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October 10, 2022

SUBMITTED ELECTRONICALLY AND VIA USPS

Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-47 and Notice 2022-50)
Room 5203
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

The Honorable Lily L. Batchelder
Assistant Secretary for Tax Policy
United States Department of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, DC 20220

Mr. William M. Paul
Principal Deputy Chief Counsel and Deputy Chief
Counsel (Technical)
Internal Revenue Service
1111 Constitution Ave. N.W.
Washington, DC 20224

Re: Request for Meeting and Comments on Regulatory Implementation of the Inflation Reduction Act and Sections 45X, 45Y, 6717, and 6718 of the Code Pursuant to Notice 2022-47 and Notice 2022-50

Dear Ms. Batchelder and Mr. Paul:

Baker & Hostetler LLP ("BakerHostetler") respectfully submits this request for meeting and these comments on behalf of GameChange Solar Corp. ("GameChange Solar") to the U.S. Department of Treasury ("Treasury") and the Internal Revenue Service (the "IRS") regarding recently enacted Section 13502 of the Inflation Reduction Act ("IRA")[1] and pursuant to Notice

[1] P.L. 117-169.

2022-47 and Notice 2022-50.[2] The Chief Executive Officer and Chief Financial Officer of GameChange Solar and their tax advisors would like to meet with individuals at Treasury and the IRS to discuss the contents of this letter and practical issues of which the government should be aware in connection with issuing regulations and related guidance relating to tax credits under Section 45X ("Tax Credits").

GameChange Solar is a leading producer of fixed tilt and solar tracking systems that are among the simplest, strongest, easiest to assemble, and lowest cost solar trackers in the industry. The fixed tilt and solar tracking systems are built with high grade steel with enhanced galvanization coatings, 5052 aluminum alloy, plastics, semiconductors, batteries, control actuators and various steel fasteners. There are 4 separate product lines of fixed tilt and solar tracking systems offered by GameChange Solar: (1) the Genius Tracker System; (2) the Maxspan Post Ground System; (3) the MaxDensity Stem; and (4) the Ballasted Ground System (coming in either a Pour-In-Place System, a Precast System, or a Landfill Solar Racking System). These Solar racking and tracking systems of GameChange Solar currently support over 30 million solar modules located in Arizona, California, Connecticut, Florida, Georgia, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Carolina, Rhode Island, South Carolina and Texas.[3] This enables over 20 Gigawatts of Solar energy systems and protects the arrays from the elements to support the longevity of those arrays. GameChange has always maintained a presence in the USA for production, but in recent years due to significant steel pricing differentials has moved the majority of its productions overseas. With the IRA in place, GameChange Solar intends to move the vast majority of its production for domestic consumption back to the USA.

GameChange Solar enters two different types of contracts in connection with the production of solar systems.

In the first type of contract, GameChange Solar enters into fabrication agreements with third-party vendors to (i) act as GameChange Solar's agent for purposes of sourcing materials for purchase by GameChange Solar; (ii) arrange logistics with respect to the materials; and (iii) act as a service-provider to GameChange Solar for purposes of fabricating GameChange Solar's materials into products. Under these contracts, GameChange Solar is responsible for: (i) owning the product throughout the conversion of the material (*i.e.*, steel) into finished products; (ii) confirming that its custom product designs and design specifications (*i.e.*, some or all of steel grade, elongation, galvanization, and color) are met; and (iii) confirming that the products conform with the exact needs of the customer (either the electric utility or the solar construction firm building the solar field). GameChange Solar then sells its products to a third party for use at a solar farm. In this type of situation, GameChange Solar intends to be the "producer" for

[2] IR-2022-172 (Oct. 5, 2022). Unless otherwise indicated, all "Section" references are to the Internal Revenue Code of 1986, as amended ("Code"), and all "Treasury Regulation" references are to the final, temporary, and proposed U.S. Treasury regulations promulgated thereunder (the "Regulations"), respectively.
[3] For a list of all of GameChange Solar's projects, see: https://gamechangesolar.com/gallery.

