

Tax Notes

IRS Releases Guidance for Energy Tax Credit Transfers

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The Inflation Reduction Act (IRA) of 2022 provides for new and expanded energy tax credits. It also offers new methods for claiming the credits including:

- As a transfer (i.e., sale) of a credit from one taxpayer to another for cash (Transfer).
- As direct payment by the government to eligible tax-exempt entities or government including local governments (Direct Pay).

Late last month, the IRS and Treasury Department released proposed and temporary regulations that provide details for how to elect for credit Transfer or Direct Pay. The regulations, along with [FAQs](#), address eligible taxpayers, eligible credits, tax treatment, the methods of obtaining the benefits and a registration process designed to prevent fraud and improper payments from occurring through these methods.

The proposed and temporary regulations were published last month in the Federal Register. The regulations may be relied upon for taxable years beginning after December 31, 2022, but are subject to a notice and comment period through August 14, 2023, before they are finalized.

This bulletin provides answers to key questions regarding the [transfer regulations](#). Direct Pay developments will be addressed in a subsequent bulletin.

Which credits qualify for energy tax credit transfer?

Under the IRA, transferability applies to the following credits:

- Investment Tax Credit
- Production Tax Credit
- Tax Credit for Carbon Sequestration
- Nuclear Power and Clean Hydrogen Production Credits
- Advance Manufacturing Production Credit
- Clean Fuel Production Credit
- Alternative Fuel/EV Charger Credit

Which taxpayers are “transfer eligible” for an energy tax credit transfer?

A broad class of taxpayers subject to U.S. tax can choose to monetize credits by electing to transfer some or all of an eligible energy tax credit. However, this excludes nontaxable entities that are eligible to claim Direct Pay for these credits.

Can payment for the transfer of credits be for non-cash consideration?

No, payment must be made in cash. Cash payments include payments made through cash, check, cashier's check, money order, wire transfer, ACH transfer, or other bank transfer that involves the immediate availability of funds.

Are there pre-transfer registration requirements?

Transfer eligibility is contingent upon a transfer eligible taxpayer meeting [pre-filing registration requirements](#) and obtaining a registration number from the IRS.

Registering and receiving a registration number does not, by itself, mean that the taxpayer is eligible for a valid transfer. Ultimately, eligibility is determined under the specific substantive energy credit tax authority.

What is the deadline for making a transfer?

An election to transfer any portion of an eligible credit must be made by the original return due date (including extensions). The election must be filed on an original return and may not be made on an amended return.

A transferor's tax return will require a:

- properly completed relevant form for the eligible credit,
- properly completed Form 3800 for the General Business Credit,
- schedule showing the amount of credit transferred,
- transfer election statement between the Transfer Eligible Taxpayer and the transferee and
- any other information the IRS specifies.

What is the tax treatment for the transferor and transferee?

The person transferring the credit does not treat the cash payments received as income and the person receiving the credit cannot deduct those cash payments.

Can a purchaser of an energy credit subsequently transfer it?

No, the transferee taxpayer is barred from transferring the credits once purchased.

Contact Us

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