

Long Awaited Elective Payment Election Final Regulations and Other Guidance Issued by Treasury Department and IRS



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On March 5, 2024, the U.S. Department of Treasury and Internal Revenue Services (IRS) released [final regulations](#) regarding the direct payment election under the Inflation Reduction Act of 2022 (IRA), a tax credit monetization opportunity for certain applicable entities such as state and local governments and their instrumentalities and agencies and tax-exempt organizations. These final regulations adopt and codify the temporary regulations issued in June 2023 with slight modifications including special rules applicable to certain types of entities, excessive payment penalties, basis reduction and recapture, denial of double benefit, and the pre-filing registration process. The final regulations take effect May 10.

The IRS also updated the elective payment [frequently asked questions](#) based on the final regulations.

In addition, [proposed regulations](#) were issued regarding elections to be excluded from certain partnership tax rules for certain unincorporated organizations that are owned by one or more applicable entities. These proposed regulations would provide certain unincorporated organizations with one or more applicable entities certain exceptions to current regulations allowing them to make an elective payment election. Comments on the proposed regulations must be received by the date that is 60 days after the date the regulations are published in the Federal Register. A public hearing on the proposed regulations is scheduled for May 20, 2024 at 10 a.m. E.T.

The IRS issued [Notice 2024-27](#) requesting additional comments on any situations in which an elective payment election could be made for a clean energy credit that was purchased in a transfer for which an election under Section 6418 of the Internal Revenue Code is made, which is referred to as chaining. Previously issued proposed regulations disallowed a taxpayer to claim an elective payment for credits purchased from a transferor under Section 6418.

Additional analysis will be provided as Mitchell Williams' Municipal and Public Finance and Tax groups continue to review the regulations.