

Submitting Comments related to Notice 2022-50, Section 2 .01 Elective Payment of Applicable Credits (§ 6417).

We have provided comments related to the following items:

(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)?

Comment: Reliance on advisors – the law in the substantive areas of law is complex tax-exempts do not have large in-house tax departments to research and apply the law correctly. Reliance on a memo from a reputable law firm or accounting firm and/or a cost segregations study from a reputable accounting firm should be the primary factor in avoiding penalization under the excess payment provisions.

.02 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?

Comment: Eligible taxpayer should be defined to clarify if it does in fact include pass-through entities, disregarded entities or just taxpayers such as individuals and c-corporations.

(3) 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?

Comment: Clarify if based on partnership agreements or if allowed any way they choose

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

Comment: Clarify that credit may be utilized in the same year as transferor based on placed in service or generation of credit, clarify 3 year carry back and 20 forward.

(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)?

Comment: As long as transferred prior to due date of an amended return within the three year carry-back window than allowed, otherwise must applied to year of transfer within the 20 year carry forward period. Clarify credits apply to estimated payments regardless of when actual transfer occurs within the tax year.

(7) 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?

Comment: Clarify what taxes and types of income (ordinary, capital, passive, investment, etc.) may be offset for each type of transferee (corps vs. Individuals), any limitation on those taxes.

(8) For purposes of preventing duplication...

Comment: Proof the project has been placed in service (commissioning / engineering report) and is generating a credit, cost certification with eligible basis and costs properly incurred or report calculating the credit. All transferred credits should be assigned a registration number for tracking purposes. States have tax credit registration processes in place. See Louisiana Laws-Louisiana State Legislature. See La. Rev. Stat. Ann. § 47:1524

(9) What, if any, guidance is needed ...

Comment: States have good faith buyer relief provisions. If you are a good faith buyer, no penalty shall be imposed. Good faith should be assumed as all transferred credits shall be assigned a registration number and be calculated pursuant to CPA cost certification or other calculation report. See La. Rev. Stat. Ann. § 47:1524(E) as an example. Should consider whether by rule the Secretary shall not subject a transferee to the recapture or excess credit penalty provisions as a good faither buyer and have the risk remain with the transferor.

(10) For purposes of § 6418(g)(3) ...

Comment: 90-day time period to make notification. Address manner in which notification shall be made. Also whether the Secretary shall be notified as well so the registered credit could also notify the transferee's contact on file in the tax credit registry.