INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2024–25
June 17, 2024

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

ADMINISTRATIVE

T.D. 9997, page 1730.

Tax return preparers must use a preparer tax identification number (PTIN) on returns they prepare for compensation. The PTIN must be renewed annually. The IRS charges a user fee for each PTIN application or application for renewal to recover costs for issuing and renewing PTINs. The fee was established at $11 per application or application for renewal, in addition to an amount payable directly to a third-party contractor, by interim final rule (TD 9980) and cross-referencing notice of proposed rulemaking (REG-106203-23) published in the Federal Register on October 4, 2023. These final regulations adopt the $11 fee per application or application for renewal, in addition to an amount payable directly to a third-party contractor. TD 9997. Published May 15, 2024.

EMPLOYEE PLANS

Notice 2024-42, page 1732.

This notice specifies updated static mortality tables to be used for defined benefit pension plans under § 430(h)(3)(A) of the Code and section 303(h)(3)(A) of ERISA. This notice also specifies a mortality table for use in determining minimum present value under § 417(e)(3) of the Code and section 205(g)(3) of ERISA for distributions with annuity starting dates that occur during stability periods beginning in the 2025 calendar year.

INCOME TAX

Announcement 2024-25, page 1741.

This announcement provides the total amount of unallocated environmental justice solar and wind capacity limitation (Capacity Limitation) for the Low-Income Communities Bonus Credit Program (Program) under § 48(e) of the Internal Revenue Code and § 1.48(e)-1 of the Income Tax Regulations that has been carried over from the 2023 Program year to the 2024 Program year. Additionally, this announcement sets forth the distribution of the carried over Capacity Limitation among the facility categories, category 1 sub-reservations, and application options for the 2024 Program year.

Notice 2024-43, page 1737.

This Notice announces that the Treasury Department and the IRS intend to amend the regulations under sections 59A and 6038A to defer the applicability date of certain provisions of the regulations relating to the reporting of qualified derivative payments until taxable years beginning on or after January 1, 2027.

Notice 2024-44, page 1737.

This Notice announces that Treasury and the IRS intend to amend the section 871(m) regulations to delay the effective/applicability date of certain rules in those final regulations and extends the phase-in period provided in Notice 2022-37, 2022-37 I.R.B. 234, for certain provisions of the section 871(m) regulations.

REG-133850-13, page 1742.

These proposed regulations would remove the associated property rule and similar rules from the existing regulations under § 1.263A-11(e) on the interest capitalization requirements for improvements to designated property. In addition, these proposed regulations would update the definition of "improvement" under § 1.263A-8(d)(3) for purposes of applying those existing regulations. Lastly, these proposed regulations would clarify the application of other rules in those existing regulations in light of the proposed removal of the associated property rule.

Finding Lists begin on page ii.

Rev. Rul. 2024-12, page 1677.
Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term tax exempt rate. For purposes of sections 382, 1274, 1288, 7872 and other sections of the Code, tables set forth the rates for June 2024.

T.D. 9993, page 1679.
The final regulations describe the rules for the transfer of eligible credits in a taxable year, including definitions and specific rules for partnerships and S corporations to follow. In addition, the final regulations provide rules related to a required IRS pre-filing registration process. Temporary regulations that were previously issued to describe rules for the pre-filing registration process are removed. The pre-filing registration process is necessary to complete before making a transfer election for eligible credits.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

Part I

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 467, 468, 482, 483, 1288, 7520, 7872.)

Rev. Rul. 2024-12

This revenue ruling provides various prescribed rates for federal income tax purposes for June 2024 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2024-12 TABLE 1
Applicable Federal Rates (AFR) for June 2024
Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
		Short-term		
AFR	5.12%	5.06%	5.03%	5.01%
110% AFR	5.65%	5.57%	5.53%	5.51%
120% AFR	6.16%	6.07%	6.02%	5.99%
130% AFR	6.69%	6.58%	6.53%	6.49%
		Mid-term		
AFR	4.66%	4.61%	4.58%	4.57%
110% AFR	5.13%	5.07%	5.04%	5.02%
120% AFR	5.61%	5.53%	5.49%	5.47%
130% AFR	6.08%	5.99%	5.95%	5.92%
150% AFR	7.04%	6.92%	6.86%	6.82%
175% AFR	8.23%	8.07%	7.99%	7.94%
		Long-term		
AFR	4.79%	4.73%	4.70%	4.68%
110% AFR	5.27%	5.20%	5.17%	5.14%
120% AFR	5.76%	5.68%	5.64%	5.61%
130% AFR	6.24%	6.15%	6.10%	6.07%

REV. RUL. 2024-12 TABLE 2
Adjusted AFR for June 2024
Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	3.88%	3.84%	3.82%	3.81%
Mid-term adjusted AFR	3.53%	3.50%	3.48%	3.47%
Long-term adjusted AFR	3.62%	3.59%	3.57%	3.56%

REV. RUL. 2024-12 TABLE 3 Rates Under Section 382 for June 2024	
Adjusted federal long-term rate for the current month	3.62%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	3.62%

REV. RUL. 2024-12 TABLE 4 Appropriate Percentages Under Section 42(b)(1) for June 2024	
Note: Under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%.	
Appropriate percentage for the 70% present value low-income housing credit	8.10%
Appropriate percentage for the 30% present value low-income housing credit	3.47%

REV. RUL. 2024-12 TABLE 5 Rate Under Section 7520 for June 2024	
Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	5.6%

Section 42.—Low-Income Housing Credit

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 2024. See Rev. Rul. 2024-12, page 1677.

Section 280G.—Golden Parachute Payments

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 2024. See Rev. Rul. 2024-12, page 1677.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of June 2024. See Rev. Rul. 2024-12, page 1677.

Section 467.—Certain Payments for the Use of Property or Services

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 2024. See Rev. Rul. 2024-12, page 1677.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The applicable federal short-term rates are set forth for the month of June 2024. See Rev. Rul. 2024-12, page 1677.

Section 482.—Allocation of Income and Deductions Among Taxpayers

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 2024. See Rev. Rul. 2024-12, page 1677.

Section 483.—Interest on Certain Deferred Payments

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 2024. See Rev. Rul. 2024-12, page 1677.

Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 2024. See Rev. Rul. 2024-12, page 1677.

Section 7520.—Valuation Tables

The applicable federal mid-term rates are set forth for the month of June 2024. See Rev. Rul. 2024-12, page 1677.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 2024. See Rev. Rul. 2024-12, page 1677.

26 CFR 1.6418-1 through 1.6418-5; 26 CFR 1.706-4(e)(2)(ix) and (g)(2)

T.D. 9993

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Transfer of Certain Credits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations concerning the election under the Inflation Reduction Act of 2022 to transfer certain tax credits. The regulations describe rules for the election to transfer eligible credits in a taxable year, including definitions and special rules applicable to partnerships and S corporations and regarding excessive credit transfer or recapture events. In addition, the regulations describe rules related to a required IRS pre-filing registration process. These regulations affect eligible taxpayers that elect to transfer eligible credits in a taxable year and the transferee taxpayers to which eligible credits are transferred.

DATES: *Effective Date*: These regulations are effective on July 1, 2024.

Applicability Dates: For dates of applicability, *see* §§1.6418-1(r), 1.6418-2(g), 1.6418-3(f), 1.6418-4(d), and 1.6418-(5)(j).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, James Holmes at (202) 317-5114 and Jeremy Milton at (202) 317-5665 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

This document contains final regulations that amend the Income Tax Regulations (26 CFR part 1) to implement the statutory provisions of section 6418 of the Internal Revenue Code (Code), as enacted by section 13801(b) of Public Law 117-169, 136 Stat. 1818, 2009 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA).

Background

I. *Overview of section 6418*

Section 6418(a) provides that, in the case of an eligible taxpayer that elects to transfer to an unrelated transferee taxpayer all (or any portion specified in the election) of an eligible credit determined with respect to the eligible taxpayer for any taxable year, 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). Under section 6418(b), any amount of consideration paid by the transferee taxpayer to the eligible taxpayer for the transfer of such credit (or such portion thereof) is (1) required to be paid in cash, (2) not included in the eligible taxpayer's gross income, and (3) not allowed as a deduction to the transferee taxpayer under any provision of the Code.

Section 6418(f)(2) defines the term "eligible taxpayer" to mean any taxpayer that is not described in section 6417(d)(1)(A) of the Code (that is, any taxpayer that is not an "applicable entity" by reason of section 6417(d)(1)(A)).

Section 6418(f)(1)(A) defines the term "eligible credit" to mean each of the following 11 credits:

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

(2) The renewable electricity production credit determined under section 45(a) of the Code (section 45 credit);

(3) The credit for carbon oxide sequestration determined under section 45Q(a) of the Code (section 45Q credit);

(4) The zero-emission nuclear power production credit determined under section 45U(a) of the Code (section 45U credit);

(5) The clean hydrogen production credit determined under section 45V(a) of the Code (section 45V credit);

(6) The advanced manufacturing production credit determined under section 45X(a) of the Code (section 45X credit);

(7) The clean electricity production credit determined under section 45Y(a) of the Code (section 45Y credit);

(8) The clean fuel production credit determined under section 45Z(a) of the Code (section 45Z credit);

(9) The energy credit determined under section 48 of the Code (section 48 credit);

(10) The qualifying advanced energy project credit determined under section 48C of the Code (section 48C credit); and

(11) The clean electricity investment credit determined under section 48E of the Code (section 48E credit).

Under section 6418(f)(1)(B), an election to transfer a section 45 credit, section 45Q credit, section 45V credit, or section 45Y credit is made separately with respect to each facility and for each taxable year during the credit period of the respective credit. Pursuant to section 6418(f)(1)(C) an eligible credit does not include any business credit carryforward or business credit carryback. Section 6418(g)(4) provides that an eligible taxpayer may not make an election to transfer credits for progress expenditures.

Pursuant to section 6418(e)(1), an eligible taxpayer must make an election to transfer any portion of an eligible credit on its original tax return for the taxable year for which the credit is determined by the due date of such return (including extensions of time) but such an election cannot be made earlier than 180 days after the date of the enactment of section 6418 by section 13801(b) of the IRA (that is, in no event earlier than 180 days after August 16, 2022, which is February 13, 2023). An eligible taxpayer cannot revoke an election to transfer any portion of a credit. Pursuant to section 6418(d), a transferee taxpayer takes the transferred eligible credit into account in its first taxable year ending with, or after, the eligible taxpayer's taxable year with respect to which the transferred eligible credit was determined. Section 6418(e)(2) provides that a transferee taxpayer may not make any additional transfers of a transferred eligible credit under section 6418.

II. *Section 6418 rules for partnerships and S corporations*

Pursuant to section 6418(c), in the case of a partnership or an S corporation (as defined in section 1361(a)) that directly holds a facility or property for which an eligible credit is determined: (1) the election to transfer an eligible credit is made at the entity level and no election by any partner or shareholder is allowed with respect to such facility or property; (2) any amount received as consideration for a transferred eligible credit is treated as tax exempt income for purposes of sections 705 and 1366 of the Code; and (3) a partner's distributive share of the tax exempt income is based on the partner's distributive share of the transferred eligible credit.

III. *Special rules*

Section 6418(g) provides special rules regarding the elective transfer of certain credits. Section 6418(g)(1) provides that, as a condition of, and prior to, any transfer of any portion of an eligible credit pursuant to section 6418(a), the Secretary of the Treasury or her delegate (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 section 6418.

Pursuant to section 6418(g)(2), if the Secretary determines that there is an excessive credit transfer to a transferee taxpayer, then the tax imposed on the transferee taxpayer by chapter 1 of the Code (chapter 1), regardless of whether such entity would otherwise be subject to tax under chapter 1, is increased in the year of such determination by the amount of the excessive credit transfer plus 20 percent of such excessive credit transfer. The additional amount of 20 percent of the excessive credit transfer does not apply if the transferee taxpayer demonstrates to the satisfaction of the Secretary that the excessive credit transfer resulted from reasonable cause.

An excessive credit transfer is defined in section 6418(g)(2)(C) as, with respect to a facility or property for which an election is made under section 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 the eligible credit that, without application of section 6418, would be otherwise allowable under the Code with respect to such facility or property for such taxable year.

Pursuant to section 6418(g)(3), if a section 48 credit, section 48C credit, or section 48E credit is transferred, the basis reduction rules of section 50(c) of the Code apply to the applicable investment credit property as if the transferred eligible credit was allowed to the eligible taxpayer. Further, if 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 as described in section 50(a)(1), then certain notification requirements apply. The eligible taxpayer must notify the transferee taxpayer of a recapture event in such form and manner as the Secretary may provide. In addition, the transferee taxpayer must notify the eligible taxpayer of the recapture amount, if any, in such form and manner as the Secretary may provide.

Section 6418(h) directs the Secretary to issue regulations or other guidance as may be necessary to carry out the purposes of section 6418, including guidance providing rules for determining a partner's distributive share of the tax exempt income described in section 6418(c)(1).

IV. *Notice 2022-50*

On October 24, 2022, the Department of the Treasury (Treasury Department) and the IRS published Notice 2022-50, 2022-43 I.R.B. 325, to, among other things, request feedback from the public on potential issues with respect to the transfer election provisions under section 6418 that may require guidance. Stakeholders submitted more than 200 letters in response to Notice 2022-50.

V. *Proposed and Temporary Regulations*

On June 21, 2023, informed by the stakeholder feedback received in response to Notice 2022-50, the Treasury Department and the IRS published proposed regulations under section 6418 (REG-101610-23) in the *Federal Register* (88 FR 40496) to provide guidance on transfer elections (proposed regulations). The proposed regulations included proposed §1.6418-4, which contained proposed rules identical to the text of temporary regulations (TD 9975) at §1.6418-4T. Those temporary regulations also were published on June 21, 2023, in the *Federal Register* (88 FR 40086) to provide guidance on the mandatory information and registration requirements for transfer elections. The preamble to the proposed regulations discusses stakeholder feedback received in response to Notice 2022-50 and explains in greater detail the provisions of the proposed regulations.

VI. *6417 Final Regulations*

On March 11, 2024, the Treasury Department and the IRS published final regulations under section 6417 (TD 9988) in the *Federal Register* (89 FR 17546) to provide guidance on the section 6417 elective payment election (section 6417 final regulations). Among other things, the section 6417 final regulations provide guidance on the definition of applicable entity under section 6417(d)(1)(A).

Summary of Comments and Explanation of Revisions

This Summary of Comments and Explanation of Revisions summarizes comments submitted in response to the proposed regulations and the revisions to the proposed regulations reflected in these final regulations. The Treasury Department and the IRS received more than 80 written comments in response to the proposed regulations. The comments are available for public inspection at https://www.regulations.gov or upon request. A hearing was conducted in person and telephonically on August 23, 2023, during which 10 presenters provided testimony. After full consideration of the comments received and testimony provided, these final regulations adopt the proposed regulations with modifications in response to such comments and testimony as

described in this Summary of Comments and Explanation of Revisions.

Comments merely summarizing or interpreting the proposed regulations, recommending statutory revisions to section 6418 or other statutes, or addressing issues that are outside the scope of this rulemaking, such as the calculation of eligible credits (including any bonus credit amounts) or recommended changes to IRS forms, are beyond the scope of these regulations and are generally not described in this preamble.

I. *General Rule and Definitions*

Proposed §1.6418-1 would have described general rules related to the transfer of eligible credits. Proposed §1.6418-1(a) would have provided an overview of a transfer of eligible credits, and paragraphs (b) through (q) would have provided definitions of terms under the section 6418 regulations. Commenters addressed certain aspects of the proposed definitions, as described in this part I. To the extent a definition in §1.6418-1(b) through (q) is not addressed in this part I and no comment addressed it, such definition is adopted by this Treasury Decision as proposed.

A. *Eligible Taxpayer*

Section 6418(f)(2) defines the term "eligible taxpayer" to mean any taxpayer that is not described in section 6417(d)(1)(A). Proposed §1.6418-1(b) would have clarified that the term "eligible taxpayer" means any taxpayer (as defined in section 7701(a)(14) of the Code), other than one described in section 6417(d)(1)(A) and §1.6417-1(b). The intended cite in the proposed regulations was to §1.6417-1(c), rather than §1.6417-1(b). As the preamble to the proposed regulations noted, the term "taxpayer" in section 7701(a)(14) means "any person subject to any internal revenue tax" and generally includes entities that have a United States employment tax or excise tax obligation even if they do not have a United States income tax obligation.

A commenter recommended that an eligible taxpayer also include any person that does not have a United States internal revenue tax obligation, such as a taxpayer that is only subject to the taxes of a territory of the United States. Broadening the definition of eligible taxpayer in section 6418(f)(2) is beyond the definition of taxpayer in section 7701(a)(14) and is not supported by section 6418. Section 6418(f)(2) defines eligible taxpayer as "any taxpayer" not described in section 6417(d)(1)(A). Section 7701(a)(14) provides the definition of taxpayer for purposes of the Code. Pursuant to section 7701(a), the definition under section 7701(a)(14) applies to all Code provisions unless a different definition is otherwise distinctly expressed or the definition in section 7701(a)(14) is manifestly incompatible with the intent of section 6418. Under section 6418, there is no distinct expression that the term "taxpayer" should include those not subject to any United States tax obligations, and there is no indication that the definition in section 7701(a)(14) is incompatible with the intent of section 6418. Thus, it is appropriate to use the definition of taxpayer in section 7701(a)(14) for purposes of defining eligible taxpayer for purposes of section 6418, and these regulations finalize the definition of eligible taxpayer as proposed.

A commenter requested a clarification that a partnership wholly or partially owned by applicable entities described in section 6417(d)(1)(A) qualifies as an eligible taxpayer under section 6418(f)(2). The Treasury Department and the IRS agree that if such a partnership has not elected to be treated as an applicable entity with respect to the section 45Q credit, section 45V credit, or section 45X credit, it can otherwise qualify as an eligible taxpayer. Section 6418(f)(2) defines eligible taxpayer as a taxpayer other than one described in section 6417(d)(1)(A). Under section 6417 and the section 6417 final regulations, a partnership (regardless of the tax status of its partners) can only be treated as an applicable entity with respect to the section 45Q credit, section 45V credit, or section 45X credit and only if the partnership makes an elective payment election. Further, section 7701(a)(14) defines the term "taxpayer" as any person subject to any internal revenue tax. The term "person" is defined in section 7701(a)(1) and includes a partnership. Consequently, if a partnership has not elected to be treated as an applicable entity with respect to the section 45Q credit, section 45V credit, or section 45X credit, it can qualify as an eligible taxpayer.

The same commenter also sought to clarify that a partnership that has one or more applicable entity partners described in section 6417(d)(1)(A) is entitled to transfer the entirety of the eligible credits determined with respect to a property or facility held directly by the partnership without a reduction of the eligible credits allocable to the applicable entity partners. The Treasury Department and the IRS agree that such a partnership is entitled to transfer the entirety of the eligible credits determined with respect to a property or facility held directly by the partnership; however, section 50(b)(3) and (4) may limit the amount of eligible investment tax credits (ITCs) determined with respect to any tax-exempt or government entity partner.

B. *Eligible credit property*

Section 6418(a) states that an eligible taxpayer can elect to transfer all (or any portion specified in the election) of an eligible credit determined with respect to such eligible taxpayer. Proposed §1.6418-1(a) would have provided that an eligible taxpayer may make a transfer election to transfer any specified portion of an eligible credit determined with respect to any eligible credit property of the eligible taxpayer for any taxable year. Proposed §1.6418-1(d) would have defined the term "eligible credit property" as the unit of property of an eligible taxpayer with respect to which the amount of an eligible credit is determined. Proposed §1.6418-1(d)(1) through (11) would have described the unit of property that is considered an eligible credit property for each of the 11 eligible credits.

A commenter recommended that the final regulations use the same concept of a unit of property as is used for the various underlying eligible credit provisions (for example, energy property or energy project for purposes of section 48, and qualified facility for purposes of section 45). The proposed regulations referenced the statutory rules for each eligible credit to determine the appropriate unit of measurement for section 6418 registration and election and provided additional infor-

mation relevant for each eligible credit. For example, proposed §1.6418-1(d)(2) would have provided that, in the case of a section 45 credit, the relevant unit of property is a qualified facility described in section 45(d). Likewise, proposed §1.6418-1(d)(9) would have provided that, in the case of a section 48 credit, the relevant unit of property is an energy property described in section 48, or, at the option of the taxpayer, an energy project described in section 48(a)(9)(A)(ii) and defined in guidance. The proposed regulations, without modification, are consistent with this comment. Thus, these final regulations, consistent with the proposed regulations, base the definition of an eligible credit property on the underlying Code provisions for the eligible credits and no further changes are necessary.

Another commenter asked for clarification that section 48 credits determined with respect to energy property qualifying as "energy storage technology" under section 48(c)(6)(A) would be eligible credits that could be transferred under section 6418. The preamble to the proposed regulations provided in part that energy property is comprised of all components of property necessary to generate electricity up to the point of transmission or distribution. The commenter raised that "energy storage technology" is specifically designated as "energy property" under section 48(a)(3)(A)(ix), but unlike other forms of "energy property," it does not generate electricity. The Treasury Department and the IRS confirm that, to the extent a section 48 credit is determined with respect to energy property held by an eligible taxpayer, whether the credit is with respect to energy storage technology or other energy property, such credit is an eligible credit that can be transferred under section 6418 by the eligible taxpayer.

Other commenters recommended revising the definition of eligible credit property for purposes of section 45Q. Proposed §1.6418-1(d)(3) would have provided that an eligible credit is determined, for purposes of section 45Q, based on a *single process train of carbon capture equipment* described in §1.45Q-2(c)(3). Commenters recommended that, for the section 45Q credit, the definition of eligible credit property be a component of a single process train for the capture, disposal, utilization, or injection of qualified carbon oxide, rather than a single process train of carbon capture equipment described in §1.45Q-2(c)(3). Other commenters urged that the final regulations reconcile the proposed rules with Rev. Rul. 2021-13, 2021-30 I.R.B. 152, under which a taxpayer need own only one component in a single process train to be the person to whom the section 45Q credit is attributable to (assuming the taxpayer also meets the requirements of section 45Q(a), as applicable). The Treasury Department and the IRS agree that guidance under section 45Q does not require a taxpayer to own every component of a single process train and have revised the language under §1.6418-1(d)(3) (defining eligible credit property with respect to the section 45Q credit) to state "[i]n the case of a section 45Q credit, a component of carbon capture equipment within a *single process train* described in §1.45Q-2(c)(3)."

C. *Paid in Cash*

Section 6418(b)(1) requires that any amount paid by a transferee taxpayer to an eligible taxpayer as consideration for a transfer be paid in cash. Proposed §1.6418-1(f) would have defined the term "paid in cash" to mean a payment in United States dollars that (1) is made by cash, check, cashier's check, money order, wire transfer, automated clearing house (ACH) transfer, or other bank transfer of immediately available funds; (2) is made within the period beginning on the first day of the eligible taxpayer's taxable year during which a specified credit portion is determined and ending on the due date for completing a transfer election statement (as provided in proposed §1.6418-2(b)(5)(iii)); and (3) may include a transferee taxpayer's contractual commitment to purchase eligible credits with United States dollars in advance of the date a specified credit portion is transferred to such transferee taxpayer if all payment of United States dollars are made in a manner described in proposed §1.6418-1(f)(1) and during the time period in proposed §1.6418-1(f)(2).

Several commenters recommended revising the proposed paid in cash rule so that advanced payments could be made for eligible credits that will be determined in later taxable years. For example, commenters specifically requested that the final regulations allow upfront payments for transfers of eligible credits that are production tax credits (PTCs) that are expected to be determined in a future taxable year. Commenters suggested that such a rule would more closely align the timing of payments for eligible credits that are PTCs with the timing of payments for eligible credits that are ITCs. Commenters raised that upfront payments for PTCs determined in future taxable years are standard in tax equity transactions and that allowing for upfront payments for future PTCs under section 6418 would more closely align transferability with traditional tax equity structures. Another commenter asked for clarification that the use of certain loan structures would not violate the paid in cash rule. Specifically, the commenter requested confirmation that loans, including security arrangements, made on arm's length terms by a transferee taxpayer or a third party to an eligible taxpayer would not be treated as an upfront payment under an eligible credit purchase and sale agreement or otherwise recharacterized.

Allowing advanced payments prior to the taxable year an eligible credit is determined may more closely align the section 6418 regulations with current tax equity transactions. However, proposed §1.6418-1(f)(2) would have specifically provided a timing safe harbor that is intended to provide certainty as to the treatment of payments of United States dollars made during the prescribed time period. Allowing advanced payments would also raise several complex legal and administrative issues, such as whether an excessive credit transfer has occurred or if the eligible taxpayer has gross income if prepaid eligible credits were not transferred in a later tax year. No commenter addressed the administrative and legal challenges of allowing for advanced payments. Based on these reasons, the Treasury Department and the IRS have adopted the paid in cash definition of the proposed regulations without change.

Further, the Treasury Department and the IRS note that there is no prohibition on either a transferee taxpayer or another third-party loaning funds to an eligible taxpayer, including loans secured by an

eligible credit purchase and sale agreement, provided such loans are at arm's length and treated as loans for Federal tax purposes. Whether such loans are treated as upfront payments for eligible credits or otherwise recharacterized is an analysis based on the facts and circumstances of the loan and is otherwise outside the scope of these final regulations.

