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IRS Issues Proposed Regulations on Direct Pay

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On June 14, the Treasury Department (Treasury) and the Internal Revenue Service (IRS) issued proposed regulations and temporary regulations on direct pay of certain tax credits pursuant to Section 6417 of the Internal Revenue Code of 1986, as amended (Code), which was enacted by the Inflation Reduction Act. Section 6417 allows applicable entities to elect to treat certain tax credits, including the ITC and PTC, as a payment against federal income tax liability for the taxable year with respect to which such credit was determined. The IRS also issued regulations on tax credit transfers pursuant to Section 6418, which we addressed in a previous update.

The temporary regulations, which govern the registration requirements, will apply to taxable years ending on or after the date they are published in the *Federal Register* (currently scheduled for June 21, 2023). The proposed regulations would apply to taxable years ending on or after the date the final regulations are published in the *Federal Register.* Taxpayers may rely on these proposed regulations for taxable years beginning after December 31, 2022, and before the date the final regulations are published in the *Federal Register,* if they follow the proposed regulations in their entirety and in a consistent manner.

Comments on the proposed regulations must be received by August 14, 2023. A public hearing on the regulations will be held on August 23, 2023.

Summary

The proposed regulations are over 100 pages and extremely detailed. Readers who want just the highlights can focus on the following summary. Subsequent sections discuss the regulations in greater detail.

- **Partnerships Generally Not Eligible for Direct Pay.** Partnerships or S corporations that own credit property generally cannot utilize direct pay, regardless of how many partners or shareholders are tax-exempt or government entities. Partnerships can elect direct pay with respect to the Sections 45V (clean hydrogen), 45Q (carbon oxide sequestration), or 45X (advanced manufacturing) credits.
- **Treatment of Election.** The election is treated as a payment against federal income taxes in the amount of the credit deemed to be made on the later of the due date of the return or the date on which the return was filed for an entity required to file an annual return. If an entity is not required to file a return, the payment is treated as made on the later of the due date for a return if it were required, or the date a claim for refund is submitted.
- **Amount of Election.** The election applies to the entire amount of the credit determined with respect to each credit property.
- **Timing of Election.** The election must be filed on an original return and may not be revised on an amended return or an administrative adjustment request. No late-filing relief is available. For entities that are not required to file an annual return, the election must be filed no later than the due date (including an automatic six-month extension) for an original Form 990 that would be due if required to be filed by the entity.
- **Credit Limitations.** The amount of the credit is determined without regard to the limitations in Sections 50(b)(3)

and (4) (the tax-exempt use property limitations) and by treating the credit property as used in a trade or business of the applicable entity.

- **Computing Amount of Elective Payment.** Expenditures funded using grants and forgivable loans used to construct or acquire credit property is included in basis for purposes of computing the credit amount, even if such grants or forgivable loans are tax-exempt income. However, if tax-exempt income is obtained for the specific purpose of constructing or acquiring an investment credit property and the amount of such income plus the credit exceeds the cost of the credit property, the credit will be reduced by such excess.
- **No Direct Pay of Transferred Credits.** Credits transferred pursuant to Section 6418 are not eligible for direct pay to the transferee.
- **Registration.** Before making an elective payment election, the entity must register with and provide information to the IRS through an IRS electronic portal in accordance with the instructions provided therein. The registrant will receive a unique registration number from the IRS for the applicable credit property. That registration number must be used in subsequent reporting. It is unclear when the electronic portal will be ready or how long the registration process will take.
- **Excessive Payment.** If there is an excessive payment (*i.e.*, a bigger credit is claimed than is otherwise allowable), the tax imposed on the entity will be increased by the amount of the excessive payment and a 20% penalty, even if the entity does not otherwise pay federal income taxes. The 20% penalty does not apply if the entity demonstrates that the excessive payment resulted from reasonable cause.
- **Basis Reduction and Recapture.** Basis reduction and recapture rules apply to the entity making the election.

Overview and Key Concepts

In the terminology of the regulations, an "applicable entity" may make an election (an "elective payment election) to treat an "applicable credit" determined with respect to the "applicable credit property" of such entity as making a payment against the federal income tax liability for the taxable year with respect to which the credit was determined, equal to the amount of such credit. Section 6417 also allows certain taxpayers (electing taxpayers) to elect to be treated as applicable entities for the limited purpose of making an elective payment election with respect to a Sections 45V, 45Q, or 45X credit.

