

PUBLIC FINANCE

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How Governments and Nonprofits Can Take Advantage of Tax Credits for Clean Energy: Opening of the Pre-Filing Window

On December 22, 2023 the Internal Revenue Service (IRS) announced the availability of the anticipated “IRA/CHIPS Pre-filing Registration Tool” (the “Tool”) relating to elective payment of certain tax credits. *State and local governments and political subdivisions thereof, Indian tribal governments, tax-exempt organizations and other applicable entities will now be able to use the Tool to register tax credits expected to be claimed as direct payments for eligible energy projects.* The IRS announcement and additional information regarding the Tool may be found [here](#).

There are 12 tax credits currently eligible for direct payments (also referred to as “elective payment”) including, for example, the following credits: renewable electricity production (I.R.C. § 45 – pre-2025); carbon oxide sequestration (I.R.C. § 45Q); clean electricity production (I.R.C. § 45Y – 2025 onwards); energy credit (I.R.C. § 48 – pre-2025); and clean electricity investment credit (I.R.C. § 48E – 2025 onwards). Elective payment of these tax credits was made available through the Inflation Reduction Act of 2022, Pub. L. No. 117-169 (IRA). These tax credits are general business credits under I.R.C. § 38. Elective payment under I.R.C. § 6417 creates an alternative way for applicable entities that have earned tax credits to receive the benefit of the credits even if these entities cannot use the credit to offset tax liability. Please see our [publication of June 16, 2023](#) describing elective pay tax credits generally. Please contact any member of the firm’s [Energy Group](#) to discuss general eligibility for elective pay tax credits.

Projects eligible for elective payments may be combined with tax-exempt bonds, subject to the potential reduction in the amount of the elective payment depending on how bond proceeds are used or allocated. Further guidance from the Treasury Department is expected concerning the combination of elective pay tax credits and tax-exempt bonds for projects. Please contact any member of the firm’s [Public Finance Tax Group](#) to discuss the structuring of tax-exempt bond projects with elective pay tax credits.

Before an applicable entity may claim an elective payment by filing its tax return and IRS Form 3800 (General Business Credits), the entity must register each proposed applicable credit property with the IRS. Such pre-filing registration is intended to prevent duplication, fraud, improper payments, or excessive payments. Temporary regulations in Treas. Reg. § 1.6417-5T require the use of the Tool to accomplish such registration. An entity expecting to claim an elective payment must complete the pre-registration filing using the Tool no earlier than the beginning of the tax year in which the entity expects to earn and claim the elective payment. No filing can therefore be made before the project’s placed in service date. To avoid a delay in being able to file for elective payments, the IRS recommends that the registration be submitted at least 120 days before the date the entity plans to claim the elective payment. A new user guide released by the IRS provides step-by-step instructions for using the Tool. The user guide may be found [here](#).

Please contact members of the firm’s Energy Group or Public Finance Tax Group listed on the left if you have questions about the Tool or potential qualifying projects. You may also visit us at www.kutakrock.com.

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