D. *Specified Credit Portion*

Section 6418(a) provides that an eligible taxpayer can elect to transfer all (or any portion specified in the election) of an eligible credit determined with respect to such taxpayer. Proposed §1.6418-1(h) would have defined the term "specified credit portion" to mean a proportionate share (including all) of an eligible credit determined with respect to a single eligible credit property of the eligible taxpayer that is specified in a transfer election. The proposed regulations further provided that a specified credit portion of an eligible credit reflects a proportionate share of each bonus credit amount that is taken into account in calculating the entire amount of eligible credit determined with respect to a single eligible credit property. Thus, under the proposed regulations, an eligible taxpayer would not be permitted to sever bonus credit amounts taken into account to determine an eligible credit from the base eligible credit determined with respect to the relevant eligible credit property and separately transfer any bonus credit amount or base eligible credit amount (horizontal credit transfer). Instead, an eligible taxpayer would be permitted to transfer the entire eligible credit (or portion of the entire eligible credit, which would include a proportionate amount of any component bonus credit amounts taken into account to determine the entire eligible credit) determined with respect to a single eligible credit property (vertical credit transfer).

Several commenters recommended that the final regulations allow for horizontal credit transfers and that the term "portion" in section 6418(a) should be broadly construed. As support, commenters contended that horizontal credit transfers would increase flexibility and marketability of eligible credits and allow eligible taxpayers to better allocate credit risk among various transferee taxpayers. Commenters also asserted that requiring vertical credit transfers favors large investors with sufficient resources for diligence, finance, and risk tolerance. One commenter stated that requiring vertical credit transfers will increase the burden of tax administration because auditing a transferee taxpayer's portion of a vertical credit transfer would require a larger audit team and auditors conversant with the rules applicable to the underlying eligible credits and the rules applicable to the bonus credit amounts. Another commenter suggested the final regulations allow for eligible taxpayers to elect either a vertical or a horizontal credit transfer for each specified credit portion.

Each eligible credit determined with respect to a single eligible credit property is a single eligible credit that cannot be separated into a base credit amount and bonus credit amounts for purposes of making transfer elections. The language in section 6418(a) that refers to a portion specified in the election is better understood to refer to a percentage of a single overall eligible credit amount, rather than to a particular "layer" of credit. Further, while commenters suggested allowing horizontal transfers of eligible credits, none of the commenters fully addressed the potential administrative issues with the approach. For example, allowing horizontal credit transfers would add another layer of compliance due to the need for taxpayers and the IRS to track all base and bonus credit amounts separately. Moreover, a bonus credit amount is not itself an eligible credit but only an amount taken into account to determine the single eligible credit with respect to an eligible credit property. In this regard, the pre-filing registration portal does not allow for registration numbers associated only with bonus credit amounts. Thus, these final regulations adopt the definition of specified credit portion in proposed §1.6418-1(h) without change.

II. *Rules for Making Transfer Elections*

A. *In general*

Proposed §1.6418-2 would have provided general rules for an eligible taxpayer to make a transfer election under section 6418 with respect to any eligible credit determined with respect to such taxpayer. Proposed §1.6418-2(a)(1) would have provided that an eligible taxpayer can make an election as provided in proposed §1.6418-2. Proposed §1.6418-2(a)(2) through (4) would have provided rules regarding making multiple transfer elections, rules for determining the eligible taxpayer in certain ownership situations, and rules describing circumstances in which no transfer election is allowed. Commenters addressed aspects of these proposed rules, as discussed in this part II of the Summary of Comments and Explanation of Revisions. These final regulations generally adopt the rules as proposed, with the modifications described in this part II of the Summary of Comments and Explanation of Revisions.

Proposed §1.6418-2(a)(2) would have provided that an eligible taxpayer may make multiple transfer elections to transfer one or more specified credit portion(s) to multiple transferee taxpayers, provided that the aggregate amount of specified credit portions transferred with respect to any single eligible credit property does not exceed the amount of the eligible credit determined with respect to the eligible credit property. A commenter asked for clarification of whether an eligible taxpayer may transfer all or a portion of an eligible credit to more than one taxpayer. The Treasury Department and the IRS confirm that the proposed regulations, as drafted, would have allowed an eligible taxpayer to make multiple transfer elections of specified credit portions of an eligible credit determined with respect to an eligible credit property subject to the limitation that such portions, in the aggregate, cannot exceed the amount of the determined eligible credit. Because proposed §1.6418-2(a)(2) would have already provided this result, a revision to the proposed rules is unnecessary, and these final regulations adopt the proposed rule without change.

Proposed §1.6418-2(a)(3) would have provided rules for transfer elections in certain ownership situations, specifically with respect to ownership through a disregarded entity, as an undivided ownership interest, as a member of a consolidated group (as defined in §1.1502-1), and for partnerships and S corporations. One commenter asked for clarity as to whether

a grantor trust is treated as a disregarded entity in determining ownership of an eligible credit property, and, if a grantor trust directly holds an eligible credit property, which party registers the property and makes a transfer election. The Treasury Department and the IRS agree that these final regulations should provide rules for transfer elections if eligible property is held directly by a grantor trust. Accordingly, the final regulations add §1.6418-2(a)(3)(v) to provide that if an eligible taxpayer is a grantor or any other person that is treated as the owner of any portion of a trust as described in section 671 of the Code, then the eligible taxpayer may make a transfer election in the manner provided in §1.6418-2 for any eligible credits determined with respect to eligible credit property held directly by the portion of the trust that the eligible taxpayer is treated as owning under section 671.

Proposed §1.6418-2(a)(4) would have described three circumstances in which no transfer election can be made. First, consistent with section 6418(g)(4), the proposed regulations would have precluded any election with respect to any amount of an eligible credit determined based on progress expenditures that is allowed pursuant to rules similar to the rules of section 46(c)(4) and (d) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990). Second, consistent with section 6418(b)(1), proposed §1.6418-2(a)(4)(ii) would have precluded a transfer election if an eligible taxpayer receives any amount not paid in cash (as defined in proposed §1.6418-1(f)) as consideration in connection with the transfer of a specified credit portion. Third, consistent with section 6418(a), proposed §1.6418-2(a)(4)(iii) would have provided that no election is allowed if eligible credits are not determined with respect to an eligible taxpayer. As a result, proposed §1.6418-2(a)(4)(iii) would have provided as an example that a section 45Q credit allowable to an eligible taxpayer because of an election under section 45Q(f)(3)(B), or a section 48 credit allowable to an eligible taxpayer because of an election made under section 50(d)(5) and §1.48-4, although described in proposed §1.6418-1(c)(2), is not an eligible credit that can be transferred because such credit is not determined with respect to the eligible taxpayer.

A commenter suggested that the final regulations allow transfers of section 48 ITCs before the taxable year in which the energy property is placed in service. While not explicitly referenced, the commenter appears to be requesting that progress expenditures (under section 48(b)) be permitted to be transferred under section 6418. Section 6418(g)(4) and proposed §1.6418-2(a)(4)(i) both directly prohibit making a transfer election if an eligible credit is related to progress expenditures. Based on this, these final regulations adopt the rule in proposed §1.6418-2(a)(4)(i) without change.

Multiple commenters advocated that the proposed regulations be modified to permit a taxpayer that is allowed a section 45Q credit due to an election under section 45Q(f)(3)(B) to make a transfer election with respect to the section 45Q credit. Commenters generally suggested that the proposed rule is incorrect because (1) ownership of the single process train is not necessary for credit determination, and (2) a taxpayer claiming the credit and making an election under section 45Q(f)(3)(B) does in fact determine the credit because of their activities. Commenters relied in part on the language in proposed §1.6418-2(d)(1), which states that "[f]or an eligible credit to be determined with respect to an eligible taxpayer, the eligible taxpayer must own the underlying eligible credit property or, *if ownership is not required, otherwise conduct the activities giving rise to the underlying eligible credit* [emphasis added]."

A taxpayer that is allowed a section 45Q credit as a result of an election under section 45Q(f)(3)(B) is not the taxpayer with respect to which the section 45Q credit is determined. Under section 45Q(f)(3)(A)(ii), a section 45Q credit is attributable to the person that owns the carbon capture equipment *and* physically or contractually ensures the capture and disposal, utilization, or use as a tertiary injectant of such qualified carbon oxide. Further, under §1.45Q-1(h)(3), it is the taxpayer described in §1.45Q-1(h)(1) to whom the section 45Q credit is attributable (electing taxpayer), that may elect to allow the person that enters into a contract with the electing taxpayer to dispose of the qualified carbon oxide (disposer), utilize the qualified carbon oxide (utilizer), or use the qualified carbon oxide as a tertiary injectant to claim the credit (section 45Q(f)(3)(B) election). Contrary to commenters' assertions, it is not sufficient for a party to only conduct carbon capture activities to be eligible for a section 45Q credit. Further, the ownership requirement in the section 45Q statute and regulations means the commenters' suggestions that the language in proposed §1.6418-2(d)(1) allows a section 45Q credit to be determined with respect to an eligible taxpayer if the party "otherwise conducts the activities giving rise to the underlying applicable credit" is misplaced. That language in proposed §1.6418-2(d)(1) applies only in the case of an eligible credit for which ownership of property is not required, which is not the case with respect to a section 45Q credit. Thus, these final regulations clarify in §1.6418-2(d)(1) that the only eligible credit for which ownership is not required is the section 45X credit. While the activities of a contractor may be necessary for a section 45Q credit to be determined, ultimately, the credit is attributable to and determined by the person that both owns the equipment and physically or contractually ensures the capture and disposal, injection, or utilization of such qualified carbon oxide. Thus, these final regulations adopt the proposed regulations without change on this issue.

A commenter asked that separate, unrelated taxpayers to which section 45Q credits and section 45Z credits are determined with respect to the same qualified facility each be permitted to make a separate transfer election with respect the section 45Q credits or section 45Z credits determined with respect to such taxpayer. Specifically, the commenter requested clarification as to who is an eligible taxpayer if more than one eligible credit (for example, a section 45Q credit and a section 45Z credit) is determined with respect to two unrelated, eligible taxpayers for units of property or a facility within the same general geographic location. The commenter stated that the qualified facility definition under section 45Z(d)(4) should not preclude an owner

and producer taxpayer from making a transfer election, even if an unrelated taxpayer who is eligible for the section 45Q credit makes a transfer election in the same taxable year.

It is beyond the scope of these final regulations to address underlying requirements of eligible credits, such as the requirements of sections 45Q and 45Z, and who may be eligible for those credits. The Treasury Department and the IRS will consider this comment in connection with drafting additional guidance under sections 45Q and 45Z.

Several commenters recommended that the final regulations allow transfer elections following a lease passthrough election under the rules of section 50(d)(5), both generally and with specific additional rules (such as, revising §1.48-4 to require a lessor to commit to not making an election to transfer under section 6418 and requiring the lessee to complete pre-filing registration). One commenter stated that the proposed regulations are inconsistent with existing tax law, suggesting that the original inclusion of the lease passthrough election obviated the need to engage in more complicated sale-leaseback transactions in order to calculate the credit based on fair market value of a property rather than on its cost. The commenter posited that the proposed regulations would upend that balance by putting sale-leaseback transactions on unequal footing with lease passthrough structures in the context of a contemplated transfer of eligible credits, which the commenter thought was precisely the outcome that Congress sought to avoid in 1962 at the time of the introduction of the ITC.

There is a distinction between sale-leaseback transactions under section 50(d)(4) and lease passthrough elections under former section 48(d) (pursuant to section 50(d)(5)). In the latter case, it is the owner or lessor that is the party with respect to which the credit is determined, and not the lessee that is allowed to claim the credit as a result of the election. Therefore, the lessee does not meet the requirement of section 6418(a), which requires the eligible credit to be determined with respect to the eligible taxpayer making the transfer election. For the reasons stated, these final regulations adopt the proposed rule without change.

B. *Manner and due date of making a transfer election*

1. In general

Proposed §1.6418-2(b)(1) would have provided that an eligible taxpayer must make a transfer election to transfer a specified credit portion on the basis of a single eligible credit property. As an example, the proposed regulations would have provided that an eligible taxpayer that determines eligible credits with respect to two eligible credit properties would need to make a separate transfer election with respect to any specified credit portion determined with respect to each eligible credit property. Because no comments were received on proposed §1.6418-2(b)(1), these final regulations adopt this provision without change. Some commenters requested that grouping of eligible credit properties be permitted for purposes of registration and making a transfer election. These comments are discussed in part IV of this Summary of Comments and Explanation of Revisions.

2. Special rules for certain eligible credits

Section 6418(f)(1)(B) provides that, in the case of any eligible credit under sections 45, 45Q, 45V, or 45Y, an election is made (1) separately with respect to each facility for which a credit is determined, and (2) 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 a section 45Q credit, for each taxable year during the 12-year period beginning on the date the single process train of carbon capture equipment was originally placed in service). Proposed §1.6418-2(b)(2) would have provided rules consistent with section 6418(f)(1)(B). Because no comments were received on proposed §1.6418-2(b)(2), these final regulations adopt this provision without change.

3. Manner of making a valid transfer election

Proposed §1.6418-2(b)(3) would have provided rules for making a valid transfer election and included that a transfer election is made based on each specified credit portion with respect to a single eligible credit property. To make a valid transfer election, an eligible taxpayer as part of filing an annual tax return (or a return for a short year within the meaning of section 443 of the Code), must include the following: (1) a properly completed relevant source credit form for the eligible credit for the taxable year that the eligible credit was determined; (2) a properly completed Form 3800, General Business Credit (or its successor); (3) a schedule attached to the Form 3800 (or its successor) showing the amount of eligible credit transferred for each eligible credit property, except as otherwise provided in guidance; (4) a transfer election statement as described in proposed §1.6418-2(b)(5); and (5) any other information related to the election specified in guidance. While comments were received on individual aspects of this proposed rule as described later in this Summary of Comments and Explanation of Revisions, there were no comments received on proposed §1.6418-2(b)(3), and so these final regulations adopt the proposed rule without substantive change. However, the final regulations clarify that the registration number received during the required pre-filing registration (as described in proposed §1.6418-4) related to an eligible credit property with respect to which a transferred eligible credit was determined must be included on a properly completed relevant credit source form.

4. Due date and original return requirement of a transfer election

Section 6418(e)(1) states that an election under section 6418(a) to transfer any portion of an eligible credit must be made not later than the due date (including extensions of time) for the return of tax for the taxable year for which the credit is determined, but in no event earlier than 180 days after the date of the enactment of this section. Proposed §1.6418-2(b)(4) would have provided that a transfer election must be made on an original return not later than the due date (including extensions) for the original return of the eligible taxpayer for the taxable year for which the eligible credit is determined. The proposed regulations stated that no transfer election could be made or revised on an amended return or by filing an administrative

adjustment request under section 6227 of the Code (AAR). The preamble to the proposed regulations clarified that an original return includes a superseding return filed on or before the due date (including extensions). The proposed regulations also did not provide for relief under §§301.9100-1 through 301.9100-3 (9100 relief) for a late transfer election.

Some commenters asked that a transfer election be permitted on an amended return or AAR and/or that a taxpayer be permitted an extension of time under the 9100 relief procedures to make a late election. Commenters raised concerns that the amount of information required to obtain a registration number and file a transfer election is substantial, and that given there are bound to be omissions and misstatements, an eligible taxpayer should have the ability to cure errors or omissions on an amended return or pursuant to an AAR. Further, commenters urged that 9100 relief should be available in situations in which the parties acted in good faith with respect to a transfer election.

The section 6418 transfer election process is novel and eligible taxpayers may experience inadvertent errors or omissions. The statutory text of section 6418(e), however, provides that a transfer election must not be made "later than the due date (including extensions of time) for the return of tax for the taxable year for which the credit is determined." The preamble to the proposed regulations provided that eligible taxpayers could make a transfer election on a superseding return up until the extended due date for the return.

Neither the Code nor regulations define a superseding return, but administrative IRS guidance provides that a superseding return is a return filed subsequent to the originally-filed return but before the due date for filing the return (including extensions). For example, if an eligible taxpayer subject to an automatic 6-month extension files an original return on the due date (excluding extensions) and then files a subsequent return within the automatic extension period, the subsequent return would generally be considered a superseding return. Unlike a superseding return, an amended return is a return filed after the taxpayer filed an original return and after the due date for filing the return (including extensions).

Accordingly, these final regulations modify proposed §1.6418-2(b)(4) by clarifying that a transfer election filed by an electing taxpayer may be made or revised on a superseding return, but not on an amended return or AAR. These final regulations further clarify that a transfer election cannot be made for the first time on an amended return, withdrawn on an amended return, or made or withdrawn by filing an AAR, although a numerical error with respect to a properly claimed transfer election may be corrected on an amended return or by filing an AAR if necessary. This clarification is intended to address situations in which an eligible taxpayer intended to make a transfer election but made a reporting error with respect to an element of a valid election (for example, miscalculating the amount of the eligible credit on the original return or making a typographical error in the process of inputting a registration number), and to allow the eligible taxpayer to correct any errors that would result in a denial of the transfer election. The provision cannot be used to revoke a transfer election made on an original return or to make a transfer election for the first time on an amended return. In addition, the eligible taxpayer's original return (including a superseding return), which must be signed under penalties of perjury, must contain all of the information, including a registration number, required by these final regulations. In order to correct an error on an amended return or AAR, an eligible taxpayer must have made an error in the information included on the original return such that there is a substantive item to correct; a taxpayer cannot correct a blank item or an item that is described as being "available upon request."

The Treasury Department and the IRS note that the rules described in this part II.B.4 of the Summary of Comments and Explanation of Revisions, regarding the original return requirement, apply to transfer elections made on an originally filed return of the eligible taxpayer. A transferee taxpayer, however, may take a transferred specified credit portion into account on a properly filed amended return or AAR, or correct the amount of the transferred specified credit portion on a properly filed amended return or AAR to, for example, avoid a determination by the IRS that the transferee taxpayer is subject to an excessive credit transfer under §1.6418-5(a). Excessive credit transfers are discussed in more detail in part V.A of this Summary of Comments and Explanation of Revisions.

An eligible taxpayer may file an amended return or an AAR to adjust the amount of the eligible credit following a timely and properly filed transfer election. Such an adjustment may affect the information that was reported on the transfer election statement under §1.6418-2(b)(5)(ii), for example, the total amount of the credit determined with respect to the eligible credit property and any corresponding specified credit portion being transferred. Some commenters suggested that the final regulations provide clarity for a taxpayer that may need to correct the amount of an eligible credit reported on its tax return. The final regulations modify proposed §1.6418-2(b)(4) to provide that an eligible taxpayer may, after making a timely and complete transfer election, file an amended return or AAR, if applicable, to adjust the amount of the eligible credit reported on the eligible taxpayer's original return if the amount of the eligible credit was incorrectly reported on the original return. Under §1.6418-2(b)(4)(ii)(B), to the extent the eligible taxpayer's correction of an eligible credit results in an increase in the amount of the eligible credit reported, such amount must be reflected on the credit source forms with the eligible taxpayer's amended return or AAR, if applicable. However, such increase cannot be reflected by either the eligible taxpayer or the transferee taxpayer as a transferred specified credit portion on the transfer election statement, in accordance with the rules set forth in §1.6418-2(b)(4)(i). Those rules, regarding the due date and original return requirement of a transfer election, are described in greater detail in part II.B.3 and 4 of the Summary of Comments and Explanation of Revisions.

Under §1.6418-2(b)(4)(ii)(C), to the extent the eligible taxpayer's correction of an eligible credit results in a decrease in the amount of the eligible credit reported, such amount must be reflected on the credit source forms with the eligible tax-

payer's amended return or AAR, if applicable, and the transfer election statement reducing the amount of the credit reported. The amount of the decrease first reduces the amount of the eligible credit that is retained, if any (and thus not transferred) by the eligible taxpayer. Any portion of such decrease that remains after reducing the eligible credit retained by the eligible taxpayer then reduces the amount reported by the transferee taxpayer. If the eligible credit was transferred to more than one transferee taxpayer, the reduction to each transferee taxpayer's specified credit portion is on a pro rata basis. The amount of any cash consideration retained by the eligible taxpayer after accounting for any reduction in the amount of the eligible credit transferred to the transferee taxpayer(s) cannot be excluded from gross income. These rules are further described in §1.6418-2(e)(2). The final regulations provide examples illustrating these rules.

If an eligible taxpayer has made an adjustment such that the specified credit portion is reduced, depending on the facts and circumstances, a transferee taxpayer may be at risk for an excessive credit transfer, should the IRS make such a determination prior to the transferee taxpayer making its own adjustment to correct the specified credit portion through a qualified amended return under §1.6664-2(c)(3). The eligible taxpayer itself may have income to include to the extent it received a payment that directly relates to the excessive credit transfer.

These final regulations do not mandate a reporting or notification requirement on the eligible taxpayer or the transferee taxpayer in the event of an adjustment that occurs after a timely and properly filed transfer election. The eligible taxpayer and the transferee taxpayer may freely contract for such a requirement. Nevertheless, this part II.B.4 of the Summary of Comments and Explanation of Revisions acknowledges that an adjustment to the eligible credit determined by an eligible taxpayer may impact the tax liability of a transferee taxpayer.

Additionally, these final regulations modify the proposed regulations to permit an extension of time under §301.9100-2(b) to allow for an automatic six-month extension of time from the due date of the return (excluding extensions) to make the election prescribed in section 6418(e)(1). A transfer election is a statutory election because its due date is prescribed by statute. As such, the section 9100 relief procedures only apply insofar as the late election is being filed pursuant to §301.9100-2(b), which requires that the taxpayer timely filed its return for the year the election should have been made. Relief under this provision will only apply to taxpayers that have not received an extension of time to file a return after the original due date (excluding extensions). Taxpayers eligible for this relief must take corrective action under §301.9100-2(c) and follow the procedural requirements of §301.9100-2(d).

5. Transfer election statement

Proposed §1.6418-2(b)(5)(i) generally would have defined a transfer election statement as a written document that describes the transfer of a specified credit portion between an eligible taxpayer and transferee taxpayer and would have provided rules for both an eligible taxpayer and transferee taxpayer to attach a transfer election statement to their respective return. The proposed regulations would have provided that any document can be used that meets the requirements of proposed §1.6418-2(b)(5)(ii), with the document labeled as a "Transfer Election Statement" that is attached to a return. The information required in proposed §1.6418-2(b)(5)(ii) would not otherwise have limited any other information that the eligible taxpayer and transferee taxpayer may agree to provide in connection with the transfer of any specified credit portion. The proposed regulations would have provided that the statement must be signed under penalties of perjury by an individual with authority to legally bind the eligible taxpayer and must also include the written consent of an individual with authority to legally bind the transferee taxpayer.

Proposed §1.6418-2(b)(5)(ii) described the information required in a transfer election statement, which generally would have included: (1) information related to the transferee taxpayer and the eligible taxpayer; (2) a statement that provides the necessary information and amounts to allow the transferee taxpayer to take into account the specified credit portion with respect to the eligible credit property; (3) an attestation that the parties are not related (within the meaning of section 267(b) or 707(b)(1)); (4) a statement or representation from the eligible taxpayer that it has or will comply with all relevant requirements to make a transfer election; (5) a statement or representation from the eligible taxpayer and the transferee taxpayer acknowledging the notification of recapture requirements under section 6418(g)(3) and the section 6418 regulations (if applicable); and (6) a statement or representation from the eligible taxpayer that it has provided the required minimum documentation to the transferee taxpayer.

A commenter requested clarification on whether a transfer election statement can be a partnership agreement. Unless otherwise provided in guidance, any document, including a written partnership agreement, can serve as a transfer election statement if the document otherwise meets the requirements of proposed §1.6418-2(b)(5)(i) and includes the information outlined in proposed §1.6418-2(b)(5)(ii). The Treasury Department and the IRS did not include a specific rule in these final regulations allowing for a partnership agreement to be treated as a transfer election statement because the language in proposed §1.6418-2(b)(5) was already broad enough to allow for such an agreement to qualify.

Another commenter recommended that an eligible taxpayer be required, in a form accompanying its annual tax return, to list all tax credits it generated in the year by credit type, the total amount of those tax credits it sold, a schedule of projects to which the sold credits relate, the parties to whom it sold, and the remaining credits it retained. The Treasury Department and the IRS note that the registration and transfer election process will require an eligible taxpayer to list all eligible credits it determined and transferred during a taxable year. Additionally, an eligible taxpayer will be required to file the relevant credit source forms and the Form 3800, which will include the type of credits the eligible taxpayer determined and if it claimed any credits against its tax liability. At this time, the Treasury Department and the IRS do not think it is necessary for tax administration purposes for an eligible taxpayer to report the parties to whom it transferred eligible credits as part of the

registration process. This is because the IRS matches the registration numbers obtained by an eligible taxpayer in the registration process with the transferee taxpayers that claim transferred specified credit portions against their tax liability. Because no changes are necessary to proposed §1.6418-2(b)(5)(i) and (ii), these final regulations adopt these provisions without substantive change.

Proposed §1.6418-2(b)(5)(iii) described the time by which a transfer election statement must be completed. The proposed rule provided that a transfer election statement can be completed at any time after the eligible taxpayer and transferee taxpayer have sufficient information to meet the requirements of proposed §1.6418-2(b)(5)(ii), but, for any year, the transfer election statement cannot be completed after the earlier of: (1) the filing of the eligible taxpayer's return for the taxable year for which the specified credit portion is determined with respect to the eligible credit; or (2) the filing of the transferee taxpayer's return for the year in which the specified credit portion is taken into account. Because no comments were received on proposed §1.6418-2(b)(5)(iii), these final regulations adopt this provision without change.

Proposed §1.6418-2(b)(5)(iv) would have defined required minimum documentation as the minimum documentation that the eligible taxpayer is required to provide to a transferee taxpayer. This documentation included: (1) information that validates the existence of the eligible credit property; (2) if applicable, documentation substantiating that the eligible taxpayer has satisfied the requirements to include any bonus credit amounts (as defined in proposed §1.6418-1(c)(3)); and (3) evidence of the eligible taxpayer's qualifying costs in the case of a transfer of an eligible credit that is part of the investment credit or the amount of qualifying production activities and sales amounts, in the case of a transfer of an eligible credit that is a production credit. Proposed §1.6418-2(b)(5)(v) would have specified that a transferee taxpayer, consistent with §1.6001-1(e), would be required to retain the required minimum documentation provided by the eligible taxpayer so long as the contents thereof may become material in the administration of any internal revenue law.

