

## Internal Revenue Service, Treasury

## § 1.6417-1

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[TD 9988, 89 FR 17584, Mar. 11, 2024]

EFFECTIVE DATE NOTE: By TD 9988, 89 FR 17584, Mar. 11, 2024, § 1.6417-0 was added, effective May 10, 2024.

### § 1.6417-1 Elective payment election of applicable credits.

(a) *In general.* An applicable entity may make an elective payment election with respect to any applicable credit determined with respect to such applicable entity in accordance with section 6417 of the Code and the section 6417 regulations. Paragraphs (b) through (p) of this section provide definitions applicable to the section 6417 regulations. *See* § 1.6417-2 for rules and procedures under which all elective payment elections must be made, rules for determining the amount and the timing of payments, and statutory rules denying double benefits. *See* § 1.6417-3 for special rules pertaining to electing taxpayers. *See* § 1.6417-4 for special rules pertaining to electing taxpayers that are partnerships or S corporations. *See* § 1.6417-5 for pre-filing registration requirements and other information required to make any elective payment election effective. *See* § 1.6417-6 for special rules related to excessive payments, basis reduction and recapture, any U.S. territory with a mirror code tax system, and payments made to partnerships subject to subchapter C of chapter 63 of the Code.

(b) *Annual tax return.* The term *annual tax return* means the following returns (and for each, any successor return)—

(1) For any taxpayer normally required to file a tax return with the IRS on an annual basis, such return (including the Form 1040 for individuals; the Form 1120 for corporations, certain rural electric cooperatives, and certain agencies and instrumentalities; the Form 1120-S for S corporations; the Form 1065 for partnerships; and the Form 990-T for organizations subject to tax imposed by section 511 of the Code or a proxy tax under section 6033(e) or

that are required to file a Form 990 pursuant to section 6033(a));

(2) For any taxpayer that is not normally required to file a tax return with the IRS on an annual basis (such as taxpayers located in the U.S. territories), the return they would be required to file if they were located in the United States, or, if no such return is required (such as for governmental entities), the Form 990-T; and

(3) For taxpayers filing a return for a taxable year of less than 12 months (short year), the short year tax return.

(c) *Applicable entity.* The term *applicable entity* means—

(1) Any organization exempt from the tax imposed by subtitle A of the Code—

(i) By reason of subchapter F of chapter 1 of subtitle A; or

(ii) Because it is the government of any U.S. territory or a political subdivision thereof;

(2) Any State, the District of Columbia, or political subdivision thereof;

(3) An Indian Tribal government or a subdivision thereof;

(4) Any Alaska Native Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602(m));

(5) The Tennessee Valley Authority;

(6) Any corporation operating on a cooperative basis that is engaged in furnishing electric energy to persons in rural areas as described in section 1381(a)(2)(C) of the Code; and

(7) An agency or instrumentality of any applicable entity described in paragraph (c)(1)(ii) or (c)(2) or (3) of this section.

(d) *Applicable credit.* The term *applicable credit* means each of the following:

(1) So much of the credit for alternative fuel vehicle refueling property determined under section 30C of the Code that, pursuant to section 30C(d)(1), is treated as a credit listed in section 38(b) of the Code (section 30C credit).

(2) So much of the renewable electricity production credit determined under section 45(a) of the Code as is attributable to qualified facilities that are originally placed in service after December 31, 2022 (section 45 credit).

(3) So much of the credit for carbon oxide sequestration determined under

section 45Q(a) of the Code as is attributable to carbon capture equipment that is originally placed in service after December 31, 2022 (section 45Q credit).

(4) The zero-emission nuclear power production credit determined under section 45U(a) of the Code (section 45U credit).

(5) So much of the credit for production of clean hydrogen determined under section 45V(a) of the Code as is attributable to qualified clean hydrogen production facilities that are originally placed in service after December 31, 2012 (section 45V credit).

(6) In the case of a tax-exempt entity described in section 168(h)(2)(A)(i), (ii), or (iv) of the Code, the credit for qualified commercial vehicles determined under section 45W of the Code by reason of section 45W(d)(2) (section 45W credit).

