



Response to Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits

Notice 2022-50

November 4, 2022

Windustry
201 Ridgewood Ave
Minneapolis, MN 55403
lisadaniels@windustry.org
www.windustry.org

Dear Treasury Department and IRS,

Windustry is small non-profit with a national reach that has worked for approximately 20 years to grow the sector of the wind industry that is scaled for communities and local investment. This sector uses wind turbines of all sizes installed at places where people live and work. Distributed and community wind energy systems are frequently installed behind-the-meter to offset utility power purchase and reduce energy costs.

We offer the following responses to the questions posed in the RFC.

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

(1) 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?

Windustry Response:

There were problems in the ARRA 1603 program around what constituted “fair market value” and it would be helpful if the Treasury Department was able to clarify how it intends to treat this general topic as it applies to 6417.

(2) With respect to the Secretary’s discretion to determine the time and manner for making an election under § 6417(a):

(a) What, if any, issues could arise when an applicable entity described in § 6417(d)(1)(A) makes an election under § 6417(a) and what, if any, guidance is needed with respect to such issues?



Windustry
201 Ridgewood Ave
Minneapolis, MN 55403
www.windustry.org
612.200.0331
888.818.0936



Windustry Response:

No comment.

(b) What factors should the Treasury Department and the IRS consider in determining the time and manner for making the election?

Windustry Response:

We recommend that the election not be tied to the applicable entity's filing of annual federal tax returns (Form 990, etc.). Treasury should create a new form with submittal instructions and documentation requirements that can be submitted upon a qualifying investment being placed in service. The lesser cash flow and bankability of applicable entities compared to for-profit entities, we believe, justifies special treatment with respect to the election in § 6417.

(3) 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?

Windustry Response:

No comment.

(4) With respect to an election under § 6417(a) made by a partnership or S corporation pursuant to § 6417(c)(1) for any applicable credit determined with respect to any facility or property held directly by a partnership or S corporation:

(a) 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?

Windustry Response:

The election should be approved and signed by the chief executive or board chairman. A motion of the board should not be required.

(b) Is guidance needed to clarify the treatment of a payment made pursuant to § 6417(c)(1)(A) to the electing partnership or S corporation? If so, what clarification is needed?

Windustry Response:

No, the legislation is clear on distributions and tax exemption. The value of new qualifying assets would be reflected on the entity's balance sheet but not in profit and loss statements.



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201 Ridgewood Ave

Minneapolis, MN 55403

www.windustry.org

612.200.0331

888.818.0936



(5) With respect to the definition of the term “applicable entity” in § 6417(d)(1):

(a) What, if any, guidance is needed to clarify which entities are applicable entities for purposes of § 6417(d)(1)(A), and which taxpayers may elect to be treated as applicable entities under § 6417(d)(1)(B), (C), or (D) for purposes of § 6417?

Windustry Response:

No comment.

(b) What types of structures are anticipated to be used by applicable entities, and taxpayers who have elected to be treated as applicable entities under § 6417(d)(1)(B), (C), or (D), when seeking to apply § 6417(a)?

Windustry Response:

There should be some clarification of the treatment of for-profit subsidiaries or affiliates of applicable entities. Only the non-profit should be allowed to make the election.

(c) Is guidance needed to clarify the application of any Code provision other than § 6417 to an applicable entity, or a taxpayer electing to be treated as an applicable entity, that makes an election under § 6417(a)? If so, what is the Code provision and what clarification is needed?

Windustry Response:

No comment.

(d) Are there specific issues that the Treasury Department and the IRS should address for applicable entities that are subject to non-tax legal requirements or other rules that may affect such entities’ ability to make an election under § 6417(a)?

Windustry Response:

No comment.

(6) With respect to the elections under § 6417(d)(1)(B), (C), or (D):

(a) What, if any, issues could arise when an entity makes an election under § 6417(d)(1)(B), (C), or (D) and what, if any, guidance is needed with respect to such issues?

Windustry Response:

No comment.



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201 Ridgewood Ave

Minneapolis, MN 55403

www.windustry.org

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888.818.0936



(b) What factors should the Treasury Department and the IRS consider in determining the time and manner for making the election?

Windustry Response:

In regard to § 6417(d)(1)(D), we recommend that for the purposes of the 45X credits from entities that qualify as small businesses under SBA rules, they be allowed to take the election and submit documentation to the IRS on a quarterly basis, as opposed to waiting for their annual federal tax filing. We believe the lesser cash flow and bankability of small businesses justifies this special treatment. Providing small manufacturers with additional growth capital earlier will have a compounding effect on their ability to increase production in response to the stronger demand created by the IRA'22 market incentives. To be effective the IRS will also need to be capable of efficiently and expeditiously processing 45X § 6417(a) election submittals. If this would require a heavier documentation burden on the claimants side to reduce IRS review burden then we would support such requirements.