Several commenters recommended that the final regulations increase the amount of required minimum documentation that an eligible taxpayer must provide to a transferee taxpayer to make a valid transfer election under section 6418(a). One commenter urged that all of the records that would be necessary for an eligible taxpayer to substantiate the claimed tax credit should be provided to the transferee taxpayer. Other commenters stated that more robust minimum documentation requirements should be imposed, including specific disclosure requirements and minimum documentation that an eligible taxpayer must provide to a transferee taxpayer concerning compliance with labor laws and an affirmation that the eligible taxpayer has undertaken best efforts to establish compliance. Another commenter asked for confirmation that the required minimum documentation is the same for all taxpayers.

In providing for the required minimum documentation that an eligible taxpayer must provide to a transferee taxpayer, the intention was to require a baseline of information that is necessary for validating an eligible taxpayer's claim of eligibility to an eligible credit, while not overburdening the eligible taxpayer with production requirements or altering the arm's length arrangement between the parties. Further, the proposed regulations did not limit the amount or type of information that a transferee taxpayer can require prior to agreeing to an eligible credit transfer. This means that while the required minimum documentation requirements are the same for all taxpayers, any particular agreement between an eligible taxpayer and transferee taxpayer may go beyond the required minimum documentation based on the arrangement of the parties. The proposed regulations allowed sufficient flexibility for market participants to determine if more information is necessary in a particular transaction, while balancing the burden of producing the required minimum documentation required to make a transfer election. Thus, these final regulations adopt proposed §1.6418-2(b)(5)(iv) and (v) without substantive change.

Another commenter requested clarification that any responsibility to engage in regular reporting of certified payroll, apprentice labor hour reports, or other obligation under the prevailing wage and apprenticeship requirements for transferred specified credit portions remain with the eligible taxpayer. Because an eligible taxpayer determines any increased credit amount applicable to the prevailing wage and apprenticeship requirements, proposed regulations under section 45 would provide that the requirements relevant to determining the credit, including the correction and penalty provisions described in section 45(b)(7)(B) and 45(b)(8)(D), would remain with the eligible taxpayer who determined the credit. On August 30, 2023, the Treasury Department and the IRS published proposed regulations under section 45 (REG-100908-23) in the *Federal Register* (88 FR 60018) (section 45 proposed regulations) that would also provide that the general recordkeeping requirements for prevailing wage and apprenticeship (PWA) requirements would remain with an eligible taxpayer who transfers a specified credit portion that includes an increased credit amount. The section 45 proposed regulations would not require regular reporting of certified payroll or apprentice labor hour reports to the IRS. The responsibility of determining a credit is initially with the eligible taxpayer, and the transfer of an eligible credit does not relieve an eligible taxpayer of this responsibility or the responsibility to substantiate. Thus, the responsibility for substantiating a PWA increased credit amount does not shift to the transferee taxpayer, although a transferee taxpayer may be treated as the relevant taxpayer for other purposes under the IRA under section 6418(a). In light of the section 45 proposed regulations, the Treasury Department and the IRS have determined that no clarification is needed under proposed §1.6418-2(b)(5)(iv) and (v) and thus, these final regulations adopt these provisions without substantive change.

C. *Limitations after a transfer election is made*

Proposed §1.6418-2(c)(1) would have provided that a transfer election with respect to a specified credit portion is irrevocable. No comments were received on this rule, and these final regulations adopt the rule without change.

Consistent with section 6418(e)(2), proposed §1.6418-2(c)(2) would have provided that a specified credit portion may only be transferred pursuant to a transfer election once. A transferee taxpayer cannot make a transfer election of any specified credit portion transferred to the transferee taxpayer. As described in the Explanation of Provisions in the preamble to the proposed regulations, the proposed rule would have disallowed any arrangement in which the Federal income tax ownership of a specified credit portion transfers first from an eligible taxpayer to a dealer or intermediary and then, ultimately, to a transferee taxpayer. In contrast, the Explanation of Provisions in the preamble to the proposed regulations provided that an arrangement using a broker to match eligible taxpayers and transferee taxpayers should not violate the no additional transfer rule, assuming the arrangement at no point transfers the Federal income tax ownership of a specified credit portion to the broker or any taxpayer other than the transferee taxpayer.

Commenters advocated for the final regulations to allow certain transactions with brokers, or other taxpayers, that were disallowed under proposed §1.6418-2(c)(2) based on the no additional transfer rule of section 6418(e)(2). Those commenters posited that allowing such transactions would increase the number of participants entering the credit purchasing market. Another commenter recommended that the final regulations apply the no additional transfer rule in proposed §1.6418-2(c)(2) to prohibit only successive transfers made by a transferee taxpayer specified in the transfer election, assuming the intent of the rule is not to prohibit the development of a liquid trading market or derivative activity by third parties other than the eligible taxpayer. The commenter stated that if the intent of the rule is to prevent the development of such a market or activities, then the final regulations should contain clear and administrable rules based upon the other timing rules provided in the proposed regulations because applying normal "benefits and burdens of ownership" principles, as described in the Explanation of Provisions in the preamble to the proposed regulations, to transfers of eligible credits is not workable.

The Treasury Department and the IRS agree that it is unnecessary to apply benefits and burdens of ownership principles to transfers of eligible credits under section 6418, but no changes are needed to proposed §1.6418-2(c)(2) because it does not reference those principles. To clarify the rules, to make a transfer election, all the requirements of §1.6418-2(b) must be satisfied. Until the requirements are satisfied, then there is no valid transfer, no transferee taxpayer, and the requirements of §1.6418-2(c)(2) are not applicable. To the extent there are brokers or other taxpayers providing liquidity, it is noteworthy that any payments received by those taxpayers related to eligible credits will be taxable because the provisions of section 6418 will not prevent the inclusion of gross income for such taxpayers, or for any amounts received by an eligible taxpayer other than amounts paid by a transferee taxpayer in consideration for the eligible credit. Further, if brokers, or others, are transferred a specified credit portion after satisfying the rules of §1.6418-2(b) such that they are considered transferee taxpayers, then the prohibition of section 6418(e)(2) and the requirements of §1.6418-2(c)(2) will prevent a second transfer by such transferee taxpayer.

A commenter recommended that the final regulations clarify that agreements for the right to purchase eligible credits may be transferred and are not subject to the rule in proposed §1.6418-2(c)(2). Specifically, the commenter raised that the statutory language prohibiting multiple transfers with respect to any portion of an eligible credit does not prohibit a transferee taxpayer that entered into an agreement with an eligible taxpayer for the right to purchase eligible credits for a number of years from transferring that right to another transferee taxpayer as long as the eligible credits themselves have not been transferred to the original transferee taxpayer first. These final regulations do not adopt a specific rule related to this situation because it describes a transaction that is outside of section 6418. As previously described, until the requirements of a valid transfer election are satisfied, then there is no valid transfer and no transferee taxpayer.

Several commenters asked for clarity on when a transfer has occurred or recommended the point at which a transfer has occurred. For example, one commenter recommended a rule that once the amount of the credit has been determined, the specified credit portion is considered to have been transferred on the earliest date on which payment for credit has been made, the last day of the eligible taxpayer's taxable year, or (if earlier) the date the transfer election statement has been filed. To clarify, a transfer of a specified credit portion does not technically occur until an eligible taxpayer satisfies all the requirements in §1.6418-2(b) to make a valid transfer election. However, it is important to note that the technical transfer date does not necessarily control for other purposes of section 6418. For example, under the paid in cash rule, amounts can be paid with respect to the specified credit portion as early as the beginning of the taxable year in which the related eligible credit is determined.

D. *Determining the eligible credit*

Section 6418(a) states that an eligible taxpayer may elect to transfer an eligible credit determined with respect to such taxpayer. Proposed §1.6418-2(d) would have provided rules to clarify how an eligible taxpayer determines an eligible credit. Under proposed §1.6418-2(d)(1), an eligible taxpayer can only transfer eligible credits determined with respect to the eligible taxpayer. The proposed regulations would have provided that, for an eligible credit to be determined with respect to an eligible taxpayer, the eligible taxpayer must own the underlying eligible credit property or, if ownership is not required, conduct the activities giving rise to the underlying eligible credit.

A commenter suggested that, in the absence of clear statutory language indicating that ownership of underlying eligible credit property or conducting activities giving rise to the underlying eligible credit is a prerequisite to transferability, such requirements should not be imposed under proposed §1.6418-2(d)(1). The text of section 6418(a), which requires the eligible credit to be determined with respect to the eligible taxpayer, and the text of the underlying eligible credit provisions confirm the requirement that ownership of underlying eligible credit property or

conducting activities giving rise to the underlying eligible credit is a prerequisite to transferability. However, as discussed in part 2.A of this Summary of Comments and Explanation of Revisions, these final regulations clarify that the only eligible credit for which an eligible taxpayer does not have to own an underlying eligible credit property, and instead can merely conduct activities, is section 45X. This revision should help clarify the "determined with respect to" requirements of section 6418.

A commenter noted that section 50(b)(1) limits the use of certain eligible credits in the territories and requested that the final regulations provide an exception to section 50(b)(1) to allow eligible taxpayers in U.S. territories to transfer all eligible credits. Since before the enactment of the IRA, section 50(b)(1) has limited the use of certain credits (including ITCs, vehicle-related credits, and energy efficiency incentives) for property used in the U.S. territories. Section 50(b)(1) provides that no credit can be determined with respect to any property that is used predominantly outside the United States[1] unless section 168(g)(4)(G) applies. Section 168(g)(4)(G) provides an exception for any property that is owned by a domestic corporation or by a United States citizen other than a citizen entitled to the benefits of sections 931 or 933, and that is used predominantly in a possession of the United States by such a corporation or such a citizen, or by a corporation created or organized in, or under the law of, a possession of the United States. The IRA did not amend these provisions; instead, the IRA specifically referenced section 50(b)(1) in section 30C and did not exclude section 48, 48C, or 48E from the application of section 50(b)(1). Without specific language in section 6418 or in the underlying eligible credits addressing section 50(b)(1), or other compelling evidence of Congressional intent, a special rule turning off the application of section 50(b)(1) is not supported by the Code. Therefore, these final regulations do not adopt this recommendation.

E. *Treatment of Payments Made in Connection with a Transfer Election*

Section 6418(b)(1) through (3) provides rules related to the treatment of payments made in connection with a transfer. Proposed §1.6418-2(e)(1) through (4) would have provided guidance related to these rules, including that such amounts are required to be paid in cash, are not includable in the gross income of the eligible taxpayer and are not deductible by the transferee taxpayer, as well as an anti-abuse rule that included examples illustrating the anti-abuse rule.

1. Cash requirement

Section 6418(b)(1) requires that any amount paid by a transferee taxpayer for an eligible credit must be paid in cash. Consistent with section 6418(b)(1), proposed §1.6418-2(e)(1) would have provided that an amount paid by a transferee taxpayer to an eligible taxpayer would be consideration for a transfer of a specified credit portion only if it is paid in cash (as defined in proposed §1.6418-1(f)), directly relates to the specified credit portion, and is not described in proposed §1.6418-5(a)(3) (describing payments related to an excessive credit transfer). Consistent with section 6418(b)(2), proposed §1.6418-2(e)(2) would have provided that any amount paid to an eligible taxpayer as consideration for a transfer of a specified credit portion is not includible in the gross income of the eligible taxpayer. Correspondingly and consistent with section 6418(b)(3), proposed §1.6418-2(e)(3) would have provided that no deduction is allowed to the transferee taxpayer for consideration that is paid as consideration for a transfer of a specified credit portion.

2. Anti-abuse provision

Section 6418(h) authorizes the Secretary to issue regulations or other guidance that may be necessary to carry out the purposes of section 6418. To prevent transactions contrary to the purposes of section 6418, the proposed regulations would have included an anti-abuse provision in proposed §1.6418-2(e)(4). This rule would have provided that a transfer election of any specified credit portion, and therefore the transfer of that specified credit portion to a transferee taxpayer, may be disallowed, or the Federal income tax consequences of any transaction(s) effecting such a transfer may be recharacterized, in circumstances in which the parties to the transaction have engaged in the transaction or a series of transactions with the principal purpose of avoiding any Federal tax liability beyond the intent of section 6418. For example, under the proposed rule, an amount of cash paid by a transferee taxpayer would not be considered as paid in connection with the transfer of a specified credit portion in proposed §1.6418-2(e)(1) if a principal purpose of a transaction or series of transactions was to allow an eligible taxpayer to avoid gross income. Conversely, an amount of cash paid by a transferee taxpayer would have been considered paid in connection with the transfer of a specified credit portion under proposed §1.6418-2(e)(1) if a principal purpose of a transaction or series of transactions was to increase a Federal income tax deduction of a transferee taxpayer.

The proposed regulations included two examples in §1.6418-2(e)(4)(ii) and (iii) to illustrate the application of the anti-abuse rule. In the first example, to avoid recognizing gross income, the eligible taxpayer (Taxpayer A) undercharges for services to the transferee taxpayer (Customer B) in combination with the transfer of a specified credit portion, and so the transaction is recharacterized. Specifically, Taxpayer A normally charges $20 for the same services without the purchase of the eligible credit, and the average transfer price of the eligible credit between unrelated parties is $80 paid in cash for $100 of an eligible credit. The example provides that Taxpayer A instead charges Customer B $100 for the eligible credit and $0 for the services. In the second example, to increase a transferee taxpayer's (Customer D) deduction, an eligible taxpayer (Taxpayer C) overcharges for property and undercharges for the eligible credit. Specifically, Tax-

[1] Under section 7701(a)(9), "[t]he term 'United States' when used in a geographical sense includes only the States and the District of Columbia."

payer C normally charges $20 for the same property without the transfer of the eligible credit, and the average transfer price of an eligible credit between unrelated parties is $80 paid in cash for $100 of the eligible credit. The example provides that Taxpayer C instead charges Customer D $80 for the property and $20 for the eligible credit. In both examples, the proposed regulations would have recharacterized the transactions.

A number of commenters made suggestions related to the proposed anti-abuse rule and examples. One commenter urged the Treasury Department and the IRS to take all possible precautionary measures to protect taxpayer interests and prevent abuse. Another commenter, while acknowledging that concerns raised by the anti-abuse rule and the examples are fair and appropriate, recommended as an alternative that the final regulations only include the general anti-abuse rule and remove the specific rules and examples. The commenter suggested that the IRS could rely on generally applicable principles and the anti-abuse rule to recharacterize abusive transactions and separately issue sub-regulatory guidance to provide safe harbors for cases in which the anti-abuse rule will not be asserted. The commenter also suggested that the IRS could issue further clarifying guidance if a publicly available and readily commoditized market develops. While the commenter did not expressly describe the specific rules it recommended be removed, the Treasury Department and the IRS infer that the commenter was referring to the language describing situations that had a principal purpose of eligible taxpayers avoiding the recognition of gross income or of transferee taxpayers increasing deductions. Other commenters, however, recommended that the final regulations include additional specific examples or safe harbors to determine those situations that would not be considered abusive. In considering all of these commenters' views, the Treasury Department and IRS have determined that taxpayers would benefit from having fact patterns in these final regulations that are likely to represent situations in which abuse could be present. Thus, these final regulations adopt the anti-abuse provision of the proposed regulations, but with certain revisions in response to commenters that are described in the following paragraphs.

A commenter noted a discrepancy in the language of the anti-abuse rule in proposed §1.6418-2(e)(4)(i), making it unclear whether the standard of the anti-abuse rule was that parties to the transaction have engaged in the transaction or a series of transactions with "the" or "a" principal purpose of tax avoidance. As noted by the commenter, the use of "the" or "a" represent different standards. To demonstrate the difference, the commenter compared the regulations under section 269 of the Code (employing a "the principal purpose" standard) with the regulations under section 881 of the Code (section 881 regulations) (employing a "one of the principal purposes" standard). The proposed rule was intended to apply the anti-abuse provision if a transaction was entered into with "a" principal purpose of avoidance of tax beyond the intent of section 6418. In response to the comment, these final regulations are clarified. This "a" principal purpose standard is similar to other anti-abuse standards, such as the standard in the section 881 regulations cited by the commenter or the anti-abuse rule in §1.45D-1(g) (relating to the new markets tax credit determined under section 45D (section 45D credit)). This standard is appropriate based on the goals of preventing fraud and improper payments and in accordance with section 6418(h) to provide rules necessary to carry out the purposes of section 6418.

Another commenter requested clarification on the meaning of the phrase "will be considered paid" in proposed §1.6418-2(e)(4)(i), noting that the proposed regulations would have provided that an "amount of cash paid by a transferee taxpayer will not be considered as paid in connection with the transfer of a specified credit portion under paragraph (e)(1) of this section if a principal purpose of a transaction or series of transactions is to allow an eligible taxpayer to avoid gross income." The commenter stated, however, that the next sentence in proposed §1.6418-2(e)(4)(i) provides: "[c]onversely, an amount of cash paid by a transferee taxpayer *will be considered paid* in connection with the transfer of a specified credit portion under paragraph (e)(1) of this section if a principal purpose of a transaction or series of transactions is to increase a Federal income tax deduction of a transferee taxpayer [emphasis added]." The commenter believed that the "will be considered paid" in the quoted second sentence should read as "will not be considered paid" similar to the quoted first sentence. The Treasury Department and the IRS clarify that the proposed rule is written as intended, and no changes to the proposed rule are made based on this comment. The quoted second sentence is describing a situation in which a transferee taxpayer paid less for an eligible credit and more for an item or service that resulted in a deduction. In this scenario, it is correct that the amount "will be considered paid" in connection with the transfer of the specified credit portion, and not with respect to the purchase of the item that was deductible.

Commenters requested clarification of the language in the examples in proposed §1.6418-2(e)(4)(ii) and (iii) that referred to the "average transfer price of the eligible credit between unrelated parties" in determining whether the transactions are subject to recharacterization under the proposed anti-abuse rule. Commenters raised concerns about the availability of pricing information, including specifically in the case of the section 45U credit. A commenter thought that there will be insufficient publicly available pricing information, and if the available data are limited and incomplete, price averages will not yield reliable results. That same commenter noted that if the IRS develops the requisite data to determine an average transfer price for each eligible credit, organizing such data and publishing it regularly would be administratively burdensome. Further, commenters were concerned that the average price would not take into account the facts and circumstances of an arrangement, which commenters believed relevant for determining price. The commenter recommended changing "the average transfer price of the eligible credit between unrelated parties" to "an arm's length price of the eligible credit without regard to other commercial relationships" could solve potential issues with the language in the proposed regulations. The commenter stated that the recommendation would also resolve a separate comment related to the use of the term "unrelated party" in the proposed regula-

tions by clarifying that the intent was the price be determined without regard to other commercial relationships.

In response, these final regulations adopt the commenter's suggested language and revise the examples in proposed §1.6418-2(e)(4)(ii) and (iii) accordingly. This change is made in acknowledgment that average price data may not be currently available, may take more time to develop, and will most likely be dependent on the facts and circumstances of the transaction (for example, the risk profile of the project). The language suggested by the commenter will still allow average transfer price data to be used to the extent it is relevant. The intent of using an average transfer price was to suggest an objective criterion for evaluating a transaction, along with using the pricing information of the eligible taxpayer in the determination. While the language "an arm's length price of the eligible credit without regard to other commercial relationships" has the potential to add more subjectivity to the determination, concerns with respect to determining the average transfer price of a certain eligible credit, including those with limited markets, outweigh any benefit with respect to retaining a potentially more objective standard.

Another commenter requested clarification on whether a transfer of a credit for cash consideration could ever be fully respected in cases in which the cash consideration for such credit transfer is greater or less than the average transfer price of the eligible credit between unrelated parties. Any deviation from an average transfer price of an eligible credit should not necessarily require recharacterization under the anti-abuse rule; however, the revisions made to the examples in proposed §1.6418-2(e)(4)(ii) and (iii) should help clarify this issue. The intent of the anti-abuse rule is to allow recharacterization if the price paid is not economically supportable and is unreasonable based on the facts and circumstances of the transaction.

Another commenter asked that the final regulations include considerations of whether an eligible taxpayer is viewed as transferring credits at a discount without avoiding tax liabilities. For example, if an eligible taxpayer is willing to transfer eligible credits at a discount and receive income from product sales or services that is in accordance with such eligible taxpayer's acceptable investment rate of return, the commenter wanted to know whether the anti-abuse rule would be applicable. In the commenter's hypothetical, the eligible taxpayer appears to be decreasing the price of eligible credits to encourage customers to purchase products or services but not making a corresponding increase to the price of its products or services, which could avoid recognizing gross income. However, the facts and circumstances would dictate whether the eligible taxpayer and the transferee taxpayer were engaging in the transaction with a principal purpose of avoiding any Federal income tax liability beyond the intent of section 6418.

The Treasury Department and the IRS have concluded that it is premature to adopt any safe harbor or a list of abuse examples in these final regulations in §1.6418-2(e)(4) but will continue to study transactions between eligible taxpayers and transferee taxpayers to determine if it is appropriate to adopt an objective safe harbor or clarify other examples of abusive practices.

F. *Transferee taxpayer's treatment of eligible credit*

1. Taxable year

Pursuant to section 6418(d), a transferee taxpayer takes the transferred eligible credit into account in its first taxable year ending with, or after, the eligible taxpayer's taxable year with respect to which the transferred eligible credit was determined. Proposed §1.6418-2(f)(1) would have adopted this rule and further explained that to the extent the taxable years of an eligible taxpayer and a transferee taxpayer end on the same date, the transferee taxpayer will take the specified credit portion into account in that taxable year. To the extent the taxable years of an eligible taxpayer and a transferee taxpayer end on different dates, the transferee taxpayer will take the specified credit portion into account in the first taxable year that ends after the taxable year of the eligible taxpayer.

Commenters requested clarification on whether a taxpayer that has a 52–53-week taxable year can rely on §1.441-2(c)(1) to allow its taxable year that otherwise ends the last Saturday in December to be treated as ending on December 31. Otherwise, a transferee taxpayer with a 52–53-week taxable year would have to wait until the following taxable year to take into account an eligible credit that was transferred by an eligible taxpayer with a calendar year. A similar delay could result if the eligible taxpayer had a 52–53-week taxable year ending in January and the transferee taxpayer has a taxable year ending on December 31. Section 1.441-2(c)(1) provides, in relevant part, that for purposes of determining the effective date (for example, of legislative, regulatory, or administrative changes) or the applicability of any provision of the internal revenue laws that is expressed in terms of taxable years beginning, including, or ending with reference to the first or last day of a specified calendar month, a 52–53-week taxable year is deemed to begin on the first day of the calendar month nearest to the first day of the 52–53-week taxable year, and is deemed to end or close on the last day of the calendar month nearest to the last day of the 52–53-week taxable year, as the case may be. While the fact patterns from commenters do not fall within the explicit language of §1.441-2(c)(1), the Treasury Department and the IRS conclude it is consistent to adopt a similar rule with respect to taxable year ends for purposes of section 6418(d). Thus, these final regulations include a rule in §1.6418-2(f)(1)(ii) providing that, for purposes of determining the taxable year in which a credit is taken into account under section 6418(d) and §1.6418-2(f)(1)(i), a 52–53-week taxable year of an eligible taxpayer and transferee taxpayer is deemed to end on or close on the last day of the calendar month nearest to the last day of the 52–53-week taxable year, as the case may be. Thus, in the fact patterns described by commenters, the transferee taxpayer and the eligible taxpayer would have the same year end, and the transferee taxpayer would not have to wait until the following year-end to take the eligible credit into account.

Another commenter asked when a transferee taxpayer with a taxable year that is a calendar year can take into account an eligible credit transferred from an eligible

taxpayer that has a fiscal year ending June 30, if the eligible taxpayer's project was placed in service on November 1, 2023, and the eligible taxpayer proposes to transfer the eligible credit to the transferee taxpayer on November 15, 2023 (and assuming all other requirements of section 6418 were met). It appears this comment is seeking clarity on whether it is possible for an eligible taxpayer to determine an eligible credit during its taxable year beginning July 1, 2023, and ending June 30, 2024, and transfer the eligible credit in November 2023 to a transferee taxpayer with a taxable year ending December 31, 2023, for the transferee taxpayer to use in calculating its 2023 tax liability. Section 6418(d)(1) requires that a transferee taxpayer take a specified credit portion into account in a taxable year ending with or after the taxable year of the eligible taxpayer to which the eligible credit was determined. In this fact pattern, the transferee taxpayer's taxable year ends after the eligible taxpayer's taxable year. The transferee taxpayer cannot take into account the eligible credit until its first taxable year ending after June 30, 2024, meaning that the transferee taxpayer would have to wait until it filed its 2024 tax return (not considering whether the transferee taxpayer was able to use the eligible credit against its estimated tax payments as described in part II.F.5 of this Summary of Comments and Explanation of Revisions). The eligible taxpayer's taxable year end of June 30, 2023, does not impact this analysis, as there was no eligible credit determined with respect to the eligible taxpayer in that taxable year. Further, even if a credit was determined in the taxable year ending June 30, 2023, because section 6418 only applies to taxable years beginning after December 31, 2022, no eligible credits generated in such year are eligible to be transferred.

2. No gross income for a transferee taxpayer upon claiming a transferred specified credit portion

Proposed §1.6418-2(f)(2) would have provided that a transferee taxpayer does not have gross income upon claiming a transferred specified credit portion even if the amount of cash paid to the eligible taxpayer was less than the amount of the transferred specified credit portion, assuming all other requirements of section 6418 are met. For example, a transferee taxpayer who paid $9X for $10X of a specified credit portion that the transferee taxpayer then claims on its return does not result in the $1X difference being included in the gross income of the transferee taxpayer.

