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

Notice 2022-50

SECTION 1. PURPOSE

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) anticipate issuing guidance to implement the elective payment provisions under § 6417 and the elective credit transfer provisions under § 6418 of the Internal Revenue Code (Code), as added by § 13801 of Public Law 117-169, 136 Stat. 2003 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). This notice requests general comments on questions arising under new §§ 6417 and 6418, as well as specific comments on questions listed in section 3 of this notice. Comments received in response to this notice will help to inform development of future guidance implementing §§ 6417 and 6418.

SECTION 2. BACKGROUND

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

Section 6417 of the Code was enacted by § 13801(a) of the IRA, to allow certain taxpayers to elect to treat certain credits as a direct payment rather than a credit against their federal income tax liabilities.

Section 6417(a) provides that, in the case of an applicable entity making an election with respect to any applicable credit determined with respect to such entity,

such entity is treated as making a payment against the tax imposed by subtitle A (that is, federal income taxes) for the taxable year with respect to which such credit was determined equal to the amount of such credit. Any election under § 6417 can only be made at such time and in such manner as the Secretary of the Treasury or her delegate (Secretary) may provide.

Section 6417(b) defines the term "applicable credit" to mean each of the following:

(1) so much of the credit for alternative fuel vehicle refueling property allowed under § 30C that, pursuant to § 30(d)(1), is treated as a credit listed in § 38(b);

(2) so much of the renewable electricity production credit determined under § 45(a) as is attributable to qualified facilities that are originally placed in service after December 31, 2022;

(3) so much of the credit for carbon oxide sequestration determined under § 45Q(a) as is attributable to carbon capture equipment that is originally placed in service after December 31, 2022;

(4) the zero-emission nuclear power production credit determined under § 45U(a);

(5) so much of the credit for production of clean hydrogen determined under § 45V(a) as is attributable to qualified clean hydrogen production facilities that are originally placed in service after December 31, 2012;

(6) in the case of a tax-exempt entity described in § 168(h)(2)(A)(i), (ii), or (iv), the credit for qualified commercial vehicles determined under § 45W by

reason of § 45W(d)(3);

(7) the credit for advanced manufacturing production under § 45X(a);

(8) the clean electricity production credit determined under § 45Y(a);

(9) the clean fuel production credit determined under § 45Z(a);

(10) the energy credit determined under § 48;

(11) the qualifying advanced energy project credit determined under § 48C; and

(12) the clean electricity investment credit determined under § 48E.

Section 6417(c)(1) provides that, in the case of any applicable credit determined with respect to any facility or property held directly by a partnership or S corporation, any election under § 6417(a) is to be made by such partnership or S corporation and must be made in such manner as the Secretary may provide. If such partnership or S corporation makes an election under § 6417(a) with respect to any applicable credit, (A) the Secretary must make a payment to such partnership or S corporation equal to the amount of such credit, (B) § 6417(e) is applied with respect to such credit before determining any partner's distributive share, or shareholder's pro rata share, of such credit, (C) any amount with respect to which the election in § 6417(a) is made is treated as tax exempt income for purposes of §§ 705 and 1366, and (D) a partner's distributive share of such tax exempt income is based on such partner's distributive share of the otherwise applicable credit for each taxable year.

Section 6417(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 of shareholder is allowed under § 6417(a) with respect to any applicable credit determined with respect to

such facility or property.

Section 6417(d)(1)(A) defines the term “applicable entity” to mean (i) any organization exempt from tax imposed by subtitle A, (ii) any State or political subdivision thereof; (iii) the Tennessee Valley Authority; (iv) an Indian tribal government (as defined in § 30D(g)(9)); (v) any Alaska Native Corporation (as defined in § 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)); or (vi) any corporation operating on a cooperative basis that is engaged in furnishing electric energy to persons in rural areas.

Pursuant to § 6417(d)(1)(B), if a taxpayer, other than an entity listed in § 6417(d)(1)(A), makes an election under § 6417(d)(1)(B) with respect to any taxable year in which such taxpayer has placed in service a qualified clean hydrogen production facility (as defined in § 45V(c)(3)), such taxpayer is treated as an applicable entity for purposes of § 6417 for the taxable year, but only with respect to the credit under § 45V to the extent described in § 6417(b)(5).