purposes of Section 45X and to elect "direct pay" pursuant to new Section 6417 to treat the Tax Credits as refundable payments of federal tax.[4]

In the second type of contract, GameChange Solar contracts to purchase materials produced by a third party according to GameChange Solar's custom product designs and design specifications (*i.e.*, some or all of steel grade, elongation, galvanization, and color), but GameChange Solar does not own the materials and does not take title until the end of production.[5] In this type of situation, GameChange Solar also intends to be a "producer" for purposes of Section 45X because it: (i) creates custom product designs and specifications that control what is to be built and in what quantity; (ii) procures the materials needed for production; and (iii) performs quality control functions on finished products to ensure its custom product designs and specifications are achieved.[6] Nevertheless, GameChange Solar recognizes that it is possible the third-party producer may alternatively meet the definition of a "producer" for purposes of Section 45X. GameChange Solar requests that proposed regulations address this point by allowing GameChange Solar and the third-party producer to contractually agree to which party qualifies as the producer for purposes of Section 45X. If the third-party producer is considered to have produced the eligible component under Section 45X, GameChange Solar intends to acquire any Section 45X credits from the third-party producer in accordance with Section 6418 and to elect "direct pay" pursuant to new Section 6417.[7]

We appreciate the opportunity to discuss practical issues with you prior to the issuance of any guidance or proposed regulations under Section 45X and 45Y.[8] We recognize that the government rules should both allow for effective tax administration and align with commercial realities so that taxpayers entitled to the Section 45X credits will be able to claim them. We respectfully recommend that any guidance or proposed regulation contain the following items:

- The terms "produced" and a "producer" should be broadly defined to allow producers such as GameChange Solar to be the "producer" for purposes of Section 45X (in such a situation, the contract would make clear that GameChange Solar is the only producer and that the service provider is not entitled to any Tax Credits);

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[4] BakerHostetler and GameChange Solar acknowledge that the term "producer" is not used or defined in Section 45X. Nevertheless, we anticipate that regulations would define the term, and accordingly use it herein to mean a taxpayer that produces an eligible component under Sections 45X(a)(1)(A) and 45X(a)(2).

[5] In this second type of contract, GameChange Solar does not own the specific tools.

[6] As discussed below, GameChange Solar believes that these activities qualify it as a producer or manufacturer under the rules and regulations of Sections 263A and 954. *See generally Suzy's Zoo v. Comm'r*, 273 F.3d 875, 879 (9th Cir. 2001) (holding that that a taxpayer "produced" property under Section 263A where they exercised a level of control over the production process); Treas. Reg. § 1.954-3(a)(4)(iv)(b) (stating for purposes of Section 954, a controlled foreign corporation qualifies as a manufacturer where its employees substantially contribute to the manufacturing process by, inter alia, performing quality control checks and reviews).

[7] BakerHostetler and GameChange Solar additionally believe that Sections 45X and 6418 support a producer's ability to transfer separate credits to multiple parties. For example, if a taxpayer produces eligible components for multiple parties, the taxpayer should be allowed to transfer Section 45X credits produced in connection with one customer's eligible components to that customer, and to transfer Section 45X credits produced in connection with a different customer's eligible components to that different customer. Proposed guidance should clarify this point.

[8] BakerHostetler and GameChange Solar's discussion herein related to Section 45Y is limited to the requirements under Section 45Y(g)(11) relating to the increase to the Section 45Y credit if a taxpayer certifies that any iron, steel, or manufactured products that are components of a qualified facility were produced in the United States.