"Applicable entity" means (1) any organization exempt from federal income taxes by Section 501(a) (including the government of any U.S. territory), (2) any state (including the District of Columbia) or political subdivision thereof, (3) the Tennessee Valley Authority, (4) an Indian tribal government as defined in Section 30D(g)(9) or a subdivision thereof, (5) any Alaska Native Corporation as defined in 43 U.S.C. 1602(m), (6) any corporation operating on a cooperative basis that is engaged in furnishing electric energy to persons in rural areas, and (7) any agency or instrumentality of any state, the District of Columbia, Indian tribal government, U.S. territory, or political subdivision thereof. Payments under Section 6417(a) are not considered income for purposes of the 85% income test under Section 501(c)(12) for electric cooperatives.

"Electing taxpayer" means any taxpayer that is not an applicable entity but makes an election to be treated as an applicable entity for a taxable year with respect to applicable credits determined with respect to Sections 45V, 45Q, or 45X.

"Applicable credit" means the alternative fuel vehicle refueling property determined under Section 30C to the extent treated as a credit listed in Section 38(b), the renewable electricity production credit determined under Section 45(a) (PTC), the credit for carbon oxide sequestration determined under Section 45Q(a), the zero-emission nuclear power production credit determined under Section 45U(a), the clean hydrogen production credit determined under Section 45V(a), the advanced manufacturing production credit determined under Section

45X(a), the clean electricity production credit determined under Section 45Y(a), the clean fuel production credit determined under Section 45Z(a), the energy credit determined under Section 48 (ITC), the qualifying advanced energy project credit determined under Section 48C, the clean electricity investment credit determined under Section 48E, and in case of a tax-exempt entity described in Sections 168(h)(2)(A)(i), (ii), or (iv) of the Code, the credit for qualified commercial vehicles determined under Section 45W. Credit carryforwards and carrybacks are not eligible credits.

- The regulations clarify that an electing taxpayer may elect to be treated as an applicable entity for up to five years with respect to the Section 45X credit for a facility that produces eligible components after December 31, 2022, regardless of whether the facility existed on or before December 31, 2022. With respect to the Section 45Q credit, an electing taxpayer may make the elective payment election only with respect to process trains placed in service at a qualified facility after December 31, 2022.

- An electing taxpayer that elects to treat qualified property that is part of a clean hydrogen production facility as energy property under Section 48(a)(15) is not eligible to make an elective payment election with respect to such facility.

"Applicable credit property" means the unit of property with respect to which the amount of an applicable credit is determined and for which registration is required. For the PTC and the Section 48E ITC (except with respect to energy storage technology), an applicable entity generally would be required to register and make the election on a qualified facility-by-qualified facility basis. For the Section 48 ITC, an applicable entity would be required to register and make an election on an energy property-by-energy property basis or, in the alternative, for an entire energy project. For the Section 48E ITC with respect to energy storage technology, an applicable entity would be required to register and make the election on a property-by-property basis. For the Section 45Q credit, an applicable entity or electing taxpayer would be required to register and make an election with respect to a single process train of carbon capture equipment. For the Section 45W credit, an applicable entity would be required to register and make the election with respect to a qualified commercial clean vehicle.

Who Can Make the Election

The regulations would clarify the elective payment election rules for a variety of ownership situations:

- **Disregarded Entities.** If an applicable entity or electing taxpayer is the owner (directly or indirectly) of a disregarded entity that directly holds applicable credit property, the applicable entity or electing taxpayer treated as the owner of the assets of the disregarded entity would make the election.
- **C Corporations.** C corporations owned by applicable entities are not themselves applicable entities.
- **Co-Owners.** If there are multiple owners of undivided interests in applicable credit property, each co-owner is considered to own an undivided share of the applicable credit property for Section 6417 purposes, and an applicable entity may make an elective payment election with respect to its share of the applicable credits determined with respect to its share of the underlying applicable credit property. A similar rule applies to a partnership that has made an election out of Subchapter K pursuant to Section 761(a).
- **Consolidated Groups.** An electing taxpayer that is a member of a consolidated group of corporations must make an elective payment election (rather than the common parent of the group as agent for the member).
- **Partnerships and S Corporations.** Partnership or S corporations are not applicable entities, regardless of how many (or all) of the partners or shareholders are applicable entities, and therefore, cannot make an elective payment election unless the partnership or S corporation is an electing taxpayer (and then only with respect to Sections 45V, 45Q, or 45X).
  - The conclusion that a partnership with one or more tax-exempt partners cannot utilize the elective payment