Pursuant to § 6417(d)(1)(C), if a taxpayer, other than an entity listed in § 6417(d)(1)(A), makes an election under § 6417(d)(1)(C) with respect to any taxable year in which such taxpayer has, after December 31, 2022, placed in service carbon capture equipment at a qualified facility (as defined in § 45Q(d)), such taxpayer is treated as an applicable entity for purposes of § 6417 for such taxable year, but only with respect to the credit under § 45Q to the extent described in § 6417(b)(3).

Section 6417(d)(1)(D)(i) provides that, if a taxpayer other than an entity described in § 6417(d)(1)(A) makes an election under § 6417(d)(1)(D) with respect to any taxable year in which such taxpayer has, after December 31, 2022, produced

eligible components (as defined in § 45X(c)(1)), such taxpayer is treated as an applicable entity for purposes of § 6417 for such taxable year, but only with respect to the credit under § 45X to the extent described in § 6417(b)(7).

Pursuant to § 6417(d)(1)(D)(ii)(I), except as provided in § 6417(d)(1)(D)(ii)(II), if a taxpayer makes an election under § 6417(d)(1)(D) with respect to any taxable year, such taxpayer is treated as having made such election for each of the 4 succeeding taxable years ending before January 1, 2033.

Pursuant to § 6417(d)(1)(D)(ii)(II), a taxpayer may elect to revoke the application of the election made under § 6417(d)(1)(D) to any taxable year described in § 6417(d)(1)(D)(ii)(I). Any such election, if made, applies to the applicable year specified in such election and each subsequent taxable year within the period described in § 6417(d)(1)(D)(ii)(I). Any election under § 6417(d)(1)(D) cannot be revoked once made.

Section 6417(d)(1)(D)(iii) provides that, for any taxable year described in § 6417(d)(1)(D)(ii)(I), no election may be made by the taxpayer under § 6418(a) for such taxable year with respect to eligible components for purposes of the credit described in § 6417(b)(7) (that is, the credit for advanced manufacturing production under § 45X(a)).

Pursuant to § 6417(d)(1)(E)(i), an election made under § 6417(d)(1)(B), (C), or (D) must be made at such time and in such manner as the Secretary may provide.

Pursuant to § 6417(d)(1)(E)(ii), no election may be made under § 6417(d)(1)(B), (C), or (D) with respect to any taxable year beginning after December 31, 2032.

Section 6417(d)(2) provides that, in the case of any applicable entity that makes

the election described in § 6417(a), any applicable credit is determined (A) without regard to § 50(b)(3) and (4)(A)(i), and (B) by treating any property with respect to which such credit is determined as used in a trade or business of the applicable entity.

Section 6417(d)(3)(A)(i) provides that, any election under § 6417(a) cannot be made later than (I) 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), such date as is determined appropriate by the Secretary, or (II) in any other case, the due date (including extensions of time) for the tax return for the taxable year for which the election is made, but in no event earlier than 180 days after the date of the enactment of § 6417 by § 13801(a) of the IRA (that is, in no event earlier than 180 days after August 16, 2022).

Section 6417(d)(3)(A)(ii) provides that, any election under § 6417(a) applies (except as otherwise provided in § 6417(d)(3)(A)) with respect to any credit for the taxable year for which the election is made and, once made, is irrevocable.

Section 6417(d)(3)(B) provides that, in the case of the credit described in § 6417(b)(2) (that is, the renewable electricity production credit under § 45(a)), any election under § 6417(a): (i) applies separately with respect to each qualified facility, (ii) must be made for the taxable year in which such qualified facility is originally placed in service, and (iii) applies to such taxable year and to any subsequent taxable year that is within the period described in § 45(a)(2)(A)(ii) with respect to such qualified facility.

Section 6417(d)(3)(C)(i) provides that, in the case of the credit described in § 6417(b)(3) (that is, the credit for carbon oxide sequestration under § 45Q(a)), any election under § 6417(a): (i) applies separately with respect to the carbon capture

equipment originally placed in service by the applicable entity during a taxable year, and (ii)(I) in the case of a taxpayer who makes an election described in § 6417(d)(1)(C), applies to the taxable year in which such equipment is placed in service and the 4 subsequent taxable years with respect to such equipment that end before January 1, 2033, and (II) in any other case, applies to such taxable year and to any subsequent taxable year that is within the period described in § 45Q(a)(3)(A) or (4)(A) with respect to such equipment.

Section 6417(d)(3)(C)(ii) provides that, for any taxable year described in § 6417(d)(3)(C)(i)(II)(aa) with respect to carbon capture equipment, no election may be made by the taxpayer under § 6418(a) for such taxable year with respect to such equipment for purposes of the credit described in § 6417(b)(3).

