

Elective Pay under the Inflation Reduction Act

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Office of Climate Innovation and Resilience



Disclaimer

The information provided in this presentation does not, and is not intended to, constitute legal or tax accounting advice. Instead, all information is for general informational purposes only.

This presentation provides a high-level overview only and should not be considered direct legal or tax accounting advice. Please consult an attorney for legal assistance with your specific matter.



What is Elective Pay?

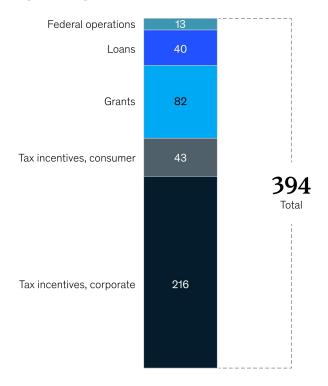
- The Inflation Reduction Act makes non-taxable entities newly eligible to receive cash refunds for certain clean energy investments.
- Eligible entities (including local governments & nonprofits) would not normally owe federal income tax.
- By filing a return and using elective pay, these entities can receive the value of certain clean energy and clean transportation tax incentives as a tax-free cash payment from the IRS.
- This is a new source of funding for States, municipalities, Tribes, nonprofits, etc. to be reimbursed for creating new clean energy projects, reducing the final cost for certain projects such as
 - Investing in and constructing clean energy (wind, solar, green hydrogen, etc.)
 - Transition government vehicle fleet to Evs
 - Placement of EV infrastructure in rural, urban and low income
 - Rooftop Solar
- Elective pay applies to projects put into service January 1, 2023 through December 31, 2032, creating a decade of tax opportunity.
- The total potential payout of these tax credits to states and municipalities is limited only by our rate of investment.



Clean Energy Tax Credits Represent a Significant Portion of Federal Clean Energy Spending

Corporations, individuals, and state and local governments are all eligible to receive funding in the energy portion of the Inflation Reduction Act.

Energy and climate change funding in the Inflation Reduction Act, \$ billion



Note: This exhibit reflects analysis of the appropriation figures contained in the Inflation Reduction Act, as well as those reported by the Congressional Budget Office and Joint Committee on Taxation. This analysis may differ from other analyses due to differences in methodology. Source: Inflation Reduction Act of 2022, H.R. 5376, 117th Cong. (2021–22)

McKinsey & Company

- Unlike the Bipartisan Infrastructure Law, the Inflation Reduction Act is predominately a tax-credit bill;
- Most of these tax credits are not capped, making current estimates of the cost of the IRA mere projections. The actual cost will be a function of the rate of tax credit uptake;
- These tax credits represent a decade of uncapped funding for certain categories of clean energy projects



Preparation for Elective Pay in Four Dimensions

Navigate
complex IRS
regulations to
develop a
process for the
Commonwealth
to claim credits
for completed
2023 projects

Provide
guidance to
non-taxable
entities to
decode the
process to
claim credits for
completed 2023
projects,
sharing best
practices,
templates, FAQ
resources, etc.

Incorporate
credit value into
long-term
capital project
planning for
state assets and
non-taxable
entities.

Provide up-front bridge-loan products for non-taxable entities to facilitate tax credit uptake.



Elective Pay Applies to Twelve Types of Federal Tax Credits

Section 30C

Alternative fuel refueling property

Section 45

Renewable electricity production tax credit (PTC)

Section 45Q

Carbon dioxide sequestration credit

Section 45U

Zero-emission nuclear power production credit

Section 45V

Clean hydrogen production credit

Section 45X

Advanced manufacturing production credit

Section 45Y

Clean electricity production credit

Section 45Z

Clean fuel production credit

Section 48

Energy investment tax credit (ITC)

Section 48C

Qualifying advanced energy project credit

Section 48E

Clean electricity investment credit

Section 45W

Qualified commercial vehicles

Four Types of Tax Credits are Most Relevant to States, Municipalities and Nonprofit Entities



Example Projects:

Placement in non-urban or low income areas

Example Projects:

EV Fleet Transition

- Gov. vehicles, school
 buses, public transit, etc.
- Stacking available with EPA funding

Section 30C
Alternative fuel refueling property

Section 45W

Qualified commercial vehicles

Section 45

Renewable electricity production tax credit (PTC)

Section 48

Energy investment tax credit (ITC)

Example Projects:

- Microgrid/ Community Solar
- Storage deployed at distribution level
- Port electrification
- Rooftop Solar or Wind on gov. buildings or affordable housing
- Geothermal HVAC



Six Steps Toward Elective Pay

- Identify qualifying projects for 2023 and start planning 2024/beyond projects with direct pay in capital stack
- 2. Build Internal team: Work with financial officers (CFO) and in house counsel to identify eligible credit, authorized party, etc.
- 3. Timeline: Identify taxable year project was placed in service 2023? 2024?**
- 4. Pre-Reg Portal: File using the <u>IRS Pre-filing Registration Portal</u> to obtain Unique Registration Number for each "applicable credit property"
- 5. File Tax Forms: 4.5 months after end of Fiscal Year or 10.5 months with an extension automatic 6 month extension for first-time filers!
 - Forms: 990-T, 3800, 8936-A (include registration number for each eligible property on the form)
 - Can include multiple applicable credit properties (registration IDs) on the same 990-T
 Form, if same applicable tax year (plan for one 990-T Form for each taxable year)
- 6. Get Paid: Receive payment after the return is processed (no clear timeline; financial institutions estimate 12+ months)



Mechanics: How to Monetize 2023 Projects

- Select a Tax Year Cycle
- Identify qualifying projects for 2023.
 - o Information for each eligible project/property Identify each applicable credit
 - Date Placed in Service
 - Size (for EV make/model)
- Determine taxable year in which the project was placed in service 2023 or 2024?
- Complete pre-filing registration form with the IRS portal and obtain registration number for each "applicable credit property" by July 15, 2024
- File Form 990-T and Form 3800 by November 15, 2024



Challenges

- General process questions: when and how. See https://www.mass.gov/lists/directelective-pay-resources
- Identification of required project details and expertise to address specific project questions (e.g., tax basis, in service date, etc.)
- Financial-technical assistance with project planning to incorporate tax credit value
- Bridge loan product to address the time delay in receiving tax credit refunds
- In some cases, remaining funding gap for eligible projects



Additional Resources

- https://www.mass.gov/lists/directelective-pay-resources
- <u>Lawyers for Good Government Elective Pay Resources</u>: A collection of resources from third party tax experts provided on a generic basis to states and municipalities. Webinars, presentations, FAQs etc.
- IRS Elective Pay Overview
- IRS Publication 5884 on Elective Pay Portal registration
- Pub. L. No. 117-169, 136 Stat. 1818 (Aug. 16, 2022). Section 13801 of the IRA establishes the elective payment and transfer provisions, codified at 26 U.S.C. §§ 6417-6418