



November 4, 2022

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Hon. Charles Rettig
Commissioner of Internal Revenue
Internal Revenue Service
CC: PA:LPD:PR (Notice 2022-50)
Room 5203, P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

RE: Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits, IRS-2022-0050

Dear Commissioner Rettig,

On behalf of General Motors Company (“GM”), we appreciate the opportunity to comment on implementation of the elective payment and transfer provisions of the Inflation Reduction Act (“IRA”). These provisions align with GM’s long-term vision for an all-electric future and plans for a resilient and highly localized electric vehicle (“EV”) supply chain. Moreover, the clean energy policy provisions of the IRA will help accelerate GM’s plans to onshore and near-shore EV supply chains, thereby expanding job opportunities and the availability of EVs across a broad range of segments and price points.

To this end, we encourage the Department of the Treasury (“Treasury” or the “Department”) to account for industry input in any implementing guidance and regulations to ensure that companies will be able to access credits available under the IRA as soon as reasonably practicable, while fully adhering to the text and intent of the IRA.

Specific to Treasury’s request regarding the IRA’s elective payment and credit transfer provisions, Treasury should provide clear guidance to industry to maximize utility of the relevant provisions of the IRA while minimizing opportunities for fraud or abuse. Detailed comments in response to Treasury’s questions are provided below.

.01 – Elective Payment of Applicable Credits (§ 6417)

- *What, if any, guidance is needed to clarify the meaning of certain terms in § 6417, such as applicable credit and excessive payment? Is there any term not defined in § 6417 that should be defined in future guidance? If so, what is the term and how should it be defined?*

Treasury should issue guidance to clarify whether taxpayers are permitted to make more than one five-year direct pay election.

- *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? What, if any, issues could arise when a partnership or S corporation makes an election under § 6417(a) and what, if any, guidance is needed with respect to such issues?*



Treasury should issue guidance confirming that the reference to “property held directly by a partnership or S corporation” in Section 6417(c)(1) includes property held indirectly by a partnership or S corporation through a wholly owned subsidiary treated as a disregarded entity (i.e., that the principles of federal income tax apply even when the terms “held directly” are used).

Additionally, Treasury should allow for the election to be made on behalf of the partnership by the partnership representative, rather than require a majority vote of the partners, a designated agent, or a designated manager/officer.

- *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?*

Treasury should consider implementing a certification requirement whereby an officer/manager or other agent affirms, under penalties of perjury, that the taxpayer meets the basic requirements under the applicable provision and thus qualifies for the credit. For example, a taxpayer making an election with respect to an Advanced Manufacturing Production Credit could certify that it manufactured eligible components that were produced and sold to an unrelated party in the taxpayer’s trade or business as required under Section 45X.

- *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)?*

With respect to Section 6417(d)(6)(B), Treasury should consider offering a safe harbor that qualifies as reasonable cause. For example, if a taxpayer’s excessive payment does not exceed, e.g., 10% of the amount of the credit otherwise allowable under Section 6417(d)(6)(C)(ii), the excessive payment will be treated as satisfying the reasonable cause provision.

- *For purposes of § 6417(g), what, if any, guidance is needed to clarify the application of § 50 for credit recapture and basis adjustments to investment credit property?*

Treasury should clarify that the Basis Reduction and Recapture referenced in Section 6417(g) applies only to the investment credits and not the business-related credits in Sections 38-45Z.

.02 – Transfer of Certain Credits (§ 6418)

- *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?*



Treasury should issue guidance as to whether a “transferee taxpayer” includes an individual and, if so, identify any conditions or limitations that would apply to the transfer of a credit.

- *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. What, if any, issues could arise when a partnership or S corporation makes an election under § 6418(a) and what, if any, guidance is needed with respect to such issues?*

Treasury should allow for the election to be made on behalf of the partnership by the partnership representative, rather than require a majority vote of the partners, a designated agent, or a designated manager/officer.

- *Section 6418(c)(2) provides that, in the case of any facility or property held directly by a partnership or S corporation, no election by any partner or shareholder is allowed under § 6418(a) with respect to any eligible credit determined with respect to such facility or property. If the election is made, what issues should be considered regarding the transfer of any portion of an eligible credit and what, if any, guidance is needed with respect to such issues? Further, what, if any, guidance is needed on allocating any amount received as consideration for transferring any portion of an eligible credit?*

Treasury should clarify whether and how allocations should be made to partners when a partnership makes an election, with respect to either 1) less than the entire credit allowed by the partnership; or 2) the entire credit, but where the partnership desires to allocate the proceeds to less than all of the partners.

- *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)?*

Treasury should confirm that an election may be made before a transferee is identified. In this scenario, a taxpayer should be able to reclaim a credit that is ultimately not sold. For example, the taxpayer making the election should have a number of years (e.g., 3 years) to identify and sell to a transferee; if the taxpayer does not complete a sale during that period, the taxpayer should be able to amend its return from the year of the election to claim the unsold credits on its own tax return.

- *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?*

If an eligible transferee taxpayer, as referenced in Section 6418(a), includes an individual, Treasury should clarify whether the passive activity loss limitations would apply to such individual and whether any other limitations would apply.

- *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?

Treasury should consider implementing a certification requirement whereby an officer/manager or other agent affirms, under penalties of perjury, that the taxpayer qualifies for the credit by meeting the basic requirements under the applicable provision. For example, a taxpayer making an election with respect to an Advanced Manufacturing Production Credit could certify that it manufactured eligible components that were produced and sold to an unrelated party in the taxpayer's trade or business as required under Section 45X.

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On behalf of GM, thank you again for the opportunity to provide comments on these provisions. Please do not hesitate to contact me if there is any additional information we can provide.

Sincerely,

A handwritten signature in black ink, appearing to read 'Omar A. Vargas', written in a cursive style.

Omar A. Vargas
Vice President, Head of Global Public Policy
General Motors Company