



November 4, 2022

SUBMITTED ELECTRONICALLY

Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-50)
Room 5203
P.O. Box 5203, Ben Franklin Station
Washington, D.C. 20044

The Honorable Lily L. Batchelder
Assistant Secretary for Tax Policy
Department of Treasury

Mr. William M. Paul
Principal Deputy Chief Counsel and Deputy Chief Counsel
Internal Revenue Service

Re: Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits (Notice 2022-50)

Dear Ms. Batchelder and Mr. Paul:

Thank you for providing the Coalition for American Battery Independence (CABI)¹ the opportunity to provide comments pursuant to Notice 2022-50 regarding the elective payment provisions under § 6417 and the elective credit transfer provisions under § 6418 of the Internal Revenue Code, as added by § 13801 of Public Law 117-169, commonly known as the Inflation Reduction Act of 2022 (IRA).

I. Background

Our members are a diverse group of American automakers, battery manufacturers, and materials producers throughout the entire battery supply chain that either have a significant manufacturing presence in the United States, or intend to start or shift significant portions of their manufacturing operations to the U.S. following passage of the IRA. Together, the companies within this coalition represent more than 250,000 U.S. workers across 32 states.

¹ <https://www.batteryindependence.us/>

CABI is directly focused on re-shoring the supply chain around both vehicle and grid battery manufacturing while creating good-paying manufacturing jobs.

As the U.S. Department of Treasury (Treasury) and the Internal Revenue Service (IRS) work to develop and issue future IRA guidance, we hope the law's implementation will result in a policy environment that leads to a U.S. battery manufacturing renaissance. Given that global demand for battery technologies — ranging from electric vehicles to grid storage — is growing exponentially, we must ensure the IRA's implementation will result in reducing U.S. reliance on overseas supply chains to meet our future clean energy needs. By developing an approach that appropriately considers the critical role that current and future battery companies will play in establishing a domestic battery supply chain, the Treasury and IRS will best position the country to build out a secure and independent U.S. battery industry in the very near future.

With this perspective in mind, below, we have prioritized questions and issues under this section that will have the greatest impact on CABI members and the future of the U.S. battery manufacturing industry.

II. Request for Comments

.01 Elective Payment of Applicable Credits (§ 6417)

(3) In determining the amount treated as making a payment against tax under § 6417(a), is guidance needed to clarify the application of any other Code provision? If so, what is the Code provision and what clarification is needed?

Explicit guidance from the Treasury and the IRS is needed to clarify that transferability will be available for any remaining years pursuant to § 6418 in the event of a direct pay election under § 6417 for § 45X.

(4) With respect to an election under § 6417(a) made by a partnership or S corporation pursuant to § 6417(c)(1) for any applicable credit determined with respect to any facility or property held directly by a partnership or S corporation:

(b) Is guidance needed to clarify the treatment of a payment made pursuant to § 6417(c)(1)(A) to the electing partnership or S corporation? If so, what clarification is needed?

Clear, concise, and early guidance by the Treasury and IRS on how partnership or S corporation elections are treated under § 6417 is extremely important as they relate to § 45X. Many CABI members are contemplating various corporate structures as they look to establish and invest in new battery manufacturing facilities across the U.S., and understanding early-on how the Treasury and the IRS intends to treat partnerships and S corporations is critical to the success of those projects. Specifically, CABI members would appreciate clarification on whether, in the case of a partnership that produces and sells eligible components under § 45X, the eligible component is property held by the partnership pursuant to § 6417(c)(1).

(5) With respect to the definition of the term “applicable entity” in § 6417(d)(1):

(a) What, if any, guidance is needed to clarify which entities are applicable entities for purposes of § 6417(d)(1)(A), and which taxpayers may elect to be treated as applicable entities under § 6417(d)(1)(B), (C), or (D) for purposes of § 6417?

CABI recommends the Treasury and the IRS provide guidance on which taxpayers may elect to be treated as applicable entities under § 6417(d)(1)(D). The Treasury and the IRS should, where possible, take a broad and flexible approach to ensure that various types of structures can make the appropriate election. This will aid in ensuring the success of § 45X, as well as the significant investments to come throughout the entire battery value chain.

(6) With respect to the elections under § 6417(d)(1)(B), (C), or (D):

(b) What factors should the Treasury Department and the IRS consider in determining the time and manner for making the election?

The Advanced Manufacturing Production Tax Credit – § 45X – is one of the few credits eligible for direct payment, as Congress recognized the importance of providing an immediate, regular, and recurring cash incentive for future battery manufacturing facilities. As a result, CABI encourages the Treasury and the IRS to develop flexible, timely, and regular opportunities for taxpayers to make an election to ensure Congressional intent is achieved.

Successful deployment of that new manufacturing capacity, and continued investment in new and existing facilities, will depend on the accessibility and timeliness of direct payment.

