

Partnership Clean Energy Regulations

Cross References

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The IRS has released final regulations that will help certain entities that co-own clean energy projects access clean energy tax credits through elective pay (also commonly referred to as direct pay).

Prior to the Inflation Reduction Act, entities now eligible for elective pay could not benefit from clean energy tax credits because they had little or no federal tax liability. Elective pay enables eligible entities and organizations access to the full value of clean energy incentives by making certain clean energy credits refundable.

Elective-pay eligible entities include state and local governments, tribal entities, public school districts, rural electric co-ops and tax-exempt organizations, such as churches, hospitals, higher education institutions and non-profits.

The final regulations provide greater clarity and flexibility for elective pay-eligible entities that want to jointly invest in clean energy projects. Examples include a tax-exempt entity co-investing in a clean energy project with a for-profit developer, or multiple tax-exempt entities or governments co-investing in clean energy projects.

Specifically, these final regulations make targeted modifications to existing partnership tax rules clarifying how co-owned clean energy projects can elect not to be treated as partnerships for tax purposes and providing such projects additional flexibility.

Partnerships are not generally eligible for elective pay. However, by collectively electing out of partnership status, co-owners that are eligible for elective pay can take advantage of elective pay for the share of the project that they own while co-owners that are not eligible for elective pay could use or take advantage of the transferability rules to transfer their share of the credits from the project.

In response to comments received, the final regulations clarify that eligible co-ownership arrangements can be organized to own and operate property giving rise to any of the clean energy tax credits for which elective pay is available. The regulations also enable these arrangements to invest in clean energy projects through a non-corporate entity, such as a limited liability company.

The IRS also released proposed regulations that would provide additional administrative requirements for unincorporated organizations that opt out of partnership treatment under the modified rules. Before the proposed regulations are finalized, the IRS will consider comments regarding the notice of proposed rulemaking.