NEW MEXICO
TAX CREDIT ALLIANCE

November 21, 2022

Via Overnight Mail and Electronically Filed

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

Re: Comments Responsive to IRS Notice 2022-50;
Transfers of Tax Credits Pursuant to IRC Section 6418

Dear Representative:

Please find attached one comment in response to IRS Notice 2022-50, which supplement our previous comments that we submitted on November 3, 2022.

Thank you for this submission opportunity regarding the upcoming federal transferable income tax credit system.

Ethan Epstein

Enclosure

ADDITIONAL COMMENT IN RESPONSE TO IRS NOTICE 2022-50 SOLITICING COMMENTS REGARDING DIRECT TRANSERABILITY OF INCOME TAX CREDITS PROVIDED FOR IN THE INFLATION REDUCTION ACT

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I, together with my associated organizations, have been involved with direct transfer of state tax credits for the last twenty years. We promoted the enactment of the tax credit transfer legislation for direct transfer of state tax credits; we have transferred various different kinds of transferable state tax credits (primarily in the green space) and are very experienced in the tax credit transfer process from a transactional standpoint. We have transacted state tax credits to tax credit buyers throughout the Country in substantial amounts. Because of this, we are very familiar with various technical issues within the transferable tax credit arena as well as the procedures that have been utilized to allow and track such direct transfers at the state level. This single comment supplements our prior comments previously submitted on November 3, 2022.

I. Additional Technical Issue Concerning Transferable Tax Credits

(A) Clarification of Interplay Between Sections Section 6417(d)(1) and 6418(f)(1): Section 6418(a) plainly provides that an "eligible credit" can be transferred to unrelated taxpayers. Section 6418(f)(1) provides that an "eligible credit" includes eleven renewable energy income tax credits. Three of these tax credits – the Hydrogen Production Tax Credit, the Carbon Oxide Sequestration Tax Credit and the Advanced Manufacturing Production Tax Credit – are also respectively addressed in the tax credit direct payment rules at Section 6417(d)(1)(B), (C) and (D). These subsections provide direct payment rules for each of the tax credits. Many of the foregoing tax credit programs award tax credits annually over time. Because Section 6417(d)(1)(B), (C) and (D) require direct payment during part of this tax credit award period, to minimize the risk of confusion that these tax credits can also be transferred pursuant to Section 6418, the Internal Revenue Service should publish clarification that reinforces this statutory principle and is explained further below.

Based on Section 6417(d)(1)(D)(iii), entitled "Prohibition on Transfer", expressly applies only to the Advanced Manufacturing Tax Credit and provides that it cannot be transferred based on the following language: "[f]or **any taxable year** ..... no election may be made by the taxpayer under Section 6418(a) [i.e., the transfer general rule] **for such taxable year** with respect to eligible components" for the Advanced Manufacturing Tax Credit. Thus, it is clear that the Advanced Manufacturing Tax Credit cannot be transferred in "any taxable year." Comparatively, Section 6417(d)(1)(B) and (C) provide that the Hydrogen Production Tax Credit and the Carbon Sequestration Tax Credit cannot be transferred in the year the corresponding hydrogen or carbon oxide sequestration facilities are placed into service. The operative language for this conclusion in these Sections, which parrot each other, is "if a taxpayer other than a [direct payment entity] makes an election under this subparagraph with respect to any taxable year in which such taxpayer has **placed in service** a [qualified hydrogen or carbon sequestration facility] ..... such taxpayer shall be treated as an [direct payment entity] for purposes of section **for such taxable year**." The bolded reference "for such taxable year" specifically and only references the year the qualified property was placed into service. Thus, Hydrogen Production Tax Credits and Carbon Sequestration Tax Credits received in the subsequent year(s) after those facilities are placed into service can be transferred because the above-explained direct payment imposed by Section 6417(d)(1)(B) and C only relates to when

the qualified facility is placed into service under its plain language. The Internal Revenue Service should point this distinction out in its forthcoming regulations.

The above analysis allows the tax credit monetization provisions in Sections 6417 and 6418 to be read consistently. If direct payments pursuant to 6417(d)(1)(B) and C applied for all years, not just the year the property is placed into service, that interpretation would directly conflict with the transferability allowances made under Section 6418 for the Hydrogen Production Tax Credit and the Carbon Sequestration Tax Credit. That is, Section 6418(f)(1)(A)(iii) and (v) say that the Carbon Sequestration Tax Credit and the Hydrogen Production Tax Credits are "eligible credits" that can be transferred under Section 6418(a); the only limitation to this transferability conclusion with regard to these two tax credits is that the taxpayer must get a direct payment when the property is placed into service, but only "for such taxable year." In order to read Sections 6417 and 6418 consistently with one another, we recommend that the Internal Revenue Service clarify in its regulations that the Hydrogen Production Tax Credit and the Carbon Sequestration Tax Credit can both be transferred during their respective tax credit award periods except for the first tax credit award when the underlying property is placed into service.