- In instances where both parties to a contract qualify as a producer, the parties to the contract should have the flexibility to structure their affairs in any reasonable manner provided they agree which party is the "producer" and which party is not the "producer;"

- Introduce a test similar to the one contained in new Section 45Y for purposes of determining whether an eligible component and its subcomponents are produced in the United States;

- Adopt documentation standards for when a product is considered to be an eligible component produced in the United States that are based on documents already produced in the ordinary course (*e.g.*, shipping logs, sale invoices, and shipping records) of a taxpayer's trade or business;

- Confirm that a taxpayer such as GameChange Solar that purchases Tax Credits pursuant to Section 6418(a) is eligible to make a direct pay election and receive a tax refund in accordance with Section 6417(d)(1)(D).

- Clarify that a producer may transfer separate Section 45X credits to separate but multiple parties.

- Clarify whether Section 6417(d)(1)(D)(iii) prohibits a taxpayer from electing to transfer certain Section 45X credits (to one or multiple parties) under Section 6418 while simultaneously electing to receive direct pay on certain other Section 45X credits under Section 6417.

- Confirm that eligible components that are in production on December 31, 2022, including instances where a raw material such as steel is held in inventory and production will occur soon, will qualify for the full amount of any credit under Section 45X where the taxpayer completes production and sells the eligible component or is deemed to have sold the eligible component to a third party within the effective dates of Section 45X.

- Clarify that purlins, speed clamps, saddle brackets, aluminum, steel, and plastic bearings, damper arms, and damper bottom brackets are included in the definition of a "structural fastener."

- Clarify that there are instances where it is appropriate for a producer to qualify for a credit under Section 45X, and for a fabricator to qualify for a credit under Section 48C with respect to a facility. Proposed regulations should confirm that, in certain instances, a producer qualifies for a credit under Section 45X and a fabricator that is not a "producer" may qualify for a credit under Section 48C with respect to its facility.

- Adopt similar rules to the Buy America Act with respect to the U.S. production requirements under Section 45Y(g)(11).

I. Overview of Sections 45X and 45Y

The IRA was signed into law on August 16, 2022. Section 13502 of the IRA adds Section 45X to the Code, as well as to the list of credits contained in Section 38.[9] Specifically, Section 45X generally allows a manufacturing production credit for eligible components domestically produced and sold after December 31, 2022.[10]

Section 45X provides a tax credit for each eligible component produced in the United States and sold by a manufacturer to an unrelated person. The production and sale of the eligible component must be conducted through a trade or business of the taxpayer.[11]

Eligible components include photovoltaic cells and wafers, solar grade polysilicon, polymeric back sheets, solar modules, wind energy components, torque tubes, structural fasteners, electrode active materials, battery cells, battery modules, and certain critical minerals.[12] GameChange Solar believes its tilt and solar tracking systems qualify as solar tracker components and, more specifically, its torque tubes and structural fasteners as those terms are defined under Section 45X(c)(3)(B)(vii)(I) and (II).[13] In addition, GameChange Solar (as discussed below) believes purlins, speed clamps, saddle brackets, aluminum, steel, and plastic bearings, damper arms, and damper bottom brackets – all essential components of a solar tracking system – should also qualify as eligible components.

GameChange Solar additionally requests guidance under Section 45Y. Section 45Y provides a tax credit for the production of clean electricity, which will impact a number of GameChange Solar's customers. The production credit is based on the amount of kilowatt hours of electricity produced by a taxpayer in a qualified facility.[14] A qualified facility is defined as a facility owned by the taxpayer that: (1) is used for the generation of electricity; (2) is placed in service after December 31, 2024; and (3) has zero greenhouse gas emissions.[15]

Section 45Y(g)(11) allows for a 10 percent increase to the credit under Section 45Y if a taxpayer certifies that any steel, iron, or manufactured product which is a component of its qualified facility was produced in the United States.

