

## Final and proposed regulations address electing out of Subchapter K, direct pay

The Internal Revenue Service on November 20 published final regulations (T.D. 10012) and proposed regulations (REG-116017-24) under section 761(a) that provide administrative requirements for unincorporated organizations to comply with section 6417.

**URL:** <https://www.federalregister.gov/documents/2024/11/20/2024-26944/election-to-exclude-certain-unincorporated-organizations-owned-by-applicable-entities-from>

**URL:** <https://www.federalregister.gov/documents/2024/11/20/2024-26962/administrative-requirements-for-an-election-to-exclude-applicable-unincorporated-organizations-from>

### Background

Section 6417 provides that “applicable entities” (or “electing taxpayers” for credits provided in section 45V, 450, 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”). Generally, applicable entities include tax-exempt entities and certain other enumerated entities. On March 11, 2024, the IRS and Treasury published final regulations under section 6417 (the “final 6417 regulations” (T.D. 9988)), which provided that a partnership, regardless of whether it is wholly or partially owned by applicable entities, is not an applicable entity and cannot make a direct-pay election. However, the final 6417 regulations allowed a partnership to be treated as an electing taxpayer. In addition, the final 6417 regulations allowed an applicable entity that is a co-owner in an “applicable credit property” (as defined in Treas. Reg. section 1.6417-1(e)) through an organization that has made a valid election under section 761(a) to be excluded from the application of subchapter K of the Code (an “election out of subchapter K”) to make a direct-pay election under section 6417 for the applicable credits with respect to its undivided interest in the applicable credit property.

Concurrently with the release of the final 6417 regulations, the IRS issued proposed regulations (the “March 2024 proposed regulations”) providing amendments to the election out of subchapter K rules for certain unincorporated organizations.

### The latest guidance

The final regulations released on November 20 (the “final regulations”) largely adopted the March 2024 proposed regulations with limited modifications, but expanded the scope of activities to which these regulations would potentially apply. The final regulations would generally apply to taxable years ending on or after March 11, 2024.

Additionally, the proposed regulations that were released concurrently with the final regulations (the “November 2024 proposed regulations”) provide administrative requirements for unincorporated organizations to comply with section 6417. The November 2024 proposed regulations are generally proposed to apply to taxable years ending on or after November 20, 2024.

## Find out more

Details on the newly released final and proposed regulations are available in an alert from Deloitte Tax LLP.

**URL:** [https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/241206\\_4\\_suppA.pdf](https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/241206_4_suppA.pdf)

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