Panasonic

Comments to

U.S. Department of Treasury, Internal Revenue Service

RE: Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits

Notice 2022-50; Docket ID No. IRS-2022-0024

November 4, 2022

Panasonic North America[1] and its affiliates (Panasonic) submits these comments to the U.S. Department of Treasury (Treasury) and the Internal Revenue Service (IRS) in response to Notice 2022-50 requesting comments on Elective Payment of Applicable Credits and Transfer of Certain Credits (the Notice)[2] regarding the recently enacted Inflation Reduction Act (IRA). Panasonic appreciates the opportunity to comment on Treasury and the IRS' implementation and monetization of these credits.

Introduction

With close to 100 years' experience in electronics and manufacturing, Panasonic has consistently been a pioneer in battery technology, serving as a leader in developing and expanding new batteries and markets. Since the development of its first dry cell battery in 1923, Panasonic has repeatedly proven itself to be at the forefront of battery manufacturing technology and development, being first in the industry with respect to zero mercury batteries, the practical application of winding type batteries, the mass production of cylindrical cells, the mass production of high nickel cathodes, and cylindrical cell mass production for electric vehicles (EVs). Since 2010, Panasonic has utilized its experience and expertise to successfully incorporate cylindrical cells for automotive end uses into its portfolio.

Panasonic is the largest producer of EV batteries in North America and is committed to the safety and quality of its products, as well as innovation and partnerships leading to a more robust, secure, and sustainable domestic battery supply chain. Panasonic operates the world's largest EV battery factory in Reno, Nevada, producing nearly 40 gigawatt hours of advanced lithium-ion batteries per year thanks to our more than 4,000 workers at that facility. Panasonic is committed to the U.S. market and has also invested millions in a research and development facility in downtown Reno, Nevada that will support ongoing materials innovation and continuous improvement. Panasonic is planning another multi-gigawatt hour battery factory in Kansas to produce lithium-ion batteries, and the company plans to continue its growth and innovation in the United States, further encouraging the growth of related upstream and downstream sectors.

Given Panasonic's background working in the domestic market for electric vehicle batteries, the company appreciates the opportunity to provide feedback on how best to implement these credits. Below, we have provided responses to a selection of the questions asked in the Notice that are most salient to Panasonic.

[1] Newark, NJ-based Panasonic Corporation of North America is a leading provider of Consumer Lifestyle technologies, as well as innovative Smart Mobility, Sustainable Energy, Immersive Experiences, and Integrated Supply Chain solutions. The company is the principal North American subsidiary of Osaka, Japan-based Panasonic Holdings Corporation. One of Interbrand's Top 100 Best Global Brands of 2021, Panasonic is a leading technology partner and integrator to businesses, government agencies and consumers across the region. Learn more about Panasonic's ideas and innovations at https://na.panasonic.com/us/.

[2] Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits (Notice 2022-50); IRS-2022-0024-0001, Oct. 5, 2022

Panasonic Corporation of North America – Corporate and Government Affairs
505 9th Street NW, Suite 850 · Washington, DC 20004
Tel: 202.912.3800 · www.panasonic.com

Elective Payment of Applicable Credits (§ 6417)

(2) With respect to the Secretary's discretion to determine the time and manner for making an election under § 6417(a):

(a) What, if any, issues could arise when an applicable entity described in § 6417(d)(1)(A) makes an election under § 6417(a) and what, if any, guidance is needed with respect to such issues?

Section 6417(a) provides that in the case of an applicable entity making an election under this section with respect to any applicable credit, such entity is treated as making a payment against the tax ("Direct Pay election") imposed by subtitle A equal to the amount of such credit. Panasonic's reading of "Direct Pay election" is that upon making this election, the taxpayer would first be required to reduce its regular Federal tax liability with such applicable credit and then treat the excess credit as a refund of taxes deemed paid.

We understand that an applicable entity wishing to apply the direct payment of tax provisions must make an election to that effect on its timely filed Federal tax return "in such time and in such manner as the Secretary may provide." Furthermore, a taxpayer, other than an applicable entity described in § 6417(d)(1)(A), who is eligible for certain energy credits (which includes the § 45X Manufacturing Production Credit) and that wishes to be treated as an "applicable entity" must also make an election "at such time and in such manner as the Secretary may provide" in order to qualify for the direct payment of tax provisions.[3] Since the Advanced Manufacturing Production Credit is effective for taxpayers that sell eligible components after December 31, 2022, a taxpayer who is eligible for this credit and whose taxable year ends on a date other than December 31 (calendar year) would require timely guidance to assess the impact of making such an election for its 2022 tax return year (instead of the 2023 tax return year for calendar year taxpayers). This is critical for Panasonic whose taxable year ends on March 31 and plans to file for batteries sold between January 1, 2023 and March 31, 2023 in its federal tax return for the year ending March 31, 2023. Given the need for financial reporting obligations and disclosures, as well as being an "early mover" for these provisions, we urge Treasury and the IRS to issue timely guidance as soon as possible.