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[9] Section 45X(a)(1).
[10] *Id.*
[11] Section 45X(a)(2).
[12] Section 45X(c)(6).
[13] A torque tube is defined as a structural steel support element which: (1) is part of a solar tracker; (2) is of any cross-sectional shape; (3) may be assembled from individually manufactured segments; (4) spans longitudinally between foundation posts; (5) supports solar panels and is connected to a mounting attachment for solar panels; and (6) is rotated by means of a drive system. Meanwhile, a structural fastener means a component which is used: (1) to connect the mechanical and drive system components of a solar tracker to the foundation of such solar tracker; (2) to connect torque tubes or to drive assemblies; or (3) to connect segments of torque tubes to one another.
[14] Section 45Y(a)(1(A).
[15] Section 45Y(b)(1)(A).

II. Items That Should Be Addressed in Future Guidance

A. Definition of Producer

The words "producer" and "produced" are not defined in the IRA. The requirement that an eligible component only includes those items "produced in the United States" is defined by reference to Section 638(1), which extends the definition of the United States to the seabed and subsoil of submarine areas that are adjacent to the territorial waters of the United States, but does not otherwise define the term "produce" or how a taxpayer may establish that an eligible component was produced in the United States.[16]

Treasury and the IRS should define the terms "produced" or "producer" in proposed regulations. The definition of "produced" or "producer" should take into account manufacturers and producers that use third-party vendors to fabricate their products. Support for such an expansive definition may be found elsewhere in the Code. For example, under Section 263A, the term "produce" includes the terms construct, build, install, manufacture, develop, improve, create, raise or grow.[17] In addition, under Section 263A regulations, property produced for the taxpayer under a contract with another party is treated as property produced by the taxpayer to the extent that the taxpayer makes payments or otherwise incurs costs with respect to the property.[18] In general, courts have determined that a taxpayer "produced" property under Section 263A where they exercised a level of control over the production process.[19]

Section 954 is another example that contains a broad definition of "manufacture," "produce," or "produced." Under Section 954 and the regulations thereunder, there is an exception from foreign base company sales income for income derived in connection with the sale of property manufactured by a controlled foreign corporation.[20] This manufacturing exception extends to arrangements where a controlled foreign corporation does not itself perform the manufacturing, but instead contracts with a third-party vendor to perform the manufacturing. The controlled foreign corporation's employees must "substantially contribute" to the manufacturing process in order for the controlled foreign corporation to qualify as a manufacturer. Activities that constitute substantial contributions include: (1) oversight and direction of the manufacturing activities; (2) material selection, vendor selection, or control of raw materials, work in process, or finished goods; (3) management of manufacturing costs or capacities; (4) control of manufacturing related logistics; (5) development of product design and

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[16] Section 45X(d)(2)(A).
[17] Section 263A(g)(1).
[18] Treas. Reg. § 1.263A-2(a)(1)(ii)(B)(2).
[19] *See Suzy's Zoo v. Comm'r*, 273 F.3d 875, 879 (9th Cir. 2001) ("We hold that the term 'produce' is to be broadly construed under § 263A."); *see also Von-Lusk v. Comm'r,* 104 T.C. 207, 215 (1995) (costs of meeting with governmental officials, obtaining building permits and drafting architectural plans were development costs amounting to "production" under § 263A); *Reichel v. Comm'r,* 112 T.C. 14, 18 (1999) (real estate taxes had to be capitalized under § 263A as indirect costs of "producing" property even though property was not developed); *Carpenter v. Comm'r,* T.C. Memo. 1994-289 (1994) (construction costs incurred by building contractor for an unsold home had to be capitalized under § 263A because the home was "produced" by the contractor).
[20] Treas. Reg. § 1.954-3(a)(4)(iv).

design specifications, as well as trade secrets, technology, or other intellectual property for the purpose of manufacturing or producing personal property; and (6) quality control standards.[21]

We believe that both of these sections support the adoption of broad definitions of the terms "produced" and "produce" for purposes of Section 45X, including an extension of the definition to producers that use third-party vendors to manufacture or fabricate their products where the producer oversees and participates in the manufacturing process. Furthermore, adopting such a broad definition would align with the commercial reality that many producers of eligible components are not vertically integrated and instead rely on third-party vendors to manufacture or fabricate their eligible components. This is due, in part, to a producer using its capital to invest in the development, design and engineering of an eligible component, not to build and maintain tooling or a facility that is capable of manufacturing or producing eligible components. Moreover, such a broad definition should not permit taxpayers that are engaged in passive activities to qualify as a producer due to Section 45X(a)(2) also requiring that a producer be engaged in a trade or business.