(7) The credit for advanced manufacturing production determined under section 45X(a) of the Code (section 45X credit).

(8) The clean electricity production credit determined under section 45Y(a) of the Code (section 45Y credit).

(9) The clean fuel production credit determined under section 45Z(a) of the Code (section 45Z credit).

(10) The energy credit determined under section 48 of the Code (section 48 credit).

(11) The qualifying advanced energy project credit determined under section 48C of the Code (section 48C credit).

(12) The clean electricity investment credit determined under section 48E of the Code (section 48E credit).

(e) *Applicable credit property.* The term *applicable credit property* means each of the following units of property with respect to which the amount of an applicable credit is determined:

(1) In the case of a section 30C credit, a *qualified alternative fuel vehicle refueling property* described in section 30C(c).

(2) In the case of a section 45 credit, a *qualified facility* described in section 45(d).

(3) In the case of a section 45Q credit, a component of carbon capture equipment within a *single process train* described in § 1.45Q-2(c)(3).

(4) In the case of a section 45U credit, a *qualified nuclear power facility* described in section 45U(b)(1).

(5) In the case of a section 45V credit, a *qualified clean hydrogen production facility* described in section 45V(c)(3).

(6) In the case of a section 45W credit, a *qualified commercial clean vehicle* described in section 45W(c).

(7) In the case of a section 45X credit, a facility that produces eligible components, as described in guidance under sections 48C and 45X.

(8) In the case of a section 45Y credit, a *qualified facility* described in section 45Y(b)(1).

(9) In the case of a section 45Z credit, a *qualified facility* described in section 45Z(d)(4).

(10) *Section 48 credit property*—(i) *In general.* In the case of a section 48 credit and except as provided in paragraph (d)(10)(ii) of this section, an *energy property* described in section 48.

(ii) *Pre-filing registration and elections.* At the option of an applicable entity or electing taxpayer, and to the extent consistently applied for purposes of the pre-filing registration requirements of § 1.6417-5 and the elective payment election requirements of §§ 1.6417-2 through 1.6417-4, an *energy project* as described in section 48(a)(9)(A)(ii) and defined in guidance.

(11) In the case of a section 48C credit, an *eligible property* described in section 48C(c)(2).

(12) In the case of a section 48E credit, a *qualified facility* described in section 48E(b)(3) or, in the case of a section 48E credit relating to a qualified investment with respect to energy storage technology, an *energy storage technology* described in section 48E(c)(2).

(f) *Disregarded entity.* The term *disregarded entity* means an entity that is disregarded as an entity separate from its owner for Federal income tax purposes under §§ 301.7701-1 through 301.7701-3 of this chapter. The term includes a Tribal corporation incorporated under section 17 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. 5124, or under section 3 of the Oklahoma Indian Welfare Act, as amended, 25 U.S.C. 5203, that is not recognized as an entity separate from the tribe for Federal tax purposes, and

therefore is disregarded as an entity separate from its owner for purposes of section 6417.

(g) *Electing taxpayer.* The term *electing taxpayer* means any taxpayer that is not an applicable entity described in paragraph (c) of this section but makes an election in accordance with §§ 1.6417-2(b), 1.6417-3, and, if applicable, 1.6417-4, to be treated as an applicable entity for a taxable year with respect to applicable credits determined with respect to an applicable credit property described in paragraph (e)(3), (5), or (7) of this section.

(h) *Elective payment amount*—(1) *In general.* The term *elective payment amount* means, with respect to an applicable entity or an electing taxpayer that is not a partnership or an S corporation, the applicable credit(s) for which an applicable entity or electing taxpayer makes an elective payment election to be treated as making a payment against the tax imposed by subtitle A for the taxable year, which is equal to the sum of—

(i) The amount (if any) of the current year applicable credit(s) allowed as a general business credit under section 38 for the taxable year, as provided in § 1.6417-2(e)(2)(iii), and

(ii) The amount (if any) of unused current year applicable credits that would otherwise be carried back or carried forward from the unused credit year under section 39 and that are treated as a payment against tax, as provided in § 1.6417-2(e)(2)(iv).