election is hard to reconcile with Section 6417(c), which, though difficult to apply mechanically, contemplated direct pay for credits determined with respect to property held directly by partnerships and corporations. In addition, although the preamble recognizes the importance of applicable entities partnering with other entities to gain access to expertise and resources, these policy considerations are thwarted by this interpretation. The preamble states that such a partnership or S corporation would be an "eligible taxpayer" for purposes of Section 6418, suggesting that a tax credit transfer election is available. However, under the proposed Section 6418 elections, the amount of the credit would be reduced as a result of the application of the limitations for tax-exempt use property in Section 50(b)(3).

Treatment of Elective Payment Election

An applicable entity or electing taxpayer that makes an elective payment election is treated as making a payment against federal income taxes for the taxable year with respect to which an applicable credit was determined in the amount of such credit. The payment is treated as made (1) in the case of an entity for which no return is required to be filed pursuant to Sections 6011 or 6033 on the later of the date that a return would be due under Section 6033(a) (determined without regard to extensions) if such entity were described in that section or the date on which such entity submits a claim for credit or refund, and (2) in any other case 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.

Time and Manner for Making the Election

The regulations provide that an elective payment election applies to the entire amount of the applicable credit determined with respect to each applicable credit property, such that the elective payment amount is the entire amount of the applicable credit. An applicable entity or electing taxpayer would make an elective payment election on the applicable entity's or electing taxpayer's annual tax return in the manner prescribed in guidance, along with (1) any required completed source credit form for the applicable credit property, (2) a completed Form 3800, including reporting the registration number received during the required pre-filing registration, and (3) other information, including supporting calculations, required in instructions to the relevant forms.

The election must be filed on an original return and may not be made or revised on an amended return or an administrative adjustment request. No late-filing relief is available.

- The guidance does not address timing of when the IRS will make the payment to the applicable entity or electing taxpayer. In Frequently Asked Questions posted to the IRS website on the same day the regulations were released, in response to the question of when the elective payment is received, the IRS indicates only that payments occur "after the tax return is processed."

- Although not specifically addressed, it is not expected that the Joint Committee of Taxation will review elective payments as is otherwise required for refunds over $2 million (or $5 million for C corporations), as Joint Committee review does not include refunds of estimated payments made without an IRS audit.

An applicable entity for which no federal income tax return is required under Sections 6011 or 6033 of the Code must make the elective payment election no later than the due date (including extensions) for the original return that would be due under Section 6033(a) if such applicable entity were described in that section. Subject to further guidance, an automatic paperless six-month extension is deemed to apply. In the case of an applicable entity located in the U.S. territories, the elective payment election must be made no later than the due date (including

extensions) that would apply if the taxpayer was located in the United States. For all other applicable entities or electing taxpayers, the election must be made no later than the due date (including extensions) for the original return for the taxable year for which the election is made, but no earlier than February 13, 2023.

For the Section 45 or Section 45Y PTC, the election applies to the 10-year period beginning on the date the facility is originally placed in service. For the Section 45Q credit, the election applies to the 12-year period beginning on the date the carbon capture equipment was originally placed in service. For the Section 45V credit, the election applies to the year the facility was originally placed in service and all subsequent years.

Electing taxpayers make an elective payment election separately for each applicable credit property. If the election is made for the year the electing taxpayer places in service a qualified clean hydrogen production facility for which a Section 45V credit is determined or a single process train at a qualified facility for which a Section 45Q credit is determined, or produces eligible components after December 31, 2022 for which a Section 45X credit is determined, the electing taxpayer is treated as an applicable entity for one five-year period per applicable credit property. Electing taxpayers are allowed one revocation per applicable credit property.

Determining the Applicable Credit

The regulations would provide three rules relating to the determination of any applicable credit.