Section 6417(d)(3)(C)(iii) provides that, in the case of a taxpayer who makes an election described in § 6417(1)(C) with respect to carbon capture equipment, such taxpayer may, at any time during the 5-year period described in § 6417(d)(3)(C)(i)(II)(aa), revoke the application of such election with respect to such equipment for any subsequent taxable years during such period. Any such election, if made, applies to the applicable year specified in such election and each subsequent taxable year within the 5-year period described in § 6417(d)(3)(C)(i)(II)(aa). Any election under § 6417(d)(3)(C)(iii) may not be subsequently revoked.

Section 6417(d)(3)(D)(i) provides that, in the case of the credit described in § 6417(b)(5) (that is, the credit for production of clean hydrogen under § 45V(a)), any election under § 6417(a): (i) applies separately with respect to each qualified clean hydrogen production facility; (ii) must be made for the taxable year in which such facility

is placed in service (or within the 1-year period subsequent to the date of enactment of § 6417 in the case of facilities placed in service before December 31, 2022), and (iii)(I) in the case of a taxpayer who makes an election described in § 6417(d)(1)(B), applies to such taxable year and the 4 subsequent taxable years with respect to such facility that end before January 1, 2033, and (II) in any other case, applies to the taxable year and all subsequent taxable years with respect to such facility.

Section 6417(d)(3)(D)(ii) provides that, for any taxable year described in § 6417(d)(3)(C)(i)(III)(aa) with respect to a qualified clean hydrogen production facility, no election may be made by the taxpayer under § 6418(a) for such taxable year with respect to such facility for purposes of the credit described in § 6417(b)(5).

Section 6417(d)(3)(D)(iii) provides that, in the case of a taxpayer who makes an election described in § 6417(1)(B) with respect to a qualified clean hydrogen production facility, such taxpayer may, at any time during the period described in § 6417(d)(3)(D)(i)(III)(aa), revoke the application of such election with respect to such facility for any subsequent taxable years during such period. Any such election, if made, applies to the applicable year specified in such election and each subsequent taxable year within the period described in § 6417(d)(3)(D)(i)(II)(aa). Any election under § 6417(d)(3)(D)(iii) may not be revoked once made.

Section 6417(d)(3)(E) provides that, in the case of the credit described in § 6417(b)(8) (that is, the clean electricity production credit under § 45Y(a)), any election under § 6417(a): (i) applies separately with respect to each qualified facility, (ii) must be made for the taxable year in which such facility is placed in service, and (iii) applies to such taxable year and to any subsequent taxable year that is within the period

described in § 45Y(b)(1)(B) with respect to such facility.

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. Any claim for credit or refund must be made at such time and in such manner as the Secretary provides. Section 6417(d)(4)(B) provides that, in any other case, the payment described in § 6417(a) is treated as made on the later of the due date (determined without regard to extensions) of the return of tax for the taxable year or the date on which such return is filed.

Section 6417(d)(5) provides that, as a condition of, and prior to, any amount being treated as a payment that is made by an applicable entity under § 6417(a), the Secretary may require such information or registration as the Secretary deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments under § 6417.

Section 6417(d)(6)(A) provides that, in the case of any amount treated as a payment that is made by the applicable entity under § 6417(a), or the amount of the payment made pursuant to § 6417(c), that the Secretary determines constitutes an excessive payment, the tax imposed on such entity by chapter 1 (regardless of whether such entity would otherwise be subject to tax under such chapter) for the taxable year in which such determination is made must be increased by an amount equal to the sum of (i) the amount of such excessive payment, plus (ii) an amount equal to 20 percent of

such excessive payment.

Pursuant to § 6417(d)(6)(B), § 6417(d)(6)(A)(ii) (that is, the 20 percent of excessive payment increase) does not apply if the applicable entity demonstrates to the satisfaction of the Secretary that the excessive payment resulted from reasonable cause.

Section 6417(d)(6)(C) defines the term "excessive payment" to mean, with respect to a facility or property for which an election is made under § 6417 for any taxable year, an amount equal to the excess of (i) the amount treated as a payment that is made by the applicable entity under § 6417(a), or the amount of the payment made pursuant to § 6417(c), with respect to such facility or property for such taxable year, over (ii) the amount of the credit that, without application of § 6417, would be otherwise allowable (as determined pursuant to § 6417(d)(2) and without regard to § 38(c)) with respect to such facility or property for such taxable year.

