
Registering Your Clean Energy Project for Direct Pay or Tax Credit Transfer

Legal Alert

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Late last year the Internal Revenue Service released Publication 5884 (“Inflation Reduction Act and CHIPS Act of 2022 Pre-Filing Registration Tool User Guide and Instructions”), which provides instructions to taxpayers wishing to take advantage of the “Elective Pay or “Credit Transfer” provisions of Sections 6417 and 6418 of the Internal Revenue Code in connection with certain clean energy projects. In an Elective Pay scenario, an applicable entity that qualifies for one of the clean energy tax credits will notify the IRS of its intent to claim the credit and file an annual tax return claiming “elective pay” for the full value thereof, and the IRS will pay the entity the value of the credit. In a Credit Transfer scenario, an eligible taxpayer that qualifies for a credit but cannot use Elective Pay can instead transfer all or a portion of the credit to a third-party buyer in exchange for cash. A party that does not file an annual income tax return (such as a government entity) will use Form 990-T, Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e)) in lieu of a regular annual return. A taxpayer who intends to make an Elective Pay or Credit Transfer election must complete the pre-file registration process to receive a registration number, which number must be included on the taxpayer’s annual return as part of making its election.

The Publication includes a Pre-Filing Registration Tool, along with a user guide and an instructional video. Interestingly, while it is not possible to register with the IRS before the beginning of the tax year in which the tax credits will be generated (which generally is the year in which the clean energy project will be put into service), the IRS suggests that the pre-filing registration be done as soon as possible during that tax year to allow the IRS time to review the request and obtain any additional information needed before a registration number can be issued. Specifically, the IRS would like to see the pre-filing registration be done at least 120 days prior to the date the taxpayer claiming the credit intends to submit its annual tax return.

The first step in the registration process is to create an ID.me account. The user must be a natural person. The next step is to create an “Energy Credits Online” account. Certain personal information will be required from the person who is responsible for filing on behalf of any entity. While amendments are possible after registration, it is important to try to avoid having to make them, as each amendment can cause a delay in obtaining the needed registration number. In addition, any amendments should be made at least 120 days prior to filing the taxpayer’s annual return to avoid a situation where the registration has not yet been filed but the tax return is due.

Once the pre-filing registration process is done, the IRS will generate a registration number. This number needs to be included in the taxpayer’s annual return on which the election to claim the Elective Pay or Credit Transfer is made. It is important to note that a separate registration number must be obtained for each separate facility or property for which a credit is claimed, and is only valid for one tax year. Thus, if the taxpayer intends to make pre-filing registration submissions for different properties, the taxpayer must wait under the prior submission is processed by the IRS.

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While the Elective Pay and Credit Transfer provisions in the Inflation Reduction Act appear to be excellent tools, the IRS registration process can be clunky and cumbersome. It is advisable to attempt to familiarize yourself with the process and/or speak to qualified counsel before undertaking this path.

Publication 5884, Inflation Reduction Act (IRA) and CHIPS Act of 2022 (CHIPS) Pre-Filing Registration Tool User Guide

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