SIEMENS

November 4, 2022

The Honorable Lily Batchelder
Assistant Secretary for Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Ave, NW
Washington, DC 20220

Dear Assistant Secretary Batchelder,

As a partner to U.S. industry in guiding the energy transition, Siemens appreciates the opportunity to respond to the Department of Treasury's requests for comment on energy tax incentives included in the Public Law 117-169. As the nation moves forward to a cleaner, more sustainable economy, the climate and energy policies and investments in clean power production and component manufacturing supported by the Public Law 117-169 will accelerate the deployment of sustainable technologies and infrastructure. Scaling the deployment of innovative technologies protects our environment and bolsters productivity. Together, we will shape the next century of American leadership and growth.

Specifically, Siemens offers comments related to Energy Security Tax Credits for Manufacturing, Domestic Content Requirements and Energy Communities within Public Law 117-169.

Siemens in the USA

Siemens USA has been a national asset moving America forward for more than 170 years, investing $40 billion in the United States over the past two decades. The company's technology supports the critical infrastructure and vital industries forming the backbone of America's economy.

With customers in all 50 states and Puerto Rico, working with more than 100 U.S. cities, Siemens USA's 40,000 employees and 24,000 suppliers transform the everyday – from more agile and productive factories, to more intelligent and resilient buildings and power systems, to more reliable and sustainable transportation.

Request for Comments on Energy Security Tax Credits for Manufacturing under Sections[1] 48C and 45X

Siemens continues to invest in the U.S. economy and seeks opportunities to bolster our portfolio of industrial, building and energy technologies to create value for our customers and the communities where we work. We support fair, stable and predictable tax policies to incentivize investment. The new Section 45X credit and continuation of Section 48C present opportunities to manufacture key inputs and products to support the clean energy transition in the United States.

[1] All references to "Sections" herein are to the relevant sections of the Internal Revenue Code of 1986, as amended.

To fully realize the opportunities presented by Section 45X, Treasury should clarify that Section 45X and other eligible credits properly subject to Section 6417 direct pay elections are treated for Section 59A BEAT purposes as payments of tax rather than "credits against regular tax liability." Thus, following an election under Section 6417, a taxpayer's Section 45X or other eligible credit should not be treated as a credit that reduces regular tax liability for Section 59A BEAT purposes. As such the credit should not increase a taxpayer's Base Erosion Minimum Tax Amount (BEMTA) as determined under Section 59A(b)(1).

The BEAT, included in Public Law 115-97, created a new policy to limit profit shifting by creating a minimum tax add-on to target interest, royalties and other payments to related foreign parties. For taxpayers, the provision's disallowance of most credits pursuant to the BEAT calculation is inconsistent with its own stated purpose and other policies Congress has created to incentivize certain activities such as investments in clean energy and research and development. Tax credits are not profit shifting nor base eroding, thus the disallowance of the credits in the BEAT computation does not further the policy of the BEAT. Without a full fix to the BEAT to remove all credits from the BEAT calculation, the policy goals of some tax incentives may not be fully achieved as taxpayers will not realize the full benefit of their investment.

Given the prior law's hindrance of effectuating policy goals through tax credits, Siemens is pleased to see Congress construct the new Section 45X manufacturing credit in a manner that avoids the negative impact on a taxpayer's BEMTA calculation when an election for direct pay under Section 6417 is made.

In new Section 6417, any electing entity will be treated as an applicable entity for purposes of the credits under 45X, 45Q and 45V. A taxpayer electing Section 6417(a) with respect to these credits is treated as "making a payment against" its tax liability, rather than claiming a "credit against regular tax liability", a distinction Siemens believes is critical for purposes of calculating the taxpayer's BEMTA under Section 59A. Further, the use of the word "deemed" in Section 6417(e) (i.e., language that says that if an election is made "such credit shall be reduced to zero and shall, for any other purposes under this title, be deemed to have been allowed" to the taxpayer) indicates the credit was not actually allowed or it was deemed allowed in the past rather than in the current year. Thus, for purposes of the Section 59A BEMTA calculation, an electing entity's credit is not "a credit allowed under this chapter against such regular tax liability." Finally, Section 6417(h) includes the enabling language, stating "the Secretary shall issue such regulations or other guidance as may be necessary to carry out the purposes of this section, including guidance to ensure that the amount of the payment or deemed payment made under this section is commensurate with the amount of the credit that would be otherwise allowable (determined without regard to Section 38(c))". Importantly the language focuses on "payments", including the reference to the limitation for general business credits.