A commenter suggested that the proposed rule conflicted with *Palmer v. Commissioner*, 302 U.S. 63 (1937), which held that the purpose of a bargain purchase determines its tax treatment; that is, if it is intended as compensation, then it is so treated for Federal tax purposes. Based on the case, the commenter thought that it is not possible to determine that a bargain purchase of a tax credit is not gross income to the purchaser, as the proposed regulations provided, without examining the facts and circumstances surrounding the transaction.

Proposed §1.6418-2(f)(2) does not conflict with *Palmer*. The proposed rule presumes that the eligible taxpayer and the transferee taxpayer negotiated the consideration paid for the specified credit portion at arm's length and that the difference between the specified credit portion and the consideration paid for the credit (the "discount") reflects the transferee taxpayer's assumption of the risk of an excess credit transfer or recapture event. The proposed rule does not preclude the IRS from parsing the net consideration paid for the specified credit portion and analyzing whether the net consideration reflects a reduction due to an amount separately owed by the transferor to the transferee due to the receipt of services or property from the transferee. In such situation, the proposed rule does not preclude the IRS from asserting that a portion of the discount is income to the transferee taxpayer under *Palmer* or the anti-abuse rule in §1.6418-2(e)(4) if a portion of the discount, in fact, constitutes compensation to the transferee taxpayer under section 61. Section 6418(a) is unambiguous that the transferee taxpayer is treated as the eligible taxpayer for purposes of the Code. Because the eligible taxpayer does not recognize gross income from generating or claiming a transferred specified credit portion under the Code, the Treasury Department and the IRS interpret section 6418(a) to provide the transferee taxpayer with the same treatment upon claiming a transferred specified credit portion acquired at a discount. Section 6418(a) is also unambiguous that the income exclusion is limited to the claiming of the eligible credit and does not cover compensation paid to the transferee taxpayer.

For these reasons, these final regulations adopt proposed §1.6418-2(f)(2) without substantive change.

3. Transferee taxpayer treated as the eligible taxpayer

Consistent with the language in section 6418(a), proposed §1.6418-2(f)(3)(i) would have provided that a transferee taxpayer (and not the eligible taxpayer) is treated as the taxpayer for purposes of the Code with respect to the transferred specified credit portion. Proposed §1.6418-2(f)(3)(i) further explained that an eligible taxpayer must apply the rules necessary to determine the amount of an eligible credit prior to making the transfer election for a specified credit portion, and therefore a transferee taxpayer does not re-apply rules that relate to a determination of an eligible credit, such as the rules in sections 49 or 50(b). However, a transferee taxpayer must apply rules that relate to computing the amount of the specified credit portion that is allowed to be claimed in the taxable year by the transferee taxpayer, such as the rules in sections 38 or 469, as applicable.

a. Passive credit rules generally

Proposed §1.6418-2(f)(3)(ii) provided a more specific rule regarding application of section 469 to a transferee taxpayer. This proposed rule provided that a specified credit portion transferred to a transferee taxpayer is treated as determined in connection with the conduct of a trade or business and, if applicable, such transferred specified credit portion is subject to the rules in section 469 (passive credit rules).

Many comments were received regarding the application of section 469 to transferred specified credit portions. One commenter supported applying the passive credit rules to transferee taxpayers and believed that a more restrictive rule would better prevent potential fraud and abuse.

Similarly, another commenter raised that allowing individuals to be credit purchasers raises important potential concerns about fraud and abuse since individuals, particularly those who are less affluent, may have less ability to perform due diligence on the transferred eligible credits and may become targets of fraudulent schemes. Most commenters, however, asserted that the passive credit rules should not apply to transferee taxpayers or that the rules should only apply in limited circumstances.

Some commenters argued that applying the rules will limit the market of potential purchasers of eligible credits to corporate entities with large tax liabilities and thus, exclude other taxpayers as potential investors. Other commenters contended that if the passive credit rules did not apply to transferee taxpayers, participation of individuals could materially increase, which would strengthen the transferability market and support the IRA's renewable energy and job creation goals. One commenter supported providing a carveout from the application of the passive credit rules for projects that generate less than 5 megawatts of energy. A few commenters requested that if the application of the passive credit rules remains, the Treasury Department and the IRS should allow for some amount of non-passive income tax liability flowing from operating S corporations and limited liability companies to be eligible to be offset by transferred eligible credits.

Many commenters addressed the rule in proposed §1.6418-2(f)(3)(ii) that would treat a specified credit portion transferred to a transferee taxpayer as determined in connection with the conduct of a trade or business. One commenter generally supported the position that an eligible credit is earned in connection with the conduct of a trade or business, as that reflects how an eligible credit would arise. Other commenters, however, contended that treating transferred specified credit portions as earned in connection with a trade or business is inconsistent with the language in section 6418(a), which states that the transferee taxpayer is treated as the taxpayer with respect to a transferred credit. Some commenters stated that the language in section 6418(a) should be read as only transferring the rights of the credit to the transferee rather than subjecting the transferee to the passive credit rules. Another commenter argued that section 469 cannot apply to an activity that is not owned directly, or indirectly, by the taxpayer. A few commenters urged that instead of treating transferred specified credit portions as determined in connection with the conduct of a trade or business, it would be appropriate to treat transferee taxpayers as engaged in an investment activity and specified credit portions as determined in connection with such investment activity. As support for this position, these commenters cited Rev. Rul. 2010-16, 2010-26 I.R.B. 769, which addresses the application of the passive credit rules to section 45D credits earned through certain factual situations. Although unclear, another commenter appeared to assert that a transferred specified credit portion should be treated as a capital asset under section 1221 to a transferee taxpayer and that *Palmer v. Commissioner*, *supra*, is misapplied.

The language in section 6418 is most straightforwardly understood to not support disregarding the passive credit rules for transferred specified credit portions or applying the rules in a different manner than they apply to other general business credits arising in a trade or business. In enacting the novel credit delivery mechanisms of sections 6417 and 6418 as part of the IRA, Congress considered the application of the rules governing the determination and the utilization of tax credits. In cases in which Congress desired to alter the application of certain rules, they provided as such. For example, Congress generally turned off section 38(c) and sections 50(b)(3) and (4)(A)(i) in the case of elective pay under section 6417. Like section 38(c), the application of section 469 can materially affect whether a taxpayer can use tax credits to offset its tax liability. There is no carveout for section 469 in section 6418. Instead, section 469 provides in relevant part that a credit is subject to the passive credit rules if the credit arises in the conduct of a trade or business in which the taxpayer does not materially participate in the year to which it is attributable, and the credit is a general business credit under section 38. All of the eligible credits listed in section 6418(d) arise in the conduct of a trade or business and are general business credits under section 38. As a result, section 469 applies to the use of such eligible credits unless Congress provides otherwise, and commenters did not point to strong statutory or other evidence that Congress intended a different result. Moreover, any differences in the application of the passive credit rules among taxpayers is a result of section 469(a) and not the result of section 6418 or the proposed regulations.

Also, the application of section 469 to a transferee taxpayer is not inconsistent with the language in section 6418(a) that provides a transferee taxpayer "shall be treated as the taxpayer" for purposes of the Code with respect to a transferred credit. Absent section 6418, any taxpayer that has determined a general business credit under section 38 in the conduct of a trade or business is subject to section 469. While section 469 may not apply, for example, because a taxpayer is not a person described in section 469(a)(2), or may not result in a passive activity credit because a taxpayer materially participated in the trade or business or has sufficient passive activity income, all taxpayers have to consider whether section 469 is applicable to the use of any general business credit arising in the conduct of a trade or business. Thus, it is not inconsistent to apply section 469 to a transferee taxpayer that is treated as the taxpayer for purposes of the Code with respect to a transferred credit. Moreover, an eligible credit generated through the conduct of a trade or business and transferred does not lose its status as a section 38 credit or its status of having arisen in a trade or business solely because the credit is transferred. If such attributes did not transfer under section 6418, eligible credits earned and used by eligible taxpayers would be subject to different limitations than transferred eligible credits used by transferee taxpayers. Lastly, the Treasury Department and the IRS agree with commenters that not applying the passive credit rules to transferred specified credit portions could increase the risk of fraud and abuse.

It is also inappropriate to treat transferred specified credit portions as determined in connection with the conduct of an investment activity or as a capital asset. Specifically, the facts and analysis in Rev. Rul. 2010-16 are distinguishable

from transfers of specified credit portions under section 6418. Rev. Rul. 2010-16 held that if an acquisition, either directly or indirectly through a partnership, of a qualified equity investment in a community development entity (CDE) is not in connection with the conduct of a trade or business (or in anticipation of a trade or business), the section 45D credit will not be a passive activity credit under section 469. The determination of a section 45D credit does not require the conduct of a trade or business. Instead, a section 45D credit is determined based on the percentage of the amount paid to a CDE for a qualified equity investment at original issue and can be determined through a mere investment activity. Under the facts of Rev. Rul. 2010-16, the section 45D credit was not a passive activity credit under section 469 to either the individual or the partnership investors because it did not arise in the conduct of a trade or business. Conversely, eligible credits under section 6418 can only be determined (or arise) in connection with the conduct of a trade or business. Moreover, eligible credits are not determined through (or do not arise in connection with) an investment activity by a transferee taxpayer. Instead, all eligible credits are determined with respect to (or arise in connection with) the conduct of a trade or business owned by an eligible taxpayer. Eligible credits are transferred after they are determined. Thus, they cannot be redetermined in connection with an investment activity by a transferee. For these reasons, the final regulations do not adopt commenters' suggestions to not apply the passive credit rules to transferred specified credit portions or to apply the passive credit rules in a different manner than as provided in the proposed regulations. For a discussion of the application of *Palmer v. Commissioner*, *supra*, to section 6418, *see* part II.F.2 of this Summary of Comments and Explanation of Revisions.

A comment was received stating that the proposed regulations were silent on the rule of section 48(a)(3)(C) requiring the property to be used in a trade or business or held for the production of income. Any rules applicable to the underlying eligible credits are beyond the scope of the final regulations; however, the Treasury Department and the IRS note that any rules that relate to the determination of the eligible credit apply to the eligible taxpayer as described in proposed §1.6418-2(d).

b. Material participation and grouping rules

Proposed §1.6418-2(f)(3)(ii) provided that in applying section 469, a transferee taxpayer is not considered to own an interest in the eligible taxpayer's trade or business at the time the work was done (as required for material participation under §1.469-5(f)(1)) (material participation rules). Accordingly, a transferee taxpayer will not ordinarily materially participate within the meaning of section 469(h) in order to be treated as participating in the activity. Proposed §1.6418-2(f)(3)(ii) also provided that a transferee taxpayer cannot change the characterization of its participation (or lack thereof) in the eligible taxpayer's trade or business by using any of the grouping rules under §1.469-4(c) (grouping rules). Generally, §1.469-4(c) allows a taxpayer to satisfy the material participation standard for a specific activity by virtue of having materially participated in a separate but related trade or business.

Comments were received in connection with the application of the material participation and grouping rules under section 469 to transferred specified credit portions. One commenter supported treating a transferee as not materially participating in the trade or business that generates an eligible credit if they did not actually do so. Other commenters asserted that the final rules should clarify that a transferee taxpayer that actually owns an interest in an eligible taxpayer, and materially participates in the credit generating activity, is treated as owning an interest in the eligible taxpayer's trade or business at the time the work was done. One commenter requested that transferee taxpayers that conduct an activity directly relating to and necessary for the generation of an eligible credit (but do not own an interest in the eligible taxpayer's credit generating trade or business) be treated as materially participating in the credit generating activity for purposes of section 469. Another commenter supported an approach that would permit taxpayers subject to the passive credit rules that satisfy the material participation requirement with respect to a specific activity (but do not own an interest in the activity that generates to the specified credit portion) to treat purchased credits from that activity as nonpassive. The same commenter raised that the application of the grouping rules under §1.469-4(c) could be used to expand the potential purchasers of credits but acknowledged that this approach would be difficult to administer. Other commenters suggested that the language in section 6418(a) treating the transferee taxpayer as the taxpayer for purposes of the Code with respect to the transferred specified credit portion supports attributing the activities or all characteristics of an eligible taxpayer to a transferee taxpayer for purposes of applying the passive credit rules.

The Treasury Department and the IRS agree that in the limited circumstance of a transferee taxpayer who materially participates in an eligible credit generating activity within the meaning of section 469(h) in which the transferee taxpayer owns an interest at the time the work is done, the transferee taxpayer should be permitted to purchase eligible credits generated from the activity (assuming the transferee taxpayer is not related to the eligible taxpayer within the meaning of section 267(b) or section 707(b)(1)) and treat those purchased credits as not arising in connection with a passive activity. It is not workable to expand the material participation rules under section 469 for purposes of transferred specified credit portions in a meaningful manner without substantially increasing administrative burdens. For example, such a view would presumably require ownership of the underlying eligible credit property to be attributed to a transferee taxpayer. This formulation would be impracticable for purposes of section 50(c) and section 6418(g)(3)(A), which require an eligible taxpayer to make basis adjustments for transferred ITCs. Commenters did not address how to overcome the technical and administrative complexities in attributing the activities or attributes of an eligible taxpayer to a transferee taxpayer for purposes of applying the passive credit rules. Additionally, allowing a transferee taxpayer to change the characterization of an eligible credit based on grouping

with its own activities is inconsistent with the grouping rules under §1.469-4(c) and would create significant administrative complexity. As such, these final regulations clarify that a transferee taxpayer who directly owns an interest in an eligible taxpayer's trade or business at the time the work was done (as required for the material participation rules), is not deemed to fail the requirements of section 469(h). However, these final regulations do not adopt commenters' suggestions to expand the material participation or grouping rules for purposes of applying the passive credit rules to transferred specified credit portions.

Lastly, commenters wanted confirmation that an individual transferee taxpayer can use eligible credits acquired as a result of a transfer election to offset passive income tax liability if the approach from the proposed regulations is adopted. The Treasury Department and the IRS confirm that if an individual transferee taxpayer does not materially participate (within the meaning of §§1.469-5 and 1.469-5T) in the activity that generates a specified credit portion, a transferred specified credit portion will be treated to the transferee taxpayer as arising in connection with a passive activity.

4. Transferee taxpayer requirements to take into account a transferred specified credit portion.

Section 6418(d) provides the taxable year that a transferee taxpayer takes a transferred eligible credit into account but does not provide rules on how a transferee taxpayer can take a transferred specified credit portion into account. To that end, proposed §1.6418-2(f)(4) would have required (1) a properly completed Form 3800, General Business Credit (or its successor), taking into account a transferred eligible credit as a current general business credit, including all registration number(s) related to the transferred eligible credit; (2) the transfer election statement described earlier in this preamble attached to the return; and (3) any other information related to the transfer election specified in guidance. Because no comments were received on proposed §1.6418-2(f)(4), these final regulations adopt this provision without change.

5. Estimated tax payments

The preamble to the proposed regulations explained that a transferee taxpayer could take into account a specified credit portion that it has purchased, or intends to purchase, to calculate its estimated tax payments, though the transferee taxpayer remains liable for any additions to tax in accordance with sections 6654 and 6655 of the Code to the extent the transferee taxpayer has an underpayment of estimated tax.

Commenters generally acknowledged that the preamble to the proposed regulations provided that transferred credits could be taken into account for purposes of calculating estimated tax but asked that the final regulations include a specific rule on how transferred credits should be taken into account. Commenters also offered particular circumstances for the Treasury Department and the IRS to consider in formulating a potential rule regarding transferred credits and estimated tax. One commenter requested that credits purchased in the first quarter could be applied against the transferee taxpayer's first quarter estimated tax payment if the taxpayer relied on a "prior year safe harbor" under section 6655(d)(2)(B). Another commenter requested clarification that the transferred credits should apply to a transferee's tax liability when the credit is determined. Another commenter requested that the final regulations should permit a transferee taxpayer to make an election to take into account the specified credit portion in the first taxable year in which such credit was determined by the eligible taxpayer.

The addition of a specific rule on estimated tax payments is unnecessary. The appropriateness of a transferee taxpayer taking the eligible credit into account for purposes of determining its quarterly estimated tax liability depends on the facts and circumstances. Nevertheless, as a clarification, because section 6418 generally contemplates a transferee taxpayer effectively stepping in the shoes of the eligible taxpayer from whom the transferee taxpayer was transferred the eligible credit, it follows that a transferee taxpayer can take into account the eligible credit for purposes of determining its quarterly estimated tax liability no earlier than an eligible taxpayer would. Further, if a transferee taxpayer is required to take a transferred eligible credit into account in a taxable year that has not yet begun because of the application of section 6418(d) and §1.6418-2(f)(1), then a transferee taxpayer cannot take the eligible credit into account for purposes of determining quarterly estimated tax liability until after the start of that later year. As noted in the preamble to the proposed regulations and confirmed in this part II.F.5 of the Summary of Comments and Explanation of Revisions, the transferee taxpayer remains liable for any additions to tax in accordance with sections 6654 and 6655 to the extent the transferee taxpayer has an underpayment of estimated tax.

For example, if a calendar year eligible taxpayer enters into an agreement with a calendar year transferee taxpayer during calendar year 2024 to transfer an eligible credit, and such credit is determined with respect to the eligible taxpayer in calendar year 2024, then assuming a timely and complete transfer election is made, the transferee taxpayer can take the transferred credit into account when calculating the required annual payment and quarterly estimated tax installments for calendar year 2024. The transferee taxpayer cannot treat the transferred credit as a payment of estimated tax. If any portion of the eligible credit that is ultimately transferred to a transferee taxpayer under section 6418(a) is subsequently adjusted to an amount less than what was agreed upon by the eligible taxpayer and the transferee taxpayer in calendar year 2024, the transferee taxpayer may be liable for any additions to tax under sections 6654 or 6655, given the reduced credit amount being transferred.

Commenters requested clarification of the phrase "intends to purchase" as used in the preamble to the proposed regulations. The phrase captures a situation in which the taxpayer plans to complete a transaction that meets the requirements of proposed §1.6418-2(b) so that the taxpayer would qualify as a transferee taxpayer with respect to a specified credit portion, but has not yet done so. This phrase illustrates that all the requirements of proposed §1.6418-2(b) do not have to be met for a transferee taxpayer to take the expected eligible credit into account in its estimated tax calculations, though the transferee taxpayer remains liable for any additions to

tax in accordance with sections 6654 and 6655 of the Code to the extent the transferee taxpayer has an underpayment of estimated tax if the eligible credit is not obtained as expected.

6. Chaining

Multiple commenters responding to the section 6418 proposed regulations, as well as the section 6417 proposed regulations, requested that a transferee taxpayer that is also an applicable entity under section 6417 be permitted to make an elective payment election under section 6417(a) for a credit that the transferee taxpayer purchased from an eligible taxpayer under section 6418(a) (referred to in the section 6417 regulations as "chaining"). These comments are outside of the scope of these final regulations because they ask a question that can only be resolved under section 6417. As explained in the preamble to TD 9988, the Treasury Department and the IRS note that §1.6417-2(c)(4) specifically does not adopt commenters' recommendations. However, the Treasury Department and the IRS also published Notice 2024-27, 2024-12 IRB 715, which requests comments on situations in which a section 6417(a) election could be made for credits purchased in transfers under section 6418(a). Written comments submitted pursuant to procedures described in Notice 2024-27 are due by December 1, 2024.

III. *Additional Rules for Partnerships and S corporations*

Section 6418(c)(2) provides that, in the case of any facility or property held directly by a partnership or an S corporation, any election under section 6418(a) is made by such partnership or S corporation. Section 6418(c)(1)(A) and (B) describes the treatment of a transfer election made by a partnership or an S corporation, and proposed §1.6418-3 would have provided additional rules for partnerships or S corporations that are eligible taxpayers or transferee taxpayers.

A. *Rules applicable to both partnerships and S corporations*

Proposed §1.6418-3(a)(1) through (6) provided certain rules that are applicable to both partnerships and S corporations. Proposed §1.6418-3(a)(1) provided generally that a partnership or an S corporation may qualify as an eligible taxpayer or a transferee taxpayer, assuming all other relevant requirements in section 6418 are met. Proposed §1.6418-3(a)(2) provided that in the case of any specified credit portion determined with respect to any eligible credit property held directly by a partnership or an S corporation, if such partnership or S corporation makes a transfer election with respect to such specified credit portion, (i) any amount of cash payment received as consideration for the transferred specified credit portion will be treated as tax exempt income for purposes of sections 705 and 1366 of the Code, and (ii) a partner's distributive share of such tax exempt income will be as described in proposed §1.6418-3(b)(1) and (2). Proposed §1.6418-3(a)(3) clarified that in the case of an eligible credit property held directly by a partnership or an S corporation, no transfer election by any partner or S corporation shareholder is allowed. Proposed §1.6418-3(a)(4) clarified that the language in section 6418(c) requiring an eligible credit property to be "held directly" by a transferor partnership or transferor S corporation allows for such eligible credit property to be owned by an entity disregarded as separate from the transferor partnership or transferor S corporation for Federal income tax purposes. Proposed §1.6418-3(a)(5) provided that any tax exempt income resulting from the receipt of consideration for the transfer of a specified credit portion by a transferor partnership or transferor S corporation is treated as arising from an investment activity and not from the conduct of a trade or business within the meaning of section 469(c)(1)(A). Additionally, the proposed regulations provided that any tax exempt income is not treated as passive income to any direct or indirect partners or shareholders who do not materially participate within the meaning of section 469(c)(1)(B). Lastly, proposed §1.6418-3(a)(6)(i) provided that the disposition of a partner's interest under §1.47-6(a)(2) or the disposition of an S corporation shareholder's interest under §1.47-4(a)(2) in a transferor partnership or an S corporation, respectively, does not result in recapture under section 6418(g)(3)(B) to which a transferee taxpayer is liable. Likewise, proposed §1.6418-3(a)(6)(ii) provided that a change in the nonqualified nonrecourse financing (as defined in section 49(a)(1)(D)) amount of any partner or shareholder of a transferor partnership or transferor S corporation, respectively, after the close of the taxable year in which the investment credit property is placed in service and the specified credit portion is determined, is disregarded for purposes of section 6418(g)(3)(B). That is, only the applicable partner in the transferor partnership or shareholder in the transferor S corporation is liable for recapture in such a circumstance. As such, notification by the transferor partnership or transferor S corporation to the transferee taxpayer of a section 49 recapture event is not required. Because there were no comments related to the provisions described in this paragraph, the proposed regulations are adopted without change in these final regulations.

B. *Rules solely applicable to transferor and transferee partnerships*

Section 6418(c)(1)(A) provides that any amount received as consideration for a transfer of eligible credits by a transferor partnership is treated as tax exempt income for purposes of section 705. Section 6418(c)(1)(B) provides that 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. Proposed §1.6418-3(b)(1) provided that a transferor partnership must generally determine a partner's distributive share of any tax exempt income resulting from the receipt of consideration by a transferor partnership for a transferred specified credit portion based on such partner's proportionate distributive share of the eligible credit that would otherwise have been allocated to such partner absent the transfer of the specified credit portion (otherwise eligible credit). The proposed regulations noted that a partner's distributive share of an otherwise eligible credit is determined under §§1.46-3(f) and 1.704-1(b)(4)(ii). The proposed regulations further clarified that any tax exempt income resulting from the receipt of consideration by a transferor partnership for a transferred spec-

ified credit portion is treated as received or accrued, including for purposes of section 705, as of the date the specified credit portion is determined with respect to the transferor partnership (such as, for investment credit property, the date the property is placed in service).

Proposed §1.6418-3(b)(2) provided a special rule for allocations of tax exempt income and eligible credits resulting from a transfer of a specified credit portion of less than all eligible credits determined with respect to an eligible credit property held by a transferor partnership. This special rule permitted tax exempt income resulting from the receipt of consideration for a transfer of one or more specified credit portion(s) of less than all eligible credits from an eligible credit property to, generally, be allocated to those partners that desired to transfer their distributive share of the underlying credits. To take advantage of this special rule, the proposed regulations provided that a transferor partnership would first determine each partner's distributive share of the otherwise eligible credits determined with respect to such eligible credit property in accordance with §§1.46-3(f) and 1.704-1(b)(4)(ii). This amount is referred to as a "partner's eligible credit amount." Thereafter, the transferor partnership would determine, either in a manner described in the partnership agreement or as the partners may agree, the portion of each partner's eligible credit amount to be transferred and the portion of each partner's eligible credit amount to be retained and allocated to such partner. Following the transfer of the specified credit portion(s), the transferor partnership would be permitted to allocate to each partner its agreed upon share of eligible credits, tax exempt income resulting from the receipt of consideration for the transferred specified credit portion(s), or both, as the case may be; provided that, the amount of eligible credits allocated to each partner did not exceed such partner's eligible credit amount and the amount of tax exempt income allocated to each partner would equal such partner's proportionate share of tax exempt income resulting from the transfer(s). Each partner's proportionate share of tax exempt income resulting from the transfer(s) would be equal to the total tax exempt income resulting from the transfer(s) of the specified credit portion(s) multiplied by a fraction, (i) the numerator of which would be a partner's total eligible credit amount minus the amount of eligible credits actually allocated to the partner with respect to the eligible credit property for the taxable year, and (ii) the denominator of which would be the total amount of the specified credit portion(s) transferred by the partnership with respect to the eligible credit property for the taxable year. The proposed regulations provided examples of this rule.

A commenter generally supported the partnership allocation rules in the proposed regulations, although there was a non-specific question related to the administrability of the proposed rules in the tax credit industry. The Treasury Department and the IRS appreciate that the partnership allocation rules under section 6418 could be considered complex and difficult to administer, but any such complexity of those rules is warranted given the flexibility they provide to taxpayers operating through transferor partnerships.

