Elective Pay Overview

The answers to the questions below are based on proposed and temporary elective pay and transferability regulations and other tax guidance on IRS.gov. These proposed and temporary regulations and the answers below may change when these regulations are finalized following a public comment period. You may also choose to consult with a tax advisor.

What is elective pay?

Elective pay allows applicable entities, including tax-exempt and governmental entities that would otherwise be unable to claim certain credits because they do not owe federal income tax, to benefit from some clean energy tax credits. By choosing this election, the amount of the credit is treated as a payment of tax and any overpayment will result in a refund.

For example, because of the Inflation Reduction Act, a local government that makes a clean energy investment that qualifies for the investment tax credit can file an annual tax return with the IRS to claim elective pay for the full value of the investment tax credit, as long as it meets all of the requirements including a pre-filing registration requirement. As the local government would not owe other federal income tax, the IRS would then make a refund payment in the amount of the credit to the local government.

Who is eligible?

Applicable entities can use elective pay. Applicable entities include tax-exempt organizations, states and political subdivisions such as local governments, Indian tribal governments, Alaska Native Corporations, the Tennessee Valley Authority, rural electric cooperatives, U.S. territories and their political subdivisions, and agencies and instrumentalities of state, local, tribal and U.S. territorial governments.

What types of businesses are eligible?

Generally, only "applicable entities" are eligible for elective pay. However, there are special rules for three of the clean energy tax credits. Specifically, other taxpayers that are not "applicable entities" may make an election to be treated as an applicable entity for elective pay with respect to the applicable credit property giving rise to

1. The section 45Q credit (credit for carbon oxide sequestration),

2. The section 45V credit (credit for production of clean hydrogen), or

3. The section 45X credit (advanced manufacturing production credit).

There are additional rules if the taxpayer is a partnership or S Corporation.

How do I make the elective payment election?

Eligible entities would claim and receive an elective payment by making an elective payment election on their annual tax return along with any form required to claim the relevant tax credit.

However, there are steps leading up to this, such as a required pre-filing registration process. An EIN or TIN is required to complete the pre-filing registration process.

Electronic return filing is strongly encouraged.

What will I need to do to receive a payment?

1. **Identify and pursue the qualifying project or activity:** You will need to know what applicable credit you intend to earn and use elective pay for.
2. **Determine your tax year, if not already known:** Your tax year will determine the due date for your tax return.
3. **Complete pre-filing registration with the IRS:** This will include providing information about yourself, which applicable credits you intend to earn, and each eligible project/property that will contribute to the applicable credit and other information required. Upon completing this process, the IRS will provide you with a registration number for each applicable credit property. You will need to provide that registration number on your tax return as part of making the elective pay election.
   - Complete pre-filing registration in sufficient time to have a valid registration number at the time you file your tax return.
   - *More information about this pre-filing registration process will be available by late 2023.*
4. **Satisfy all eligibility requirements for the tax credit and any applicable bonus credits, if applicable, for a given tax year:** For example, to claim an energy credit on a solar energy generating project, you would need to place the project in service before making an elective payment election.
   - You will need the documentation necessary to properly substantiate any underlying tax credit, including if bonus amounts increased the credit.
5. **File the required annual tax return by the due date (or extended due date) and make a valid elective payment election.**

What tax credits can elective pay be used for?

See **Publication 5817g** for a list of tax credits that can be used for elective pay.

Resources

- **Elective Pay and Transferability**
- **irs.gov/cleanenergy**

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