(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?

General Business Credit and the Corporate Alternative Minimum Tax**.** For purposes of the corporate AMT, adjusted financial income (AFSI) is adjusted to disregard any amount treated as a payment against tax pursuant to an election under § 6417, to the extent such amount was not otherwise taken into account under § 56A(c)(1)(5). At the same time, the IRA amends § 38 (General Business Credit (GBC)) to take into account the Corporate AMT, which generally follows the current rules in calculating net income tax as the sum of regular Federal tax liability and the AMT, reduced by credits allowable under § 38. An election made pursuant to § 6417(a) to treat an applicable credit as a payment against regular Federal tax liability should not have any effect on nor impact the ability for the taxpayer to use the applicable credit against its corporate AMT liability, subject to the allowable limitation under the GBC rules. An applicable credit that is subject to § 38 should follow the current GBC rules as they apply to the corporate AMT.

[3] Sections 6417(d)(1)(D). Other qualifying credits include the Section 45V Clean Hydrogen Production Credit and the Section 45Q Carbon Oxide Sequestration Credit.

(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?

A taxpayer that makes an election to be classified as an "applicable entity" pursuant to § 6417(d)(1)(D) with respect to any taxable year is treated as having made such election for each of the succeeding 4 taxable years. We believe that if a taxpayer becomes a party to an internal tax-free reorganization (such as a merger, tax-free liquidation, or a tax-free divisive transaction) during a year subsequent to making this election but before the conclusion of the 5-year period, this election should carry over to the successor entity. Recognizing the companies often enter into internal tax-free reorganizations to accomplish non-tax business-driven objectives, it is our view that taxpayers should not be penalized by the loss of such election and guidance providing clear instructions on this matter will assist taxpayers in making these business decisions.

(c) Is guidance needed to clarify the application of any Code provision other than § 6417 to an applicable entity, or a taxpayer electing to be treated as an applicable entity, that makes an election under § 6417(a)? If so, what is the Code provision and what clarification is needed?

Elections under § 6417(a) should be made with respect to each manufacturing or production facility on a stand-alone legal entity basis. In addition, § 6417(d)(1)(D)(iii) prohibits a taxpayer from making an election for any taxable year under § 6417(a) if the taxpayer had made an election under § 6417(d)(1)(D). This prohibition should also be applied with respect to each manufacturing or production facility on a stand-alone legal entity basis.

(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?

Section 6417(d)(5) stipulates that as a condition of, and prior to, any amount being treated as a payment made by an applicable entity under § 6417(a), the Secretary may require such information, or registration as the Secretary deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments under this section. Panasonic respectfully requests Treasury and the IRS to consider introducing and putting in place a separate reporting process to approve direct-pay claims in a timely manner for the "refundable" portion of the taxes. Since the election for taxpayers to be treated as an "applicable entity" (as defined in § 6417(d)(1)(A)) is available only for taxpayers who qualify for § 45X (advanced manufacturing PTC), § 45Q (Carbon Sequestration), and § 45V (Clean Hydrogen) energy credits, we are of the view that this election should apply only to a limited number of qualified taxpayers and that one of the primary purposes of such election is to provide these taxpayers access to an alternative funding source for making investments in green renewal and infrastructure projects.

Treasury should rely on engineers and technical experts to review and approve the information submitted by qualified taxpayers for credit eligibility in order to minimize the time required for processing refunds. Because the qualification requirements of these credits are generally very technical in nature, Panasonic suggests Treasury hire or work through the interagency process to clear technical specialists reviewing the § 45X credit. The review should be customized for each applicable energy tax credit (§ 45X, § 45Q, and § 45V), as certain credits require time to review. The timely review of these submissions is critical to achieving the Administration's climate and domestic EV production goals as well as stimulating further investment into the United States.

Panasonic is deeply committed to investing in the U.S. market and hopes to accelerate that investment timeline with the use of § 45X to exponentially ramp the production of high-quality lithium ion EV batteries to meet consumer demand. However, that accelerated investment timeline greatly depends on the ability for Panasonic to access the funds provided under U.S. law. Having technical specialists employed at the IRS and Treasury to review the documents submitted will be critical to timely payment to the taxpayers who elect direct pay for these credits to properly incentivize an immediate scale-up in EV manufacturing and production in line with Congressional intent.

