



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: Comments of the Hopi Utilities Corporation on IRS Notice-2022-50

To Whom It May Concern:

On behalf of the Hopi Utilities Corporation (HUC), a corporation chartered and wholly owned by the Hopi Tribe, I hereby submit these written comments in response to IRS Notice 2022-[49] related to request for comments regarding the Inflation Reduction Act. The Hopi Tribe is located in the state of Arizona. The Tribe has over 12,000 tribal members, and over 1,542,306 acres on the Hopi Reservation.

The Hopi Tribe is a historically underserved community that is experiencing extreme economic hardship due to coal plant closures. Over 30% of homes on the reservation do not have access to electricity or running water, and the poverty rate on the Reservation is significantly higher than in other areas of northern Arizona. In 2019, the NGS Coal plant and Kayenta Mine complex were closed, reducing the Tribe's annual revenue by 85%. Now, HUC and the Hopi Tribe are working to build on previous efforts to develop new clean energy projects to create new revenue, jobs, and expand electricity access on the Reservation.

The Hopi Tribe has pursued clean energy project opportunities for more than a decade, including efforts to develop and deploy wind, solar, and microgrid projects on the Reservation. Up to now, these efforts have been almost entirely dependent on federal financial assistance, such as grants. These clean energy projects have included feasibility studies for large energy projects and installation of small, facility-scale solar and microgrid projects that power single buildings or remote well sites. The Tribe is also pursuing utility-scale solar projects as energy and revenue generating projects but due to Investment Tax Credit (ITC) and Production Tax Credit (PTC) rules that limit the Tribe's ability to capture the full value of these projects, the Tribe has been forced to participate in these projects as the landlord, with no ownership interest in the projects located on Hopi Trust lands. This structure limits the Tribe's potential revenue and puts control of the Tribe's major economic assets in the hands of external companies.

With the newly enacted Inflation Reduction Act, the Tribe now has opportunities to develop, deploy, own and control clean energy projects on the Reservation that will serve to meet the Tribe's clean energy and economic development goals and can help the Tribe contribute to the United States' overall clean energy goals. Our comments are submitted in the context of trying to take full advantage of the new authorities, tax benefits, and opportunities the IRA is intended to create for tribes.

Specific Comments

Sec.01 Elective Payments

Q.(1) Treasury should explicitly and clearly define the term "applicable credit." It's important to remember that the tribal government "applicable entities" are not familiar with the tax code, its terms and the IRS interpretation of terms. To be fair to tribal governments, the IRS should clearly state what tax credits are included in the term "applicable credit", how those tax credits are calculated and any specific terms and conditions for qualifying for such credits. Simple cross-references to the provisions in the Code will not be helpful.

Q.(2)(a) The primary issues that are likely to arise are mostly related to tribal government familiarity with the Code and lack of access to tax attorney and accountancy services to ensure understanding and compliance with the Code. Thus, any process for making the election should be relatively simple, with easy to understand forms and instructions.

Q.(2)(b) Some factors for consideration in determining time and manner of election might include:

- * timing of completion of the project and allowing claims within 90 days of completion, regardless of timing of completion during the year
- * the type of entity that is making the election (i.e., tax-exempt, utility or cooperative, governmental entity) since the timing of the elective payment may be relevant based on entity type.

Q.(4)(a) The primary issues that will arise with the election made by a partnership are related to limited liability companies that are owned in whole or in part by tribal governments or tribal entities. Guidance should acknowledge that many tribes structure economic activities under LLCs, and some use the structure for various financial and risk purposes. Such LLCs or partnerships should be treated the same way similarly situated partnerships are treated under the Code.

Q.5(a) The term "Indian tribal government" should be defined to include political or economic subdivisions of a tribe (such as a utility, housing authority, energy division or authority, or other enterprise) regardless of how the entity is formed (whether by federal, tribal or state law).

Q.5(b) Tribal governments could create multiple types of structures for purposes of owning and controlling clean energy projects that could benefit from the IRA tax benefits. For

example, many tribes have federally chartered corporations (Section 17 companies) or tribally-chartered enterprises that own and control energy assets (such as utilities). Tribes might also form limited liability companies as special purpose vehicles - a typical industry structure to own clean energy projects - to own and control clean energy projects.

Q.5(c) To the extent the partnership provisions of the Code are relevant to the treatment of tribal government owned LLCs, the IRS should treat tribal government owned LLCs consistently and equitably with other taxpayer partnerships. For example, tribal LLCs should be able to partner with investors, developers, utilities, other tribes or governments or non-profits and employ the accepted distributive share rules for allocating the "applicable credit" to each partner.

Q.7/8 Factors the Treasury could consider related to the due dates to make an election and make a claim for a credit or refund include:

- * need for simplicity and clarity
- * use of a single form, such as Form 3468, to make the election and claim the credit

Q.9 Treasury should not require any additional information than what is already required to file Form 3468. Tribal governments should be instructed to retain any documentation necessary to support its filing, such as construction agreements, appraisals, interconnection agreements, or other evidence to support the cost basis of the "applicable credit." But, these documents should not have to be submitted to either make the election, submit the claim, or qualify for the payment. Tribal governments should be treated the same way as any taxpayer that is also submitting Form 3468 for a tax credit.

Other Comments

As discussed above, the Tribe has typically relied on federal grants or other federal financial assistance to develop and deploy clean energy projects. Treasury should clarify that the use of federal grant funding for clean energy projects will not result in the loss of tax credit eligibility or reduce the amount of payment under the elective payment provision. The Tribe would support an approach that the "cost basis" of the tax credit will be reduced by the grant amount, but that the tax credit would be available for any remaining non-federal cost share. For example, if the clean energy project costs \$10 million to construct and the Tribe receives a \$2 million federal grant, then the cost basis could be reduced to \$8 million (the non-federal cost share amount) and the tax credit applied to the \$8 million. If the Tribe makes an election to receive a credit or refund, the Tribe should be able to receive a payment equal to the applicable credit amount.

Again, thank you for the opportunity to present comments on behalf of the Hopi Utilities Corporation.

Sincerely,

Carroll Onsaie
President, Hopi Utilities Corporation



Timothy L. Nuvangyaoma
CHAIRMAN

Craig Andrews
VICE-CHAIRMAN

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Sincerely,

Timothy Nuvangyaoma

Timothy L. Nuvangyaoma, Chairman
Hopi Tribe

Cc: File