Of course, there can be only one "producer" of each eligible component for purposes of Section 45X. Parties to a contract should have the flexibility to structure their affairs in any reasonable manner provided they agree which party is the "producer" and which party is not the "producer."

B. What Constitutes "Produced in the United States"

Section 45X also contains a requirement that eligible components must be produced within the United States to qualify for a credit.[22] It does not contain a requirement, however, for every sub-component of the eligible component (e.g., screws, bolts, and pins) to also be produced in the United States, or, if such requirement is somehow implied, there is some allowable threshold of subcomponents that may be produced outside the United States so long as the eligible component is manufactured in the United States.

Proposed regulations should address this issue and should clarify that there is no express or implied requirement in Section 45X for subcomponents to also be produced in the United States. Alternatively, proposed regulations should consider adopting a test similar to the one set forth in Section 45Y, which, for purposes of determining whether a taxpayer qualifies for a domestic content bonus credit, makes reference to the Buy America Act and the rules under 49 C.F.R. § 661. Regulations thereunder set forth rules for determining whether construction material or end products were manufactured or produced in the United States, including whether substantially all of their components were manufactured in the United States.[23] Under the regulations, construction material and end products are manufactured or produced in the United States if: (1) the end product or construction material is manufactured in the United States; and (2) at least 55 percent of all subcomponent parts (determined based on cost) are produced or manufactured in the United States.[24] Such a test would balance the need to increase domestic

[21] Treas. Reg. § 1.954-3(a)(4)(iv)(b).
[22] Section 45X(d)(2).
[23] 48 C.F.R. § 25.101.
[24] 48 C.F.R. § 25.101(a).

production of eligible components with the reality that not every component and subcomponent of an eligible component is available in the United States or may be purchased in a cost-effective manner from a U.S. manufacturer. If such a test is not adopted, the remaining portion of the eligible component that is produced in the United States should still qualify for the advanced manufacturing credit.

C. Substantiation – Eligible Components That Are Produced in the United States

Section 45X defines in relative detail what constitutes an eligible component but does not determine or provide guidelines regarding when or how an item qualifies as an eligible component. It also does not provide guidance on how a producer may substantiate that an eligible component was produced in the United States.

With respect to the first question, proposed regulations should allow taxpayers to determine that an item qualifies as an eligible component by reference to or based on documentation created in the ordinary course of business. For example, for the definition of torque tubes, a taxpayer should be permitted to establish that its product qualifies as a torque tube by either reference to the commercially available product description or by reference to its sale and purchase contracts describing the product.

For the second question, a taxpayer should also be permitted to reference documentation created in the ordinary course of business (*e.g.*, shipping logs, sale invoices, and shipping records) to demonstrate that an eligible component was produced in the United States. This could include a binding contract specifically requiring the eligible component be produced in the United States or a written statement by the producer corroborating that the eligible component was produced in the United States. The written statement could contain information such as the name and address of the producer, the date the property was produced, a description of the property, and a description of the producer's operations.[25]

In any event, taxpayers should be provided with flexibility in establishing that an item is an eligible component and that it was produced in the United States. Imposing documentation or substantiation standards that do not currently exist in the ordinary course of business would be unduly burdensome.