(10) What, if any, guidance is needed to clarify the application of the excessive payment provisions of § 6417? What factors should be taken into account in determining whether reasonable cause exists for purposes of § 6417(d)(6)(B)? What, if any, guidance is needed to calculate the excessive payment amount under § 6417(d)(6)(C)?

Section 6417(d)(6)(C) defines the term "excessive payment" to mean, "with respect to a facility for which an election is made, an amount equal to the excess of the amount treated as a payment by the applicable entity with respect to this election, over the amount of the credit which, without having made such election under § 6417(a), would otherwise be allowable with respect to such facility." Panasonic requests that Treasury and the IRS provide regulatory guidance and examples to clarify where an excessive payment may arise. For example, we request that Treasury and IRS to consider whether an "excessive payment" would arise in context of an error in the qualification for eligibility or in the calculation of the amount of an eligible credit.

We also request that Treasury and the IRS consider application of the reasonable cause exception under § 6417(d)(6)(B) to excessive payments that resulted from the taxpayer's computational errors or reliance on the use of incomplete and/or erroneous data, of which the taxpayer was unaware, at the time the computation of the credit was made.

Transfer of Certain Credits (§ 6418)

(1) What, if any, guidance is needed to clarify the meaning of certain terms in § 6418, such as eligible credit, eligible taxpayer, and excessive credit transfer? Is there any term not defined in § 6418 that should be defined in guidance? If so, what is the term and how should it be defined?

When making an election under § 6418(a) for the § 45X Advanced Manufacturing Production Credit, the election should be made with respect to each manufacturing or production facility that is owned by an eligible taxpayer on a stand-alone legal entity basis. For example, a taxpayer that owns multiple facilities that produce eligible components for sale to unrelated parties that qualify for the § 45X credit, should be able to make such election with respect to each facility.

(4) What, if any, guidance is needed with respect to parameters or limitations on a transferee taxpayer's eligibility to claim the credit?

The elective provisions pursuant to § 6418(a) state that "in the case of an eligible taxpayer which elects to transfer all (or any portion specified in the election) of an eligible credit determined with respect to such taxpayer for any taxable year to a taxpayer (referred to in this section as the "transferee taxpayer") which is not related (within the meaning of § 267(b) or §707(b)(1)) to the eligible taxpayer, the transferee taxpayer specified in such election (and not the eligible taxpayer) shall be treated as the taxpayer for purposes of this title with respect to such credit (or such portion thereof)."

We believe that the definition of a "transferee taxpayer" should not be limited to C corporations, but also include private individuals, partnerships, trusts, and others. We also do not believe there should be a restriction or limit to the number of transferee taxpayer(s) to which the eligible taxpayer may transfer an eligible credit (or portion thereof).

Furthermore, the eligible taxpayer should have the option to enter into a multi-year agreement with a transferee taxpayer to transfer eligible credits.

(5) For purposes of § 6418(d), what, if any, guidance is required to determine the proper taxable year in which to claim any credit that was transferred pursuant to an election made under § 6418(a)?

We understand that an election made pursuant to § 6418(a) shall apply to taxable years beginning after December 31, 2022. For taxpayers that are eligible for the § 45X Advanced Manufacturing Production Credit, such credit becomes effective for eligible components produced and sold after December 31, 2022. A taxpayer whose taxable year ends on March 31 and who is eligible for the § 45X credit for components produced and sold after December 31, 2022 would be unable to make an election pursuant to §6418(a) for qualifying units sold from January 1, 2023 to March 31, 2023 for its taxable year ending March 31, 2023. In order to appropriately plan, Panasonic requires Treasury's swift confirmation of this reading.

(6) In determining the amount of eligible credit transferred under § 6418(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?

For purposes of the corporate AMT, unlike the Federal tax treatment, adjusted financial income (AFSI) does not disregard any amount treated as a payment received by an eligible taxpayer (from a transferee taxpayer), as a result of having made an election under § 6418(a). This result is contrary to the corporate AMT treatment of a taxpayer having received a payment of "refundable" tax after making a "Direct Pay" election under § 6417(a). For an election made pursuant to § 6417(a), AFSI does disregard the amount received as a result of making the "Direct Pay" election. We request Treasury and the IRS to reconcile the corporate AMT treatment of an amount received by an eligible taxpayer pursuant to an election made under § 6418(a) to be consistent with corporate AMT treatment of an amount received by an eligible taxpayer pursuant to an election made under § 6417(a), which is to disregard any amount received from the transferee taxpayer (same as the Federal tax treatment).

(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?

