

# IRA Implementation

Part 1



NY-GEO — NYC Conference

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# Limited Use Property Doctrine Background

The lessor must



represent and demonstrate certain facts relating to the estimated fair market value and estimated remaining useful life of the property at the end of the lease term. This requirement is intended, in part, to assure that the purported lessor has **not transferred the use of the property to the purported lessee for substantially its entire useful life**. In the case of such "limited use" property, at the end of the lease term **there will probably be no potential lessees or buyers other than members of the Lessee Group**. As a result, the lessor of limited use property will probably sell or rent the property to a member of the Lessee Group, thus enabling the Lessee Group to enjoy the benefits of the use or ownership of the property for substantially its entire useful life.

[Revenue Procedure 2001-28](#) (update to Rev. Proc. 75-21 with minimal changes)

## Congressional Letters in Support



As it is not feasible to move or remove a geothermal ground loop, there is uncertainty regarding how the IRS would treat a geothermal lease (or thermal energy contract). To ensure growth in the adoption of geothermal is realized as Congress intended by expanding the tax credit for it, we encourage the IRS to provide a safe harbor pursuant to which geothermal ground loops and heat pump systems will not be challenged as limited use property as defined by Revenue Procedure 2001-28.

Rep. Thoms Suozzi et al, Oct. 12, 2022



However, there is uncertainty over how the IRS will apply the “limited use property” doctrine under Revenue Procedure 2001-28 to GHP systems. In order for a lessor to retain ownership of certain property for tax purposes, the doctrine requires that a lessor not transfer the property to the consumer for substantially all of the property’s useful life.

Sen. Michael Bennet et al, December 12, 2023

# Treasury's Response



There is a longstanding body of IRS guidance stating that the IRS will not provide advance rulings on issues of true ownership with respect to leases, sales and financing arrangements, except in very limited circumstances, and that the IRS will not issue advance rulings on transactions involving limited use property. In light of this IRS precedent and procedures addressing leasing transactions, an exemption from the limited use doctrine for geothermal heat pumps, or any other specific kind of property, **requires a legislative fix.**

Corey Tellez, Acting Ass't Sec., Office of Legislative Affairs, Feb. 7, 2024  
to Senator Bennet

# Split Ownership Prohibition in Proposed ITC Regulations

The proposed regulations provide that if different taxpayers own separate components of a GHP system that are functionally interdependent, then none of the taxpayers can claim an ITC (unless the two taxpayers share more than 50 percent overlapping ownership of the equipment).



X and Y own separate components of a geothermal heat pump equipment, which taken together is a unit of energy property. **X owns the coils** in the ground and **Y owns the heat pump**. **No section 48 credit** may be determined with respect to either X or Y because each owns a separate component of energy property that does not constitute a unit of energy property as defined in § 1.48-9(f)(2).

Prop. Treas. Reg. §1.48-14(e)(4), Ex. 2.

# Additional Resources on Tax Planning for Geothermal Heat Pumps

## Limited Use Property:

- [House Letter to the Treasury Requesting Limited Use Property Safe Harbor](#)
- [Senate Letter to the Treasury Requesting Limited Use Property Safe Harbor](#)
- [Limited Use Property Safe Harbor Proposed to Treasury](#)
- [Treasury declines to Address Limited Use Property](#)

## Split Ownership:

- [GeoExchange's Initial Comments on Proposed ITC Regs](#)
- [GeoExchange's Supplemental Comments](#)

## Domestic Content:

- [GeoExchange's Domestic Content Safe Harbor Proposed to Treasury](#)



Please see our blog [TaxEquityNews.com](https://TaxEquityNews.com) for more information about the IRA, tax credits, tax equity and tax credit transfers.

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## Part 2: Transferability



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## Price data from NRF deals

- Range of prices: **\$0.83 – \$0.97**
- Average price: **\$0.931**
- Average weighted price: **\$0.937**
- Haven't yet handled any transfers from of geothermal heat pump projects



# Transfer-Eligible Taxpayers

- Section 6418(f)(2) defines what taxpayer (an “eligible taxpayer”) can make a one-time transfer election as “any taxpayer which is not defined” in the direct pay rules under Section 6417(d)(1)(A).
  - Thus, tax-exempt organizations, state or political subdivisions thereof, the Tennessee Valley Authority, Indian tribal governments, Alaska Native Corporations, and corporations operating as a cooperative that furnishes electricity to persons in rural areas *cannot* elect to transfer credits



Prop. Treas. Reg. § 1.6418-1(b): defines “taxpayer” by reference to Section 7701(a)(14)

Any person subject to internal revenue tax, unless included in Section 6417(d)(1)(A) (i.e., tax-exempt organizations, Indian tribes, etc.)

