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[Monetizing Renewable Energy Credits - Final Regulations on Direct Pay: BakerHostetler](#)

Key Takeaways

- On March 5, 2024, Treasury and the IRS issued [final regulations](#) addressing direct pay elections for certain renewable energy credits.
- Eligible taxpayers and taxable entities seeking to make a direct pay election should pay close attention to the specific rules regarding the process for making the election and the timing for receiving proceeds from the government. The final regulations maintain that a direct pay election must be made on an original return filed no later than the due date (including extensions) for the taxable year for which the applicable credit is determined. Thus, a direct pay election may not be made on an amended return or through an administrative adjustment request. The final regulations do allow taxpayers to correct “numerical errors” in an election on an amended return if the original return and election contained all the required information. A taxpayer may not correct an item that was left blank on the original election.
- For entities that file federal returns, the deemed payment is treated as having been made on the later of the due date (determined without regard to extensions) of the return of tax for the taxable year or the date on which such return is filed with the IRS. For entities that do not file returns (e.g., governmental or political subdivisions), the elective payment is treated as having been made on the later of the date that a return would be due or the submission of a claim for credit or a refund. Taxpayers requested that payments be made earlier than these dates, such as quarterly, but the IRS and Treasury declined to adopt those suggestions. The final rules may weigh significantly in certain taxpayer decisions regarding whether to elect direct pay or instead accelerate receiving payments by transferring eligible credits under § 6418 of the Internal Revenue Code.
- The final regulations held firm that partnerships and corporations are eligible only to receive credits under §§ 45Q (carbon capture), 45V (clean hydrogen) and 45X (clean energy manufacturing) via direct pay. Thus, applicable entities (as defined below) are not eligible to receive credits through a partnership or corporation, even if all the partners or shareholders are applicable entities.
- The final regulations adopt the proposed regulations’ rules regarding “chaining,” which refers to a transferee taxpayer that acquires a credit via transfer under § 6418 and then seeks to make a direct pay election for any specified credit portions received via such transfer. As such, transferee taxpayers are not eligible to make direct pay elections on credits they acquire under § 6418.

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