Section 6417(e) provides that, in the case of an applicable entity making an election under § 6417 with respect to an applicable credit, such credit must be reduced to zero and, for any other purposes under this title, must be deemed to have been allowed to such entity for such taxable year.

Section 6417(g) states that, "[e]xcept as otherwise provided in [§ 6417(c)(2)(A)], rules similar to the rules of section 50 shall apply for purposes of [§ 6417]."

Section 13801(g) of the IRA provides that § 6417 applies to taxable years beginning after December 31, 2022.

.02 Transfer of Certain Credits (§ 6418).

Section 6418 of the Code was enacted by § 13801(b) of the IRA to permit eligible

credits to be transferred from eligible taxpayers to an unrelated taxpayer.

Section 6418(a) provides that, in the case of an eligible taxpayer that elects to transfer all (or any portion specified in the election) of an eligible credit determined with respect to such taxpayer for any taxable year to another taxpayer (transferee taxpayer) that is not related (within the meaning of § 267(b) or § 707(b)(1)) to the eligible taxpayer, the transferee taxpayer specified in such election (and not the eligible taxpayer) is treated as the taxpayer for purposes of the Code with respect to such credit (or such portion thereof). Any election under § 6418 must be made at such time and in such manner as the Secretary may provide.

Pursuant to § 6418(b), with respect to any amount paid by a transferee taxpayer to an eligible taxpayer as consideration for a transfer described in § 6418(a), such consideration (1) must be required to be paid in cash, (2) is not includible in the gross income of the eligible taxpayer, and (3) with respect to the transferee taxpayer, is not deductible under the Code.

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, such partnership or S corporation may make an election under § 6418(a) with respect to such credit in such manner as the Secretary may provide. If such partnership or S corporation makes an election under § 6418(a) with respect to such credit, (A) any amount received as consideration for a transfer described in § 6418(a) is treated as tax exempt income for purposes of §§ 705 and 1366, and (B) a partner's distributive share of such tax exempt income is based on such partner's distributive share of the otherwise eligible credit for each taxable year.

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.

Under § 6418(d), in the case of any credit (or portion thereof) with respect to which an election is made under § 6418(a), such credit is taken into account in the first taxable year of the transferee taxpayer ending with, or after, the taxable year of the eligible taxpayer with respect to which the credit was determined.

Under § 6418(e)(1), any election under § 6418(a) must be made not later than the due date (including extensions of time) for the tax return for the taxable year for which the credit is determined, but cannot be made earlier than 180 days after the date of the enactment of § 6418 by § 13801(a) of the IRA. Any election, once made, is irrevocable.

Section 6418(e)(2) provides that no election may be made under § 6418(a) by a transferee taxpayer with respect to any portion of an eligible credit that has been previously transferred to such taxpayer pursuant to § 6418.

Section 6418(f)(1)(A) defines the term “eligible credit” to mean each of the following: (i) so much of the credit for alternative fuel vehicle refueling property allowed under § 30C that, pursuant to § 30(d)(1), is treated as a credit listed in § 38(b); (ii) the renewable electricity production credit determined under § 45(a); (iii) the carbon oxide sequestration credit determined under § 45Q(a); (iv) the zero-emission nuclear power production credit determined under § 45U(a); (v) the clean hydrogen production credit determined under § 45V(a); (vi) the advanced manufacturing production credit

determined under § 45X(a); (vii) the clean electricity production credit determined under § 45Y(a); (viii) the clean fuel production credit determined under § 45Z(a); (ix) the energy credit determined under § 48; (x) the qualifying advanced energy project credit determined under § 48C; and (xi) the clean electricity investment credit determined under § 48E.

Under § 6418(f)(1)(B), in the case of any eligible credit described in § 6418(f)(1)(A)(ii), (iii), (v), or (vii), an election under § 6418(a) must be made (i) separately with respect to each facility for which such credit is determined, and (ii) for each taxable year during the 10-year period beginning on the date such facility was originally placed in service (or, in the case of the credit described in § 6418(f)(1)(A)(iii), for each year during the 12-year period beginning on the date the carbon capture equipment was originally placed in service at such facility).

Pursuant to § 6418(f)(1)(C), the term “eligible credit” does not include any business credit carryforward or carryback determined under § 39.

Section 6418(f)(2) defines the term “eligible taxpayer” to mean any taxpayer that is not described in § 6417(d)(1)(A).