First, in the case of any applicable entity that makes the elective payment election, any applicable credit is determined (1) without regard to the restrictions regarding use of property by tax-exempt organizations and government entities found in Sections 50(b)(3) and (4)(A)(i), and (2) by treating any property with respect to which such credit is determined as used in a trade or business of the applicable entity. The “trade or business” rule allows tax-exempt and government entities to take advantage of applicable credits outside of the unrelated business taxable income context and allows such entities to use the capitalization and depreciation rules for property used in a trade or business. It also makes applicable general limitations on the use of credits by persons engaged in the conduct of a trade or business, such as the limitations in Section 49 concerning nonrecourse financing (which apply to individuals and other taxpayers subject to the at-risk rules) and the passive activity rules in Section 469.

Second, the regulations provide that, for purposes of Section 6417, any expenditures to construct or acquire an investment-related applicable credit property (*i.e.,* those described in Sections 30C, 45W, 48, 48C, or 48E) funded using certain grants and forgivable loans that are exempt from income tax (Tax Exempt Amounts) are included in basis for purposes of computing the applicable credit amount. If an applicable entity receives Tax Exempt Amounts for the specific purpose of constructing or acquiring an investment credit property (Restricted Tax Exempt Amounts), and the Restricted Tax Exempt Amount plus the applicable credit determined with respect to the investment-related credit property exceeds the cost of the investment-related credit property, then the amount of the applicable credit is reduced so that the total amount of the applicable credit plus the Restricted Tax Exempt Amount equals the cost of the property.

Third, the regulations state that any credits for which an election is made under Section 6417(a) must have been determined with respect to the applicable entity or electing taxpayer, meaning that the applicable entity or electing taxpayer owns the underlying applicable credit property or, if ownership is not required, otherwise conducts the

activities giving rise to the underlying applicable credit.

- This rule prevents “chaining” in which an applicable entity would purchase credits under Section 6418 and then make an elective payment election with respect to such credits, which many in the industry hoped would be permitted. It also means that no elective payment election is available to an applicable entity that received credits via a transfer under Section 45Q(f)(3) or as a lessee pursuant to a passthrough election.

- The IRS is seeking comments on limited situations where exceptions to this rule may be appropriate, considering appropriate limitations, such as the type of applicable entity, involvement of the applicable entity in the project’s development, the level of due diligence conducted by the applicable entity, whether the applicable entity is paying close to face value of the credit, and any special financing arrangements between the parties.

Calculating the Elective Payment Amount

The regulations set forth a methodology for determining the amount of the elective payment, reducing the credit amount to zero, and treating the applicable credit as a credit allowed for the taxable year for all other purposes of the Code, in order to ensure that the benefit arising from an applicable credit is commensurate with the amount of the credit otherwise allowable, as follows:

1. Compute the amount of the federal income tax liability (if any) for the taxable year, without regard to the general business credit under Section 38 (GBC), which is payable on the due date of the return (without regard to extensions), and the amount of the federal income tax liability that may be offset by GBCs pursuant to the limitation based on amount of tax under Section 38.
2. Compute the allowed amount of GBC carryforwards carried to the taxable year plus the amount of current year GBCs (including current applicable credits) allowed for the taxable year under Section 38 (that is, in accordance with all the rules in Section 38, including the ordering rules provided in Section 38(d)). Any business credit carrybacks are not considered when determining the elective payment amount for the taxable year.
3. Apply the GBCs allowed for the taxable year as computed in step 2, including those attributable to applicable credits as GBCs, against the tax liability computed in step 1.
4. Identify the amount of any excess or unused current year business credit, as defined under Section 39, attributable to current year applicable credits for which the applicable entity is making an elective payment election. The amount of such unused applicable credits would be treated as a payment against federal income taxes for the taxable year with respect to which such credits are determined (net elective payment amount).
5. Reduce the applicable credits for which an elective payment election is made by the amount (if any) allowed as a GBC under Section 38 for the taxable year, as provided in step 3, and by the net elective payment amount (if any) that is treated as a payment against tax, as provided in step 4, which results in the applicable credits being reduced to zero.

The full amount of the applicable credits for which an elective payment election is made is deemed to have been allowed for all purposes of the Code, including the basis reduction and recapture rules imposed by Section 50 and calculation of underpayment of estimated taxes.