Siemens believes Congressional intent is clear from the face of the statute that any credit for which a Section 6417 election is properly made should not be treated for Section 59A BEAT purposes as a "credit allowed under this chapter against such regular tax liability". Instead, it is treated as a "payment" against tax liability, similar to an estimated tax payment. Siemens asks Treasury to clarify this interpretation in order to provide taxpayers with certainty regarding the economic outcome of any initiatives to invest in the clean energy industry.

Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022

Siemens has taken the opportunity to engage with the federal government related to increased focus on domestic content requirements for federal procurement and federally funded infrastructure projects. Since Executive Order 14005 was issued in January 2021, Siemens has committed to support and expand its U.S. manufacturing operations to demonstrate its continued investment in the transformation of the U.S. economy.

Related to the domestic content requirements for the 'bonus credit' within Public Law 117-169, Siemens offers comments related to regulations, determinations for the requirement, definitions, and administration of the requirements.

For determining whether requirements of Section §§ 45(b)(9)(B) and 45Y(g)(11)(B) are satisfied, the Treasury Department and the IRS may use certifications similar to those contained at 49 CFR 661.6 tailored to reference the domestic content requirements contained in these two respective sections. Once modified accordingly, taxpayers could fulfill the certification requirement(s) by demonstrating the value of the cost of the manufactured products which are components of a qualified facility, and thus whether those costs meet the requirements set out in Public Law 117-169. Additionally, we recommend, for record keeping purposes, taxpayers maintain spreadsheets noting the origin and compliance of the components to a project for their own monitoring purposes to support the adjusted percentage being met. As Treasury and the IRS continue implementation of these domestic content provisions and become more familiar with the nature of administering domestic content requirements, adjustments may be made to further tailor the rules with respect to topics presented by Section §§ 45(b)(9)(B) and 45Y(g)(11)(B).

The term "component of a qualified facility" may need further clarification. First, the qualified facility should always be considered the end product with each input, including systems, being considered components. Second, "systems" should be considered a component, when installed at the construction site, satisfying the requirement for components of the facility that is produced or manufactured in the United States. Hence, the total cost of the manufactured products which are components, and the systems of a qualified facility, will be the appropriate calculation when determining whether the requirements of Section §§ 45(b)(9)(B) and 45Y(g)(11)(B) are satisfied. Public Law 117-169 does not reference subcomponents when making this calculation and, generally, it is federal policy not to apply origin requirements to subcomponents.

Regarding Energy Communities it will be important for Treasury and IRS to continue stakeholder outreach to ensure the full scope of Congressional intent is met. Community groups, labor and industry all play a role in guiding the appropriate investments. Further consideration in the form of stakeholder roundtables in the communities where investments may occur or an additional comment period may be appropriate to ensure the most inclusive guidance is delivered.

Conclusion

Thank you for the opportunity to respond to the Department of Treasury's request for comments related to Public Law 117-169. Siemens looks forward to additional guidance from Treasury to guide its investments and technology offerings to support the United States' continued efforts towards electrification, clean power production and manufacturing.

We request a meeting with you or your team to further discuss the advanced manufacturing production tax credit and domestic content issues, as well as other areas of interest for Treasury and Siemens. To arrange a meeting, or if you have any questions, please reach out to Drew Wayne, Senior Director for Government Affairs, at drew.wayne@siemens.com.

Sincerely,

Lonnie Ellis
Senior Vice President and Head of Tax
Siemens Corporation