

GROOM LAW GROUP

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Submitted electronically to pra.comments@irs.gov

Attn: Mr. Andres Garcia
Internal Revenue Service, Room 6526
1111 Constitution Avenue NW
Washington, D.C. 20224

Re: Proposed Collection; Requesting Comments on Tax-Exempt Organization Forms, Docket No. 2024-20539 [OMB Control Number 1545-0047]

Dear Mr. Garcia:

Groom Law Group, on behalf of a group of apprenticeship and training organizations, hereby submits the following comments to the U.S. Department of Treasury (“Treasury”) and the Internal Revenue Service (“IRS”) in response to the above-referenced notice and request for comments published on September 11, 2024. Our comments relate to the impact of the Inflation Reduction Act of 2022 (“IRA”) on Draft Form 990-T, Exempt Organization Business Income Tax Return which requires taxpayers to attach Form 3800, General Business Credit, which is used in conjunction with additional forms to claim the energy-related investment and production tax credits and deductions that were extended, modified, and created by the IRA and codified at Internal Revenue Code (“Code”) sections 30C, 45, 45Q, 45V, 45Y, 45Z, 48, 48C, 48E, 179D, 45L and 45U (collectively, the “IRA Tax Credits and Deductions”), as well as the proposed instructions for such forms.¹ Specifically, our comments suggest changes to Draft Form 990-T that will ensure that it is fully aligned with the IRA’s prevailing wage and apprenticeship utilization requirements (“PWA Requirements”), which must be met in order to claim significantly increased credit and deduction amounts (“bonus credits”). Further, we believe our recommendations will help maximize the value of the IRS’ expanded enforcement efforts related to the clean energy provisions of the IRA for consumers, small businesses, communities, and industries, including by “quickly identify[ing] and address[ing] noncompliant activity, including fraud, to ensure credits are properly claimed by eligible taxpayers.”²

¹ These comments only directly address Draft Form 990-T because Draft Form 3800 and its instructions, as well as the draft forms and instructions for the IRA Tax Credits and Deductions, are the subject of Docket No. 2024-20568 [OMB Control No. 1545-0123]. Our comments on that docket, also filed on November 12, 2024, are attached and incorporated herein by reference.

² Internal Revenue Service, *Inflation Reduction Act Strategic Operation Plan for FY2023- 2031* at pg. 63, available at: <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

I. Background

Local governments, government-related entities, and tax-exempt organizations have shown significant interest in the IRA Tax Credits and Deductions, as many of them have been seeking a transition to renewable energy even prior to the enactment of the IRA. The direct pay option has greatly accelerated the interest for these nonprofits and private foundations interested in fostering renewable energy development. While some of the credits already existed, unless tax exempt organizations had a significant amount of unrelated business income tax (UBIT), they could not avail themselves of the credits prior to the enactment of Section 6417 of the IRA, which provides the direct payment alternative.

To enhance the utility, quality, and clarity of the information collected regarding the PWA requirements, we are recommending changes that are necessary for the Treasury and the IRS to properly perform their functions with respect to correctly issuing the bonus credits. Particularly given the transferability and direct pay options, the bonus credits are highly lucrative financial tools for the entire energy industry, including taxpayers, tax insurers, investors, and project owners seeking a healthy return on investment. The Treasury – and indeed the entire U.S. economy – faces enormous financial risk if the bonus credits are issued erroneously to taxpayers who claim the credits but have, either intentionally or unintentionally, failed to meet them. Our recommendations will make it easier for the Treasury and IRS to determine whether a taxpayer has complied with the PWA requirements, which will promote greater efficiency and economy in enforcement.

II. Recommended Changes to Draft Form 990-T

Form 990-T, Exempt Organization Business Income Tax Return, is used by tax-exempt organizations to report any unrelated business income and pay any associated taxes. Although these organizations are generally exempt from federal income tax, they must pay taxes on income generated from activities that are not substantially related to their primary, tax-exempt purpose, generally, income from activities like advertising, operating a gift shop, or renting out property if it is not directly related to their exempt mission. In addition to calculating and reporting UBIT, Form 990-T also allows tax-exempt organizations to claim certain deductions and credits that are applicable to their taxable activities, including the IRA Tax Credits and Deductions. To claim the IRA Tax Credits and Deductions, a tax-exempt organization would attach its Form 3800 as required by Part III, 1c. The specific forms for the IRA Tax Credits and Deductions must be filed along with Form 3800 in order to claim the bonus credits for meeting the PWA requirements.

Recommendation: Draft Form 990-T should be revised to include an additional line below Part III, 1c that states: “If you are attaching Form 3800 because you are claiming credit transfer election amounts associated with Forms 3468, 8835, 7211, 7218, 7210, 8933, 7205, 8911, 8908, or 7213, attach a statement that claiming such credits will not result in unrelated business income tax. Attach a copy of your Form 3800 to such statement in addition to attaching it to this form.”

Reasoning: For tax-exempt organizations, it is crucial to clarify that claiming transfer election amounts for the IRA Tax Credits and Deductions does not result in UBIT to ensure that the organization maintains its tax-exempt status and avoids unexpected tax liabilities. Tax-exempt organizations can benefit from these credits, including the bonus credits, via elective payments or transfer elections. However, if the credits are classified as unrelated business income, the organization could face taxes on the credited amount, eroding the intended benefit of the IRA incentives. By declaring that these credits and deductions do not generate unrelated business income, tax-exempt organizations can benefit fully from IRA incentives without triggering additional tax obligations. This declaration would also provide clarity for IRS compliance and promote enhanced utility, quality, and clarity of the information collected. Furthermore, the declaration would help to preserve the organization's resources for its core, exempt-purpose activities. Such a statement will help tax-exempt organizations demonstrate compliance with IRS rules on unrelated business income tax, reducing audit risks and ensuring alignment with both federal tax guidelines and the objectives of the IRA to promote sustainable practices among tax-exempt entities. We note that, in response to comments requesting that the final regulations on the elective payment provisions provide that income from applicable credit property does not give rise to UBIT, the Treasury stated that whether income from applicable credit property gives rise to UBIT is a fact-intensive inquiry under sections 511 through 514 of the Code and was outside the scope of such final regulations.³ Therefore, it is appropriate to instead require a statement from the taxpayer that claim such credits does not result in UBIT in the Form 990-T.

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Thank you for your consideration of the foregoing comments. We welcome the opportunity to provide any additional information you may feel helpful.

Very truly yours,



James V. Cole II

Enclosure

³ *Elective Payment of Applicable Credits; Elective Payment of Advanced Manufacturing Investment Credit; Final Rules; Election To Exclude Certain Unincorporated Organizations Owned by Applicable Entities From Application of the Rules on Partners and Partnerships; Proposed Rule*, 89 FR 17546, TD 9988 (March 11, 2024) at 17561.