Section 6418(g)(1) provides that, as a condition of, and prior to, any transfer of any portion of an eligible credit pursuant to § 6418(a), the Secretary may require such information (including, in such form or manner as is determined appropriate by the Secretary, such information returns) or registration as the Secretary deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments under § 6418.

Section 6418(g)(2)(A) provides that, in the case of any portion of an eligible credit

that is transferred to a transferee taxpayer pursuant to § 6418(a) that the Secretary determines constitutes an excessive credit transfer, the tax imposed on the transferee taxpayer by chapter 1 (regardless of whether such entity would otherwise be subject to tax under such chapter) for the taxable year in which such determination is made is increased by an amount equal to the sum of (i) the amount of such excessive credit transfer, plus (ii) an amount equal to 20 percent of the excessive credit transfer.

Pursuant to § 6418(g)(2)(B), § 6418(g)(2)(A)(ii) (that is, the 20 percent of excessive credit transfer increase) does not apply if the transferee taxpayer demonstrates to the satisfaction of the Secretary that the excessive credit transfer resulted from reasonable cause.

Section 6418(g)(2)(C) defines the term "excessive credit transfer" to mean, with respect to a facility or property for which an election is made under § 6418(a) for any taxable year, an amount equal to the excess of (i) the amount of the eligible credit claimed by the transferee taxpayer with respect to such facility or property for such taxable year, over (ii) the amount of such credit that, without application of § 6418, would be otherwise allowable under this title with respect to such facility or property for such taxable year.

Section 6418(g)(3) provides that, in the case of any election under § 6418(a) with respect to any portion of an eligible credit described in § 6418(f)(1)(A)(ix) through (xi), (A) § 50(c) will apply to the applicable investment credit property (as defined in § 50(a)(5)) as if such eligible credit was allowed to the eligible taxpayer, and (B) if, during any taxable year, the applicable investment credit property (as defined in § 50(a)(5)) is disposed of, or otherwise ceases to be investment credit property with

respect to the eligible taxpayer, before the close of the recapture period described in § 50(a)(1), (i) such eligible taxpayer must provide notice of such occurrence to the transferee taxpayer (in such form and manner as the Secretary prescribes), and (ii) the transferee taxpayer must provide notice of the recapture amount (as defined in § 50(c)(2)), if any, to the eligible taxpayer (in such form and manner as the Secretary prescribes).

Pursuant to § 6418(g)(4), § 6418 does not apply with respect to any amount of an eligible credit that is allowed pursuant to rules similar to the rules of § 46(c)(4) and (d) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

Section 13801(g) of the IRA provides that § 6418 applies to taxable years beginning after December 31, 2022.

SECTION 3. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments on any questions arising from §§ 6417 and 6418, as added by the IRA, that should be addressed in guidance. Commenters are encouraged to specify the issues on which guidance is needed most quickly as well as the most important issues on which guidance is needed. In addition to general comments, the Treasury Department and the IRS request comments that address the following specific questions:

.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?

(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?

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

(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?

(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?

(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?

(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?

(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)?

(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?

(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)?

(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?

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

(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?

(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?

(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?

(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?

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

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)? 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?

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

(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?

(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.

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

.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?

(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?

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

(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?

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

(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)?

(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?

(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?

(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)? What factors should the Treasury Department and the IRS consider as to when documentation or registration should be required? Should the IRS require the same documentation or registration for all eligible credits? If not, how should the information or registration differ between eligible credits? What other processes could be implemented by the IRS to prevent duplication, fraud, improper payments, or excessive credit transfers under § 6418?

(9) What, if any, guidance is needed to clarify the application of the excessive credit transfer provisions of § 6418? What factors should be taken into account in determining whether reasonable cause exists for purposes of § 6418(g)(2)(B)? What guidance is needed to calculate the excessive credit transfer amount?

(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)? 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 form and manner of this notice? 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?

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

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

SECTION 4. SUBMISSION OF COMMENTS

.01 Written comments should be submitted by Friday, November 4, 2022. Consideration will be given, however, to any written comment submitted after Friday, November 4, 2022, if such consideration will not delay the issuance of guidance. The subject line for the comments should include a reference to Notice 2022-50. Comments may be submitted in one of two ways:

(1) Electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2022-0050 in the search field on the regulations.gov homepage to find this notice and submit comments).

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

.02 All commenters are strongly encouraged to submit comments electronically. The Treasury Department and the IRS will publish for public availability any comment submitted electronically, or on paper, to its public docket on regulations.gov.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is the Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, call the energy security guidance contact number at (202) 317-5254 (not a toll-free call).