NLC NATIONAL LEAGUE OF CITIES

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5 Steps Toward Successfully Filing for the IRA Elective Pay Provision for Local Clean Energy Projects

The elective pay provision under the Inflation Reduction Act (IRA) encourages cities, towns and villages—as well as other public entities—to invest in clean and renewable energy projects in their communities. But unlike grants, which have been the tried-and-true funding mechanism in the federal-local partnership, this is instead an "elective payment" program.

Introduction

Under the program, local governments must first invest in the project and then submit a tax form detailing the investment to the Internal Revenue Service (IRS) in order to receive payment back. It's not the first of its kind but it is substantially different than grants and, therefore it's important that cities, towns and villages have internal controls in place to file the tax information to receive the elective payment.

Together the National League of Cities (NLC) and the Government Finance Officers Association (GFOA) are gearing up to see great success in the program. It is, after all, the opportunity of a lifetime for some cities who were already planning to make investments in clean and renewable energy projects to receive a return check from the IRS. For those cities who were on the verge of making these types of investments, it's a nice nudge in that direction.

One of the most critical elements for a city, town or village to file for elective payment is to understand the importance of timing. This is no strange concept for cities. After all, cities keep financial calendars with processes and procedures (and execute best practices) for budgets, fiscal years, audit processes and capital programs. This program maps just one more financial calendar over the year—establishing a tax year and in due process filing income tax statements to the IRS by the deadline.

As we are supporting cities in preparing and prefiling for their elective payments, we are also witnessing starts and stops and best practices for filing for the elective payment. This brief summarizes the key steps in the filing process and provides information that may help you approach and eventually successfully execute your city's Inflation Reduction Act elective payment.

STEP 1
Pick a Tax Year

As mentioned, the elective payment is predicated on a city establishing a tax year and filing tax forms by the deadline of that tax form. Most citizens or permanent residents who work in the U.S. must file a form 1040 by April 15, unless they file for an extension. Similarly, all cities that plan to claim an elective payment **must file their 990-T claiming the elective payment by the 15th day of the fifth month after the end of their tax filing year.**

However, unlike individuals filing their 1040s, the tax year for cities has never been established up until this point. We know not all cities claim a calendar year tax year (aka January 1 – December 31). Noting these differences, Treasury has afforded cities the option to select the calendar year or their fiscal year as the tax year (if the city's fiscal year is different than the calendar year). The IRS provides the opportunity to realign the tax year with the fiscal year for first-time filers. Stay tuned in late 2024 for instructions on that realignment.

Tip: Cities would only choose the calendar year option if eligible projects were placed into service after January 1 but before the beginning of their fiscal year in 2023.

STEP 2
Prefiling Registration

Once your city has selected its tax year, **the next step in the process is to "prefile" your intention to file your city's income taxes via form 990-T**. After successfully prefiling, your entity will receive a registration number. You MUST have a registration number to file your taxes by the IRS deadline, so this step should be done well in advance of the deadline.

Resources:
IRS publications 5884 and 5902 are practical user guides for cities to registering and filing.

The first and most important part of the process is that each individual who is going to be involved in the prefiling process must register through id.me. There is no alternative to registering for a Clean Energy Account.

In the Clean Energy Account, there are a few designations that can be assigned. A *Clean Energy Officer* (or CEO—congrats, you got a promotion!) has access to all the information that will be submitted, whereas a *Clean Energy Delegate* has access to limited information based on sensitivity to certain information, such as banking information. Importantly, the CEO must be able to *attest on behalf of the entity* that all information submitted to the IRS is true to the best of their knowledge.

When the Clean Energy Account is established, it must be created by a singular person and every additional person must be added by that initial CEO. Since so many local officials already have id.me accounts through the American Rescue Plan Act State and Local Fiscal Recovery Funds program, a person in the finance realm may be the best person to be the initial CEO. Other recommended CEOs may include your sustainability officer or a representative from your legal team. Clean Energy Delegates may be other parties within your city, or alternatively, vendors helping reconcile the information.

Tip: Bring together finance, legal and sustainability teams early in the process to coordinate and share information.

INFORMATION REQUIRED IN THE PORTAL

Here's a few key things to keep on hand as you are approaching the IRS tax portal:

- Know the city's tax filing year and be ready to establish it in the portal.
- Know your login credentials (see id.me help center for any questions).
- Know when the project was "placed in service." For example, for electric vehicles, that means receipt of the vehicle, whereas for power generating facilities, that means when the facility started production.
- Know the city's employer identification number and banking information—aka the routing and transit information—as the payments, once approved, will be electronically deposited via ACH there.
- Have evidence of your facility's information, including census tract information and latitude and longitude coordinates.

