



November 3, 2022

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

Dear Sir or Madam:

We are submitting these comments in response to Notice 2022-50 – issued on October 5, 2022 by the Internal Revenue Service (“IRS”) that requests for public comments on upcoming energy guidance. These comments submitted address elective payment provisions under Section 6417 and the elective credit transfer provisions under Section 6418 of the Internal Revenue Code (“IRC”), as added by Section 13801 of Public Law 117-169, 136 Stat. 2003 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (“IRA”). We are separately submitting comments in response to Notice 2022-47 on Energy Security Tax Credits for Manufacturing Under Sections 48C and 45X.

I. Zekelman Industries - Background & Business Operations

Zekelman Industries, Inc. (“ZII”) is the parent of a wholly owned group of entities that manufactures and sells structural tubing, electrical conduit, standard pipe and other industrial steel pipe and tube products. With almost 150 years of manufacturing experience, ZII, along with its subsidiaries (collectively, “Zekelman” or the “Company”), is the largest independent steel pipe and tube manufacturer in North America. The Company operates seventeen (17) manufacturing facilities in North America located in ten (10) states and one (1) Canadian province and is an important economic contributor to the state and local communities.

The majority of Zekelman’s products are used in infrastructure and non-residential construction applications. Zekelman also supplies products for use in the fabrication, automotive, oil and gas, agricultural and industrial equipment, and retail end-markets. Zekelman manufactures many products to operate under specialized conditions, including in load-bearing, high pressure, corrosive and high-temperature environments, and is committed to continue serving the renewable energy sector.

Of relevance to this comment process, Zekelman manufactures and sells carbon steel solar torque tubes that will qualify for the new advanced manufacturing production tax credit provision included in Section 45X of the IRA. In addition to its capabilities to produce the torque tubes in the existing manufacturing plants, Zekelman is currently investing in constructing new production facilities and purchasing manufacturing equipment to expand its production capacity of torque tubes and to service its customer and market demands and design needs.

II. Transfer to Multiple Taxpayers

New Section 6418 allows for the transferability of certain federal income tax credits including the qualified advanced energy project credit under Section 48C and the advanced manufacturing tax credit under Section 45X.

The provision provides that an eligible taxpayer may elect to transfer all or any portion of an eligible credit determined with respect to such taxpayer for any taxable year to “a” taxpayer (referred to as the transferee taxpayer) which is not related to the eligible taxpayer.

Taxpayer’s Request:

We request guidance to clarify that an eligible taxpayer can transfer a credit to more than one transferee taxpayer. For instance, if the taxpayer generates a \$100x credits under Section 45X in the 2023 taxable year, it can transfer that credit to multiple taxpayers – i.e., \$10x to 10 taxpayers; as long as no more than \$100x of such credits is transferred and that such credits are only transferred once.

As the IRS prepares to issue a guidance on this matter, we believe it will be important for the agency to issue special reporting and recordkeeping requirements to ensure that no more than the allowable credits are transferred by the eligible taxpayer.

III. Determination of Error After Filing of Return

In a case where a taxpayer realizes that it has miscalculated a credit claimed on a prior year tax return, the remedy is typically to file an amended return if the statute of limitations is still open.

This process would be unwieldy in cases where the credit has been transferred to third parties and multiple returns would have to be amended – see request above allowing the credit to be transferred to multiple taxpayers.

The statute language in the *IRA* seems to contemplate this. It states as follows: “In the case of an eligible credit which is transferred to a transferee taxpayer pursuant to subsection (a) which the Secretary determines constitutes an excessive credit transfer, the tax imposed on the transferee taxpayer by Chapter 1 (regardless of which such entity would otherwise be subject to the tax under such chapter) for the taxable year ***in which such determination is made*** shall be increased by an amount equal to the sum of – (i) the amount of such excessive credit transfer, plus (ii) an amount equal to 20% of such excessive credit transfer [20% penalty is waived if the error was due to reasonable cause].”

We believe that this gives the Secretary statutory authority to seek a “recapture” of the credit in the year that the error is discovered – be it by the IRS or by the taxpayer itself – if the statute of limitations for the year in question remains open.



The transferor taxpayer would have an obligation to notify the IRS and the transferee taxpayers of the error. Upon receipt of such notice, the claimant taxpayer would increase their tax liability on the next filed tax return in an amount equal to the excess credit. This would operate similarly to the rules for an ITC recapture event. In that instance, the taxpayer files a Form 4225 in the year the recapture event occurs and increases its tax liability by the amount of the recaptured amount.

Taxpayer's Request:

We request guidance to clarify that the treatment of an erroneous or miscalculated credit claimed on a prior year tax return of (a) the producer taxpayer, and (b) the transferee of the credits; as well as the necessary actions to be undertaken.

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Zekelman and its employees applaud Congress for taking steps to ensure the United States can continue to expand its secure and renewable energy sector. The opportunities to serve this expanding market will provide endless opportunities for U.S. manufacturers and their employees. Further, Zekelman, like many others, has embarked to implement new and innovative manufacturing processes that will comply with climate and environment goals.

We appreciate the opportunity to share our views on this important matter. We also look forward to continued engagement on this matter as the comment period moves forward.

Should you have any questions or would like to discuss this matter further, please contact Angela Miu at angela.miu@zekelman.com or 312-275-1672.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Michael Graham".

Michael Graham
Executive Vice President & CFO

A handwritten signature in blue ink, appearing to read "Angela Miu".

Angela Miu
Vice President of Tax