



August 14, 2023

Douglas W. O'Donnell
Deputy Commissioner for Services and Enforcement
Services and Enforcement
Internal Revenue Service
Department of the Treasury
1111 Constitution Avenue NW
Washington, DC 20224

Re: Docket number REG-101607-23 Section 6417 Elective Payment of Applicable Credits

Submitted Electronically

Dear Mr. O'Donnell:

The Association of Metropolitan Water Agencies (AMWA) is pleased to have the opportunity to voice support for the proposed rule regarding Section 6417 of the Internal Revenue Code. AMWA is an organization representing the largest publicly owned drinking water utilities in the United States, and collectively its membership serves more than 160 million people. Members serve communities of more than 100,000 people across the country. Many AMWA utilities have been at the forefront of addressing climate change through implementing greenhouse gas mitigation projects and utilizing renewable energy technologies at utility facilities and, therefore, will benefit from the proposed Section 6417 elective pay regulations. AMWA is happy to provide the following comments of general support and additional requests for clarity in the final rule.

First, AMWA supports the Section 6417 elective pay regulations as many AMWA member utilities already have projects eligible for elective payment for the 12 proposed "applicable credits" described in the proposed rule. AMWA utilities have long been at the forefront of climate adaptation and have prioritized climate change mitigation, adaptation, and resilience in their utility operations and capital planning. Water utilities across the nation to date have

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implemented an array of greenhouse gas mitigating projects¹ and, as public utilities, AMWA members will now receive more incentives to continue implementing these kinds of projects through the Section 6417 elective payment. For example, many AMWA utilities have reduced emissions by purchasing alternative fuel vehicle fleets and housing alternative fuel vehicle refueling properties. Many others have used utility properties, such as reservoirs, land, and water systems, to produce renewable energy through solar, wind, and in-line micro-hydro power projects. Through the Inflation Reduction Act's transferability provisions outlined in Section 6418 and the elective direct pay provisions found in Section 6417, public water utilities now have further incentives to participate in the crucial clean energy initiatives they are already overseeing.

Applicable entities background - Section 6417's direct pay provisions allow an "applicable entity" (as defined in the proposed rule) to choose to receive the value of the relevant tax credit directly from the IRS, even if the entity does not have enough federal tax liability to offset the credits. Tax-exempt or governmental entities that meet the criteria for being classified as an "applicable entity" might have the option to choose direct payment for each category of tax credit offered under the IRA. Section 6417(d)(1) defines "applicable entity" as "(1) any organization exempt from the tax imposed by subtitle A, (2) any State or political subdivision thereof, (3) the Tennessee Valley Authority, (4) an Indian tribal government (as defined in section 30D(g)(9)), (5) any Alaska Native Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act ([43 U.S.C. 1602\(m\)](#))), or (6) any corporation operating on a cooperative basis that is engaged in furnishing electric energy to persons in rural areas."²

AMWA recognizes and appreciates the Treasury and IRS's logic in developing Section 6417(d)(1)(A)(ii), which further clarifies that "any State or political subdivision thereof is an applicable entity for purposes of Section 6417,"² as well as the proposed rule's inclusion of agencies and instrumentalities as applicable entities. AMWA strongly agrees with the IRS's logic in the proposed rule's preamble that distinguishing State or political subdivisions from agencies and instrumentalities of the state would be burdensome. Therefore, AMWA strongly supports the IRS including proposed Section 1.6417-1(c)(7) in the final rule, as it would provide that applicable entities include any agency or instrumentality of any State, the District of Columbia, Indian tribal government, U.S. territory, or political subdivision thereof.²

As IRS knew when creating this clarification, it is difficult to distinguish whether many publicly owned utilities and other services would be agencies and instrumentalities or political subdivisions. Similarly, AMWA members vary in their governance structures and can include public water authorities, public water districts, and departments of city and county governments,

¹ Water Utility Climate Alliance (WUCA). 2022. Greenhouse gas mitigation case studies. <https://www.wucaonline.org/adaptation-in-practice/greenhouse-gas-mitigation/index.html>

² IRS. Proposed rule: Section 6417 Elective Payment of Applicable Credits. 88 FR 40528.

<https://www.federalregister.gov/documents/2023/06/21/2023-12798/section-6417-elective-payment-of-applicable-credits>

among others. Proposed Section 1.6417-1(c)(7) in the final rule would help provide clarity that will encourage AMWA member utilities to pursue elective payment for eligible activities.

To build further clarity, AMWA recommends that Section 6417 State and Local Government, Publication 5817-E³ be amended to add additional public water utility examples under the section titled, “Are state and local governments eligible?” AMWA recommends amending the phrase, “Water districts, school districts, economic development agencies, public universities and hospitals that are agencies and instrumentalities of states or political subdivisions are also included” to say “Water districts *and authorities...*” While seemingly a small change, many members have expressed reservation over eligibility as public water authorities under other IRA programs and might hesitate to pursue cumbersome federal tax credit opportunities if not explicitly given direction upfront about their eligibility.

As Treasury and IRS continue to roll out this IRA program, AMWA is eager to provide more information to public water utility leaders. AMWA encourages these agencies to convene associations representing the public water utility sector to explain further this new tax credit, eligible entities, eligible projects, and how to take advantage of the credits. AMWA is eager to help facilitate outreach.

Conclusion

AMWA sincerely thanks IRS for the opportunity to provide feedback on Section 6417 Elective Payment of Applicable Credits and appreciates the agency’s consideration of issues raised in this letter. If you have any questions, please contact Jessica Evans (evans@amwa.net), AMWA’s Manager of Government Affairs and Sustainability Policy.

Sincerely,



Thomas Dobbins
Chief Executive Officer

³ IRS. Publication 5817-E State and Local Government. <https://www.irs.gov/pub/irs-pdf/p5817e.pdf>