

Tax Notes

Non-Taxpayers Receive IRS Guidance on Clean Energy Direct Payments

By Sandy Weinberg, Partner and Lior Roth, Manager

The Inflation Reduction Act of 2022 (IRA) brought new and expanded energy tax credits for taxpayers. It also provided an opportunity for tax-exempt entities, state and local governments and tribes (collectively “non-taxpayers”) to receive subsidies in lieu of the clean energy tax credits. The subsidies for the non-taxpayers are in the form of direct payment from the federal government (“Direct Pay”). Recently, the IRS and Treasury Department unveiled proposed temporary regulations outlining the process for non-taxpayers to elect the Direct Pay option.

Since tax-exempt and governmental entities are not subject to federal income tax, they could not previously claim the credits. In changing this, the Direct Pay provision puts tax-exempt and governmental entities on a level playing field with taxpayers while expanding the reach of clean energy incentives.

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.

Key questions regarding Direct Pay developments are addressed in this bulletin. The recent guidance regarding the transferability of tax credits for taxpayers was addressed in our recently published [Tax Notes](#).

Who Qualifies for Direct Pay?

Tax-exempt organizations under IRC §501(a), §501(c) and §501(d), tribal governments and state and local governments, among others, qualify for the Direct Pay Option. [FAQs](#) issued in connection with the recent temporary regulations discuss the eligibility of non-taxpayers for the Direct Pay option.

What Credits Are Eligible for Direct Pay?

Direct Pay is effective for tax years beginning after December 31, 2022. Non-taxpayers can receive subsidies in lieu of the following IRA tax credits:

- Energy Credit
- Clean Electricity Investment Credit
- Renewable Electricity Production Credit
- Clean Electricity Production Credit
- Commercial Clean Vehicle Credit
- Zero-emission Nuclear Power Production Credit
- Advanced Manufacturing Production Credit
- Clean Hydrogen Production Credit
- Clean Fuel Production Credit
- Carbon Oxide Sequestration Credit
- Credit for Alternative Fuel Vehicle Refueling / Recharging Property
- Qualifying Advanced Energy Project Credit

How Does a Non-Taxpayer Elect Direct Pay?

Making a Direct Pay election for non-taxpayers requires completing several steps.

Initially, the entity will need to complete a pre-filing registration requirement and obtain a unique registration number. This pre-filing process can be completed online through an IRS e-portal that is currently being developed. As part of the pre-filing submission, the non-profit or local government, for example, must list all the appropriate clean energy credits it intends to claim, along with each property that contributed to determining the credit. **Note:** receiving a registration number does not mean non-taxpayers are automatically eligible for the Direct Pay subsidy.

The actual Direct Pay election is made on the non-taxpayer's annual tax return, Form 990-T. This includes tax-exempt entities, such as state, local and tribal governments, that typically do not file tax returns. There is no current guidance on whether a complete Form 990-T must be filed.

PKF O'Connor Davies Observation: If a complete Form 990-T is required to claim Direct Pay, it could be a significant burden on state, local and tribal governments that do not currently have that requirement.

Form 990-T should be filed with any form required to claim the relevant tax credit (source credit forms, such as Form 3468 for the Energy Credit), a completed General Business Credit Form 3800 and supporting documentation and calculations required in the instructions of the relevant forms. The IRS recommends electronically filing the returns.

Contact Us

If you have questions or need assistance with the above clean energy Direct Pay opportunities or the tax credit developments, contact:

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