

Deloitte Tax looks at new guidance on direct-pay elections

The Treasury Department and the IRS on March 11 published in the Federal Register final regulations (T.D. 9988) under section 6417, which provides that “applicable entities” (or “electing taxpayers”) for credits provided in sections 45V, 45Q, or 45X may elect to treat certain credits (“applicable credits”) as a direct payment made against their federal income tax liabilities, thereby allowing such entities a federal tax refund of the amount of the direct payment in excess of any tax liability (the “direct-pay election”).

URL: <https://www.taxnotes.com/research/federal/treasury-decisions/final-regs-published-energy-credit-elective-payment-election/7j8qd>

These regulations finalized, with modifications, proposed regulations (REG-101607-23) under section 6417 and removed the temporary regulations (T.D. 9975) setting forth mandatory information and registration requirements for direct-pay elections released on June 14, 2023.

URL: <https://www.taxnotes.com/research/federal/proposed-regulations/proposed-regs-address-energy-credit-elective-payment-election/c2%a0/7gw67>

URL: <https://www.taxnotes.com/research/federal/treasury-decisions/temporary-regs-provide-prefiling-registration-requirements-for-some-credit-elections/7gw62>

The final regulations would generally apply to taxable years ending on or after March 11, 2024. However, taxpayers and other entities may rely on the final regulations in taxable years ending before March 11, 2024, provided the final regulations are followed in their entirety and in a consistent manner. The IRS also updated the elective payment FAQs based on the final regulations.

URL: <https://www.irs.gov/credits-deductions/elective-pay-and-transferability-frequently-asked-questions>

Subchapter K opt-out for direct pay

In addition to the final regulations, the government has released proposed regulations (REG-101552-24) that would modify the current regulations under section 761 to allow certain unincorporated organizations that are organized exclusively to produce electricity from renewable resources to be excluded from the application of tax rules that prevent partnerships from making a direct-pay election.

URL: <https://www.taxnotes.com/research/federal/proposed-regulations/proposed-regs-create-carveout-green-energy-partnerships/7j8pq>

The proposed regulations would apply to taxable years ending on or after March 11, 2024.

Find out more

New alerts from Deloitte Tax LLP discuss the final regulations on direct pay and the proposed regulations for electing out of subchapter K for purposes of the direct-pay election.

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240315_2_suppb.pdf

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240315_2_suppa.pdf

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