D. Clarification Regarding Direct Pay Election and "Producer" Transferee Taxpayers

The IRA added Sections 6417 and 6418 to the Code, which generally allow certain taxpayers to either: (1) treat certain Section 45X credits as refundable overpayments of tax through a "direct pay" election (Section 6417); or (2) sell Section 45X credits for cash to third parties (Section 6418). Neither Sections 6417 nor 6418, however, address whether a "producer" taxpayer that also purchases advanced manufacturing tax credits from a third party (a "transferee taxpayer," as defined under Section 6418(a)) may elect direct pay under Section 6417(d)(1)(D)

[25] An approach similar to this was adopted by the IRS and Treasury in the final regulations under Section 250(b) for purposes of establishing that tangible property was for a foreign use. *See* Treas. Reg. § 1.250(b)-4(d)(3)(ii)(E).

for the purchased credits. We believe the statute supports that every transferee taxpayer is eligible to elect direct pay for any tax credits it has purchased where the transferee taxpayer otherwise satisfies the requirements of Section 6417(d)(1)(D).

We note that Section 6418(a) provides that a transferee taxpayer "shall be treated as the taxpayer for purposes of this title with respect to such credits." We further note that Section 6417(b)(7) defines as an applicable credit for purposes of the direct pay election the advanced manufacturing production credit under Section 45X(a). In addition, Section 6417(d)(1)(D) provides that entities that are not tax-exempt entities that produce eligible components are qualified to make a direct pay election with respect to advanced manufacturing tax credits they own where the taxpayer otherwise produces eligible components. We believe that these provisions should be read *in pari materia* – that is, harmoniously – to give full effect to each.[26] Guidance should thus clarify that a transferee taxpayer, including a producer of eligible components that otherwise satisfies the requirements of Section 6417(d)(1)(D), may make a single direct pay election that applies both to purchased advanced manufacturing tax credits (from a producer that does not elect direct pay) and to advanced manufacturing tax credits that it generates from the eligible components it produces. To interpret the statute otherwise would violate the language enacted by Congress that a transferee taxpayer "shall be treated as the taxpayer for purposes of this title."

E. Proposed Guidance Should Clarify Whether a Taxpayer Can Transfer Certain Section 45X Credits and Elect Direct Pay on Other Section 45X Credits

As discussed above, Section 6417 relates to direct pay elections, while Section 6418 relates to the transfer of credits. Section 6417(d)(1)(D)(iii) addresses instances where a taxpayer seeks to make elections under both Sections 6417 and 6418, and provides:

> For any taxable year described in clause (ii)(I), no election may be made by the taxpayer under section 6418(a) for such taxable year with respect to eligible components for purposes of the credit described in subsection (b)(7).

One interpretation of Section 6417(d)(1)(D)(iii) is that it prevents a taxpayer from "double dipping" by electing to receive direct pay for Section 45X credits under Section 6417, while simultaneously transferring the same Section 45X credit under Section 6418. Another interpretation of Section 6417(d)(1)(D)(iii) is that it prevents a taxpayer from electing to receive direct pay for certain Section 45X credits under Section 6417, while simultaneously transferring other separate and distinct Section 45X credits under Section 6418. For example, if a taxpayer produces eligible components for multiple parties, should the taxpayer be allowed to both transfer Section 45X credits produced in connection with one customer's eligible components to that customer and simultaneously elect direct pay for Section 45X credits produced in connection with a different customer's eligible components. Proposed guidance should clarify this point.

[26] *See Erlenbaugh v. U.S.*, 409 U.S. 239 (1972) (holding that interpreting statutes to be harmonious makes the most sense when they were enacted at the same time).

F. Credits Should Apply to Eligible Components Manufactured Before December 31, 2022

Section 45X is effective for eligible components produced and sold after December 31, 2022. The statute, however, is silent regarding whether eligible components that were in production but not completed by December 31, 2022, are eligible for the credit. In the lead up to the passage of the IRA, Senator Mark Warner (D-VA) engaged in a colloquy with Senator Ron Wyden (D-OR). Senators Warner and Wyden clarified that eligible components that were in production on December 31, 2022, and completed sometime thereafter, should be eligible in full for the Section 45X credit.[27] The proposed regulations should clarify that eligible components in production on December 31, 2022, will qualify for the full amount of any credit under Section 45X. In addition, the proposed regulations should confirm that this extends to raw materials that are held in inventory on December 31, 2022, and will soon enter production.