A commenter requested clarifying language and an example showing that the varying annual election and separate determination of each partner's eligible credit amount to be transferred under section 6418 and the portion of each partner's eligible credit amount to be retained and allocated to such partner and related allocations of tax exempt income can be made or revised at any time during the taxable year the eligible credit is generated and the following taxable year up to the due date of the partnership return for the taxable year under sections 706 and 761. Section 761(c) provides that for purposes of subchapter K of chapter 1 of the Code, a partnership agreement includes any modifications of the agreement made on or before the due date (not including extensions) of the partnership return for the taxable year, which are agreed to by all the partners or are adopted in accordance with the provisions of the agreement. The effect of section 761(c) is that a partnership is allowed to change its partners' distributive shares of income, gain, loss, deductions or credits for a taxable year (assuming such allocations are compliant with section 704(b)) up until the due date (not including extensions) for the partnership's tax return for such year. Proposed §1.6418-3(b)(2)(ii) would have provided that a transferor partnership may determine, in any manner described in the partnership agreement, or as the partners may agree, the portion of each partner's eligible credit amount to be transferred, and the portion of each partner's eligible credit amount to be retained and allocated to such partner. Assuming the agreement between the partners as to the portion of each partner's eligible credit amount to be transferred, and the portion of each partner's eligible credit amount to be retained and allocated to such partner, is properly treated as part of the partnership's agreement, such amounts can be made or revised under section 761(c) up until the due date (not including extensions) of the partnership's annual tax return. As such, there would already be considerable flexibility under the proposed regulations, and that additional language or an example is unnecessary to address this commenter's request.

Proposed §1.6418-3(b)(4)(i) would have provided that a partnership may qualify as a transferee partnership to the extent it is not related (within the meaning of section 267(b) or 707(b)(1)) to an eligible taxpayer. The proposed regulations also would have provided that while a transferee partnership is subject to the no additional transfer rule, an allocation of a transferred specified credit portion to a direct or indirect partner of a transferee partnership under section 704(b) is not a transfer for purposes of section 6418. Proposed §1.6418-3(b)(4)(ii) would have provided that a cash payment by a transferee partnership as consideration for a transferred specified credit portion is treated as an expenditure described in section 705(a)(2)(B). Proposed §1.6418-3(b)(4)(iii) would have provided that each partner's distributive share of any transferred specified credit portion is based on such partner's distributive share of the section 705(a)(2)(B) expenditures used to fund the purchase of such transferred specified credit portion. Under the proposed regulations, each partner's distributive share of the section 705(a)(2)(B) expenditures used to fund the purchase of any transferred specified credit portion would be determined by the partnership agreement. Or, if the partnership agreement did not provide for the allocation of such nonde-

ductible expenditures, then each partner's distributive share would be based on the transferee partnership's general allocation of nondeductible expenditures.

To prevent avoidance of the no additional transfer rule in proposed §1.6418-2(c)(2), the proposed regulations in proposed §1.6418-3(b)(4)(iv) would have provided that a transferred specified credit portion purchased by a transferee partnership is treated as an extraordinary item under §1.706-4(e) (and would have included a proposed addition to §1.706-4(e) confirming a transferred specified credit portion is an extraordinary item). The proposed regulations further would have provided that if the transferee partnership and eligible taxpayer have the same taxable years, such extraordinary item is deemed to occur on the date the transferee partnership first makes a cash payment to an eligible taxpayer for any transferred specified credit portion. The proposed regulations also would have provided that if the transferee partnership and eligible taxpayer have different taxable years, the extraordinary item is deemed to occur on the later of the first date the transferee partnership takes the transferred specified credit portion into account under section 6418(d), or the first date that the transferee partnership made a cash payment to the eligible taxpayer for the transferred specified credit portion.

Lastly, proposed §1.6418-3(b)(4)(v) would have provided that if an upper-tier partnership is a direct or indirect partner of a transferee partnership and directly or indirectly receives an allocation of a transferred specified credit portion, the upper-tier partnership is not an eligible taxpayer under section 6418 with respect to the transferred specified credit portion. The proposed regulations would have provided that an upper-tier partnership must determine each partner's distributive share of the transferred specified credit portion in accordance with rules in proposed §1.6418-3(b)(4)(iii) and (iv) and must report the credits to its partners in accordance with guidance.

A commenter recommended that the final regulations avoid excluding partners from credit allocations due to the extraordinary items rule of proposed §1.6418-3(b)(4)(iv) if a new partner is admitted to the partnership after the transferee taxpayer signs a credit purchase agreement but before any cash payments have been made. The commenter's concern was with respect to the application of proposed §1.6418-1(f)(3) to a partnership. This provision stated that the term "paid in cash" means a payment in U.S. dollars and "[m]ay include a transferee taxpayer's contractual commitment to purchase eligible credits with United States dollars in advance of the date a specified credit portion is transferred to such transferee taxpayer." The commenter suggested that the clause in the previous sentence could be interpreted to mean that the term "paid in cash" means the advance contractual commitment itself, rather than the payment pursuant to the advance commitment and suggested some changes to proposed §1.6418-1(f)(3). The paid in cash definition in proposed §1.6418-1(f)(3) confirms that advanced commitments are permissible and do not violate the paid in cash requirement. As the commenter hypothesizes, this provision is intended to clarify that payments in U.S. dollars made at the proper time can qualify even if the payments are made pursuant to advance contractual commitments. Likewise, the Treasury Department and the IRS confirm that an advanced commitment is not by itself considered a cash payment. Thus, if a partnership has not yet made any cash payments pursuant to a commitment to purchase eligible credits, an extraordinary item has not yet arisen.

A commenter requested additional guidance in the form of examples that illustrate the transfer of partnership interests. The Treasury Department and the IRS have considered these general requests and have determined such additional guidance is not necessary. The final regulations already provide examples demonstrating the rules applicable to a transferee partnership and its partners under section 6418, including rules applicable to an upper-tier partnership that is a direct or indirect partner in a transferee partnership. However, the final regulations clarify that an upper-tier partnership's distributive share of a transferred specified credit portion is treated as an extraordinary item to the upper-tier partnership. As a result, a transferred specified credit portion must be allocated among the partners of an upper-tier partnership as of the time the transfer of the specified credit portion is treated as occurring to the transferee partnership in accordance with §1.6418-3(b)(4)(iv) and §1.706-4(e)(1) and (e)(2)(ix). This is the case regardless of whether the transferee partnership and the upper-tier partnership have different taxable years under section 706(b).

A commenter recommended updates to §1.704-1(b)(3) to provide that the special allocations of tax exempt income and non-deductible expenses in the manner contemplated by the proposed regulations will be treated as having been made in accordance with the partners' interests in the partnership. The Treasury Department and the IRS have considered whether updates to §1.704-1(b)(3) are necessary and have determined that updates to those regulations are outside the scope of final regulations for section 6418.

C. *Rules solely applicable to transferor and transferee S corporations*

Section 6418(c)(1)(A) provides that any amount received as consideration for a transfer of eligible credits by a transferor S corporation is treated as tax exempt income for purposes of section 1366. Proposed §1.6418-3(c)(1) would have provided that each shareholder of a transferor S corporation must take into account such shareholder's pro rata share (as determined under section 1377(a) of the Code) of any tax exempt income resulting from the receipt of consideration for the transfer. The proposed regulations further would have provided that any tax exempt income resulting from the receipt of consideration by a transferor S corporation for a transferred specified credit portion is treated as received or accrued, including for purposes of section 1366 of the Code, as of the date the specified credit portion is determined with respect to the transferor S corporation (such as, for investment credit property, the date the property is placed in service).

Proposed §1.6418-3(c)(2)(i) would have provided that an S corporation may qualify as a transferee taxpayer to the extent it is not related (within the meaning of section 267(b) or 707(b)(1)) to an eligible taxpayer. The proposed regulations also would have provided that while a transferee S corporation is subject to the

no additional transfer rule, an allocation of a transferred specified credit portion to a direct or indirect shareholder of a transferee S corporation is not a transfer for purposes of section 6418. Proposed §1.6418-3(c)(2)(ii) would have provided that a cash payment by a transferee S corporation as consideration for a transferred specified credit portion is treated as an expenditure described in section 1367(a)(2)(D) of the Code. Proposed §1.6418-3(c)(2)(iii) would have provided that each shareholder of a transferee S corporation must take into account such shareholder's pro rata share (as determined under section 1377(a)) of any transferred specified credit portion. The proposed regulations further would have provided that if a transferee S corporation and eligible taxpayer have the same taxable years, the transfer of a specified credit portion is treated as occurring to a transferee S corporation during the transferee S corporation's permitted year (as defined under section 1378(b)) or the taxable year elected under section 444 that the transferee S corporation first makes a cash payment as consideration to the eligible taxpayer for the specified credit portion. The proposed regulations also would have provided that if a transferee S corporation and eligible taxpayer have different taxable years, then the transfer of a specified credit portion is treated as occurring to a transferee S corporation during the transferee S corporation's first permitted year (as defined under sections 444 and 1378(b)) ending with or after, the taxable year of the eligible taxpayer to which the transferred specified credit portion was determined. Because there were no comments related to the provisions described in this paragraph, the proposed regulations are adopted without change in these final regulations.

D. *Elections for transferor partnerships and transferor S corporations*

Proposed §1.6418-3(d) would have provided specific rules relating to elections for transferor partnerships or transferor S corporations. Proposed §1.6418-3(d)(1) would have provided that a transfer election is made on the basis of an eligible credit property and only applies to the specified credit portion identified in the transfer election by such partnership or S corporation in the taxable year for which the election is made. Proposed §1.6418-3(d)(2) would have provided that a transfer election for a specified credit portion must be made in the manner provided in proposed §1.6418-2(b)(1) through (3), including that all documents required in proposed §1.6418-2(b)(1) through (3) must be attached to the partnership or S corporation return for the taxable year during which the transferred specified credit portion was determined. The proposed regulations further would have provided that for the transfer election to be valid, the return must be filed not later than the time prescribed by §§1.6031(a)-1(e) and 1.6037-1(b) (including extensions of time) for filing the return for such taxable year. Additionally, the proposed regulations would have provided that no transfer election may be made or revised on an amended return or by filing an AAR and that no 9100 relief would be available for a transfer election that is not timely filed. Lastly, proposed §1.6418-3(d)(3) would have provided that a transfer election by a partnership or an S corporation is irrevocable. As described in greater detail in part II.B.4 of this Summary of Comments and Explanation of Revisions, these final regulations modify proposed §1.6418-2(b)(4) to permit an automatic six-month extension of time under §301.9100-2(b) to make the election prescribed in section 6418(e)(1). Consistent with that modification, these final regulations also modify proposed §1.6418-3(d)(2) to provide for late-election relief under §301.9100-2(b) for a partnership or an S corporation making a transfer election and permit, based on some commenters' requests, that a partnership or an S corporation, much like any other eligible taxpayer, may correct a numerical error with respect to a properly claimed transfer election on an amended return or AAR. The partnership's or S corporation's original return must have been signed under penalties of perjury and must have contained all of the information, including a registration number, required by these final regulations. The final regulations clarify that in order to correct an error on an amended return or AAR, a partnership or an S corporation must have made an error in the information included on the original return such that there is a substantive item to correct. A partnership or an S corporation cannot correct a blank item or an item that is described as being "available upon request."

IV. *Additional Information and Registration*

Section 6418(g)(1) provides that as a condition of, and prior to, any transfer of any portion of an eligible credit under section 6418, 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 this section. Proposed §1.6418-4 would have addressed these requirements by adding a pre-filing registration process, and §1.6418-4T, issued contemporaneously, put those rules into effect for taxable years ending on or after June 21, 2023. Because the temporary regulations are removed, this part IV discusses the proposed regulations rather than the temporary regulations, which are identical.

Proposed §1.6418-4(a)-(c) would have provided the mandatory pre-filing registration process that, except as provided in guidance, an eligible taxpayer would be required to complete as a condition of, and prior to, the transfer of an eligible credit under proposed §1.6418-2 or §1.6418-3.

Proposed §1.6418-4(a) would have provided an overview of the pre-filing registration process. Proposed §1.6418-4(b) would have included the pre-filing registration requirements, including: (1) manner of pre-filing registration; (2) pre-filing registration and election for members of a consolidated group; (3) timing of pre-filing registration; (4) that each eligible credit property must have its own registration number; and (5) information required to complete the pre-filing registration process. Proposed §1.6418-4(c) would have provided rules related to the registration number, including: (1) general rules; (2) that the registration number is valid for only one taxable year; (3) renewing registration numbers; (4) amendment of previously submitted registration information if a change occurs before the registration number is used; and (5) that the registration number is required to be

reported by an eligible taxpayer and transferee taxpayer.

Several commenters requested that the IRS implement a streamlined process for registration, including registration for multiple properties. Several commenters provided suggestions for alternatives to a registration process, such as creating a registry of tax credits, an election out of pre-filing registration, or utilizing the current process for matching transactions. Section 6418(g)(1) provides that the Secretary may implement a registration process she deems necessary for purposes of preventing duplication, fraud, or improper or excessive transfers of eligible credits. Proposed §1.6418-4(a) would have required an eligible taxpayer to satisfy the pre-filing registration requirements of proposed §1.6418-4(b) as a condition of, and prior to, making a transfer election under section 6418(a). The Treasury Department and the IRS recognize the concerns of eligible taxpayers needing an efficient registration process to transfer eligible credits but must mitigate opportunities for fraud. The IRS will consider ways outside of these final regulations to make the pre-filing registration process more streamlined for eligible taxpayers, and the IRS will continue to monitor the pre-filing registration process to determine whether there are areas in which more efficiencies in the pre-filing registration process can be created. However, these final regulations finalize proposed §1.6418-4(a) without change.

Several commenters recommended that the final regulations allow transfers under section 6418(a) without a registration requirement if the pre-filing registration application had been submitted. The Treasury Department and the IRS understand commenters' recommendations were made prior to the pre-filing registration portal being open; however, pre-filing registration is necessary to help meet the government's compelling interest to prevent fraud and duplication while also allowing for a more efficient processing and payment upon filing of the return. These final regulations do not adopt this suggestion because the timing of the submission is only one issue. The quality and accuracy of information of the provided information is also important, and so only submitting an application is an insufficient guardrail.

Several commenters stated that the registration process might create burdens for taxpayers that could prevent their participation in transfer opportunities. A commenter stated that the documentation and process related to acquiring a registration number should account for the fact that, while there are many large taxpayers that may be selling tax credits, the transfer market will include many smaller taxpayers as well. The Treasury Department and the IRS understand commenters' concerns about the need for resources to complete the pre-filing registration process; however, as described previously, pre-filing registration is necessary to help meet the government's compelling interest to prevent fraud and duplication while also allowing for a more efficient processing of the eligible taxpayer's return and the transferee taxpayer's return. The information requested during the pre-filing registration process is also information that the eligible taxpayer should have available after having engaged in an activity for which an eligible credit is determined. Further, for smaller eligible taxpayers that engage in fewer projects, the pre-filing registration process will be less complex. For example, an eligible taxpayer with one eligible credit property for which an eligible credit is determined during the taxable year will have a more streamlined registration process than will an eligible taxpayer with multiple eligible credit properties for which multiple eligible credits are determined during the taxable year. Finally, the IRS is committed to ongoing efforts to provide guidance to help taxpayers understand how to qualify for the underlying credits, how to meet the pre-filing registration requirements, and how to complete the transfer election process. These efforts, among others undertaken by the IRS, should address the commenters' concerns. Thus, these final regulations adopt the pre-filing registration process as proposed.

Commenters recommended a time limit for registration approval. A commenter urged the IRS to provide registration numbers as quickly as possible and publicly share estimates for issuing registration numbers to incentivize efficiency. Another commenter urged that the IRS be required to clarify reasons for delay in issuing a registration number and provide relief from estimated tax penalties due to the delay. Several commenters recommended that the final regulations create specific exceptions to the pre-filing registration requirement, such as a transition rule allowing transferee taxpayers to take eligible credits into account on the transferee taxpayer's 2023 tax return without a registration number for the eligible credits if a pre-registration application has been submitted by the eligible taxpayer. These final regulations do not adopt these suggestions for a time limit or a transition rule for a 2023 taxable year. Instead, the Treasury Department and the IRS recommend that taxpayers with these sorts of questions consult the current version of Publication 5884, *Inflation Reduction Act (IRA) and CHIPS Act of 2022 (CHIPS) Pre-Filing Registration Tool User Guide and Instructions*, for the latest guidance on the pre-filing registration process. In April 2024, Publication 5884 stated:

> Even though registration is not possible prior to the beginning of the tax year in which the credit will be earned, the IRS recommends that taxpayers register as soon as reasonably practicable during the tax year. The current recommendation is to submit the pre-filing registration at least 120 days prior to when the organization or entity plans to file its tax return. This should allow time for IRS review, and for the taxpayer to respond if the IRS requires additional information before issuing the registration numbers.

This information in Publication 5884 should also help other commenters that asked for clarification on the timeline for such a pre-filing registration process, including the lead-time required to initiate the process before the anticipated date of filing the applicable tax return.

One commenter suggested that the proposed regulations failure to mention bonus credits in proposed §1.6418-4 means it is ambiguous whether eligible taxpayers must separately declare their intent to elect to transfer a bonus credit. The commenter strongly encouraged that the final regulations resolve this ambiguity and clearly specify that such an intent must be separately reported. However, as explained in part I.D of the Summary

of Comments and Explanation of Revisions, bonus credits are not separately transferred from an eligible credit. Further, these final regulations do not adopt these proposed revisions to the proposed regulations because the pre-filing registration process is primarily intended to verify that the applicant is an eligible taxpayer and that the registered property is an eligible credit property. Calculation of the credit amount (including qualifying for any bonus amounts that would increase the base credit amount) is done on an annual return. However, the Treasury Department and the IRS will monitor the pre-filing registration process to determine whether requesting additional information is needed to prevent duplication, fraud, improper payments, or excessive credit transfers under section 6418.

Several commenters requested clarification of the IRS's review and determination procedures after a taxpayer completes registration, including whether taxpayers may appeal any denials of registration numbers. Publication 5884 describes this process. In cases in which a pre-filing registration submission is incomplete, the IRS will attempt to contact the registrant using the information provided to indicate deficiencies with the registration prior to making a determination.

Section 7803(e)(3) of the Code provides that it is the function of the IRS Independent Office of Appeals (Appeals) to resolve Federal tax controversies without litigation. Decisions made by the IRS relating to the denial, suspension, or revocation of a registration number are not Federal tax controversies within the meaning of section 7803(e)(3) because registration is too attenuated and separate from any tax liability of the eligible taxpayer. Accordingly, once the IRS determines that a registration number should not be given, the registrant cannot appeal the denial unless the IRS and Appeals agree that such review is available and the IRS provides the time and manner for such review.

Commenters requested that the final regulations clarify documentation retention requirements, including additional rules for the types of documents to retain or the type of information to be retained. The documentation to support the existence of valid eligible credit property will vary by the credit being claimed. The pre-filing registration portal and Publication 5884 list, for each credit, a description of the types of documents that will facilitate processing of the pre-filing registration. A registrant does not need to provide all information that may be available; in fact, as of April 2024, Publication 5884 states:

> If detailed project plans or contractual agreements are the best support that the taxpayer is engaging in activities or making tax credit investments that qualify the registrant to claim a credit, the registrant should submit an extract of the document showing the name of the taxpayer, date of purchase and identifying information such as serial numbers, rather than the entire document.

However, to the extent the information provided is insufficient for purposes of the pre-filing registration process, the IRS may request further information. *See* Publication 5884.

Commenters provided suggestions of how the registration portal should be constructed and how it should function. Commenters also recommended that the IRS enable a transferee taxpayer to verify the legitimacy of a registration number by providing the eligible taxpayer's pre-filing registration information, including a truncated taxpayer identification number, into the portal. The Treasury Department and the IRS recognize that these comments were provided prior to the opening of the registration portal; however, much of the infrastructure and planning for the registration portal was in process at the time these comments were received. The Treasury Department and the IRS will continue to review the efficiency of the registration portal, including functionality responses from the public, to determine whether changes should be implemented or whether additional guidance or publications should be issued; however, these comments are outside of the scope of these final regulations.

Several commenters stated that the final regulations should allow grouping for registration and transfer either by means of the underlying Code section provisions or existing guidance. Other commenters recommended changes in the final regulations to allow for grouping based on specific types of property. The definition of eligible credit property in section 6418 is based on the relevant rules for the underlying eligible credit, and changes to the definition of particular properties pursuant to the underlying Code sections is outside the scope of this rulemaking. If any such underlying Code section allows grouping to determine a qualified property, then grouping for purposes of a registration number is permitted. If such definition does not allow grouping, then each eligible credit property must be registered separately; however, for some eligible credits, the pre-filing registration portal allows eligible credit property information to be uploaded by way of a spreadsheet file (bulk upload). *See* Publication 5884.

A commenter specifically asked that grouping of charging properties under section 30C be permitted for registration purposes. The commenter argued that requiring the pre-registration on a single eligible credit property basis would be unduly burdensome and costly in some cases. The commenter suggested allowing taxpayers to bundle multiple projects at different locations into a single pre-registration to process and reduce transaction costs, believing in most cases that it would reflect the realities of the transfer. The Treasury Department and the IRS did not adopt the commenters recommendation regarding section 30C, as the approach recommended was determined to be too subjective, which could lead to differences in interpretation between taxpayers and the IRS. As such, the grouping of eligible credit property continues to depend on the definition of that eligible credit property under the relevant Code section and regulations implementing the underlying eligible credit. In this commenter's case, this means the rules in section 30C(c). However, it is relevant to note the pre-filing registration portal allows eligible credit property information to be uploaded by way of bulk upload for certain credits, including the section 30C credit. *See* Publication 5884.

Commenters sought clarification that the pre-filing registration process will not require designation of a qualified clean hydrogen production facility's applicable "lifecycle greenhouse gas emissions rate"

under section 45V. Similar to the issue of grouping eligible credit properties, the definition of eligible credit property in section 6418 is based on the relevant rules for the underlying eligible credit, and clarification of the definitions contained in the underlying Code sections for particular properties is outside the scope of this rulemaking. Therefore, these final regulations do not make this recommended change.

A commenter recommended that the final regulations allow the owner of a single process train to register the eligible credit property and the owner and the disposer(s) or utilizer(s) to each make a transfer election using the same registration number for a section 45Q credit. The commenter also recommended that in this case the pre-filing registration portal allow the owner of the single process train to disclose as part of its pre-filing registration that the credit or a portion thereof will be allowed to disposer(s) or utilizer(s) under a section 45Q(f)(3)(B) election. As explained in part II.A of this Summary of Comments and Explanation of Revisions, §1.6418-2(a)(4)(iii) of these final regulations provides that a section 45Q credit allowable to an eligible taxpayer because of an election under section 45Q(f)(3)(B) is not an eligible credit that can be transferred because the credit is not determined with respect to the eligible taxpayer. Thus, the final regulations do not adopt this recommendation.

Several commenters sought exceptions to the yearly registration requirement. A commenter requested an illustration of a specified change that would require an amendment or resubmission. The purpose of the registration process is to assist with the administrative needs of the IRS in tracking the eligible credit property and the transferred specified credit portion. Proposed §1.6418-4(c)(2) would have stated that a registration number is valid with respect to an eligible taxpayer only for the taxable year in which the credit is determined for the eligible credit property for which the registration is completed, and for a transferee taxpayer's taxable year in which the eligible credit is taken into account under proposed §1.6418-2(f). Additionally, proposed §1.6418-4(c)(3) would have stated that renewal must be made in accordance with applicable guidance, including attesting that all the facts previously provided are still correct or updating any facts. Thus, any changes to the pre-filing registration process to make it be more streamlined for renewals will be addressed in applicable guidance. After reviewing this comment, the Treasury Department and the IRS have determined that a yearly registration process is still necessary to meet these administrative needs.

Proposed §1.6418-4(b)(5)(vii)(D) would have required that, to complete the pre-filing registration process, registrants must provide information as to the beginning of construction date and the placed in service date of the eligible credit property. Commenters requested that the final regulations require registration up to sixty days before construction has begun as well as an IRS visit to the jobsite as part of the registration process for PWA purposes. The Treasury Department and the IRS have determined that a registration number should not be given before the eligible credit property is placed in service, which is an important step to ensuring that the eligible credit property qualifies for the eligible credit for which the eligible taxpayer seeks to make a transfer election. Because a credit must be determined in the taxable year of the transfer election, maintaining the proposed requirement will ensure that taxpayers are not attempting to make a transfer election in a year in which a credit is not determined. Further, this information will help the IRS prevent fraud. The Treasury Department and the IRS have also determined that it is not necessary for sound tax administration to require registration or a jobsite visit prior to construction for PWA purposes. Thus, these final regulations adopt proposed §1.6418-4(b)(5)(vii)(D) without change.

A commenter recommended that tax professionals be allowed to assist in the registration process on behalf of eligible taxpayers. The Treasury Department and the IRS note that the proposed regulations would not have restricted a taxpayer from authorizing a representative to apply for a registration number on behalf of the taxpayer, and these final regulations similarly do not do so. *See* Publication 5884, which provides that a person who wishes to access Energy Credits Online on behalf of a taxpayer must authorize an IRS Energy Credits Online account by selecting "Start Authorization." These final regulations modify proposed §1.6418-4(c)(5) to clarify that a valid registration number is one that was assigned to the particular taxpayer during the pre-registration process.

