



November 3, 2022

Submitted electronically via [www.regulation.gov](http://www.regulation.gov) (IRS-2022-0050)

U.S. Department of Treasury  
Washington, DC

Re: Submission of comments in response to IRS Notice 2022-50  
Docket: <https://www.regulations.gov/document/IRS-2022-0024-0001>

Stellantis N.V. appreciates the opportunity to submit comments in response to IRS Notice 2022-50 (the “Notice”) regarding the elective payment provisions under IRC § 6417 and the elective credit transfer provisions under IRC § 6418 and offer suggestions on items for clarification in upcoming proposed guidance (the “Proposed Guidance”).

Stellantis is one of the world’s largest manufacturers of passenger vehicles. Our iconic brands include the Jeep Wrangler, Grand Cherokee, Cherokee and Compass line of vehicles, the Chrysler Pacifica, the venerable Dodge Charger, Challenger, and Durango, and Ram trucks. Stellantis’ U.S. footprint includes a workforce over 60,000 employees, including over 42,000 UAW workers; seven assembly plants; three engine plants and seven component plants, some of which are currently supporting the move to electrification by producing next generation multi-use transmission, power electronics modules for Wrangler 4xe and SIEVT transmission for Pacifica Hybrid.

### **Stellantis is Committed to an Electrified Future**

Stellantis is fully committed to reducing greenhouse gas emissions in the domestic vehicle industry while continuing to provide our customers with the best-in-class performance, luxury, and vehicle experience they expect from our vehicles. Over the past year alone we have announced plans for investing \$35 billion through 2025 on electrification and software with a target of 50% of new vehicles sales being BEV products by 2030. This commitment includes:

- Investing in 4 all new BEV platforms
- Announcing from 2024 on, all new product launches will include a BEV version
- The Chrysler brand will be all electric by 2028
- Introducing 25 new BEV products into our corporate portfolio by 2030
- Constructing two brand new giga factories in North America with additional battery factories on the way.

**Public Affairs, N.A.**

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Among the credits that qualify as an “applicable credit” in IRC Sec. 6417 and an “eligible credit” in IRC Sec. 6418 is the new IRC Sec. 45X credit for advanced manufacturing production.<sup>1</sup> The comments below are confined to the application of the Elective Payment and Elective Transfer mechanisms in connection with the IRC Sec. 45X tax credit. For purposes of these comments, an “Electing Taxpayer” refers to a taxpayer that seeks to utilize the Elective Payment mechanism or the Elective Transfer mechanism (depending on the context). [Unless stated otherwise, the following comments assume a joint venture arrangement for the construction and operation of an EV battery manufacturing facility in the United States (“JV Battery Manufacturer”.)] The comments track the specific questions identified in Section 3 of the Notice in the sequential order of the Notice (not necessarily in order of priority).

### **Questions raised in Section 3.01 (Elective Payment of Credits (§ 6417)) of the Notice**

#### **Questions (4) and (6): Elections made by a partnership or S corporation pursuant to IRC Sec. 6417(c)(1) and IRC Sec. 6417(d)(1)(D)**

Comments:

1. For a JV Battery Manufacturer that desires to utilize the Elective Payment mechanism, the statute calls for separate elections (to be treated as an applicable entity and for property held directly by a partnership). The Proposed Guidance should provide that these elections are coordinated and made at the same time and in the same manner.
2. The most important factors for Treasury/IRS to consider in determining the time and manner of the election are timeliness, efficiency, and accuracy and verification.
  - a. Timeliness: As it pertains to the IRC Sec. 45X credit, the Proposed Guidance should adopt a process that will allow an Electing Taxpayer to benefit from the Elective Payment mechanism within the shortest period possible following the close of the taxable year. The IRC Sec. 45X tax credit is a function of a specified dollar amount multiplied by the number of eligible components produced by the taxpayer and sold to an unrelated person during the taxable year. In many cases, an Electing Taxpayer will have access to this information well in advance of the filing of the final tax return for the taxable year. An Electing Taxpayer should not have to wait for several months following the filing of its income tax return to receive the benefit.
  - b. Efficiency: For similar reasons, an Electing Taxpayer should not be required to develop new reporting systems or undertake a separate analysis under the Elective Payment mechanism. The information from the Electing Taxpayer’s current accounting system should suffice for this purpose.

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<sup>1</sup> IRC Sec. 6417(b)(7) and IRC Sec. 6418(f)(1)(A)(vi).

