



Direct Pay Tax Credit Questions & Answers

The following Q&A was derived from webinars hosted by the Beneficial Electrification League featuring experts from NYU's Tax Law Center. For more detailed information and resources around eligibility and applying for direct pay tax credits, visit the [BEL website](#).

Pre-registration

Is pre-registration required?

- Yes, elective pay is available for taxable years beginning after December 31, 2022. [IRS pre-registration form](#)

When do I need to register?

- In general, you should register:
 - After placing an investment property or production facility in service, but no earlier than the beginning of the tax period when you earn the credit.
 - At least 120 days before the due date (including extensions) for the return where you report the credits. Use the form identified in the instructions to apply for an extension of the time to file your return.

Is there a deadline for filing to claim direct pay?

- An elective payment election may only be made on an original, timely filed return (including extensions). This means the deadline is the due date (including extensions) for the tax return for the taxable year for which the election is made. For most tax exempt and government entities including tribal governments this is generally 4.5 months (for example, May 15 for a calendar year taxpayer) (or up to 10.5 months with extensions) after the end of the entity's tax year.

Sequestration Risk

Are tax credits potentially subject to sequestration risk, or would they be treated as an overpayment of tax similar to traditional tax returns?

- The mechanism for elective pay is that the credit is reduced to zero, and the entity shall be treated as making a payment against the tax imposed by subtitle A of the Tax Code. Unlike certain direct pay bonds, these credits are not subject to sequestration.

Are direct pay tax credits dependent on repetitive congressional appropriations?

- All credits are funded for the life of the credits. Generally, these credits run for 10 years. Therefore, they generally expire for projects that commence construction after 2032.

Domestic Content & Labor Requirements

Do entities need to meet both the labor and domestic content requirements to claim any of the credit?

- If the project is 1MW+ nameplate capacity, a failure to meet the labor requirements would reduce many credits by 80%. So, for example, the ITC is reduced from a 30% credit to a 6% credit if labor requirements are not met.

Is the 10% reduction for not meeting domestic content requirements (if can't meet an exception or show good faith effort) based on 10% of the base credit or the project amount? So, in the example, is the reduction 10% of the \$1.5 million amount or the \$600,000 credit amount?

- When domestic content requirements are not met, the credit itself is multiplied by the "applicable percentage." For projects beginning construction in 2025, the applicable percentage is 85%. That means the credit is reduced by 15% if the requirements apply and are not met.

When prevailing wage is referenced, is it only requiring appropriate wages, or does that mean the Davis Bacon applies?

- Some helpful resources here. <https://www.irs.gov/credits-deductions/frequently-asked-questions-about-the-prevailing-wage-and-apprenticeship-under-the-inflation-reduction-act>

Timeline

What about projects that commenced in 2023?

- The domestic content requirement (and direct pay phaseout) did not apply to projects that commenced in 2023. See section 45(b)(10)(C)(i)

Is the automatic 6-month extension for entities that do not normally file taxes applied year after year, or is this just for this first year?

- The guidance reads in relevant part as follows:
"Subject to issuance of guidance that specifies the manner in which an entity for which no Federal income tax return is required under sections 6011 or 6033(a) of the Code could request an extension of time to file, an automatic paperless six-month extension from the original due date is deemed to be allowed."

Is the credit lost if an amended return is filed?

- The proposed guidance states: "No elective payment election may be made or revised on an amended return or by filing an administrative adjustment request under section 6227 of the Code."
- The final regulations provide relief for many honest mistakes. Taxpayers who make a timely direct pay election and include all requisite information on the original return will be able to correct errors that would result in a direct payment disallowance and or an inaccurate payment. Filers should still exercise care, as making the election on an original return is still required, and

some mistakes, such as failing to include a registration number on the original return, are not correctible.

Financing

Can interest on debt or loans used to finance the project be included in the basis?

- If you are financing with tax exempt bonds, the project may be subject to credit reduction. See section 45(b)(3) and 48(a)(4).

Partnerships

Are partnerships eligible for direct pay?

- The elective pay guidance generally prohibits partnerships from claiming elective pay. There are exceptions, primarily for credits under 45V (clean hydrogen), 45X (advanced manufacturing PTC), and 45Q (CCS). The proposed rules note a pathway for project owners to elect out of partnership status and use tenancy-in-common structures. This is a potential pathway for developers who want to co-own property and claim elective pay.
- Treasury and IRS issued a proposed regulation which would allow applicable entities to own, in part or in full, an “unincorporated organization” that holds eligible credit property and then claim direct pay for the applicable credit in accordance with their share of such property. Another pathway for owning property through a partnership is to use a subchapter K partnership structure and sell the credits under the new transferability regime. This partnership structure works for production tax credits, but not for investment tax credits (including credits for vehicles and charging) if a partner is a governmental entity or tax-exempt.

Chaining

- In the final regulations, Treasury and the IRS prohibited “chaining,” a structure that would enable applicable entities to buy credits from a for-profit taxpayer and elect direct pay on those credits. While chaining could encourage investment and ensure broader tax credit access to new technologies and smaller businesses, there are reasonable concerns about practical and administrative challenges as well as fraud and abuse. The notice seeks additional comments on how Treasury could allow chaining in appropriate circumstances in the future, meaning that the prohibition could be lifted in part. This would be consistent with the statute, which, as our comment explains, gives Treasury broad discretion in determining whether to allow or disallow chaining in whole or in part. It is sensible for Treasury and the IRS to gather more information about potential tradeoffs before determining how to use its authority.