A commenter requested guidance stating that subsequent changes in law will not impact tax credits for which the taxpayer has already applied in the pre-filing registration process. The Treasury Department and the IRS do not adopt this request. The pre-filing registration process is not a guarantee that a project will qualify for an eligible credit for which a transfer election may be made, as verification of initial pre-filing information cannot be used by the IRS to confirm compliance with the requirements of an underlying credit. Compliance with the underlying credit requirements is reported and verified in additional detail on the annual tax return, and, as those requirements are provided in Code sections outside of section 6418, are largely outside the scope of these final regulations. Generally, for an ITC, the amount of the credit can be determined as of the placed in service date, and for a PTC, the amount of the credit is generally determined as of the end of the taxable year. Thus, for either type of credit, changes in later taxable years to the underlying Code sections would not affect an eligible taxpayer's qualification in the taxable year the credit was determined.

V. *Special Rules*

A. *Excessive credit transfers*

Pursuant to section 6418(g)(2)(A), if the Secretary determines that there is an excessive credit transfer to a transferee taxpayer, then the tax imposed on the transferee taxpayer by chapter 1 of the Code (chapter 1) (regardless of whether such entity would otherwise be subject to tax under chapter 1) is increased in the year of such determination by the amount of the excessive credit transfer plus 20 percent of such excessive credit transfer. Under section 6418(g)(2)(B), the additional amount of 20 percent of the excessive credit transfer does not apply if the transferee taxpayer demonstrates to the satisfaction of the Secretary that the excessive credit transfer resulted from reason-

able cause. An excessive credit transfer is defined in section 6418(g)(2)(C) as, with respect to a facility or property for which an election is made under section 6418(a) for any taxable year, an amount equal to the excess of (1) the amount of the eligible credit claimed by the transferee taxpayer with respect to such facility or property for such taxable year; over (2) the amount of the eligible credit that, without application of section 6418, would be otherwise allowable under the Code with respect to such facility or property for such taxable year.

1. In general

Proposed §1.6418-5(a)(1) would have provided a general rule that is consistent with the rule in section 6418(g)(2)(A) for any specified credit portion transferred to a transferee taxpayer pursuant to an election in proposed §1.6418-2(a) or proposed §1.6418-3.

2. Taxable year of determination

Proposed §1.6418-5(a)(2) would have defined the taxable year of determination as the taxable year that includes the determination of the excessive credit transfer to the transferee taxpayer and not the taxable year during which the eligible credit was originally determined by the eligible taxpayer, unless those are the same taxable years.

A commenter recommended that the final regulations also describe any further procedures that apply with respect to this IRS determination or the taxable year of the determination. The commenter noted that the proposed regulations do not describe any appeal rights of the taxpayer of such determination, including the application of deficiency procedures and the right to petition the U.S. Tax Court. The commenter recommended that the final regulations clarify that appeal rights and deficiency procedures apply to any excessive credit transfer determination.

Any excessive credit transfer determination will be made by the IRS under established examination procedures and these final regulations do not except any taxpayers or any calculations from this process. An eligible taxpayer or transferee taxpayer may challenge an adverse determination by the IRS with respect to an excess credit transfer determination if the determination creates a tax deficiency, for which deficiency procedures apply, including the right to petition the U.S. Tax Court. For example, if a transferee taxpayer claimed a transferred specified credit portion, and the transferred specified credit portion was subsequently disallowed and determined by the IRS to be an excessive credit transfer, then the transferee taxpayer could protest the disallowance before Appeals and ultimately petition the U.S. Tax Court, if desired.

3. Payments related to excessive credit transfer

Proposed §1.6418-5(a)(3) would have provided a rule that any payments made by a transferee taxpayer to an eligible taxpayer that directly relate to an excessive credit transfer (as defined in proposed §1.6418-5(b)) are not subject to section 6418(b)(2) or proposed §1.6418-2(e).

Several commenters recommended clarifying the tax consequences to a transferee taxpayer with respect to payments made to an eligible taxpayer that directly relate to an excessive credit transfer. In general, the commenters thought that proposed §1.6418-5(a)(3) only addressed the eligible taxpayer side of a transaction by only referencing section 6418(b)(2). Specifically, some commenters recommended revising the rule so that section 6418(b)(3), which says that payments related to the transfer of an eligible credit are not deductible to the transferee taxpayer, would not apply in the excessive credit transfer context. For example, a commenter raised that amounts paid as consideration by a transferee taxpayer related to an excessive credit transfer should be deductible as an ordinary business expense in year of the excess credit determination, and corresponding indemnity or insurance payment received should be included as ordinary income in the year the all events test is met (for accrual method) or in the year of payment (for cash method). Another commenter stated that amounts paid by a transferee taxpayer related to an excessive credit transfer should be deductible only to the extent they exceed the amount for which there is a claim or reimbursement with a reasonable prospect of recovery. A commenter also recommended clarifying the amount of the deduction, if a deduction is possible. Lastly, a commenter asked that the final regulations provide that any indemnification payments made by an eligible taxpayer to a transferee taxpayer relating to an excessive credit transfer be deductible as an ordinary business expense under section 162(a) in the year that the liability to make the payment is taken into account under section 461, assuming the eligible taxpayer uses the accrual method.

In response to these comments, these final regulations revise proposed §1.6418-5(a)(3) to provide that any payment made by a transferee taxpayer to an eligible taxpayer that directly relates to the excessive credit transfer (as defined in proposed §1.6418-5(b)) is not subject to section 6418(b)(2), section 6418(b)(3), or proposed §1.6418-2(e). Adding the reference to section 6418(b)(3) should clarify that a transferee taxpayer is not precluded from deducting the portion of the consideration paid to the eligible taxpayer for a specified credit portion that relates to an excessive credit transfer. In addition, these final regulations revise proposed §1.6418-5(a)(3) to clarify that the amount of a payment that directly relates to an excessive credit transfer is equal to the total consideration paid in cash by the transferee taxpayer for its specified credit portion multiplied by the ratio of the amount of the excessive credit transferred to the transferee taxpayer to the amount of the transferred specified credit portion claimed by the transferee taxpayer. However, determining the timing and character of any deduction, or the impact of insurance or indemnity payments, is beyond the scope of these final regulations. General income tax principles apply to determine the timing of any deduction to a transferee taxpayer, or gross income to an eligible taxpayer, with respect to a payment that directly relates to an excessive credit transfer. Similarly, the character of any deduction to a transferee taxpayer, or gross income to an eligible taxpayer, with respect to a payment that directly relates to an excessive credit transfer may be determined under section 6418 and general income tax principles. Finally, general income tax principles apply to determine the income tax consequences of any insurance pay-

ments received by a transferee taxpayer or indemnities paid by the eligible taxpayer to a transferee taxpayer.

4. Reasonable cause

Section 6418(g)(2)(B) provides that, if a transferee taxpayer demonstrates to the satisfaction of the Secretary that the excessive credit transfer resulted from reasonable cause, the excessive credit transfer addition to tax described in section 6418(g)(2)(A)(ii) will not apply. Proposed §1.6418-5(a)(4) would have provided that the determination of reasonable cause will be made based on the relevant facts and circumstances. Generally, the most important factor is the extent of the transferee taxpayer's efforts to determine that the amount of specified credit portion transferred by the eligible taxpayer to the transferee taxpayer is not more than the amount of the eligible credit determined with respect to the eligible credit property for the taxable year in which the eligible credit was determined and has not been transferred to any other taxpayer. Circumstances that may indicate reasonable cause can include, but are not limited to, review of the eligible taxpayer's records with respect to the determination of the eligible credit (including documentation evidencing eligibility for bonus credit amounts), reasonable reliance on third party expert reports, reasonable reliance on representations from the eligible taxpayer that the total specified credit portion transferred (including portions transferred to other transferee taxpayers in a case in which an eligible taxpayer makes multiple transfer elections with respect to a single eligible credit property) does not exceed the total eligible credit determined with respect to the eligible credit property for the taxable year, and review of audited financial statements provided to the Securities and Exchange Commission (and underlying information), if applicable.

The Treasury Department and the IRS received several comments regarding the definition of reasonable cause. For the reasons described further in this part V.A.4 of the Summary of Comments and Explanation of Revisions, these final regulations do not adopt the recommendations submitted by commenters, and the proposed regulations are finalized without any substantive changes on this issue.

A few commenters stated that the proposed regulations defined reasonable cause subjectively and did not sufficiently protect transferee taxpayers from an eligible taxpayer's inadequate controls or fraud, such as cases in which an eligible taxpayer provided material, false, or misleading information on which the transferee taxpayer relied. Some commenters suggested bright-line or safe harbor rules under which the reasonable cause exception would be deemed to be satisfied, such as if an eligible taxpayer provides to a transferee taxpayer a written certification that the requirements of a section 6418 transfer have been met, or if a transferee taxpayer can produce due diligence information or attestations or uses a third-party advisor for its due diligence.

A commenter requested that the final regulations provide guidance on the definition of reasonable cause for labor standards noncompliance, including that state and local governments should receive reasonable cause relief if a failure is due to labor noncompliance. Another commenter recommended transferee taxpayers be able to rely on project labor agreements for purposes of determining reasonable cause.

These final regulations do not adopt these comments because the determination of whether an excessive credit transfer was due to reasonable cause is based on full consideration of all the facts and circumstances. To the extent additional rules are needed to prevent eligible taxpayers from providing materially false or misleading information to transferee taxpayers, or to the extent additional enforcement mechanisms are needed to prevent this type of abuse, such a change is beyond the scope of these final regulations. These final regulations also do not adopt a bright-line rule or safe harbor identifying any particular action or omission as the transferee taxpayer's deemed satisfaction of the reasonable cause standard. Guidance regarding reasonable cause in the context of labor standards noncompliance is outside the scope of these final regulations.

The Treasury Department and the IRS note that section 6418(g)(2)(B) specifically places a due diligence responsibility on the transferee taxpayer. As provided in proposed §1.6418-5(a)(4), the most important factor in demonstrating reasonable cause under section 6418 would be the transferee taxpayer's efforts in determining that the eligible taxpayer had the specified credit portion to transfer. As acknowledged by one of the commenters, the proposed regulations would have considered representations by an eligible taxpayer as part of determining whether a transferee taxpayer has demonstrated reasonable cause. Relying solely on an eligible taxpayer's representations does not align with section 6418(g)(2)(B). Moreover, reasonable cause standards are already well-established under case law and administrative and regulatory authorities. A transferee taxpayer that is subject to an excessive credit transfer may assert defenses that are commonly raised by taxpayers in other situations in which the IRS has asserted an addition to tax. Section 1.6664-4, for example, provides guidance related to reasonable cause in the context of accuracy-related penalties under section 6662. Accordingly, these final regulations do not adopt commenters' suggestions to create bright-line rules, safe harbors, or other new standards and adopt the proposed regulations without modification.

5. Recapture events

Proposed §1.6418-5(a)(5) clarified that a recapture event under section 45Q(f)(4) or 50(a) is not an excessive credit transfer. The Treasury Department and the IRS did not receive any comments regarding this clarification, and thus, these final regulations adopt proposed §1.6418-5(a)(5) without change, except that, for clarity, the final regulations add section 49(b) to the list of recapture events that are not an excessive credit transfer.

6. Definition of excessive credit transfer

Proposed §1.6418-5(b)(1) would have defined an excessive credit transfer consistent with section 6418(g)(2)(C) as meaning, with respect to an eligible credit property for which a transfer election is made under proposed §1.6418-2 or §1.6418-3 for any taxable year, an amount equal to the excess of (1) the amount of the transferred specified credit portion

claimed by the transferee taxpayer with respect to such eligible credit property for such taxable year; over (2) the amount of the eligible credit that, without the application of section 6418, would be otherwise allowable under the Code with respect to such eligible credit property for such taxable year.

Proposed §1.6418-5(b)(2) would have provided a rule for determining an excessive credit transfer if there are multiple transferees by treating the transferees as one. The proposed regulations would have provided that all transferee taxpayers are considered one transferee for calculating whether there was an excessive credit transfer and the amount of the excessive credit transfer. If there was an excessive credit transfer, then the amount of excessive credit transferred to a specific transferee taxpayer would be equal to the total excessive credit transferred multiplied by the transferee taxpayer's portion of the total credit transferred to all transferee taxpayers. This rule would be applied on an eligible credit property basis.

A commenter recommended that the final regulations adopt a rule allowing an eligible taxpayer to determine the order of eligible credits transferred for determining an excessive credit transfer if there are multiple transferees. Specifically, the commenter recommended allowing an eligible taxpayer to choose the order in which transferred credits will be treated as excessive credit transfers. The Treasury Department and the IRS acknowledge that an ordering rule could potentially limit the number of transferee taxpayers to which an excessive credit transfer determination is made, rather than applying pro rata to all transferee taxpayers as provided in proposed §1.6418-5(b)(2). However, inclusion of an ordering rule between an eligible taxpayer and transferee taxpayers is not described in the definition of excessive credit transfer in section 6418(g)(2)(C). The definition, by limiting excessive credit transfers to amounts claimed by a transferee taxpayer over amounts otherwise allowable, effectively only applies to the extent the disallowed credit exceeds the amount retained by an eligible taxpayer. For example, if an eligible taxpayer retained $25X of a $100X eligible credit and transferred $75X of the same eligible credit and it was later determined that only $75X of the eligible credit is otherwise allowable with respect to the relevant eligible credit property, the excess credit transfer would be $0 ($75X - $75X). The $25X of disallowed credit would be disallowed to the eligible taxpayer. Thus, the definition of an excessive credit transfer effectively includes an ordering rule so that any disallowed eligible credit first reduces the eligible credit retained by an eligible taxpayer before applying to any transferee taxpayer. However, the definition does not distinguish between different transferee taxpayers. Further, adding an ordering election would add administrative complexity that does not exist with a pro rata rule. For example, rules would be needed on whether the election is made on a single eligible credit property basis or for all eligible credit properties, and the IRS would have to create additional systems to track that such an election was made. Also, additional complexity could arise with respect to tax administration if there was a disagreement between an eligible taxpayer and transferee taxpayers as to the order of a transfer. Based on this reasoning, the Treasury Department and the IRS do not adopt the commenter's suggestion, and these final regulations adopt the definition of excessive credit transfer without change and provide clarifying language for calculating the amount of excessive credit transferred to a specific transferee taxpayer if there is more than one transferee taxpayer.

7. Examples illustrating excessive credit transfers

Proposed §1.6418-5(b)(3) would have provided three examples to illustrate cases in which there is no excessive credit transfer, in which there is an excessive credit transfer, and in which there is an excessive credit transfer as to multiple transferees. Consistent with the modifications made to proposed §1.6418-5(a)(3), as described in part V.A.3 of this Summary of Comments and Explanation of Revisions, the final regulations provide additional clarification to each of the three examples in §1.6418-5(b)(3).

The Treasury Department and the IRS understand from the comment letters that partners in a transferor partnership that decide to retain their share of eligible credits generated through the partnership may refuse to consent to the partnership transferring other partners' shares of eligible credits because eligible taxpayers are first liable under the excessive credit transfer rules up to the amount of the credit retained. Commenters requested that the final regulations include an election not to apply any disallowed eligible credit amounts to an eligible taxpayer (to the extent it retained eligible credits) before triggering an excessive credit transfer. As previously described, section 6418(g)(2)(C) limits an excessive credit transfer to the amount claimed by a transferee taxpayer(s) over amounts otherwise allowable, meaning the rule only applies to the extent the disallowed credit exceeds the amount retained by an eligible taxpayer. After considering this comment, the Treasury Department and the IRS have determined that including an election not to apply the excessive credit transfer rules in specified circumstances is not consistent with the definition of an excessive credit transfer in section 6418(g)(2)(C).

Several comments were received seeking clarification on the interaction between the additions to tax for excessive credit transfers and penalties for labor standards noncompliance, as well as recommendations for additional enforcement and documentation rules. After considering these comments, the Treasury Department and the IRS have decided not to provide further clarification in these final regulations. The additions to tax imposed by section 6418 are applied in addition to other penalties imposed by the Code. Moreover, the imposition of penalties under section 45(b)(7) and (8) are addressed in the section 45 proposed regulations. The Treasury Department and the IRS will continue to study whether inequities or unfair burdens exist for taxpayers and potentially address such situations in future guidance.

B. *Recapture*

Unlike excessive credit transfers, recapture of a tax credit occurs if the original tax credit reported would have been correct without the occurrence of a subsequent recapture event.

Section 6418(g)(3)(B) provides that if, during any taxable year, the applicable investment credit property (as defined in

section 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 (as described in section 50(a)(1)), then (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 section 50(c)(2)), if any, to the eligible taxpayer (in such form and manner as the Secretary prescribes). The proposed regulations would have included a rule that the recapture amount is calculated and taken into account by the transferee taxpayer.

The proposed regulations would have provided guidance on the notifications that are required by the eligible taxpayer and the transferee taxpayer after a recapture event, as described in section 6418(g)(3)(B)(i) and (ii), stating that an eligible taxpayer is required to provide notification of a recapture event to a transferee taxpayer, with such notification including all of the information necessary for the transferee taxpayer to calculate the recapture amount (as defined under section 50(c)(2)).

On November 22, 2023, the Treasury Department and the IRS published proposed regulations (REG-132569-17) in the *Federal Register* (88 FR 82188) relating to the section 48 credit that supplemented proposed §1.6418-5 to provide guidance on the notification requirements for an eligible taxpayer and that a transferee taxpayer is responsible for any amount of tax increase under section 48(a)(10)(C). These final regulations reserve on §1.6418-5(f) as proposed in REG-132569-17 because the Treasury Department and the IRS continue to consider comments received regarding the application of section 48(a)(10)(C). Accordingly, any comments received on §1.6418-5(f) as proposed in REG-132569-17 will be separately addressed as part of that rulemaking.

Commenters recommended that the final regulations allocate the risk of recapture to the eligible taxpayer for several reasons, including that the eligible taxpayer would have the greatest ability to cause or prevent a recapture event. Another commenter urged that the final regulations allocate the risk of recapture to the eligible taxpayer for recapture events solely under section 50(a). Other commenters stated that placing the risk of recapture on the transferee taxpayer creates increased transactions costs, reduces the number of market participants, and distorts the market value of the transferred credits. The Treasury Department and the IRS have determined that the risk of recapture should be borne by the transferee taxpayer with respect to its specified credit portion for all types of recapture events (including those under sections 49(b) and 45Q(f)(4)) directly relating to an eligible taxpayer (that is, other than section 50(a) and 49(b) recapture events involving transfers of interests by partners in a transferor partnership or shareholders in a transferor S corporation). This determination is consistent with the statutory framework for recapture under sections 45Q(f)(4), 49(b), and 50(a), which generally imposes recapture tax on the taxpayer who claimed the credit, regardless of whether the underlying credit is determined with respect to such taxpayer (for example, whether the taxpayer owns the underlying credit property). This interpretation is also consistent with section 6418(a), which treats the transferee taxpayer (and not the eligible taxpayer) as the taxpayer for purposes of the Code with respect to a specified credit portion, and with section 6418(g)(3)(B)(ii), which requires the transferee taxpayer to provide notice of the recapture amount, if any, to the eligible taxpayer. Therefore, these final regulations adopt the proposed rule without change on this issue.

A commenter requested clarification as to the allocation of recapture liability between an eligible taxpayer and a transferee taxpayer to the extent the eligible taxpayer retains any eligible credits and whether there is an ordering rule applied similar to an excessive credit transfer. As discussed in part V.A.5 of this Summary of Comments and Explanation of Revisions section, proposed §1.6418-5(a)(5) would have clarified that recapture tax liability is not treated in the same manner as an excessive credit transfer tax liability, and these final regulations adopt that rule without change. Under the excessive credit transfer rules, the eligible taxpayer will be subject to a credit reduction up to the amount of the eligible credit retained before a transferee taxpayer's credit is reduced. However, the position most consistent with the statutory language of the multiple Code sections involved is that the transferee taxpayer bears a proportionate share of recapture risk, without looking to the eligible taxpayer first. Consequently, the Treasury Department and the IRS have not made a change to the proposed regulations allocating recapture risk to the eligible taxpayer for any retained credits before causing a recapture event to any transferee taxpayer. However, the final regulations under §1.6418-5(d)(3)(i) clarify that, except in the case of a partner or S corporation shareholder that has disposed of an interest in a transferor partnership or transferor S corporation and is subject to the rules relating to such disposition under §1.47-6(a)(2) or §1.47-4(a)(2), respectively, recapture liability applies proportionately to any transferee taxpayers and an eligible taxpayer to the extent an eligible taxpayer has retained eligible credits determined with respect to the relevant eligible credit property. The final regulations also add formulas for determining the recapture amount for which a transferee taxpayer and an eligible taxpayer is responsible for.

In addition, the final regulations clarify the effect of a partner or S corporation shareholder recapture event on the remaining amount of recapture liability for which the transferee taxpayer and the transferor partnership or transferor S corporation is responsible and provide two examples to illustrate who is responsible for recapture in the case of a sale of a portion of an interest in a transferor partnership and a subsequent sale of the investment credit property by the transferor partnership.

A commenter stated that the recapture notice requirement under proposed §1.6418-5(d) could be burdensome, particularly to smaller taxpayers, due to the complexity and compliance needed to prepare the necessary documentation and notify the respective party of the occurrence of a recapture event or the determination of the recapture amount. The Treasury Department and the IRS note that section 6418(g)(3)(B)(i) provides these notification requirements and that the proposed regulations merely implement the statute. For these reasons, the Treasury Department and the IRS have determined

that the notification requirements in the proposed regulations should be retained.

Several commenters requested that exceptions be provided to the recapture rules, for example, by limiting the scope of recapture events, such as if a project ceases to be credit eligible property, or by limiting recapture events to those causing recapture under the former grant program created under section 1603 of the American Recovery and Reinvestment Tax Act of 2009 (Public Law 111-5, 123 Stat. 115, 364). Section 6418(g)(3)(B) specifically provides for recapture in the event applicable investment credit property (as defined in section 50(a)(5)) is disposed of or otherwise ceases to be investment credit property with respect to the eligible taxpayer before the end of the recapture period described in section 50(a)(1). As such, providing exceptions to the operation of section 50(a) is beyond the scope of these final regulations. Consequently, the Treasury Department and the IRS decline to make the recommended changes.

Some commenters urged the Treasury Department and the IRS to mitigate instances of duplicate recapture of the same ITC. Specifically, commenters requested that to the extent an amount of an eligible ITC has been recaptured by a partner in a transferor partnership or a shareholder in a transferor S corporation under section 50(a) or section 49(b) pursuant to §1.6418-3(a)(6), the amount of potential recapture liability remaining to a transferee taxpayer should be reduced accordingly. The Treasury Department and the IRS agree that a single ITC should not be subject to duplicate recapture. As a result, the final regulations clarify that to the extent a partner in a transferor partnership or a shareholder in a transferor S corporation recognizes an amount of tax increase under sections 50(a) or 49(b) that does not result in recapture liability to a transferee taxpayer pursuant to §1.6418-3(a)(6), that amount reduces the remaining amount of ITC subject to recapture for a recapture event caused directly by the transferor partnership or transferee S corporation.

Commenters also requested additional guidance and examples of the recapture rules, including a recapture event under §§1.6418-5(e) and 1.45Q-5. For purposes of recapture, section 6418(g)(3) cross-references to section 50(a). Thus, recapture occurs with respect to the taxable year in which an investment credit property for which an eligible credit is determined is disposed of, or otherwise ceases to be investment credit property with respect to the eligible taxpayer before the end of the recapture period. Section 45Q has similar requirements in that carbon oxide that has been sequestered, utilized, or used and to which a section 45Q credit has been determined is generally intended to remain sequestered, utilized, or used for the entire recapture period. The proposed regulations would have clarified that the rules under proposed §§1.6418-5(e) and 1.45Q-5 apply to a transferee taxpayer to the extent any eligible section 45Q credit is transferred under section 6418. Based on the explanations provided in the preamble to the proposed regulations, as well as this Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS have decided not to provide additional guidance generally or through examples. However, the final regulations clarify that recapture liability applies proportionately to an eligible taxpayer and any transferee taxpayers to the extent an eligible taxpayer has retained any amount of an eligible credit determined with respect to a component of carbon capture equipment owned by the eligible taxpayer within a single process train described in §1.45Q-2(c)(3).

A commenter requested examples illustrating the section 49(b) rules causing recapture to a transferee taxpayer, particularly in cases in which specified credit portions are transferred to multiple transferee taxpayers. The Treasury Department and the IRS believe examples of the interaction of sections 49 and 6418 are beyond the scope of these regulations. As such, no examples have been added to these final regulations regarding this interaction.

A commenter stated that credit buyers will prefer purchasing credits from partnerships or S corporations because owners of partnerships and S corporations may transfer their interests without triggering recapture to the transferee taxpayer and achieve the same tax result as a sale of the underlying assets. The Treasury Department and the IRS acknowledge that the recapture rules for indirect dispositions by partners in a transferor partnership or shareholders in a transferor S corporation are different than the rules for direct dispositions by an eligible taxpayer. However, these differences are generally consistent with the effect of entity versus aggregate principles throughout the Code and regulations. Consequently, no changes are necessary to the proposed regulations on this issue.

C. *Ineffective Transfers*

Proposed §1.6418-5(f) states that an ineffective transfer election means that no transfer of an eligible credit has occurred for purposes of section 6418, including section 6418(b). The proposed regulations would have provided a clarification that an ineffective election is not considered an excessive credit transfer to the transferee taxpayer. This means that section 6418 would not apply to the transaction, and the tax consequences are determined under any other relevant provisions of the Code.