The statute states that an eligible taxpayer would be required to specify the transferee taxpayer in making this irrevocable election under § 6418(a). Such election is due at the time an eligible taxpayer files its tax return (not later than the due date, including extensions of time) for the return of tax for the taxable year for which the credit is determined. This means that an eligible taxpayer who chooses to make this election would be required to specify and disclose the name or names of the transferee entity or entities to which it plans to transfer the eligible credit (or portion thereof) at the time it files its return. Furthermore, such credit would be taken into account in the first taxable year of the transferee taxpayer ending with, or after, the taxable year of the eligible taxpayer with respect to which the credit was determined. [4] In our experience working with similar credits and incentives at the state level, Treasury and the IRS should look to effective state implementation of similar credits. Panasonic has several suggestions for optimizing this process:

- An eligible taxpayer who decides to make an election pursuant to § 6418(a) to transfer an eligible credit must be able to specify, at the time it files its tax return, the name of each transferee taxpayer to which it plans to transfer the eligible credit (or a portion thereof). We request Treasury and the IRS provide guidance with regard to what type of information would be specifically requested with regard to the transferee taxpayers. Treasury should rely on third-party certification on the eligibility of the credit.
- Treasury and the IRS should create, oversee, and manage a platform and/or exchange to facilitate the transfers of eligible credits from eligible taxpayers to transferee taxpayers. This will reduce cost burdens, encourage timely transfers, and stimulate the EV and clean energy investments desired by Congress and the Administration. Additionally, eligible taxpayers should not need to seek unrelated parties (transferee taxpayers) on their own to which to transfer eligible credits. This would invite market distortions and other complications. Finally, Treasury and the IRS should issue facilitation guidelines for transferor taxpayers seeking to sell and for transferee taxpayers seeking to purchase eligible energy credits.
- Because the transferee taxpayer would be treated as the "taxpayer" in connection with transfer of an eligible credit, the transferee taxpayer should then be subject to audit review risk for the eligible credit—even if the eligible credit did not originate from the transferee taxpayer. One consideration to transfer the audit risk to the transferor taxpayer may be to reduce the number of claims that need to be audited, because each transferor may transfer an eligible credit to multiple transferees, thereby adding to the burden of administering the credit.

[4] § 6418(d)

(9) What, if any, guidance is needed to clarify the application of the excessive credit transfer provisions of § 6418? What factors should be taken into account in determining whether reasonable cause exists for purposes of § 6418(g)(2)(B)? What guidance is needed to calculate the excessive credit transfer amount?

Panasonic requests that Treasury and the IRS provide regulatory guidance and examples demonstrating situations where an excessive credit transfer may arise. "Excessive credit transfer" is defined in § 6418(g)(2)(C) to mean, with respect to a facility for which an election is made, the amount of the eligible credit claimed by the transferee taxpayer with respect to such facility, over the amount of such credit which, without application of this section, would be otherwise allowable with respect to such facility or property for such taxable year. We request that Treasury and the IRS to consider whether an "excessive payment" would arise, for example, in the qualification for eligibility or in the calculation of the amount of an eligible credit.

We also request that Treasury and the IRS consider the application of the reasonable cause exception under § 6418(g)(2)(B) to excessive credit transfers that resulted from the taxpayer's computational errors or reliance on the use of incomplete and/or erroneous data, of which the taxpayer was unaware, at the time the computation of the credit was made.

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

Section 6418(b) states that, with respect to any amount paid by a transferee taxpayer to an eligible taxpayer as consideration for a transfer described in § 6418(a), such consideration is required to be paid in cash, shall not be includible in the gross income of the eligible taxpayer, and shall not be deductible by the transferee taxpayer. In order to incentivize an unrelated person to buy an eligible credit from the taxpayer, the sale price of such credit presumably should reflect a market rate discount to facilitate the purchase. Treasury and the IRS should provide guidance regarding such market pricing or discount by using a ceiling or safe harbor rate if the pricing determination will not allow the market to influence and dictate the discount directly.

Conclusion

Panasonic appreciates the opportunity to comment on the IRA implementation. As Treasury contemplates the public comments and develops its guidance, we respectfully request the opportunity to meet and discuss our commentary in greater detail. If you should have any questions based upon these comments, please do not hesitate to reach out.

Respectfully Submitted,

PANASONIC CORPORATION OF NORTH AMERICA

By: /s/ Jeffrey Werner

Jeffrey Werner

Vice President, Corporate and Government Affairs
PANASONIC CORPORATION OF NORTH AMERICA
505 9th Street, NW, Suite 850
Washington, DC 20036
Jeffrey.Werner@us.panasonic.com