(c) What, if any, issues could arise when an entity revokes an election made under § 6417(d)(1)(B), (C), or (D) and what, if any, guidance is needed with respect to such issues?

Windustry Response:

Revoking an application for election in the applicable year, which revokes the election in succeeding years established under § 6417(d)(1)(D)(ii)(I), should not disallow future elections in the remaining term of the allowed credits.

(d) Is guidance needed to clarify the prohibition of a transfer described in § 6418(a) by a taxpayer who has made an election under § 6417(d)(1)(B), (C), or (D)? If so, what clarification is needed?

Windustry Response:

The legislation seems clear.

(7) Section 6417(d)(3)(A)(i)(I) provides that, in the case of any government, or political subdivision, described in § 6417(d)(1), and for which no return is required under § 6011 or 6033(a), any election made by these applicable entities under § 6417(a) must be made no later than such date as is determined appropriate by the Secretary. What factors should the Treasury Department and the IRS consider when providing guidance on the due date of the election for these applicable entities?

Windustry Response:

We suggest allowing submissions on an annual basis after Dec. 31 of the

Windustry

201 Ridgewood Ave

Minneapolis, MN 55403

www.windustry.org

612.200.0331

888.818.0936



calendar year in which the facility was placed in service. We recommend considering the burdens imposed on accounting firms by the existing corporate, individual and non-profit tax filing deadlines.

(8) Section 6417(d)(4)(A) provides that, in the case of any government, or political subdivision described in § 6417(d)(1), and for which no return is required under § 6011 or 6033(a), the payment described in § 6417(a) is treated as made on the later of the date that a return would be due under § 6033(a) if such government or subdivision were described in § 6033 or the date on which such government or subdivision submits a claim for credit or refund at such time and in such manner as the Secretary provides. What factors should the Treasury Department and the IRS consider when providing guidance to clarify the timing and manner of a payment made by these governments or political subdivisions?

Windustry Response:

No comment.

(9) 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)?

Windustry Response:

No comment

What factors should the Treasury Department and the IRS consider as to when documentation or registration should be required?

Windustry Response:

Documentation should be required at the time of submitting a claim under § 6417(a).

Should the IRS require the same documentation or registration as a condition of, and prior to, any amount being treated as a payment made by both an applicable entity as well as a taxpayer who is treated as an applicable entity after making an election under § 6417(d)(1)(B), (C), or (D)?

Windustry Response:

Yes.



Windustry

201 Ridgewood Ave

Minneapolis, MN 55403

www.windustry.org

612.200.0331

888.818.0936



Should the IRS require the same documentation or registration for all applicable credits? If not, how should the information or registration differ between applicable credits? What other processes could be implemented by the IRS to prevent duplication, fraud, improper payments, or excessive payments under § 6417?

Windustry Response:

For § 45X wind turbine claimants under § 6417(d)(1)(D) we recommend:

1. Serial numbers of qualifying components that are finished goods completed in the quarterly or annual filing period.
2. The capacity rating of the wind turbine product the components are to be incorporated into and the source of that rating
3. A spreadsheet calculating the total credit the claimant is taking the election for.
4. A verification statement signed by the president, CEO or CFO of the corporation.
5. SAM registration number. However, since SAM entity verifications are so delayed (> 6 months is now typical), that registration requirement should carry a 12 month grace period.

(10) What, if any, guidance is needed to clarify the application of the excessive payment provisions of § 6417(d)(6)(A)?

Windustry Response:

For wind turbine component credits under § 45X excessive payments could be claimed through excessive component counts in the applicable period or an excessive capacity rating. Both are auditable.

What factors should be taken into account in determining whether reasonable cause exists for purposes of § 6417(d)(6)(B)?

Windustry Response:

Self-certification of capacity rating for the wind turbine model for which § 45X credits are claimed should not be considered reasonable cause.

What, if any, guidance is needed to calculate the excessive payment amount under § 6417(d)(6)(C)?

Windustry Response:

No comment

(11) 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?



Windustry

201 Ridgewood Ave

Minneapolis, MN 55403

www.windustry.org

612.200.0331

888.818.0936



Windustry Response:

No comment

(12) The advanced manufacturing investment credit under § 48D also contains an elective payment provision under § 48D(d). The Treasury Department and the IRS seek comments on whether the elective payment provisions of § 6417 should operate similarly or differently than the elective payment provision under § 48D.