- c. Accuracy and verification: In the event the information provided to the IRS requires a subsequent adjustment, an Electing Taxpayer should be permitted a limited opportunity to self-correct the initial reporting without the imposition of a penalty. An accurate system also must provide the IRS with a straightforward process to verify the credit information.

One possible approach that could accomplish these objectives would incorporate elements from the former net operating loss rules and the IRC Sec. 1060 asset acquisition statement. Specifically, an Electing Taxpayer would be permitted to utilize the Elective Payment mechanism immediately following the close of the taxable year by a filing a separate stand-alone Form (similar to the Form 1139 application for a tentative refund). The Form would include all the necessary information to calculate the amount of the tax credit and would be signed under penalties of perjury. If greater than [5%] of the claimed IRC Sec. 45X tax credit involves a sale to a single purchaser, the Form can require general information with respect to each such 5% purchaser (i.e., the name of the purchasing party, TIN, address, and total sales price similar to Form 8594, Part I).

Similar to the NOL tentative refund process, the IRS would have 90 days from the filing of the Form to process the refund request. The payment of the refund request does not mean the IRS has accepted the Form as correct.

In the event the information provided on the Form requires a subsequent adjustment, the Electing Taxpayer will have until the filing of the final tax return for the taxable year at issue (including extensions of time) to provide the revised information and provide payment for any excessive payment (as defined in IRC Sec. 6417(d)(6)). If an Electing Taxpayer fails to make the necessary corrections by the due date of the tax return (including extensions), such taxpayer will be subject to the 20% penalty described in IRC Sec. 6417(d)(6)(A)(ii) (plus any other applicable penalties).

Such an approach would (i) provide a timely benefit to Electing Taxpayers, (ii) create an efficient filing process without creating additional reporting and recordkeeping burdens, and (iii) provide incentives for taxpayers to self-report and correct any excessive payment and provide the IRS the necessary information to easily verify the claimed credit amount.

### **Question (9): Information requirements for IRS to prevent duplication, fraud and improper or excessive payments**

Comment:

The required information could vary depending on the applicable credit for which the Credit Monetization mechanism is claimed and the type of entity. For an Electing Entity that is not an “applicable entity” (as defined in IRC Sec. 6417(d)(1)(A)), the required information should include all the necessary information to calculate the amount of the tax credit. As it relates to the IRC Sec. 45X tax credit, such information could include:

- A detailed description of each eligible component for which a credit is being claimed and the specified dollar amounts associated with each component,
- The number of eligible components produced by the taxpayer and sold to an unrelated person during the taxable year,
- For significant sales to a single purchaser (e.g., if a single purchaser accounts for at least 5% of the total units produced and sold by the taxpayer during the taxable year), the name of the purchasing party, TIN, address, and total sales price.

The documentation should be the same as what otherwise would be used to calculate the IRC Sec. 45X tax credit in the absence of any election under IRC Sec. 6417.

The documentation should be provided simultaneous with the submission of the application by the Electing Taxpayer. As previously discussed, the Proposed Guidance should permit a process that prioritizes timeliness, efficiency, and accuracy and verification.

**Question (10): Application of the excessive payment provisions and the reasonable cause exception**

Comment:

The Proposed Guidance must balance the need to quickly provide the credit monetization benefits to taxpayers with the concerns of duplication, fraud, and excessive payments. We believe the approach described in response to questions (4) and (6) above appropriately reflects this balance. Our approach provides sufficient information to the IRS at the outset of the application process. An Electing Taxpayer has significant incentives to self-correct and self-report any adjustments to the credit amount – and must do so no later than the filing of final tax return for the year that includes the reporting of the applicable credit (including extension of times). And the IRS has sufficient information regarding the counterparty to the transaction (if the purchases amount to at least 5% of the total purchases).

**Question (12): Elective payment process for the advanced manufacturing investment credit under § 48D (and the operation of the elective payment provision under that section)**

Comment:

For continuity and for simplicity, the Proposed Guidance should make the elective payment process for direct payment operate similarly to that of the elective payment provisions under IRC Sec. 48D.

### **Questions raised in Section 3.02 (Transfer of Credits (§ 6418)) of the Notice**

**Question (1):** What, if any, guidance is needed to clarify the meaning of certain terms in § 6418?

Comment:

As the ability to transfer an eligible credit pursuant to IRC Sec. 6418 was designed to complement the ability to receive payment for credits pursuant to IRC Sec. 6417, the Proposed Guidance should apply consistent definitions and rules for the two provisions to the extent possible.