(2) *Elective payment amount with respect to partnerships and S corporations.* With respect to an electing taxpayer that is a partnership or an S corporation, the term *elective payment amount* means the sum of the applicable credit(s) for which the partnership or S corporation makes an elective payment election and that results in a payment to such partnership or S corporation equal to the amount of such credit(s) (unless the partnership owes a Federal tax liability, in which case the payment may be reduced by such tax liability).

(i) *Elective payment election.* The term *elective payment election* means an election made in accordance with § 1.6417-2(b) for applicable credit(s) determined

with respect to an applicable entity or electing taxpayer.

(j) *Guidance.* The term *guidance* means guidance published in the FEDERAL REGISTER or Internal Revenue Bulletin, as well as administrative guidance such as forms, instructions, publications, or other guidance on the *IRS.gov* website. See §§601.601 and 601.602 of this chapter.

(k) *Indian Tribal government.* The term *Indian Tribal government* means the recognized governing body of any Indian or Alaska Native Tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the most recent list published by the Department of the Interior in the FEDERAL REGISTER pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131) prior to the date on which a relevant elective payment election is made.

(l) *Partnership.* The term *partnership* has the meaning provided in section 761 of the Code.

(m) *S corporation.* The term *S corporation* has the meaning provided in section 1361(a)(1) of the Code.

(n) *Section 6417 regulations.* The term *section 6417 regulations* means §§1.6417-1 through 1.6417-6.

(o) *Statutory references—(1) Chapter 1.* The term *chapter 1* means chapter 1 of the Code.

(2) *Code.* The term *Code* means the Internal Revenue Code.

(3) *Subchapter K.* The term *subchapter K* means subchapter K of chapter 1.

(4) *Subtitle A.* The term *subtitle A* means subtitle A of the Code.

(p) *U.S. territory.* The term *U.S. territory* means the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(q) *Applicability date.* This section applies to taxable years ending on or after March 11, 2024. For taxable years ending before March 11, 2024, taxpayers, however, may choose to apply the rules of §§1.6417-1 through 1.6417-4 and 1.6417-6, provided the taxpayers apply the rules in their entirety and in a consistent manner.

[TD 9988, 89 FR 17584, Mar. 11, 2024]

EFFECTIVE DATE NOTE: By TD 9988, 89 FR 17584, Mar. 11, 2024, §1.6417-1 was added, effective effective May 10, 2024.

### § 1.6417-2 Rules for making elective payment elections.

(a) *Elective payment elections—(1) Elections by applicable entities—(i) In general.* An applicable entity that makes an elective payment election in the manner provided in paragraph (b) of this section will be treated as making a payment against the Federal income taxes imposed by subtitle A for the taxable year with respect to which an applicable credit is determined in the amount determined under paragraph (c) of this section.

(ii) *Disregarded entities.* If an applicable entity is the owner (directly or indirectly) of a disregarded entity that directly holds an applicable credit property, the applicable entity may make an elective payment election in the manner provided in paragraph (b) of this section for applicable credits determined with respect to the applicable credit property held directly by the disregarded entity.

(iii) *Undivided ownership interests.* If an applicable entity is a co-owner in an applicable credit property through an arrangement properly treated as a tenancy-in-common for Federal income tax purposes, or through an organization that has made a valid election under section 761(a) of the Code to be excluded from the application of subchapter K of the Code, then the applicable entity's undivided ownership share of the applicable credit property will be treated as a separate applicable credit property owned by such applicable entity, and the applicable entity may make an elective payment election in the manner provided in paragraph (b) of this section for the applicable credits determined with respect to such applicable credit property.

(iv) *Partnerships and S corporations not applicable entities.* Partnerships and S corporations are not applicable entities described in §1.6417-1(c), and thus are not eligible to make any election under paragraph (b) of this section, unless the partnership or S corporation is an electing taxpayer. This is the case no matter how many of the partners of a partnership are described in §1.6417-