A commenter requested clarification of the general tax consequences of a transfer that was ineffective. The Treasury Department and the IRS have reviewed this comment and determined that the proposed regulations provide sufficient guidance for taxpayers if an ineffective transfer occurs. To avoid the risk of not addressing a specific consequence of an ineffective transfer, the proposed regulations would have stated that the tax consequences are determined under any relevant provision of the Code. Addressing those tax consequences is outside of section 6418 and is beyond the scope of these final regulations. Consequently, these final regulations adopt the rule in proposed §1.6418-5(f) (redesignated as §1.6418-5(g)), without including specific tax consequences.

A commenter requested that the final regulations address ineffective transfer determinations made after the transfer election deadline and the resulting conflict given that an eligible taxpayer is entitled to transfer a tax credit once. The Treasury Department and the IRS understand this comment to mean that there is a potential prohibition on a transfer if the same eligible taxpayer attempted to transfer the same eligible credit in relation to an eligible credit property, but the previous transaction was deemed to be an ineffective transaction. If a previous transaction

is unwound because it is deemed to be an ineffective transaction, then no transfer has occurred. In addition to the application of existing tax rules, the eligible taxpayer would be able to make a transfer election to properly transfer the credit assuming the eligible taxpayer can satisfy the requirements for making a transfer election. Because the proposed regulations would have identified the treatment of ineffective transactions, these final regulations are adopted without change.

Another commenter suggested that the final regulations adopt a rule providing for reasonable cause relief in the event of an ineffective transfer election. These final regulations do not adopt this comment. As described in the preamble to the proposed regulations, and previously in this part V.C of the Summary of Comments and Explanation of Revisions, an ineffective transfer does not result in an excessive credit transfer to the transferee taxpayer, and so reasonable cause relief is not necessary.

D. *Credit carryforward*

The proposed regulations would have provided special rules relating to the carryback and carryforward of transferred specified credit portions. Proposed §1.6418-5(g) would have stated that a transferee taxpayer can apply the rules in section 39(a)(4) of the Code (regarding a 3-year carryback period for unused current year business credits) to a specified credit portion to the extent the specified credit portion is described in section 6417(b) (list of applicable credits, taking into account any placed in service requirements in section 6417(b)(2), (3), and (5)). The preamble to the proposed regulations provided clarity on two complementary issues related to the carryback of transferred credits stating (i) if the credit is listed in section 6417(b), then the credit is an applicable credit, and (ii) no statutory language prohibits a transferee taxpayer from using the rule in section 39(a)(4) with respect to an eligible credit.

Several commenters asked that the final regulations confirm that the transferee taxpayer should be able to carryforward an unused credit amount. These final regulations provide the requested clarification by revising proposed §1.6418-5(g) (redesignated as §1.6418-5(h)) so that the language now refers to both the carryback and carryforward period when describing application of the rules in section 39(a)(4).

E. *Real estate investment trusts*

With respect to real estate investment trusts under section 856 of the Code (REITs), commenters requested that the final regulations clarify that eligible credits that have not yet been transferred are treated as real estate assets, cash, or cash items and, thus, will not cause a REIT to fail REIT qualification under section 856(c)(4)(A) (section 856(c)(4)(A) together with section 856(c)(4)(B), the REIT Asset Test). Another commenter requested that the final regulations state that eligible credits that have not been transferred are disregarded for purposes of determining whether a REIT satisfies the REIT Asset Test. Commenters asserted that guidance is needed to avoid instances in which a REIT might fail the REIT Asset Test because it planned to make an election to transfer an eligible credit but did not do so prior to the end of a calendar quarter, when the REIT's compliance with the REIT Asset Test is measured.

The Treasury Department and the IRS recognize that REITs may be continuously earning and selling eligible credits and, therefore, need certainty with respect to this REIT qualification issue. Accordingly, §1.6418-5(i)(1) of these final regulations addresses those comments by providing that eligible credits that have not yet been transferred pursuant to section 6418 are disregarded for purposes of the REIT Asset Test.

The preamble to the proposed regulations stated that under section 6418, the cash received by an eligible REIT as consideration for the transfer of an eligible credit is not included in that taxpayer's gross income. Because the transaction does not result in any net income, the transfer does not pose a prohibited transaction tax issue. A commenter stated that, although this clarification is appreciated, the final regulations should contain a provision that the transfer of an eligible credit pursuant to section 6418 is not a sale of property for purposes of the "seven sales" safe harbor in section 857(b)(6)(C)(iii)(I) or section 857(b)(6)(D)(iv)(I) of the Code. The commenter further pointed out that many eligible credit programs allow a taxpayer to earn a large number of separately transferable credits. Thus, the commenter explained, if the transfer of an eligible credit were a sale of property for these purposes, that result could cause the REIT to have so many sales that it would be taxed 100 percent on any sale of real property in which it engaged. The possibility of that 100 percent tax could effectively deter REITs from participating in any eligible credit programs.

The Treasury Department and the IRS agree that participation in the transfer of eligible credits under section 6418 should not burden all of a REIT's sales of real property. Accordingly, §1.6418-5(i)(2) of these final regulations provides that the transfer of a specified credit portion pursuant to a valid section 6418 election is not a sale of property for purposes of section 857(b)(6)(C)(iii) and section 857(b)(6)(D)(iv) and, thus, does not count as one of the seven sales described in those provisions.

One commenter requested confirmation that receipt of (or the right to receive) an eligible credit does not result in income to an eligible taxpayer that is a REIT. Generally, Federal income tax rules do not treat a taxpayer as receiving gross income upon becoming entitled to a credit against Federal income tax. This general principle equally applies to an eligible taxpayer, including a REIT, becoming entitled to an eligible credit that it may transfer under section 6418. Accordingly, these final regulations do not include the requested rule specifically addressing REITs.

A commenter also requested confirmation that the sale of energy under sections 45 and 45Y is not a dealer sale under the REIT prohibited transactions rules of section 857(b)(6). Although, a REIT's Federal income tax treatment of the sale of energy and earning of eligible credits is outside the scope of these final regulations, the Treasury Department and the IRS note that the preamble to TD 9784 (81 FR 59849, 59856 (August 31, 2016)) (2016 preamble) stated that until additional guidance is published in the Internal Revenue Bulletin, in any taxable year in which (1) the quantity of excess electricity transferred to the utility company during the taxable year from energy-producing distinct assets that serve an inherently permanent structure does not exceed

(2) the quantity of electricity purchased from the utility company during the taxable year to serve the inherently permanent structure, the IRS will not treat any net income resulting from the transfer of such excess electricity as constituting net income derived from a prohibited transaction under section 857(b)(6). Any sale of electricity that is not within the scope of the statement in the 2016 preamble should be analyzed on a facts and circumstances basis to determine whether the sale is subject to the prohibited transaction rules of section 857(b)(6).

VI. *Other Comments*

A. *Normalization*

The proposed regulations did not address the impact of the rules described in section 50(d)(2) (normalization rules) on eligible credit transfers under section 6418, which only are relevant for credits that are ITCs. Several commenters requested guidance on the application of the normalization rules. Some commenters stated that the normalization rules could not and should not apply to eligible credit transfers. One commenter suggested that there is no authority to apply the normalization rules to eligible credit transfers. Lastly a commenter stated that the normalization rules do apply to credits related to public utility property otherwise subject to the ITC normalization requirements because section 6417(g) provides, in part, that "rules similar to the rules of section 50" apply for purposes of section 6417. The commenter went on to state that there is not a similar provision included in section 6418 to invoke application of the normalization rules, and the wording of section 6418(a) has the opposite effect. The final regulations do not adopt a specific rule addressing the normalization rules because it is beyond the scope of the final regulations. However, the Treasury Department and the IRS clarify that an eligible taxpayer is not subject to the normalization rules with respect to any cash consideration paid by a transferee taxpayer for a specified credit portion that is described in section 6418(b)(2). Any portion of an eligible credit that is not transferred, however, would remain subject to the normalization rules as applicable.

B. *Transaction costs and deductions*

The proposed regulations did not address the Federal income tax treatment of transaction costs, either for the eligible taxpayer or the transferee taxpayer but described specific matters and considerations that the Treasury Department and the IRS are taking into account in developing rules outside of these final regulations.

Commenters recommended that the final regulations clarify the treatment of transaction costs, including categories of costs such as: legal and consulting fees; success-based fees; tax insurance; and indemnity payments. The treatment of transaction costs is beyond the scope of the section 6418 final regulations. Section 6418(b)(2) and (3) only cover the treatment of consideration that is paid for the transfer of an eligible credit. The treatment of other costs is generally governed by other Code sections, and subject to general Federal income tax principles. However, the application of other Code sections and general Federal income tax principles to determine such treatment may involve the relation-back of such costs to the credit transfer transaction and its general characterization under section 6418(a) and (b). The Treasury Department and the IRS anticipate issuing further guidance taking into account the comments received regarding transaction costs.

Effect on Other Documents

The temporary regulations are removed effective July 1, 2024.

Special Analyses

I. *Regulatory Planning and Review*

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6(b) of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in these final regulations contain reporting and recordkeeping requirements. The recordkeeping requirements mentioned within these final regulations are considered general tax records under §1.6001-1(e). These records are required for the IRS to validate that transferee taxpayers have met the regulatory requirements and are entitled to the transferred specified credit portions. For PRA purposes, general tax records are already approved by OMB under 1545-0074 for individuals and under 1545-0123 for business entities.

These final regulations also mention reporting requirements related to making transfer elections as detailed in §§1.6418-2 and 1.6418-3. These transfer elections will be made by eligible taxpayers as part of filing a return (such as the appropriate Form 1040, Form 1120, Form 1120-S, or Form 1065), including filling out the relevant source credit form and completing the Form 3800. The final regulation in §1.6418-2(b)(5) describes third-party disclosures, which require eligible taxpayers and transferee taxpayers to complete transfer election statements and also require eligible taxpayers to provide required minimum documentation to transferee taxpayers as part of making a transfer election. These forms and third-party disclosures are approved under 1545-0074 for individuals and 1545-0123 for business entities.

These final regulations also describe recapture procedures as detailed in §1.6418-5 that are required by section 6418(g)(3). The reporting of a recapture event will still be required to be reported using Form 4255, Recapture of Investment Credit. This form is approved under 1545-0074 for individuals and 1545-0123 for business entities. The final regulation is not changing or creating new collection requirements not already approved by OMB.

These final regulations mention the reporting requirement to complete pre-filing registration with IRS to be able to transfer eligible credits to a transferee taxpayer as detailed in §1.6418-4. The pre-filing registration portal is approved under 1545-2310 for all filers.

The IRS solicited feedback on the collection requirements for reporting, recordkeeping, and pre-filing registration. Although no public comments received by the IRS were directed specifically at the PRA or on the collection requirements, several commenters generally expressed concerns about the burdens associated with the documentation requirements contained in the Proposed Rules. As described in the relevant portions of this preamble, the Treasury Department and IRS believe that the documentation requirements are necessary to administer the transfer of eligible credits under section 6418.

III. *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present a final regulatory flexibility analysis (FRFA) of the final regulations. The Treasury Department and the IRS have not determined whether the final regulations will likely have a significant economic impact on a substantial number of small entities. This determination requires further study. Because there is a possibility of significant economic impact on a substantial number of small entities, a FRFA is provided in these final regulations.

Pursuant to section 7805(f) of the Code, the proposed regulations were submitted to the Chief Counsel of Advocacy of the Small Business Administration, and no comments were received.

1. Need for and Objectives of the Rule

The final regulations provide greater clarity to eligible taxpayers that intend to make an election under section 6418 to transfer eligible credits. The final regulations also provide guidance to transferee taxpayers as to the treatment of transferred eligible credits under section 6418. The final regulations include needed definitions, the time and manner to make a transfer election, and information about the pre-filing registration process, among other items. The Treasury Department and the IRS intend and expect that providing taxpayers guidance that allows them to effectively use section 6418 to transfer eligible credits will beneficially impact various industries, deliver benefits across the economy, and reduce economy-wide greenhouse gas emissions.

In particular, section 6418 allows eligible taxpayers to transfer an eligible credit (or portion thereof) to a transferee taxpayer. Allowing eligible taxpayers without sufficient Federal income tax liability to use a business tax credit to instead transfer the tax credit to a taxpayer that has sufficient tax liability to use the credit will increase the incentive for taxpayers to invest in clean energy projects that generate eligible credits. It will also increase the amount of cash available to such taxpayers, thereby reducing the amount of financing needed for clean energy projects.

2. Significant Issues Raised by Public Comments in Response to the IRFA

There were no comments filed that specifically addressed the Proposed Rules and policies presented in the IRFA. Additionally, no comments were filed by the Chief Counsel of Advocacy of the Small Business Administration.

3. Affected Small Entities

The RFA directs agencies to provide a description of, and where feasible, an estimate of, the number of small entities that may be affected by the final regulations, if adopted. The Small Business Administration's Office of Advocacy estimates in its 2023 Frequently Asked Questions that 99.9 percent of American businesses meet its definition of a small business. The applicability of these final regulations does not depend on the size of the business, as defined by the Small Business Administration. As described more fully in the preamble to these final regulations and in this FRFA, section 6418 and these final regulations may affect a variety of different entities across several different industries as there are 11 different eligible credits that may be transferred pursuant to a transfer election. Although there is uncertainty as to the exact number of small businesses within this group, the current estimated number of respondents to these rules is 50,000 taxpayers. The Treasury Department and the IRS expect to receive more information on the impact on small businesses once taxpayers start to make transfer elections using the guidance and procedures provided in these final regulations.

4. Impact of the Rules

The final regulations provide rules for how taxpayers can take advantage of the section 6418 credit monetization regime. Taxpayers that elect to take advantage of transferability will have administrative costs related to reading and understanding the rules in addition to recordkeeping and reporting requirements because of the pre-filing registration and tax return requirements. The costs will vary across different-sized taxpayers and across the type of project(s) in which such taxpayers are engaged.

The pre-filing registration process requires a taxpayer to register itself as intending to make a transfer election, to list all eligible credits it intends to transfer, and to list each eligible credit property that contributed to the determination of such credits. This process must be completed to receive a registration number for each eligible credit property with respect to which the eligible taxpayer intends to transfer an eligible credit. On filing the return, to make a valid transfer election, the eligible taxpayer and transferee taxpayer would be required to complete and attach a transfer election statement. The transfer election statement is generally a written document that describes the transfer of a specified credit portion between an eligible taxpayer and transferee taxpayer. Further, the eligible taxpayer is required to provide certain required minimum documentation to the transferee taxpayer, and the transferee taxpayer is required to retain

the documentation for as long as it may be relevant. Many of the other requirements, such as completing the relevant source credit form and completing the Form 3800 would be required for any taxpayer that is claiming a general business credit, regardless of whether the taxpayer was transferring the credit under section 6418. Although the Treasury Department and the IRS do not have sufficient data to determine precisely the likely extent of the increased costs of compliance, the estimated burden of complying with the recordkeeping and reporting requirements are described in the Paperwork Reduction Act section of the preamble.

5. Alternatives Considered

The Treasury Department and the IRS considered alternatives to the final regulations. The final regulation requirements of pre-filing registration and the additional requirements to make a valid transfer election were designed to minimize burden while also minimizing the opportunity for duplication, fraud, improper payments, or excessive payments under section 6418. For example, in adopting these requirements, the Treasury Department and the IRS considered whether such information could be obtained strictly at filing of the relevant return. However, the Treasury Department and IRS decided that such an option would increase the opportunity for duplication, fraud, improper payments or excessive payments under section 6418. Section 6418(g)(1) specifically authorizes the IRS to require such information or registration as the Secretary deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments under section 6418 as a condition of, and prior to, any transfer of any portion of an eligible credit. As described in the preamble to these final regulations, these final rules carry out that Congressional intent as pre-filing registration allows for the IRS to verify certain information in a timely manner and then process the annual tax return of the eligible taxpayer and the transferee taxpayer with minimal delays. Having a distinction between eligible taxpayers that are small businesses versus others making a transfer election would create a scenario in which a subset of taxpayers seeking to transfer eligible credits would not have been verified or received registration numbers, potentially delaying return processing for both eligible taxpayers and transferee taxpayers.

Another example is the final regulation requirement that eligible taxpayers and transferee taxpayers complete a transfer election statement. In determining to adopt this proposed rule, the Treasury Department and the IRS considered that such a statement would again minimize opportunity for fraud and decrease the chance of duplication but would also benefit a transferee taxpayer by allowing the filing of its return without having to wait for an eligible taxpayer to file in all cases. Further, the contents of the transfer election statement were intended to be available to eligible taxpayers, such that the size of the business should not impact greatly the time needed to prepare such statements. The Treasury Department and the IRS also considered whether any required documentation was needed to be provided by eligible taxpayers to transferee taxpayers, which the transferee taxpayers are then required to keep for so long as the contents thereof may become material in the administration of any internal revenue law. Again, this requirement was considered consistent with the goal of minimizing fraud, as the information is generally documentation to validate the existence of the eligible credit property, any bonus credits amounts, and the evidence of credit qualification. Any size business generating an eligible credit should have access to such information. Further the recordkeeping duration is consistent with general recordkeeping rules under §1.6001-1(e). This final regulation requirement also will benefit small businesses that are transferee taxpayers as it provides a mechanism to receive such information from the eligible taxpayer.

The Treasury Department and the IRS solicited comments on the requirements in the proposed regulations, including specifically, whether there are less burdensome alternatives that do not increase the risk of duplication, fraud, improper payments, or excessive payments under section 6418. The comments received in response to this request have been discussed in the preceding paragraphs.

5. Duplicative, Overlapping, or Conflicting Federal Rules

The final regulations do not duplicate, overlap, or conflict with any relevant Federal rules. As discussed above, the final regulations merely provide procedures and definitions to allow taxpayers to take advantage of the ability to transfer eligible credits. The Treasury Department and the IRS solicited input from interested members of the public about identifying and avoiding overlapping, duplicative, or conflicting requirements. No comments were received in response to this request.

IV. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandate Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). These final regulations do not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or by the private sector in excess of that threshold.

V. *Executive Order 13132: Federalism*

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These final regulations do not have federalism implications and do not impose substantial, direct compliance costs on State and local governments or preempt state law within the meaning of the Executive order.

VI. *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (Consultation and Coordination With Indian Tribal

Governments) prohibits an agency from publishing any rule that has tribal implications if the rule either imposes substantial, direct compliance costs on Indian tribal governments, and is not required by statute, or preempts tribal law, unless the agency meets the consultation and funding requirements of section 5 of the Executive order. These final regulations do not have substantial direct effects on one or more federally recognized Indian tribes and does not impose substantial direct compliance costs on Indian tribal governments within the meaning of the Executive order.

VII. *Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs has designated this rule as a major rule as defined by 5 U.S.C. 804(2).

Statement of Availability of IRS Documents

IRS notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov*.

Drafting Information

The principal authors of these final regulations are James Holmes and Jeremy Milton, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, the Treasury Department and the IRS amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order for §§ 1.6418-0 through 1.6418-5 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Sections 1.6418-0 through 1.6418-5 also issued under 26 U.S.C. 6418(g)(1) and (h).

* * * * *

Par. 2. Section 1.706-4 is amended as follows:

1. Redesignate paragraphs (e)(2)(ix) through (xi) as paragraphs (e)(2)(x) through (xii).

2. Add new paragraph (e)(2)(ix).

3. Revise and republish paragraph (g).

The addition, revision and republication read as follows:

§1.706-4 Determination of distributive share when a partner's interest varies.

* * * * *

(e) * * *

(2) * * *

(ix) Any specified credit portion transferred pursuant to section 6418 and §§1.6418-1 through 1.6418-5;

* * * * *

(g) *Applicability date*. (1) Except with respect to paragraph (c)(3) of this section, this section applies for partnership taxable years that begin on or after August 3, 2015. The rules of paragraph (c)(3) of this section apply for taxable years of partnerships other than existing publicly traded partnerships that begin on or after August 3, 2015. For purposes of the immediately preceding sentence, an existing publicly traded partnership is a partnership described in section 7704(b) that was formed prior to April 14, 2009. For purposes of this effective date provision, the termination of a publicly traded partnership under section 708(b)(1)(B) due to the sale or exchange of 50 percent or more of the total interests in partnership capital and profits is disregarded in determining whether the publicly traded partnership is an existing publicly traded partnership.

(2) Paragraph (e)(2)(ix) of this section applies to taxable years ending on or after April 30, 2024.

Par. 3. Sections 1.6418-0 through 1.6418-5 are added to read as follows:

Sec.

* * * * *

* * * * *

§1.6418-0 Table of contents.

This section lists the captions contained in §§1.6418-1 through 1.6418-5.

§1.6418-1 Transfer of eligible credits.

§1.6418-2 Rules for making transfer elections.

§1.6418-3 Additional rules for partnerships and S corporations.

(a) Rules applicable to both partnerships and S corporations.

(b) Rules applicable to partnerships.

(c) Rules applicable to S corporations.

(d) Transfer election by a partnership or an S corporation.

(e) Examples.

(f) Applicability date.

§1.6418-4 Additional information and registration.

(a) Pre-filing registration and election.

(b) Pre-filing registration requirements.

(c) Registration number.

(d) Applicability date.

§1.6418-5 Special rules.

(a) Excessive credit transfer tax imposed.

(b) Excessive credit transfer defined.

(c) Basis reduction under section 50(c).

(d) Notification and impact of recapture under section 50(a) or 49(b).

(e) Notification and impact of recapture under section 45Q(f)(4).

(f) Notification and impact of recapture under section 48(a)(10)(C).

(g) Impact of an ineffective transfer election by an eligible taxpayer.

(h) Carryback and carryforward.

(i) Rules applicable to real estate investment trusts.

(j) Applicability date.

§1.6418-1 Transfer of eligible credits.

(a) *Transfer of eligible credits*. An eligible taxpayer may make a transfer election under §1.6418-2(a) to transfer any specified portion of an eligible credit determined with respect to any eligible credit property of such eligible taxpayer for any taxable year to a transferee taxpayer in accordance with section 6418 of the Code and the section 6418 regulations (defined in paragraph (g) of this section). Paragraphs (b) through (q) of this section provide definitions of terms for purposes of applying section 6418 and the section 6418 regulations. *See* §1.6418-2 for rules and procedures under which all transfer elections must be made, limitations to making transfer elections, the treatment of payments made in connection with transfer elections, and the treatment of eligible credits transferred to transferee taxpayers. *See* §1.6418-3 for special rules pertaining to transfer elections made by partnerships or S corporations. See §1.6418-4 for pre-filing registration requirements and other information required to make any transfer election effective. *See* §1.6418-5 for special rules related to the imposition of tax on excessive credit transfers, basis reductions, required notifications and impacts of the recapture of transferred credits, and rules regarding carrybacks and carryforwards.

(b) *Eligible taxpayer*. The term *eligible taxpayer* means any taxpayer (as defined in section 7701(a)(14) of the Code), other than one described in section 6417(d)(1)(A) and §1.6417-1(b).

(c) *Eligible credit*—(1) *In general*. The term *eligible credit* is a credit described in paragraph (c)(2) of this section determined for a taxable year with respect to a single eligible credit property of an eligible taxpayer but does not include any business credit carryforward or business credit carryback determined under section 39 of the Code.

(2) *Separately determined credit amounts.* The amount of any credit described in this paragraph (c)(2) is the entire amount of the credit separately determined with respect to each single eligible credit property of the eligible taxpayer and includes any bonus credit amounts described in paragraph (c)(3) of this section determined with respect to that single eligible credit property. The eligible credits described in this paragraph (c)(2) are:

(i) *Alternative fuel vehicle refueling property*. So much of the credit for alternative fuel vehicle refueling property allowed under section 30C of the Code that, pursuant to section 30C(d)(1), is treated as a credit listed in section 38(b) of the Code (section 30C credit).

(ii) *Renewable electricity production*. The renewable electricity production credit determined under section 45(a) of the Code (section 45 credit).

(iii) *Carbon oxide sequestration*. The credit for carbon oxide sequestration determined under section 45Q(a) of the Code (section 45Q credit).

(iv) *Zero-emission nuclear power production*. The zero-emission nuclear power production credit determined under section 45U(a) of the Code (section 45U credit).

(v) *Clean hydrogen production*. The clean hydrogen production credit determined under section 45V(a) of the Code (section 45V credit).

(vi) *Advanced manufacturing production*. The advanced manufacturing production credit determined under section 45X(a) of the Code (section 45X credit).

(vii) *Clean electricity production*. The clean electricity production credit determined under section 45Y(a) of the Code (section 45Y credit).

(viii) *Clean fuel production*. The clean fuel production credit determined under section 45Z(a) of the Code (section 45Z credit).

(ix) *Energy*. The energy credit determined under section 48 of the Code (section 48 credit).

(x) *Qualifying advance energy project*. The qualifying advanced energy project credit determined under section 48C of the Code (section 48C credit).

(xi) *Clean electricity*. The clean electricity investment credit determined under section 48E of the Code (section 48E credit).

(3) *Bonus credit amounts*. The bonus credit amounts described in this paragraph (c)(3) are:

(i) In the case of a section 30C credit, the increased credit amounts for which the requirements under section 30C(g)(2)(A) and (3) are satisfied.

(ii) In the case of a section 45 credit, the increased credit amounts for which the requirements under section 45(b)(7)(A)(8), (9), and (11) are satisfied.

(iii) In the case of a section 45Q credit, the increased credit amounts for which the requirements under section 45Q(h)(3) and (4) are satisfied.

(iv) In the case of a section 45U credit, the increased credit amount for which the requirements under section 45U(d)(2) are satisfied.

(v) In the case of a section 45V credit, the increased credit amounts for which the requirements under section 45V(e)(3) and (4) are satisfied.

(vi) In the case of a section 45Y credit, the increased credit amounts for which

the requirements under section 45Y(g)(7), (9), (10), and (11) are satisfied.

(vii) In the case of a section 45Z credit, the increased credit amounts for which the requirements under section 45Z(f)(6) and (7) are satisfied.