**Question (2)(b):** Time and manner for making an election under IRC Sec. 6418

Comment:

Similar to the previous discussion regarding the Elective Payment mechanism, the Proposed Guidance should propose an Elective Transfer methodology that prioritizes timeliness, efficiency, and accuracy and verification.

- **Timeliness:** The Proposed Guidance should adopt a process that will allow an Electing Eligible taxpayer to transfer an eligible credit in the shortest period possible following the close of the taxable year in which the eligible credit is generated.
- **Efficiency:** An Electing Eligible taxpayer should not be required to develop new reporting systems or undertake a separate analysis under the Elective Transfer mechanism. The information from its current accounting system should suffice for this purpose.
- **Accuracy and verification:** An Electing Eligible taxpayer should be required to file a separate stand-alone information Form (similar to the Form 8594 filed in connection with asset acquisitions under IRC Sec. 1060). The Information Form, which would be required for any transfer of credit that exceeds a modest threshold [\$10,000??] should include all the necessary information that identifies the Electing Eligible taxpayer and the transferee taxpayer (including names, TINs, addresses, etc.), the type and amount of eligible credit being transferred, and the taxable year of the Electing Eligible taxpayer. The Information Form must be signed by the Electing Eligible taxpayer under penalties of perjury who must attest that the completed Information Form was provided to the IRS prior to the transaction and will be included in the tax return that includes the year of the transfer

**Questions (4) and (7): Parameters and limitations on a transferee taxpayer’s eligibility to claim a credit and clarification regarding the application of any other Code provision**

Comment:

The Proposed Guidance should clarify (or confirm) the application of the IRC Sec. 39 carryback and carryforward rules in connection with eligible credits purchased by a transferee taxpayer pursuant to IRC Sec. 6418.

At first blush, it appears that transferred credits acquired by a transferee taxpayer pursuant to IRC Sec. 6418 are eligible for a separate 3-year carryback and 20-year carryforward period in accordance with amended IRC Sec. 39(a)(4). A purported Hill staff summary of Subtitle D of the Act states that “the credit carryback period is extended from one to three years for any credit eligible to be transferred.”<sup>2</sup>

The confusion arises because the Act section which adds new IRC Sec. 39(a)(4) (i.e., Act Section 13801(d)) describes the 3-year carryback period as applying “in the case of any applicable credit (as defined in section 6417(b)) ...” While there is considerable overlap between “applicable credits” as defined in IRC Sec. 6417(b) and “eligible credits” as defined in IRC Sec. 6418(f)(1) they are not identical. And IRC Sec. 6418 does not include any reference to “applicable credits.” To eliminate the confusion, it would be very helpful if the Proposed Guidance were to specify how IRC Sec. 39 applies to any acquired IRC Sec. 6418 tax credits.

**Question (8):** Information and documentation required by the IRS as a condition to, or prior to, any transfer of credits.

Comments:

The Proposed Guidance should propose a methodology that provides sufficient information to the IRS and some level of comfort to a transferee taxpayer, particularly considering that (as discussed in comments to the next question) the transferee taxpayer is economically liable for any excessive payment (plus penalties).

Ideally, a system could be developed in which a transferee taxpayer can receive confirmation from the IRS that the Electing Eligible taxpayer filed the Information Form (as described in comments to Question (2)(b)) associated with the particular transaction. Short of some IRS verification process, the transferee taxpayer will have to rely on its due diligence. Requiring the Information Form, and incentivizing transferee taxpayers to include the Information Form on its first tax return (see the comments to the next question) should provide some assurance.

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<sup>2</sup> Document at p. 27.

**Question (9): Excessive credit transfers and the existence of reasonable cause**

Comment:

In many (and perhaps most) situations, a transferee taxpayer may not have access to information necessary to confirm the accuracy of the Electing Eligible Taxpayer's claims regarding the transfer of eligible credits. Nevertheless, IRC Sec. 6418(g)(2) holds the transferee taxpayer liable for the excess payment and imposes a 20% penalty on the transferee taxpayer unless it demonstrates that the excess transfer resulted from reasonable cause. If the Proposed Guidance adopts an accuracy and verification process similar to what was previously described in response to Question 2(b), then the reasonable cause standard should be treated as having been satisfied if the transferee taxpayer includes its copy of the separate stand-alone Form with the tax return in which the credit is taken into account (as defined in IRC Sec. 6418(d)).

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Our team at Stellantis appreciates the opportunity to provide these comments, and look forward to working with the Administration, the Treasury Department, the Department of Energy, the IRS, and other agencies on the development of proposed guidance that will permit the robust and appropriate application of IRC § 6417 and § 6418.

Respectfully Submitted,



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