taxable entities in terms of taking advantage of the PTC or ITC. However, how quickly the direct payment will be made by the IRS will impact whether or not SMUD and tax-exempt entities truly are on equal footing because the longer it takes to file for and receive the direct payment, the larger the impact will be on a present-value basis as compared to claiming an ITC or PTC as a reduction to a tax liability (or estimated tax liability).

SMUD requests that Treasury and the IRS issue guidance providing for an expedited process for tax-exempt entities to claim and receive direct payment as quickly as possible. A tax-exempt entity claiming a direct payment should be able to apply for such payment as soon as a facility is placed in service, rather than waiting until what would otherwise have been the tax return filing date had the tax-exempt entity instead been taxable. For example, if a tax-exempt entity submits a claim for an ITC by May 15th of the year following the commercial operation of a new facility, this means that the submission could be as long as 17 months after commercial operations commence. This is a significant delay that, when incorporated into a net present value calculation, could influence the decision on how to proceed.

Furthermore, SMUD requests that the direct payment of the ITC or PTC should be paid 60 days from the date of the receipt of the completed application or the date the property was placed in service. This prompt payment timeline (from submission to review to payment), is essentially what Treasury provided in the cash grant program Section 1603 of the American Recovery and Reinvestment Act of 2009 and would be beneficial to the applicant as it would allow for both reduced debt service as well as higher net present value calculation compared to the current plan under the IRA to wait until the year after the energy property is placed in service.

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Again, thank you for the opportunity to submit comments. Please do not hesitate to call on me for further information or with any questions you may have.

Respectfully Submitted,

/s/ Larry Luong

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