G. Eligible Component Definition Should Include Other Necessary and Essential Components of a Solar Tracking System

Section 45X(c)(3)(B)(vi) provides that a solar tracker, which is an eligible component, is defined as a mechanical system that moves solar modules according to the position of the sun. Solar tracker components are defined to include torque tubes and structural fasteners.[28] These items were included in the definition of eligible components because they are essential to a solar tracker. There are various components that are essential to a structural fastener, such as: purlins, speed clamps, saddle brackets, aluminum and plastic bearings, steel plastic bearings, damper arms, and damper bottom brackets. The proposed regulations should clarify that these items, necessary components of a structural fastener, qualify as eligible components under Section 45X(c)(1).

H. Differentiating Between Credits for Facilities Under Section 48C and Eligible Components Under Section 45X

Section 45X(c)(1)(B) provides that the term "eligible component" does not include any property which is produced at a facility if the basis of the property which is part of the facility is taken into account for purposes of a credit under Section 48C. As noted above, there are a number of arrangements through which eligible components are manufactured. One such arrangement involves a producer contracting with a fabricator to fabricate a producer's eligible components in accordance with the producer's design specifications and quality control standards. Under such an arrangement, the producer does not own the facility, and the fabricator does not own the produced product. Thus, a production facility and a producer of eligible components are separable.

Proposed regulations should clarify that there are instances where a producer and facility owner may be separately eligible for different credits; one for the Section 45X credit with respect to eligible components, and one for the Section 48C credit with respect to the constructed

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[27] Congressional Record Vol. 168, No. 133 (Aug. 6, 2022) (available at: https://www.congress.gov/congressional-record/volume-168/issue-133/senate-section/article/S4165-3).
[28] Section 45X(c)(3)(B)(vii).

facility. That admittedly taxpayer favorable interpretation of the statute would give maximum effect to the purposes of Section 45X, which seeks to incentivize producers of solar panels, and Section 48C, which seeks to incentivize the building of new facilities where solar power technology will be produced. In no case, of course, given the statutory language, would a single taxpayer be entitled to both (i) the 48C credit for a specific facility owned by that taxpayer, and (ii) the Section 45X credit for otherwise eligible components produced by the owner of that facility at such facility.

I. Section 45Y – Domestic Content Bonus Credit

Section 45Y(g)(11) allows for a 10 percent increase to the credit under Section 45Y if a taxpayer certifies that any steel, iron, or manufactured product which is a component of its qualified facility was produced in the United States. The statute additionally cites 49 C.F.R. § 661.5 (regulations under the Buy America Act) for purposes of determining whether steel or iron is produced in the United States. These regulations, however, provide an exception for any steel or iron used as components or subcomponents.[29] There also is an exception for materials that are not produced in the United States in sufficient and reasonable quantities.[30] There is an additional exception where the inclusion or use of a domestic item or material is cost-prohibitive because it would increase the cost of the item or material by more than 25 percent.[31]

The proposed regulations should adopt similar rules with respect to Section 45X by referencing 45Y(g)(11) and any related Buy America regulations. Doing so would reflect the commercial realities captured by the regulations under the Buy America Act that in a global economy, it is not feasible to require 100 percent of the steel, iron and manufactured products that are components of a qualified facility be produced in the United States.

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[29] 49 C.F.R. § 661.5(c).
[30] 49 C.F.R. § 661.7(c).
[31] 49 C.F.R. § 661.7(d).

Thank you for the opportunity to submit these comments. We request the opportunity to meet with Treasury and the IRS to discuss these issues in greater detail and to answer any questions that you may have.

Respectfully submitted,

Jeffrey Paravano

Nicholas C. Mowbray