# Credit Transfer Steps/Requirements

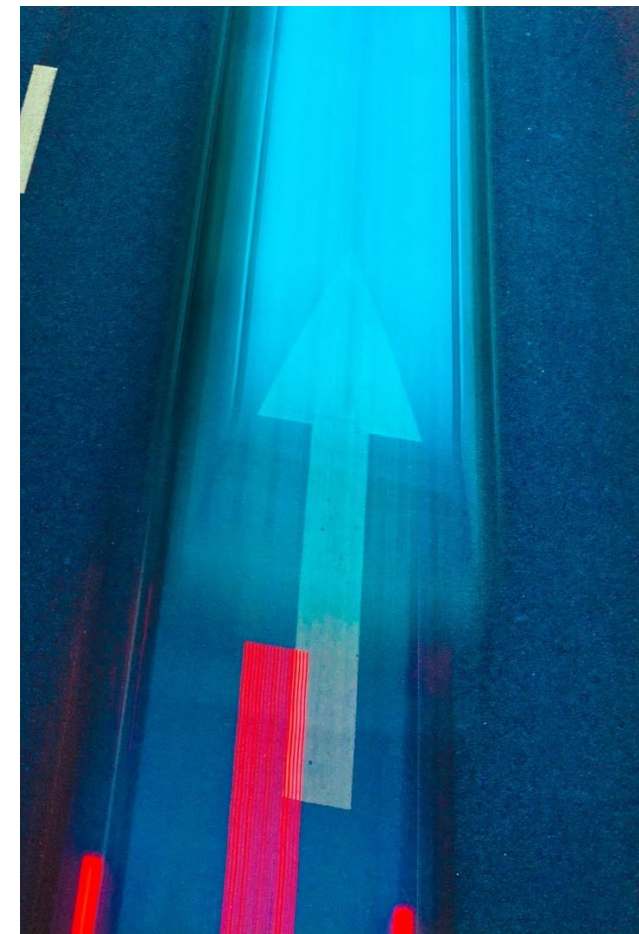
- Pre-filing requirements: Before filing, taxpayer must register through an IRS electronic portal, providing information about the taxpayer and each eligible property for which they intend to transfer a specified credit portion
  - Then, taxpayer will receive a unique registration number for each eligible credit property
- Transfer election procedures:
  - Must be made for each eligible credit property (must be consistent with pre-filing registration)
  - Must be made on an original return not later than the due date (including extension) for the original return
  - Must provide the following with each election:
    - Source credit form for the eligible credit;
    - IRS Form 3800, General Business Credit, including registration number;
    - Schedule showing amount of eligible credit transferred for each eligible credit property; and
    - Transfer election statement

Prop. Treas. Reg. § 1.6418-4 and Treas. Reg. § 1.6418-4T

Prop. Treas. Reg. § 1.6418-2(b)

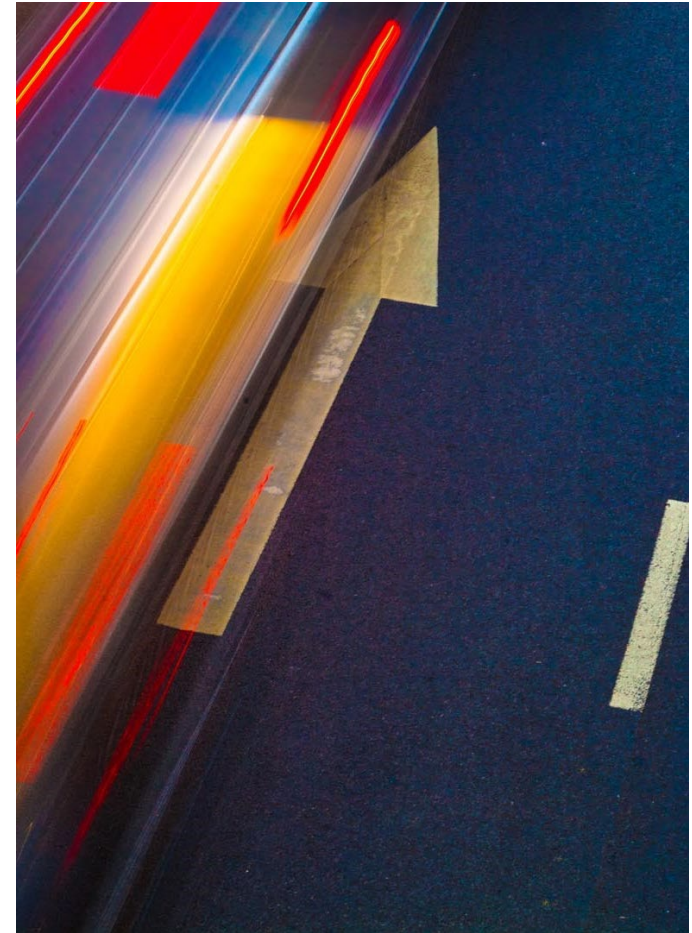
# One-Time Transfer Requirement; Other Req'ts

- Buyer/Transferee cannot transfer specified credit portion a second time.
  - However, one can break up a credit into “specified credit portions” and make transfers of those portions to multiple taxpayers. Prop. Treas. Reg. § 1.6418-2(a)(2)
- What about electing direct pay for some credits and transfer election for other credits?
  - See Prop. Treas. Reg. § 1.6417-3(e)(4)
- What about electing direct pay on credits that are received via transfer?
  - See Prop. Treas. Reg. § 1.6417-2(c)(4)



# Paid-in-Cash Requirement

- Prop. Treas. Reg. § 1.6417-1(f) – a payment in United States Dollars that:
  - Is made by cash, check, cashier's check, money order, wire transfer, automated clearing house transfer, or other bank transfer of immediately available funds
- Payment has to:
  - Directly relate to the specified credit portion; and
  - Be made within the period beginning on the first day of the eligible taxpayer's taxable year during which a specified credit is determined and ending on the due date for completing a transfer election
- Payments made in connection with a transfer are not includable in gross income



# Additional Resources on Transferring Tax Credits

[Article on Final Transferability Regulations](#)

[Article on Proposed Transfer Regulations \(Overview\)](#)

[Checklists for Tax Credit Transfers Diligence](#)

[Article on OECD's Favorable International Tax Treatment of Transferable Tax Credits](#)



Please see our blog [TaxEquityNews.com](https://www.taxequitynews.com) for more information about the IRA, tax credits, tax equity and tax credit transfers.