

Comment from Tesla, Inc.

Tesla, Inc. (“Tesla”) appreciates the opportunity to respond to the Internal Revenue Service’s (“IRS”) request for comments regarding the Inflation Reduction Act of 2022 (“IRA”) pursuant to Notice 2022-50 focused on the elective payment of applicable credits and transfer of certain credits. Please see attached submission.

November 4, 2022

Response to [Notice 2022-50](#)

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I. Background

Tesla’s mission is to accelerate the world’s transition to sustainable energy. To accomplish its mission, Tesla designs, develops, manufactures, and sells high-performance fully electric vehicles and energy generation and storage systems, installs, and maintains such systems, and sells solar electricity.

Tesla currently produces and sells four fully electric, zero emission vehicles (ZEVs): the Model 3 mid-sized sedan, the Model Y compact sport utility vehicle (SUV), the Model S full-size sedan and the Model X mid-size SUV. As the Environmental Protection Agency (EPA) recognized in its [2021 Automotive Trends Report](#), Tesla had the lowest carbon dioxide emissions (0 g/mi) and highest fuel economy (119 miles per gallon equivalent) of all large vehicle manufacturers in Model Year (MY) 2020. Tesla also received its MY2023 [EPA certification](#) of conformity for the Semi Class 8 High Roof Day Cab with [deliveries scheduled](#) to begin in December 2022.

Tesla is also deeply committed to ensuring the U.S. remains a leader in [advanced manufacturing](#). All Tesla vehicles sold in North America are manufactured in the U.S. In 2022, the Tesla Model Y ranked as [the most American-made car](#), based on overall contributions to the U.S. economy, and the Model 3 ranked just below as the second most American-made car on the market. The National Highway Traffic Safety Administration (NHTSA) similarly [confirms](#) that 100% of the vehicle, engine, and transmission assembly in each Tesla vehicle sold domestically occurs in the U.S. In addition, Tesla’s [U.S. supply chain continues to expand](#) and spans across more than 40 states, including Alabama, Georgia, Ohio, Indiana, and Michigan.

In the U.S., Tesla conducts vehicle manufacturing and assembly operations at its factories in Fremont, CA and Austin, TX and produces electric drivetrains and manufactures advanced battery packs, as well as Tesla’s energy storage products, at its Gigafactory Nevada in Sparks, NV. Tesla also builds and services highly automated, high-volume manufacturing machinery at its facility in Brooklyn Park, MN, and operates a tool and die facility in Grand Rapids, MI. Additionally, Tesla produces solar energy and vehicle DC-fast charging products at its Gigafactory New York in Buffalo, NY.

Tesla supports the [Administration’s goal](#) of the U.S. reaching net-zero greenhouse gas emissions by at least 2050. If implemented successfully, the climate technology-related tax provisions of the IRA will help facilitate consumer adoption and the rapid deployment of electric vehicles, solar and storage at [levels necessary](#) for decarbonization in service of this goal.

Below, find Tesla’s responses, as appropriate, to the Department’s Request for Comments.

II. Questions Raised by the Treasury Department and the IRS

.01 Elective Payment of Applicable Credits (Section 6417)

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

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

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

For taxpayers to make a sound determination whether to elect direct pay under Section 6417, Tesla suggests Treasury should not only prescribe the manner in which taxpayers make the election but should also clarify the timing of the generation of the credits and the earliest time that such credits are treated as payment made against the tax. For a particular tax year's credits, guidance should clarify whether the refund is treated as a payment made against tax when the triggering event happens during the year, (e.g., manufacturing of battery cells eligible for Section 45X credits), and hence could be applied against the estimated tax payment, or whether such credits are only perfected with the filing of the tax return. Treasury should also clarify that the due date for a 6417 election is on the originally filed return including extensions, any superseded filings, and amended returns.

Tesla requests Treasury provides guidance regarding the timing of the election under Section 6417 when a short year tax return is required due to an acquisition.

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

Tesla requests Treasury guidance related to the manner of taxpayer revocation of election made under Section 6417(d)(1)(B), (C), or (D). For example, in the event of an acquisition of another company, would the acquired company's prior election be revocable by the acquiring company, but not limited by the one-time revocation requirement?

(10) What, if any, guidance is needed to clarify the application of the excessive payment provisions of Section 6417? What factors should be considered in determining whether reasonable cause exists for purposes of Section 6417(d)(6)(B)? What, if any, guidance is needed to calculate the excessive payment amount under Section 6417(d)(6)(C)?

Treasury clarification would be helpful to determine what factors to consider related the existence of reasonable cause for purposes of Section 6417(d)(6)(B), including if self-identification of excess payments, relying on paid service providers for positions and quantification of the refundable credit, disparity caused by lack of legislative guidance, reliance on third-party representation etc. could be viewed as reasonable causes. As such, in this case, Tesla recommends Treasury should act in a manner consistent with Treasury Regulation 1.6664-4(b) related to treatment of taxpayers determined to be acting with reasonable cause and in good faith.

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

In the case that taxpayer-identified adjustments are needed to prior year amounts of refundable credits for which a direct pay election was made, Tesla requests guidance regarding how to report such adjustments to the IRS. These adjustments could be an increase or decrease to prior year requested refundable credits. Additionally, said credits could have already been processed by the IRS or submitted but pending processing. In each case, Tesla requests guidance regarding what method should be used to report such self-identified over or under-claimed refundable credits, any interest receivable (payable) procedures or any penalties related clarification.

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

Tesla requests Treasury provides clarity regarding the election to utilize a partial amount of the total credit to offset its tax return liability and elect to refund the remainder of the credits via direct pay program. Tesla additionally requests guidance clarifying whether, prior to claiming the refundable credits with its annual tax return, a taxpayer could take into consideration refundable credits in its quarterly estimated tax payment like other Section 38 general business credits.

III. CONCLUSION

Tesla appreciates the opportunity to respond to the Department of Treasury's Request for Comments and looks forward to continuing engagement with the Department of Treasury and the IRS to ensure the benefits of the IRA are fully realized.

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