CORNING

HSC

November 4, 2022

SUBMITTED ELECTRONICALLY

Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-50)
Room 5203
P.O. Box 7604, 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:

Corning Incorporated ("Corning") and Hemlock Semiconductor ("HSC") are pleased to submit comments with respect to Treasury 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

Corning is one of the world's leading innovators in materials science. For nearly 170 years, Corning has applied its unparalleled expertise in glass science, ceramic science, and optical physics to develop products that transform industries and enhance people's lives. We accelerate and transform life sciences, mobile consumer electronics, optical communications, display, and automotive markets. We are changing the world with trusted products that accelerate drug discovery, development, and delivery to save lives; damage-resistant cover

glass to enhance the devices that keep us connected; optical fiber, wireless technologies, and connectivity solutions to carry information and ideas at the speed of life; precision glass for advanced displays to deliver richer experiences; and auto glass and ceramics to drive cleaner, safer, and smarter transportation. Corning is headquartered in the United States and employs approximately 61,000 employees world-wide.

In addition, Corning is the majority owner of Hemlock Semiconductor (HSC). HSC manufactures hyper-pure polycrystalline silicon – the foundational component for the semiconductor and solar supply chains. Polysilicon is the semiconductor in a semiconductor chip. HSC polysilicon is also used in the manufacture of ultra low-carbon solar panels. As the only producer of hyper-pure polysilicon headquartered in the United States, HSC has been a leader in polysilicon manufacturing since beginning its operations in 1961. HSC's experience and technology have allowed it to develop a safe, efficient, sustainable, and cost-effective manufacturing process. HSC puts a strong emphasis on public safety and takes pride in being an involved and active community leader in the Great Lakes Bay Region of Michigan.

II. Request for Comments

.01 Elective Payment of Applicable Credits (§6417)

(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?**

Providing clear, concise, and early guidance on how partnership elections are treated under §6417 is extremely important for the success of §45X. In particular, Corning and Hemlock ("we") 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).

(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?**

§45X – the advanced manufacturing production tax credit – is one of the few credits eligible for direct payment. This is because Congress recognized the importance of providing an immediate, regular, and recurring cash incentive. As a result, the Treasury and the IRS must develop flexible, timely, and regular opportunities for taxpayers to make an election to ensure the obvious intent of Congress is met.

To ensure the success of §45X, the Treasury and the IRS should strongly consider allowing for more frequent elections. One option could be to allow taxpayers to use the quarterly excise tax reporting mechanism to claim payments every quarter. This is a reasonable interpretation because §6417 is in the excise tax part of the Code, and there is precedent for a quarterly direct payment approach. For example, the Treasury and the IRS could replicate the rules under §§6426 and 6427, which allow for quarterly, direct payments.

An example that should be considered by the Treasury and the IRS is how best to account for ramp-up periods for new advanced manufacturing facilities coming online. For example, when a facility comes online, it usually starts with smaller amounts of production before hitting full manufacturing capacity. However, the facility will need support in the form of direct payments initially when it is operating at a lower production capacity, and over a full five-year period, when the facility is at full capacity.

.02 Transfer of Certain Credits (§6418)

(2) Section 6418(c)(1) provides that, in the case of any eligible credit determined with respect to any facility or property held directly by a partnership or S corporation, the Secretary determines the manner in which such partnership or S corporation makes an election under §6418(a) with respect to such credit.

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

Providing clear, concise, and early guidance on how partnership elections are treated under §6418 is extremely important for the success of §45X. In particular, we 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 §6418(c)(1).

In addition, early guidance is needed to expressly permit the partnership to designate which partners' allocated credits are transferred and which partners' allocated credits are retained, in

the event an election to transfer a portion of §45X is made by a partnership. This is important because partners may have divergent interests and may have differing capacities to utilize their allocated credits. Our members believe that these determinations should be made based on the agreement between partners.

For partnerships generating eligible credits, requiring the election for transferring credits to be made at the partnership level has advantages for tax administration like maintaining records at the partnership level rather than for each partner. However, requiring the election to be made at the partnership level should not eliminate the flexibility afforded to taxpayers (i.e., partners) under §6418 to either claim eligible credits on their tax returns or transfer credits in order to maximize the benefits provided under the law.

Therefore, we believe the Treasury and the IRS should issue clear guidance expressly permitting partnerships to designate which partners' allocated credits are being transferred and which partners' allocated credits are being retained.

This approach would not be novel. Recently, the Treasury and the IRS permitted a similar result in regulations dealing with bonus depreciation, where adjustments exist following transfers of a partnership interest.[1] While the election out of bonus depreciation is a partnership-level election, in light of the fact that different partners may have different interests in which bonus depreciation is claimed, the Treasury and the IRS permitted the flexibility to take each partner's circumstance into account where possible in order to provide the maximum benefit under the statute.

(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?

IRC §56A(c)(9) disregards any amount treated as a payment against tax pursuant to an election under §48D(d) or §6417 for purposes of adjusted financial statement income in the

[1] Treasury recently permitted an analogous result in the section 168(k) regulations dealing with bonus depreciation, where section 743(b) adjustments exist following transfers of a partnership interest. While the election out of bonus depreciation is a partnership-level election, in light of the fact that different partners may have different interests in whether bonus depreciation is claimed, Treas. Reg. §1.168(k)-2(f)(1)(ii)(G) explicitly treats "[e]ach partner's basis adjustment in partnership assets under section 743(b) for each class of property" as a separate class of property with respect to which the partnership can elect out of bonus depreciation, even if the partnership has not made such an election for other partners' section 743(b) adjustments or for the partnership's property that is in the same class to which the section 743(b) adjustment relates. This approach maintained the partnership-level election but nevertheless permitted the flexibility to take each partner's circumstance into account where possible in order to maximize the benefit provided by the statute.

computation of the corporate alternative minimum tax ("CAMT"). As such, any financial statement income recognized due to direct pay elections in both §48D(d) and §6417 should not create incremental CAMT. Corning believes that the legislative intent of such a provision is intended to exclude both impacts from direct pay elections and similar impacts from the transfer of certain credits under §6418. As such, §56A(c)(9) should be clarified to also disregard any adjusted financial statement income for CAMT purposes generated by the transfer of credits pursuant to §6418.

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Both Corning and HSC are part of the Solar Energy Manufacturers for America Coalition (SEMA). SEMA had provided comments for the coalition separately.

We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. If you have questions, please contact us at the following: Tymon Daniels, Vice President of Tax, at (607) 974-4995 or DanielsT@Corning.com, or Michelle O'Neill, Vice President of Global Government Affairs, at (202) 661-4174 or ONeillML@Corning.com.

Regards,

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