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IRS and Treasury Unveil Registration Tool for Transferring and Receiving Direct Payments for IRA and CHIPS Act Tax Credits

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Any taxpayer seeking to transfer or receive a direct payment in respect of credits must complete a registration process and obtain a registration number for each eligible credit property before claiming the credit or refund. On December 22, 2023, the IRS and Treasury unveiled their new pre-filing registration portal (available here) for transferrable and refundable tax credits under the Inflation Reduction Act of 2022 (the "IRA")[1] and the CHIPS and Science Act of 2022 (the "CHIPS Act"). As discussed in greater detail in our earlier alerts about the transferability of IRA tax credits (available here) and the direct payment rules related to these credits (available here), any taxpayer seeking to transfer or receive a direct payment in respect of credits must complete a registration process and obtain a registration number for each eligible credit property before claiming the credit or refund. Without a registration number, no tax credit transfer or direct payment is permitted, so understanding the process for obtaining a registration number will be critical to taxpayers seeing to take advantage of IRA and CHIPS Act incentives. In connection with rolling out the new pre-filing registration portal, the IRS provided detailed (64 pages, plus appendices) instructions (available here). These instructions explain how to access and use the pre-filing registration portal,[2] describe the information that must be submitted (including both general information applicable to all taxpayers using the portal and credit-specific information),[3] explain the process that taxpayers with multiple qualifying projects or facilities should use (including specifying procedures for bulk registrations),[4] describe the process that the IRS will utilize if it requires additional information from a taxpayer,[5] clarify which person is required to submit a registration (including addressing consolidated groups and disregarded entities),[6] and clarify the process that should be followed if facts change after a registration number is obtained.[7] Although a comprehensive discussion of the portal and its explanatory instructions is beyond the scope of this alert, we have included ten, important observations below:

1. **Lengthy Waiting Period Required –** The instructions recommend that taxpayers make sure to budget 120 days for receipt of a registration number after submission, assuming no comments. This recommendation suggests that the IRS review period for submissions may be lengthy.

2. **Get in Line Quickly** – The instructions note that applications for registration numbers will be processed in the order in which the applications are received. Taxpayers seeking to transfer credits will want to move as quickly as possible to get in line.

3. **Don't Lose Your Spot in Line** – If the IRS makes a follow-up request to an applicant before providing a registration number, but the applicant fails to respond that request in a timely fashion, the applicant will be pushed to the back of the line. For this reason, applicants should put in place processes to make sure they are carefully monitoring the IRS portal after submitting a request for a registration

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number.

4. **One Registration Package Per Year** – The portal allows only one registration package per taxable year per applicant. So, for example, even if an applicant has multiple facilities for which registration numbers are needed, that applicant can submit only one registration package. Once a package is submitted, no adjustments are allowed until the IRS has responded to the package. (An amended submission can be made, but only after the IRS has provided its response.)

5. **Advisors May Not be Welcome** – The portal requires the person applying for a registration for an entity transferor to certify that the person is "a corporate officer, partner, guardian, executor, receiver, administrator, trustee, or individual other than the taxpayer" and that they "have the legal authority to execute [the] authorization on behalf of the taxpayer." The instructions go on to state that information submitted will be compared to information in IRS records and that errors in creating a portal account for a business result in a 24 hour lockout. Based on these statements, it is not clear whether an advisor can complete the registration on behalf of a taxpayer. It would be useful for the IRS to clarify whether representatives may assist in obtaining registration numbers.

6. **Know Which EIN to Use –** The instructions for the portal include detailed directions regarding employer identification numbers ("EINs"), including rules related to the EIN to use in the case of a disregarded entity (for disregarded entities owned by trusts/individuals, the disregarded entity's name and EIN is used, and for disregarded entities owned by other taxpayers, the EIN and name of the regarded owner is to be used), and rules that apply to consolidated groups (the EIN for the consolidated parent must be utilized).

7. **Collect Necessary Information and Documents in Advance** – Applicants are required to submit detailed information, both about themselves and about the projects for which registration numbers are being sought. In addition, for many of the credits, various documents (or summaries of documents) are required. While this information (*e.g.*, longitude and latitude coordinates that pinpoint a project location precisely (within inches)) and these documents will undoubtedly help guard against fraud, it is reasonable to anticipate that the burden on taxpayers will not be insignificant, and it will be important for applicants to collect all needed materials in order to make sure the submission process goes smoothly.