Partnerships

As discussed above, the regulations provide that partnerships or S corporations are not applicable entities. However, partnerships or S corporations may be electing taxpayers, and as such, the only applicable credits with respect to which a partnership or S corporation can make an elective payment election are a Sections 45V, 45Q, or 45X credit.

If a partnership makes an elective payment election, the IRS makes the payment to the partnership equal to the amount of the credit. Before determining any partner's distributive share of such credit, the credit is reduced to zero and is, for any other purposes of the Code, deemed to have been allowed solely to the partnership (and not allocated to any partner) for such taxable year. Any amount received by a partnership with respect to the elective pay election is treated as tax-exempt income, and a partner's allocable share of such tax-exempt income is based on such partner's distributive share of the otherwise applicable credit. The regulations treat the tax-exempt income as arising from an investment activity and not from the conduct of a trade or business within the meaning of Section 469(c)(1)(A); thus, the tax-exempt income would not be treated as passive income to any partners who do not materially participate within the meaning of Section 469(c)(1)(B).

The preamble clarifies that the regulations do not limit what an electing partnership does with the cash payment received pursuant to an elective payment election in its operations, including as to how or when it makes distributions to partners.

The partnership must compute the amount of the applicable credit allowable without regard to the limitations in Section 38(c) and as if an elective payment election were not made. Because partnerships are not subject to Section 469, the amount of an applicable credit determined with respect to applicable credit property held directly by a partnership is not subject to the limitation in Section 469. Because the credits to which a partnership may make the elective payment (*i.e.,* the Sections 45V, 45Q, and 45X credits) are not investment tax credits under Section 46, the limitations in Sections 49 and 50 do not apply.

The regulations propose updates to the centralized partnership audit regime in order to implement Section 6417.

Registration

Section 6417(d)(5) provides that as a condition of, and prior to, any amount being treated as a payment that is made by the taxpayer under Section 6417(a) or any payment being made pursuant to Section 6417(c), the Secretary may require such information or registration as the Secretary deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments.

The regulations generally would require that, before an elective payment election is made, an applicable entity or electing taxpayer register as intending to make the elective payment election, and provide information related to each applicable credit property for which the eligible taxpayer intends to make an elective payment election. An applicable entity or electing taxpayer must complete the pre-filing registration process electronically through an IRS electronic portal in accordance with the instructions provided therein, unless otherwise provided in guidance. After the required pre-filing registration process described below is successfully completed, an applicable entity or electing taxpayer will receive a unique registration number from the IRS for each applicable credit property with respect to which it intends to make an elective payment election. An applicable entity or electing taxpayer that does not obtain a registration number and report the registration number on its return with respect to an applicable credit property is ineligible to make an elective payment election.

- It is unclear when the electronic portal will be ready. But the preamble states that Treasury and the IRS believe that it is necessary to establish a mandatory registration process that is in place before the end of the 2023 calendar year.

Unless modified in future guidance (which for this purpose includes administrative guidance, such as forms, instructions, publications, or other guidance on IRS.gov in addition to guidance published in the *Federal Register*), an applicable entity or electing taxpayer must provide the following information to the IRS to complete the pre-filing registration process:

1. The applicable entity's or electing taxpayer's general information, including its name, address, taxpayer identification number, and type of legal entity;
2. Any additional information required by the IRS electronic portal, such as information establishing that the entity is an applicable entity;
3. The taxpayer's taxable year as determined under Section 441;
4. The type of annual tax return(s) normally filed by the applicable entity or electing taxpayer, or that the applicable entity or electing taxpayer does not normally file an annual tax return with the IRS;
5. The type of applicable credit(s) for which the applicable entity or electing taxpayer intends to make an elective payment election;
6. Each applicable credit property that the applicable entity or electing taxpayer intends to use to determine the credit for which the applicable entity or electing taxpayer intends to make an elective payment election;
7. For each applicable credit property, any further information required by the IRS electronic portal, such as (A) the type of applicable credit property, (B) the physical location *(e.,* address and coordinates (longitude and latitude) of the applicable credit property), (C) any supporting documentation relating to the construction or acquisition of the applicable credit property, (D) the beginning of construction date and the placed-in-service date of the applicable credit property, (E) if there is any investment-related credit property, the source of funds used to acquire the property, and (F) any other information that the applicable entity or electing taxpayer believes will help the IRS evaluate the registration request;
8. The name of a contact person for the applicable entity or electing The contact person is the person whom the IRS may contact if there is an issue with the registration. The contact person must either possess legal authority to bind the applicable entity or electing taxpayer or provide a properly executed power of attorney;
9. A penalties of perjury statement, effective for all information submitted as a complete application, and signed by a person with personal knowledge of the relevant facts that is authorized to bind the registrant; and
10. Any other information the IRS deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments that is provided in guidance.