Windustry Response:

No comment.

(13) Please provide comments on any other topics that may require guidance.

Windustry Response:

No comment.

.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?

Windustry Response:

No comment.

(2) 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.

(a) 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?

Windustry Response:

The election should be approved and signed by the chief executive or board chairman. A motion of the board should not be required.



Windustry

201 Ridgewood Ave

Minneapolis, MN 55403

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612.200.0331

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(b) What factors should the Treasury Department and the IRS consider in determining the time and manner for making the election?

Windustry Response:

Transfers should be allowed at any time but formalized in an IRS form.

(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?

Windustry Response:

The election should be approved and signed by the chief executive or board chairman. A motion of the board should not be required.

Further, what, if any, guidance is needed on allocating any amount received as consideration for transferring any portion of an eligible credit?

Windustry Response:

The consideration or discount to the transferee should be an allowable business expense if the transferring entity is a taxpayer.

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

Windustry Response:

No comment.

(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)?

Windustry Response:

The transferee should be able to take the credit in the year that the transferring entity was eligible to take the credit. Carry backs and carryforwards allowed for corporate taxes should be allowed for transferred credits.

(6) In determining the amount of eligible credit transferred under § 6418(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?



Windustry

201 Ridgewood Ave

Minneapolis, MN 55403

www.windustry.org

612.200.0331

888.818.0936



Windustry Response:

No comment.

(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?

Windustry Response:

No comment.

(8) 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)?

Windustry Response:

We recommend that the IRS create a form that documents the basis of the credit and provides acceptable documentary evidence of the basis of the credit that is to be provided to the transferee. The form would be signed by a senior officer of the transferring entity and a copy would either be provided by the transferee on their tax filing or, at the IRS's discretion, be required to be available upon IRS request. Such a request for documentation by the transferee need not be part of a formal audit of the taxpayer. Both parties in the transfer application should be SAM registered.

What factors should the Treasury Department and the IRS consider as to when documentation or registration should be required?

Windustry Response:

Since SAM entity verifications are so delayed (> 6 months is now typical), that registration requirement should carry a 12 month grace period.

Should the IRS require the same documentation or registration for all eligible credits?

Windustry Response:

Yes.

If not, how should the information or registration differ between eligible credits?



Windustry

201 Ridgewood Ave

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www.windustry.org

612.200.0331

888.818.0936



Windustry Response:

No comment.

What other processes could be implemented by the IRS to prevent duplication, fraud, improper payments, or excessive credit transfers under § 6418?

Windustry Response:

Transferred credits that claim bonus credits (e.g., domestic content) should be accompanied by documentation establishing qualification for the additional credit percentage(s).

(9) What, if any, guidance is needed to clarify the application of the excessive credit transfer provisions of § 6418?

Windustry Response:

No comment.

What factors should be taken into account in determining whether reasonable cause exists for purposes of § 6418(g)(2)(B)?

Windustry Response:

No comment.

What guidance is needed to calculate the excessive credit transfer amount?

Windustry Response:

No comment.

(10) For purposes of § 6418(g)(3), what, if any, guidance is needed to clarify the application of § 50 for purposes of credit recapture, basis adjustments, and eligibility related to § 50(b)(3)?

Windustry Response:

No comment.

Pursuant to § 6418(g)(3)(B)(i), an eligible taxpayer must notify the transferee taxpayer if, during any taxable year, the applicable investment credit property is disposed of, or otherwise ceases to be investment credit property with respect to the eligible taxpayer, before the close of the recapture period. What factors should be considered in determining the



Windustry

201 Ridgewood Ave

Minneapolis, MN 55403

www.windustry.org

612.200.0331

888.818.0936



form and manner of this notice?

Windustry Response:

No comment.

Likewise, pursuant to § 6418(g)(3)(B)(ii), the transferee taxpayer must notify the eligible taxpayer of the recapture amount. What factors should be considered in determining the form and manner of this notice?

Windustry Response:

No comment.

(11) Is guidance needed to clarify the application of § 6418(g)(4) regarding progress expenditures? If so, what clarification is needed?

Windustry Response:

No comment.

(12) Please provide comments on any other topics that may require guidance.

Windustry Response:

No comment.

We thank you for the consideration of these .

Respectfully submitted by,

Lisa Daniels
Executive Director
Email: lisadaniels@windustry.org
Cell: 612-270-7161



Windustry
201 Ridgewood Ave
Minneapolis, MN 55403
www.windustry.org
612.200.0331
888.818.0936