You can save and resave throughout the process of establishing a Clean Energy Account, but make sure everything is correct when you submit, not just for attestation, but to ensure a successful prefiling.

For many reasons, including sheer volume of the documents that the IRS must review as well as the novelty of this program, GFOA and NLC have been monitoring prefiling applications and have noticed that there are several "easy" details to note so that your prefiling registration has the best foot forward. Here are a few lessons learned from communities that can improve your city's chances of a successful filing.

1. Make sure the prefiling name EXACTLY matches the name that the IRS has on file for the city. For example, while the entity in some cases is called the City of Springfield, if tax forms note that the entity is called the "Treasurer of the City of Springfield," make sure you use the latter.
2. Check and recheck the project latitude and longitude. There are several online programs to check these inputs. Watch each value carefully, especially the use of negatives. If a city is filing for a facility, this may be the street address or the physical location of the facility.
3. When setting up the portal, make sure to enter through the Inflation Reduction Act selection. Cities should enter through the "IRA/CHIPS Credit Registration" portal. Make sure to select the correct entity type for a local government, which is a "political subdivision of a state or the District of Columbia." None of these details are intuitive and certainly an easy mistake to make.

STEP 3

IRS Issues Registration Number

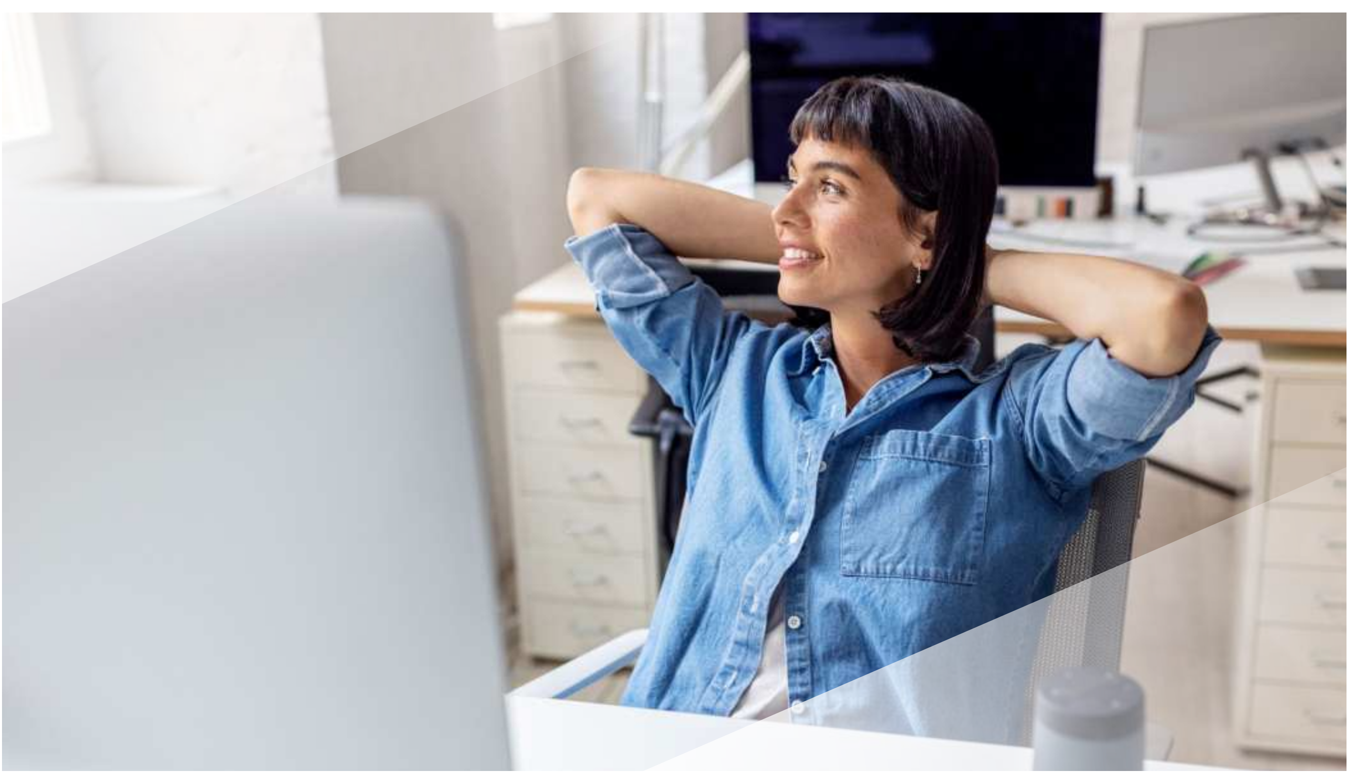
While many cities have successfully prefiled, we have seen only a few registration numbers awarded by the IRS to date, mostly due to errors in prefiling. While we have seen registration numbers awarded as quickly as a few weeks, some cities have been correcting their prefiling registration information two and three times and, so therefore, the process is taking several months. The IRS is being careful and diligent in order to minimize fraud in this nascent program. **The key part is to be patient and make sure the CEO monitors their email as that is the main way the IRS is going to contact the entity to make any corrections for a successful filing.**