Furthermore, the Treasury and the IRS should strongly consider allowing for more frequent elections. The ideal option would be for taxpayers to be allowed to use the quarterly excise tax reporting mechanism to claim direct payments every quarter. Considering that § 6417 is in the

excise tax part of the Code, the Treasury and the IRS could replicate the rules under §§ 6426 and 6427, which allow for quarterly, direct payments, in the case of § 45X.

The importance of this cannot be overstated: It will take time for facilities – new facilities or those being refurbished and put back into service – to come online and operate at full capacity. To speed up this process, domestic battery manufacturers will need ready access to capital, and having the option to make elections on a quarterly basis will provide taxpayers with the opportunity to reinvest in manufacturing operations and scale production more quickly and often. If elections happen less frequently, manufacturers will struggle to make large investments, ramp production, and benefit from § 45X as designed by Congress.

(9) For purposes of preventing duplication, fraud, improper payments, or excessive payments under § 6417, what information, including any documentation created in or out of the ordinary course of business, or registration, should the IRS require as a condition of, and prior to, any amount being treated as a payment made by an applicable entity under § 6417(a)? What factors should the Treasury Department and the IRS consider as to when documentation or registration should be required? Should the IRS require the same documentation or registration as a condition of, and prior to, any amount being treated as a payment made by both an applicable entity as well as a taxpayer who is treated as an applicable entity after making an election under § 6417(d)(1)(B), (C), or (D)? Should the IRS require the same documentation or registration for all applicable credits? If not, how should the information or registration differ between applicable credits? What other processes could be implemented by the IRS to prevent duplication, fraud, improper payments, or excessive payments under § 6417?

The Treasury and IRS should narrowly tailor any additional tax compliance obligations, requesting only additional, non-duplicative information necessary to protect the interests of the government *and* taxpayers. Compliance costs influencing business decisions, such as diverting investment funds to meet onerous reporting requirements, could create friction in the normal operation of the business and diminish the impact of the tax credits on establishing a robust domestic battery supply chain. Keeping additional documentation requirements at a minimum while still protecting taxpayer interests is essential to achieving the Congressional intent of these tax credits.

.02 Transfer of Certain Credits (§ 6418)

(3) Section 6418(c)(2) provides that, in the case of any facility or property held directly by a partnership or S corporation, no election by any partner or shareholder is allowed under § 6418(a) with respect to any eligible credit determined with respect to such facility or property. If the election is made, what issues should be considered regarding the transfer of any portion of an eligible credit and what, if any, guidance is needed with respect to such issues? Further, what, if any, guidance is needed on allocating any amount received as consideration for transferring any portion of an eligible credit?

Please refer to CABI's above comments on Question 1(b) with respect to necessary guidance and clarifications on partnerships.

(7) Is guidance needed to clarify how any other Code provision applies to an eligible taxpayer or a transferee taxpayer when an election is made under § 6418? If so, what is the Code provision and what clarification is needed?

CABI encourages the Treasury and IRS to provide guidance explicitly clarifying that transferability will be available for any remaining years pursuant to § 6418, in the event of a direct pay election under § 6417 for § 45X.

(8) For purposes of preventing duplication, fraud, improper payments, or excessive credit transfers under § 6418, what information, including any documentation created in or out of the ordinary course of business, or registration, should be required by the IRS as a condition of, prior to, or after any transfer of any portion of an eligible credit pursuant to § 6418(a)? What factors should the Treasury Department and the IRS consider as to when documentation or registration should be required? Should the IRS require the same documentation or registration for all eligible credits? If not, how should the information or registration differ between eligible credits? What other processes could be implemented by the IRS to prevent duplication, fraud, improper payments, or excessive credit transfers under § 6418?

As acknowledged in CABI's response to question .01(9), documentation and reporting to prevent duplication, fraud, improper payments, or excessive payments is of utmost importance. The Treasury and IRS should narrowly tailor any additional tax compliance obligations, requesting only additional, non-duplicative information necessary to protect the interests of the government *and* taxpayers. Compliance costs influencing business decisions, such as diverting investment funds to meet onerous reporting requirements, could create friction in the normal operation of the business and diminish the impact of the tax credits on establishing a robust domestic battery supply chain. Keeping additional documentation requirements at a minimum

in comparison to pre-IRA regulation while still protecting taxpayer interests is essential to achieving the Congressional intent of these tax credits.

(12) Please provide comments on any other topics that may require guidance.

Similar to our comments regarding direct payment, § 6418 should be implemented in such a way to allow elections to be made on a taxpayer-by-taxpayer basis (i.e. an entity-by-entity basis or facility-by-facility basis) – including within a consolidated or affiliated group. We request guidance to explicitly ensure that if a taxpayer (entity or facility) is receiving direct payment pursuant to § 6417, another taxpayer that is a part of a consolidated or affiliated group is not precluded from making an election under § 6418 (and vice versa).

Guidance must ensure the definition of taxpayer allows different members of a consolidated entity to be considered a taxpayer for the purposes of § 6417 and § 6418. As noted earlier, we recommend that the Treasury and the IRS take a broad and flexible approach that will incentivize the continued investment in new manufacturing facilities to be brought online over the next decade.