- The scope of the IRS's review has been a key question since the enactment of Section 6417. Would the process be relatively ministerial, or would it resemble the months-long back-and-forth that the Section 1603 grant applications process became? Clause (10) leaves the possibilities very open.

- The guidance does not appear to address how long the registration will take.

A registration number is valid only with respect to the applicable entity or electing taxpayer that obtained the registration number and only for the taxable year for which it was obtained. If an elective payment will be made with respect to an applicable credit property for a taxable year after a registration number has been obtained, the applicable entity or electing taxpayer must renew the registration for that subsequent taxable year in accordance with applicable guidance, including attesting that all the facts previously provided are still correct or updating any facts. In addition, if specified changes occur with respect to one or more applicable credit properties for which a registration number has been previously obtained, but not yet used, an applicable entity or electing taxpayer must amend the registration (or may need to submit a new registration) to reflect these new facts.

Excessive Payments

Section 6417(d)(6) provides that if the amount treated as a payment against tax made by an applicable entity or electing taxpayer, or the amount paid to an applicable entity or electing taxpayer, is determined by the Secretary to constitute an excessive payment, the tax imposed on the applicable entity or electing taxpayer will be increased by the amount of the excessive payment, plus a penalty equal to 20% of such excessive payment, even if the applicable entity or electing taxpayer is not otherwise subject to federal income tax. The regulations define "excessive payment" to mean the excess of (1) the amount treated as a payment against tax made by the applicable entity or electing taxpayer, or the amount of the payment made to the applicable entity or electing taxpayer with respect to a facility or property for a taxable year over (2) the amount of the credit that, without application of Section 6417, otherwise would be allowable with respect to the facility or property for such taxable year.

The regulations would provide that the 20% penalty does not apply if the applicable entity or electing taxpayer demonstrates to the satisfaction of the IRS that the excessive payment resulted from reasonable cause, which would be determined based on the relevant facts and circumstances of a transaction. The preamble notes that the IRS anticipates that existing standards of reasonable cause will inform the determination of whether reasonable cause has been demonstrated for this purpose.

- Unlike the Section 6418 regulations, the Section 6417 regulations do not include a list of factors that an applicable entity or electing taxpayer could show to demonstrate reasonable cause. However, given that existing standards will inform the determination, the list of factors in the Section 6418 regulations, which includes diligence and reasonable reliance on third-party expert reports, would appear to be a helpful starting point for demonstrating reasonable cause with respect to an elective payment election.

The regulations clarify that because the excessive payment rules apply where the credit amount reported on the original credit source form by the applicable entity or electing taxpayer was excessive, recapture events under Section 45Q(f)(4) or Section 50(a) do not result in an excessive payment.

Recapture and Basis Reduction

The regulations provide that rules similar to the rules of Section 50 (without regard to the tax-exempt use property limitations in Sections 50(b)(3) and (4)(A)(i)) apply for purposes of Section 6417 and clarify that the reporting of recapture is made on the taxpayer's annual return in the manner to be prescribed by the IRS in future guidance, even for entities that don't normally file tax returns. The regulations provide an example illustrating the manner in which Section 50 applies for purposes of basis reduction and recapture.

Conclusion

Many tax-exempt and government entities have been eager to enter the renewable energy market and have been awaiting the direct pay guidance before committing to investment structures. Unfortunately for these entities, the regulations limit the ability of applicable entities to partner with experienced for-profit partners and take advantage of direct pay unless they use a co-ownership structure, which could impose significant operating restrictions limiting its usefulness. It also remains unclear when an applicable entity or electing taxpayer can expect to receive a payment from the IRS for its applicable credit. However, the proposed regulations should greatly reduce the areas of uncertainty with respect to direct pay, and we expect to see applicable entities moving forward with investments in renewable energy facilities as a result of the guidance.

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