8. **Bulk Submissions** – The online application portal allows applicants to submit requests for registration numbers related to multiple facilities in bulk (using a spreadsheet that can be downloaded from the portal). This will be particularly useful for applicants that have many projects with many facilities (*e.g.*, a wind farm), given that a separate registration number is required for each facility. As mentioned, however, each taxpayer is not allowed to have more than one application process outstanding at a particular time.

9. **In-Service Dates Are Key**. No pre-filing registration is allowed for a facility before the date on which the facility is placed in service. For tax credit transferees that demand that a registration number be obtained before the payment for tax credits, this feature may affect transactions or financings related to credits.

10. **Watch Out for Traps** – The pre-filing registration process prioritizes fraud prevention over flexibility. Thus, it is important to remember that a registration number is specific to a type of election (*i.e.*, transfer vs. direct pay), type of credit, facility/property, tax period for the election, and the owner of the facility/property. If any of these changes, a new registration number will be required. For corporations, if a corporation has obtained a registration number and subsequently joins or leaves a consolidated group, a new registration number will be needed.

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_____ [1] As was the case with the so-called Tax Cuts and Jobs Act, the Senate's reconciliation rules prevented Senators from changing the Act's name, and the formal name of the so-called Inflation Reduction Act is actually "An Act to provide for reconciliation pursuant to title II of S. Con. Res. 14." [2] The IRS and Treasury have partnered with ID.me, a third-party technology provider, to provide identity verification and sign-in services. The portal requires each taxpayer to create an account, and, if the person submitting the filing is not the taxpayer (*e.g.*, in the case of transferors that are entities), mandates an authorization process, which requires submission of information about both the taxpayer and the person acting on behalf of the taxpayer [3] All taxpayers must submit their name, address, entity type, bank account information (required for verification), tax period to which the election relates, types of tax returns filed by the taxpayer, and (if applicable) information about consolidated subsidiaries. In addition, information about the type of election being made (*i.e.*, direct pay vs. transfer), key dates (including beginning of construction and placement in service) and facility/property location is required for many credits. Moreover, many credits require the submission of unique, credit-specific information or attestations. For example, for a taxpayer seeking to register production tax credits, an attestation is required that no investment tax credit under section 48 will be claimed for the facility/property. [4] The portal requires that each taxpayer have no more than a single submission outstanding at a given time. The portal allows taxpayers who require numerous registration numbers to make a bulk submission using a specific format. [5] Once a submission has been made, the IRS will utilize the portal to communicate with the taxpayer, although it is possible for taxpayers to opt into email alerts. [6] The relevant rules are very specific, and not always intuitive, particularly the rules that apply to disregarded entities and consolidated groups. These rules are discussed in greater detail below. [7] At a high level, and as discussed in greater detail later on in this alert, a new submission is generally required.

The following Gibson Dunn attorneys prepared this update: Mike Cannon and Matt Donnelly.

Gibson Dunn lawyers are available to assist in addressing any questions you may have about these developments. To learn more about these issues, please contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's Tax or Power and Renewables practice groups, or the authors: **Tax:** Michael Q. Cannon – Dallas (+1 214.698.3232, mcannon@gibsondunn.com) Matt Donnelly – Washington, D.C. (+1 202.887.3567, mjdonnelly@gibsondunn.com) **Power and Renewables:** Peter J. Hanlon – New York (+1 212.351.2425, phanlon@gibsondunn.com) Nicholas H. Politan, Jr. – New York (+1 212.351.2616, npolitan@gibsondunn.com) © 2023 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. Attorney Advertising: These materials were prepared for general informational purposes only based on information available at the time of publication and are not intended as, do not constitute, and should not be relied upon as, legal advice or a legal opinion on any specific facts or circumstances. Gibson Dunn (and its affiliates, attorneys, and employees) shall not have any liability in connection with any use of these materials. The sharing of these materials does not establish an attorney-client relationship with the recipient and should not be relied upon as an alternative for advice from qualified counsel. Please note that facts and circumstances may vary, and prior results do not guarantee a similar outcome.

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