STEP 4

File Your 990-T

As mentioned previously, an entity is required to file their taxes by the 15th of the fifth month after the end of the tax year. For cities with a calendar year fiscal year/tax year, that means May 15. For cities with a July-June fiscal year/tax year, the filing deadline is November 15. **For this first year of the elective pay provision being in effect, Treasury has afforded an automatic extension to those entities that have never filed income taxes before (aka never filed a 990-T before)**. Meaning, for this year only, cities choosing the calendar year as their tax year have a filing deadline of November 15, 2024.

While the 990-T is the main tax form that must be filed, it is fed by a reconciling form called a Form 3800, which collects all eligible elective payment activities from purchasing EVs (form 8936) to investing in charging stations (form 8911) to investments in a solar array and other Investment Tax Credits (form 3468).



By the time a city gets to this point in the process, the city will have already placed their project in service, so the funding and/or financing decisions to carry out the project have already taken place. In these forms, your city will calculate any grants or municipal bonds used in the project. In order to determine the "no excess benefits rule" has not been violated or to determine the haircut of benefits for the use of municipal bonds, the city should consult a registered municipal advisor. As your city is considering future eligible projects, consider consulting your registered municipal advisor while planning in order to assess the variety of financing and funding options available.

The IRS encourages cities to eFile (think TurboTax), but providers of the eFiling platform for elective payment are limited or non-existent, and so filing via paper to the 990-T repository address provided on the IRS website is likely necessary.

GFOA has created annotated tax forms that walk through each of the required pieces of information on each form:

Annotated Tax Form 2023: 990-T - LH - Google Drive

Annotated Tax Form 2023: 3800 - LH - Google Drive

Annotated Tax Form 2023: 8936 - LH & EC - Google Drive

Annotated Tax Form 2023: 8911 & Worksheet 1 - LH & EC - Google Drive

Annotated Tax Form 2023: 3468 ITC - LH - Google Drive

STEP 5

Receive the Elective Payment

Almost done! **The IRS FAQs suggest that it may take approximately 45 days to receive the elective payment back to your community.** Since this is a well-established tax credit in the energy sector, we compared that to the length of time for the private sector to receive their credits returned—and many have been longer than 45 days. For local governments, we have not seen any elective payments issued yet, so we have no empirical evidence of any true amount of time.

That said, there will be some recommended best practices that will develop over time. The first is an internal controls issue, while the second is a best use case.

First, make sure that you note throughout the accounting/reconciliation process in your city that the elective payment has been applied for. The elective payment will come via ACH, but the exact timeframe is unknown. A city may see an electronic deposit from the IRS with very little explanation. Make sure you are tracking deposits so that the elective pay payment does not get lost!

Second, there's no requirement on where and how to spend the elective payment in the law. Start discussions now about the best use case for your elective payment. Whether it is reinvested in further green and renewable energy projects or used in other ways based on your community's specific needs, policies or procedures, have that discussion as early as possible.

Conclusion

GFOA and NLC are thrilled that your city is choosing to pursue the elective payment option for clean energy projects in your community. This iterative process is still being learned. If you have best practices to add or if you have any additional questions, we are happy to assist you in your path to successful filing and receipt of the Inflation Reduction Act's elective payment program.

ACKNOWLEDGMENTS

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The Government Finance Officers Association (GFOA), founded in 1906, represents public finance officials throughout the United States and Canada. The association's more than 24,000 members are federal, state/provincial, and local finance officials deeply involved in planning, financing, and implementing thousands of governmental operations in each of their jurisdictions. GFOA's mission is to advance excellence in public finance.

The National League of Cities (NLC), the voice of America's cities, towns and villages, representing more than 200 million people. NLC works to strengthen local leadership, influence federal policy and drive innovative solutions.