



Internal Revenue Service
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Via regulations.gov

Subject: Comments to IRS Notice 2022-50

I am pleased to submit these comments regarding the implementation of the Inflation Reduction Act's new Code sections 6417 and 6418 in joint ventures involving for-profit and nonprofit partners. These comments are provided in response to the request in IRS Notice 2022-50.

BACKGROUND: Urban Ingenuity develops, finances, and owns renewable energy, energy efficiency, and microgrid projects. Through our Working Power initiative, we partner with nonprofit organizations and community groups to finance and develop clean energy projects that center climate justice and create strong benefits for underserved communities, in order to support healthy, economically resilient neighborhoods while building nonprofit and public capacity and economic ownership of clean energy resources.

We created the Working Power initiative because our experience in renewable energy development led us to conclude that nonprofits and governments were not benefiting from these projects in an equitable manner. Too often, for-profit firms take a disproportionate share of project returns, leaving too few economic benefits in local communities. At the same time, nonprofits and public entities may lack the development, financing, and operating expertise necessary for a successful renewable energy project.

Working Power is changing that dynamic by providing development services and below-market financing conditioned on nonprofit and public partners receiving direct project ownership, auditable financial and community benefits (including jobs, energy benefits, and other investment), and a clear role in short- and long-term decisionmaking around development and asset ownership. The nonprofits and public partners receive advantageous financing and development services that allow them to expand their own capacity, support their communities, and receive economic benefits that fund their mission and operations.

JOINT VENTURE STRUCTURE: In a typical Working Power solar project, Working Power partners with a local nonprofit, such as a community advocacy group, to identify neighborhood-focused solar energy opportunities that can provide low-cost power and enhance resilience for residents of underserved areas. Once a project is identified, Working Power organizes a limited liability company to own the project. That limited

liability company is jointly owned by Working Power and the nonprofit or its affiliate, usually on a 50-50 basis. Working Power finances the development of the project with a low-cost, short-term construction loan. Upon completion, using a structure common to the renewable energy industry, the jointly owned limited liability company will then admit a tax equity investor as a 99% owner of the project company in order to raise the financing necessary to repay the construction loan, with the tax equity investor receiving the investment tax credit. Following the tax equity investor's exit after the credit period ends, ownership reverts to the original 50-50 arrangement.

APPLICATION OF SECTIONS 6417 AND 6418 TO JOINT VENTURES: The provisions regarding refundable energy tax credits and transferrable energy tax credits in Sections 6417 and 6418, respectively, should be implemented in a manner that supports joint ventures between not-for-profit and for-profit partners, enhances their ability to raise capital for renewable energy projects, and allows project partnerships to access the funding mechanisms provided by those Sections to public and nonprofits partners on the one hand and for-profit partners on the other.

- Partnership Elections for Elective Payments and Transferable Credits Based on Pro Rata Ownership. Section 6417(c) and Section 6418(c) each provide that with respect to elections for credits determined with respect to a facility or property held by a partnership or S corporation, a determination regarding an elective payment under Section 6417 or a credit transfer under Section 6418 shall be made by such partnership or S corporation. Any implementing guidance for these Sections should make it clear that where such a partnership or S corporation is jointly owned by an applicable entity under Section 6417(d) and an eligible taxpayer under Section 6418(f)(2), that partnership may make elections consistent with the respective shares of its partners under Sections 6417 and 6418.
 - For example, in the case of a partnership that owns a solar facility, and which is owned 50% by a nonprofit partner and 50% by a for-profit partner, the partnership should be able to elect to receive an elective payment equivalent to 50% of the available clean energy investment credit, corresponding to the nonprofit's share of ownership, and to transfer 50% of such credits to an unrelated taxpayer, consistent with the for-profit's ownership share.
 - Ensuring that a partnership consisting of a joint venture arrangement like this one can take advantage of the applicable Code provisions will promote flexibility in financing projects and will create important opportunities for public entities and nonprofits to benefit from the revenue stream created by such projects to support their programmatic activities.
- Partnership Elections for Partial Credits Involving Pro Rata Ownership. Similarly, pursuant to the provisions of Section 6417(a) authorizing elective payments for "any applicable credit" and Section 6418(a) authorizing the transfer of "all (or



any portion...)" of eligible credits, the implementing guidance should clarify that a partnership such as the one described above may elect to receive an elective payment or transfer a portion of eligible credits, while also allocating the remaining credits to a participating investor in the project partnership through a conventional deal structure, in order to maximize the value of the credit.

- For example, in the hypothetical joint venture partnership, allowing the partnership to elect to receive an elective payment consistent with the nonprofit's 50% ownership, and to admit a participating tax equity investor into the for-profit's 50% ownership interest, could allow the project to raise additional equity investment, thereby lowering its debt burden.
- This is particularly important in a high interest rate environment, where higher debt service obligations would reduce cash flow to nonprofit or public partners, thereby limiting their programmatic funding.

We believe the clarifications suggested above are consistent with the statutory text and with the intent of the Inflation Reduction Act to support investments in underserved areas and promote climate equity. They also will support the development of a broader and more competitive renewable development market, where returns are more broadly and equitably distributed and nonprofit and public investors are empowered to participate fairly in the creation of much-needed renewable energy resources.

Thank you for your consideration.

Sincerely,

David Godschalk
General Counsel, Urban Ingenuity