(viii) In the case of a section 48 credit, the increased credit amounts for which the requirements under section 48(a)(10), (11), (12), (14), and (e) are satisfied.

(ix) In the case of a section 48C credit, the increased credit amounts for which the requirements under section 48C(e)(5) and (6) are satisfied.

(x) In the case of a section 48E credit, the increased credit amounts for which the requirements under section 48E(a)(3)(A), (B), (d)(3), (d)(4), and (h) are satisfied.

(d) *Eligible credit property*. The term *eligible credit property* means each of the units of property of an eligible taxpayer described in paragraphs (d)(1) through (11) of this section with respect to which the amount of an eligible credit is determined:

(1) In the case of a section 30C credit, a *qualified alternative fuel vehicle refueling property* described in section 30C(c).

(2) In the case of a section 45 credit, a *qualified facility* described in section 45(d).

(3) In the case of a section 45Q credit, a component of carbon capture equipment within a *single process train* described in §1.45Q-2(c)(3).

(4) In the case of a section 45U credit, a *qualified nuclear power facility* described in section 45U(b)(1).

(5) In the case of a section 45V credit, a *qualified clean hydrogen production facility* described in section 45V(c)(3).

(6) In the case of a section 45X credit, a *facility* that produces eligible components, as described in guidance under sections 48C and 45X.

(7) In the case of a section 45Y credit, a *qualified facility* described in section 45Y(b)(1).

(8) In the case of a section 45Z credit, a *qualified facility* described in section 45Z(d)(4).

(9) *Section 48 property*—(i) *In general*. In the case of a section 48 credit and except as provided in paragraph (d)(9)(ii) of this section, an *energy property* described in section 48.

(ii) *Pre-filing registration and elections*. At the option of an eligible taxpayer, and to the extent consistently applied for purposes of the pre-filing registration requirements of §1.6418-4 and the election requirements of §§1.6418-2 through 1.6418-3, an *energy project* as described in section 48(a)(9)(A)(ii) and defined in guidance.

(10) In the case of a section 48C credit, an *eligible property* described in section 48C(c)(2).

(11) In the case of a section 48E credit, a *qualified facility* as defined in section 48E(b)(3) or, in the case of a section 48E credit relating to a qualified investment with respect to energy storage technology, an *energy storage technology* described in section 48E(c)(2).

(e) *Guidance.* The term *guidance* means guidance published in the *Federal Register* or Internal Revenue Bulletin, as well as administrative guidance such as forms, instructions, publications, or other guidance on the IRS.gov website. *See* §§601.601 and 601.602 of this chapter.

(f) *Paid in cash*. The term *paid in cash* means a payment in United States dollars that—

(1) Is made by cash, check, cashier's check, money order, wire transfer, automated clearing house (ACH) transfer, or other bank transfer of immediately available funds;

(2) Is made within the period beginning on the first day of the eligible taxpayer's taxable year during which a specified credit portion is determined and ending on the due date for completing a transfer election statement (as provided in §1.6418-2(b)(5)(iii)); and

(3) May include a transferee taxpayer's contractual commitment to purchase eligible credits with United States dollars in advance of the date a specified credit portion is transferred to such transferee taxpayer if all payments of United States dollars are made in a manner described in paragraph (f)(1) of this section during the time period described in paragraph (f)(2) of this section.

(g) *Section 6418 regulations*. The term *section 6418 regulations* means §§1.6418-1 through 1.6418-5.

(h) *Specified credit portion*. The term *specified credit portion* means a proportionate share (including all) of an eligible credit determined with respect to a single eligible credit property of the eligible taxpayer that is specified in a transfer election. A specified credit portion of an eligible credit must reflect a proportionate share of each bonus credit amount that is taken into account in calculating the entire amount of eligible credit determined with respect to a single eligible credit property.

(i) *Statutory references*—(1) *Chapter 1*. The term *chapter 1* means chapter 1 of the Code.

(2) *Code.* The term *Code* means the Internal Revenue Code.

(3) *Subchapter K*. The term *subchapter K* means subchapter K of chapter 1.

(j) *Transfer election*. The term *transfer election* means an election under section 6418(a) of the Code to transfer to a transferee taxpayer a specified portion of an eligible credit determined with respect to an eligible credit property in accordance with the section 6418 regulations.

(k) *Transferee partnership*. The term *transferee partnership* means a partnership for Federal tax purposes that is a transferee taxpayer.

(l) *Transferee S corporation*. The term *transferee S corporation* means an S corporation within the meaning of section 1361(a) that is a transferee taxpayer.

(m) *Transferee taxpayer*. The term *transferee taxpayer* means any taxpayer that is not related (within the meaning of section 267(b) or 707(b)(1) of the Code) to the eligible taxpayer making the transfer election to which an eligible taxpayer transfers a specified credit portion of an eligible credit.

(n) *Transferor partnership*. The term *transferor partnership* means a partnership for Federal tax purposes that is an eligible taxpayer that makes a transfer election.

(o) *Transferor S corporation*. The term *transferor S corporation* means an S corporation within the meaning of section 1361(a) that is an eligible taxpayer that makes a transfer election.

(p) *Transferred specified credit portion*. The term *transferred specified credit portion* means the specified credit portion that is transferred from an eligible taxpayer to a transferee taxpayer pursuant to a transfer election.

(q) *U.S. territory*. The term *U.S. territory* means the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands,

American Samoa, and the Commonwealth of the Northern Mariana Islands.

(r) *Applicability date*. This section applies to taxable years ending on or after April 30, 2024. For taxable years ending before April 30, 2024, taxpayers, however, may choose to apply the rules of this section and §§1.6418-2, -3, and -5, provided the taxpayers apply the rules in their entirety and in a consistent manner.

§1.6418-2 Rules for making transfer elections.

(a) *Transfer election*—(1) *In general*. An eligible taxpayer can make a transfer election as provided in this section. If a valid transfer election is made by an eligible taxpayer for any taxable year, 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 the specified credit portion. This paragraph (a) provides rules on the number of transfers permitted, rules for determining the eligible taxpayer in certain ownership situations, and rules describing circumstances under which no transfer election is allowed. Paragraph (b) of this section provides specific rules regarding the scope, manner, and timing of a transfer election. Paragraph (c) of this section provides rules regarding limitations applicable to transfer elections. Paragraph (d) of this section provides rules regarding an eligible taxpayer's determination of an eligible credit. Paragraph (e) of this section provides the treatment of payments in connection with a transfer election. Paragraph (f) of this section provides rules regarding a transferee taxpayer's treatment of an eligible credit following a transfer.

(2) *Multiple transfer elections permitted*. An eligible taxpayer may make multiple transfer elections to transfer one or more specified credit portion(s) to multiple transferee taxpayers, provided that the aggregate amount of specified credit portions transferred with respect to any single eligible credit property does not exceed the amount of the eligible credit determined with respect to the eligible credit property.

(3) *Transfer election in certain ownership situations*—(i) *Disregarded entities*. If an eligible taxpayer is the sole owner (directly or indirectly) of an entity that is disregarded as separate from such eligible taxpayer for Federal income tax purposes and such entity directly holds an eligible credit property, the eligible taxpayer may make a transfer election in the manner provided in this section with respect to any eligible credit determined with respect to such eligible credit property.

(ii) *Undivided ownership interests*. If an eligible taxpayer is a co-owner of an eligible credit property through an arrangement properly treated as a tenancy-in-common for Federal income tax purposes, or through an organization that has made a valid election under section 761(a) of the Code, then the eligible taxpayer's undivided ownership share of the eligible credit property will be treated for purposes of section 6418 as a separate eligible credit property owned by such eligible taxpayer, and the eligible taxpayer may make a transfer election in the manner provided in this section for any eligible credit(s) determined with respect to such eligible credit property.

(iii) *Members of a consolidated group*. A member of a consolidated group (as defined in §1.1502-1) is required to make a transfer election in the manner provided in this section to transfer any eligible credit determined with respect to the member. *See* §1.1502-77 (providing rules regarding the status of the common parent as agent for its members).

(iv) *Partnerships and S corporations.* A partnership or an S corporation that determines an eligible credit with respect to any eligible credit property held directly by such partnership or S corporation may make a transfer election in the manner provided in §1.6418-3(d) with respect to eligible credits determined with respect to such eligible credit property.

(v) *Grantors or others treated as owners of a trust*. If an eligible taxpayer is a grantor or any other person that is treated as the owner of any portion of a trust as described in section 671 of the Code, then the eligible taxpayer may make a transfer election in the manner provided in this section for eligible credits determined with respect to any eligible credit property held directly by the portion of the trust that the eligible taxpayer is treated as owning under section 671.

(4) *Circumstances under which no transfer election can be made*—(i) *Prohibition on election or transfer with respect to progress expenditures*. No transfer election can be made with respect to any amount of an eligible credit that is allowed for progress expenditures pursuant to rules similar to the rules of section 46(c)(4) and (d) (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990).

(ii) *No election allowed if eligible credit transferred for non-cash consideration*. No transfer election is allowed if an eligible taxpayer receives any consideration other than cash (as defined in §1.6418-1(f)) in connection with the transfer of a specified credit portion.

(iii) *No election allowed if eligible credits not determined with respect to taxpayer*. No transfer election is allowed for eligible credits that are not determined with respect to an eligible taxpayer as described in paragraph (d) of this section. For example, a section 45Q credit allowable to an eligible taxpayer because of an election made under section 45Q(f)(3)(B), or a section 48 credit allowable to an eligible taxpayer because of an election made under section 50(d)(5) and §1.48-4, although described in §1.6418-1(c)(2), is not an eligible credit that can be transferred by the taxpayer because such credit is not determined with respect to the eligible taxpayer.

(b) *Manner and due date of making a transfer election*—(1) *In general.* An eligible taxpayer must make a transfer election to transfer a specified credit portion of an eligible credit on the basis of a single eligible credit property. For example, an eligible taxpayer that determines eligible credits with respect to two eligible credit properties would need to make a separate transfer election with respect to any specified credit portion of the eligible credit determined with respect to each eligible credit property. Any transfer election must be consistent with the eligible taxpayer's pre-filing registration under §1.6418-4.

(2) *Specific rules for certain eligible credits*. In the case of any section 45 credit, section 45Q credit, section 45V credit, or section 45Y credit that is an eligible credit, the rules in paragraph (b)(2)(i) and (ii) of this section apply.

(i) *Separate eligible credit property*. A transfer election must be made separately with respect to each eligible credit prop-

erty described in §1.6418-1(d)(2), (3), (5), and (7), as applicable, for which an eligible credit is determined.

(ii) *Time period*. A transfer election must be made for each taxable year an eligible taxpayer elects to transfer specified credit portions with respect to such an eligible credit property during the 10-year period beginning on the date such eligible credit property was originally placed in service (or, in the case of a section 45Q credit, for each taxable year during the 12-year period beginning on the date the single process train of carbon capture equipment was originally placed in service).

(3) *Manner of making a valid transfer election*. A transfer election is made by an eligible taxpayer on the basis of each specified credit portion with respect to a single eligible credit property that is transferred to a transferee taxpayer. To make a valid transfer election, an eligible taxpayer, as part of filing an annual tax return (or a return for a short year within the meaning of section 443 of the Code (short year return)), must include the following—

(i) A properly completed relevant source credit form for the eligible credit (such as Form 7207, *Advanced Manufacturing Production Credit*, if making a transfer election for a section 45X credit) for the taxable year that the eligible credit was determined, including the registration number received during the required pre-filing registration (as described in §1.6418-4) related to the eligible credit property with respect to which a transferred eligible credit was determined;

(ii) A properly completed Form 3800, *General Business Credit* (or its successor), including reductions necessary because of the transferred eligible credit as required by the form and instructions and the registration number received during the required pre-filing registration (as described in §1.6418-4) related to the eligible credit property with respect to which a transferred eligible credit was determined;

(iii) A schedule attached to the Form 3800 (or its successor) showing the amount of eligible credit transferred for each eligible credit property (such as for a section 45X election, the relevant lines that include the eligible credit property reported on Form 7207), except as otherwise provided in guidance;

(iv) A transfer election statement as described in paragraph (b)(5) of this section; and

(v) Any other information related to the election specified in guidance.

(4) *Due date and original return requirement of a transfer election*. (i) *In general*. A transfer election by an eligible taxpayer with respect to a specified portion of an eligible credit must be made on an original return (including a superseding return or any revisions made on a superseding return) not later than the due date (including extensions of time) for the original return of the eligible taxpayer for the taxable year for which the eligible credit is determined. No transfer election may be made for the first time on an amended return, withdrawn on an amended return, or made or withdrawn by filing an administrative adjustment request under section 6227 of the Code. A numerical error with respect to a properly claimed transfer election may be corrected on an amended return or by filing an administrative adjustment request under section 6227 if necessary; however, the eligible taxpayer's original return, which must be signed under penalties of perjury, must contain all of the information, including a registration number, required by the section 6418 regulations. In order to correct an error on an amended return or administrative adjustment request under section 6227, an eligible taxpayer must have made an error in the information included on the original return such that there is a substantive item to correct; an eligible taxpayer cannot correct a blank item or an item that is described as being "available upon request." There is no late-election relief available under §§ 301.9100-1 or 301.9100-3 of this chapter for a transfer election that is not timely filed; however, relief under §301.9100-2(b) may apply if the eligible taxpayer has not received an extension of time to file a return after the original due date, has timely filed a return, takes corrective action under §301.9100-2(c) within the six-month extension period, and meets the procedural requirements outlined in §301.9100-2(d).

(ii) *Amending the amount of the eligible credit reported*—(A) *In general*. If an eligible taxpayer, after making a transfer election in accordance with paragraph (b)(3) of this section on an original return in accordance with this paragraph (b)(4)(i) of this section, determines that the amount of the eligible credit reported on the eligible taxpayer's original return is incorrect, the eligible taxpayer may timely file an amended return, or administrative adjustment request under section 6227, if applicable, adjusting the amount of eligible credit.

(B) *Amending the amount of the credit determined to reflect an increased amount*. To the extent an eligible taxpayer corrects the amount of an eligible credit to reflect an increase in the amount of the eligible credit reported, such amount must be reflected on the credit source forms filed with the amended return, or administrative adjustment request under section 6227, if applicable, but cannot be reflected by either the eligible taxpayer or any transferee taxpayer as a transferred specified credit portion on the transfer election statement.

(C) *Amending the amount of the credit determined to reflect a decreased amount*. To the extent an eligible taxpayer corrects the amount of the eligible credit to reflect a decrease in the amount of the eligible credit reported, such amount must be reflected on the credit source forms filed with the amended return or administrative adjustment request, if applicable, and the transfer election statement reducing the amount of the credit reported in accordance with the following—

(I) The amount of such decrease first reduces the amount if any, of the eligible credit not transferred by the eligible taxpayer; and

(II) Any portion of the amount of such decrease that remains after applying the reduction described in paragraph (b)(4)(ii)(C)(I) of this section, reduces the amount reported by the transferee taxpayer, or if the eligible credit was transferred to more than one transferee taxpayer, reduces the amount of each transferee taxpayer's specified credit portion on a pro rata basis.

(D) *Treatment of cash consideration*. In the case of a decrease in the amount of the credit determined by the eligible taxpayer, any amount of the cash consideration retained by the eligible taxpayer after making an adjustment in accordance with paragraph (b)(4)(ii)(C) of this section

that does not directly relate to the remaining specified credit portion must not be excluded from gross income as described in paragraph (e)(2) of this section.

(iii) *Examples*. The examples in this paragraph (b)(4)(iii) illustrate the application of paragraphs (b)(6)(i) and (ii) of this section.

(A) *Example 1*. A, a U.S. C corporation for Federal income tax purposes (as defined in section 1361(a)(2) of the Code), qualifies as an eligible taxpayer and determines a section 45V clean hydrogen tax credit of $100X in year 1. At the end of year 1, A transfers the entire $100X of the section 45V credit to B. A timely makes a transfer election and properly reports the transaction in accordance with §1.6418-2(b) on its original return. In year 2, A concludes that the amount of section 45V credit determined in year 1 was $120X. A may file an amended return increasing the amount of the credit reported by $20X on the appropriate credit source forms. A cannot increase the amount of the credit reported on the transfer election statement, and B cannot increase the amount of credit claimed on its return.

(B) *Example 2*. Same facts as *Example 1* except that, in year 2, A concludes that the amount of section 45V credit determined in year 1 was $80X. On an amended return, A decreases the amount of the credit reported by $20X on the appropriate credit source forms. A should then reduce the amount of the credit reported on the transfer election statement. To avoid a determination of an excessive credit transfer, B should file a qualified amended return pursuant to §1.6664-2(c)(3) reducing the amount of credit claimed on its return by $20X.

(C) *Example 3*. C, a U.S. C corporation for Federal income tax purposes (as defined in section 1361(a)(2) of the Code), qualifies as an eligible taxpayer and determines a section 45Y clean electricity production tax credit of $100X in year 1. At the end of year 1, C transfers $80X of the 45Y credit determined to D, E, and F, with D receiving $40X, E receiving $32X, and F receiving $80X. C timely makes the transfer election and properly reports the transaction in accordance with §1.6418-2(b) on its original return. In year 2, C concludes that the amount of section 45Y credit determined in year 1 was $60X. C files an amended return decreasing the amount of the credit reported by $40X on the appropriate credit source forms to reflect $60X of section 45Y credit on its credit source forms. As a result of the $40X decrease in the credit determined, C reduces the $20X of section 45Y credit retained by C to $0X, and reduces the amount of section 45Y credit transferred to D, E, and F to $30X, $24X, and $6X, respectively (their respective pro rata shares of the reduced amount). Each of D, E, and F should file a qualified amended return under §1.6664-2(c)(3) reducing the amount of the credit claimed on their returns to avoid a determination of an excessive credit transfer.

(5) *Transfer election statement*—(i) *In general*. A transfer election statement is a written document that describes the transfer of a specified credit portion between an eligible taxpayer and transferee taxpayer. Unless otherwise provided in guidance, an eligible taxpayer and transferee taxpayer must each attach a transfer election statement to their respective return as required under paragraphs (b)(3)(iv) and (f)(4)(ii) of this section. Unless otherwise provided in guidance, an eligible taxpayer and transferee taxpayer can use any document (such as a purchase and sale agreement) that meets the conditions in paragraph (b)(5)(ii) of this section but must label the document a "Transfer Election Statement" before attaching such labeled document to their respective returns. The information required in paragraph (b)(5)(ii) of this section does not otherwise limit any other information that the eligible taxpayer and transferee taxpayer may agree to provide in connection with the transfer of any specified credit portion. The statement must be signed under penalties of perjury by an individual with authority to legally bind the eligible taxpayer. The statement must also include the written consent of an individual with authority to legally bind the transferee taxpayer.

(ii) *Information required in transfer election statement*. A transfer election statement must, at a minimum, include each of the following:

(A) Name, address, and taxpayer identification number of the transferee taxpayer and the eligible taxpayer. If the transferee taxpayer or eligible taxpayer is a member of a consolidated group, then only include information for the group member that is the transferee taxpayer or eligible taxpayer (if different from the return filer).

(B) A statement that provides the necessary information and amounts to allow the transferee taxpayer to take into account the specified credit portion with respect to the eligible credit property, including—

(*1*) A description of the eligible credit (for example, advanced manufacturing production credit for a section 45X transfer election), the total amount of the credit determined with respect to the eligible credit property, and the amount of the specified credit portion;

(*2*) The taxable year of the eligible taxpayer and the first taxable year in which the specified credit portion will be taken into account by the transferee taxpayer;

(*3*) The amount(s) of the cash consideration and date(s) on which paid by the transferee taxpayer; and

(*4*) The registration number related to the eligible credit property.

(C) Attestation that the eligible taxpayer (or any member of its consolidated group) is not related to the transferee taxpayer (or any member of its consolidated group) within the meaning of section 267(b) or 707(b)(1).

(D) A statement or representation from the eligible taxpayer that it has or will comply with all requirements of section 6418, the section 6418 regulations, and the provisions of the Code applicable to the eligible credit, including, for example, any requirements for bonus credit amounts described in §1.6418-1(c)(3) (if applicable).

(E) A statement or representation from the eligible taxpayer and the transferee taxpayer acknowledging the notification of recapture requirements under section 6418(g)(3) and the section 6418 regulations (if applicable).

(F) A statement or representation from the eligible taxpayer that the eligible taxpayer has provided the required minimum documentation (as described in paragraph (b)(5)(iv) of this section) to the transferee taxpayer.

(iii) *Timing of transfer election statement*. A transfer election statement can be completed at any time after the eligible taxpayer and transferee taxpayer have sufficient information to meet the requirements of paragraph (b)(5)(ii) of this section, but the transfer election statement cannot be completed for any year after the earlier of:

(A) The filing of the eligible taxpayer's return for the taxable year for which the specified credit portion is determined with respect to the eligible taxpayer; or

(B) The filing of the return of the transferee taxpayer for the year in which the specified credit portion is taken into account.

(iv) *Required minimum documentation*. The eligible taxpayer must provide to a transferee taxpayer the following minimum documentation—

(A) Information that validates the existence of the eligible credit property, which could include evidence prepared by a third party (such as a county board or other governmental entity, a utility, or an insurance provider);

(B) If applicable, documentation substantiating that the eligible taxpayer has

satisfied the requirements to include any bonus credit amounts (as defined in §1.6418-1(c)(3)) in the eligible credit that was part of the transferred specified credit portion; and

(C) Evidence of the eligible taxpayer's qualifying costs in the case of a transfer of an eligible credit that is part of the investment credit or the amount of qualifying production activities and sales amounts, as relevant, in the case of a transfer of an eligible credit that is a production credit.

(v) *Transferee recordkeeping requirement*. Consistent with §1.6001-1(e), the transferee taxpayer must retain the required minimum documentation provided by the eligible taxpayer as long as the contents thereof may become material in the administration of any internal revenue law.

(c) *Limitations after a transfer election is made*—(1) *Irrevocable*. A transfer election with respect to a specified credit portion is irrevocable.

(2) *No additional transfers*. A specified credit portion may only be transferred pursuant to a transfer election once. A transferee taxpayer cannot make a transfer election of any specified credit portion transferred to the transferee taxpayer.

(d) *Determining the eligible credit*—(1) *In general*. An eligible taxpayer may only transfer eligible credits determined with respect to the eligible taxpayer (paragraph (a)(4) of this section disallows transfer elections in other situations). An eligible credit is determined with respect to an eligible taxpayer if the eligible taxpayer owns the underlying eligible credit property and conducts the activities giving rise to the credit or, in the case of section 45X (under which ownership of eligible credit property is not required), is considered (under the regulations under section 45X) the taxpayer with respect to which the section 45X credit is determined. All rules that relate to the determination of the eligible credit, such as the rules in sections 49 and 50(b) of the Code, apply to the eligible taxpayer and therefore can limit the amount of eligible credit determined with respect to an eligible credit property that can be transferred. Rules relating to the amount of an eligible credit that is allowed to be claimed by an eligible taxpayer, such as the rules in sections 38(c) or 469 of the Code, do not limit the eligible credit determined, but do apply to a transferee taxpayer as described in paragraph (f)(3) of this section.

(2) *Application of section 49 at-risk rules to determination of eligible credits for partnerships and S corporations*. Any amount of eligible credit determined with respect to investment credit property held directly by a transferor partnership or transferor S corporation that is eligible credit property (eligible investment credit property) must be determined by the partnership or S corporation taking into account the section 49 at-risk rules at the partner or shareholder level as of the close of the taxable year in which the eligible investment credit property is placed in service. Thus, if the credit base of an eligible investment credit property is limited to a partner or an S corporation shareholder by section 49, then the amount of the eligible credit determined by the transferor partnership or transferor S corporation is also limited. A transferor partnership or transferor S corporation that transfers any specified credit portion with respect to an eligible investment credit property must request from each of its partners or shareholders, respectively, that is subject to section 49, the amount of such partner's or shareholder's nonqualified nonrecourse financing with respect to the eligible investment credit property as of the close of the taxable year in which the property is placed in service. Additionally, the transferor partnership or transferor S corporation must attach to its tax return for the taxable year in which the eligible investment credit property is placed in service, the amount of each partner's or shareholder's section 49 limitation with respect to any specified credit portion transferred with respect to the eligible investment credit property. Changes to at-risk amounts under section 49 for partners or S corporation shareholders after the close of the taxable year in which the eligible investment credit property is placed in service do not impact the eligible credit determined by the transferor partnership or transferor S corporation, but do impact the partner(s) or S corporation shareholder(s) as described in §1.6418-3(a)(6)(ii).

(e) *Treatment of payments made in connection with a transfer election*—(1) *In general*. An amount paid by a transferee taxpayer to an eligible taxpayer is in connection with a transfer election with respect to a specified credit portion only if it is paid in cash (as defined in §1.6418-1(f)), directly relates to the specified credit portion, and is not described in §1.6418-5(a)(3) (describing payments related to an excessive credit transfer).

(2) *Not includible in gross income*. Any amount paid to an eligible taxpayer that is described in paragraph (e)(1) of this section is not includible in the gross income of the eligible taxpayer.

(3) *Not deductible*. No deduction is allowed under any provision of the Code with respect to any amount paid by a transferee taxpayer that is described in paragraph (e)(1) of this section.

(4) *Anti-abuse rule*—(i) *In general*. A transfer election of any specified credit portion, and therefore the transfer of that specified credit portion to a transferee taxpayer, may be disallowed, or the Federal income tax consequences of any transaction(s) effecting such a transfer may be recharacterized, when the parties to the transaction have engaged in the transaction or a series of transactions with a principal purpose of avoiding any Federal tax liability beyond the intent of section 6418. For example, an amount of cash paid by a transferee taxpayer will not be considered as paid in connection with the transfer of a specified credit portion under paragraph (e)(1) of this section if a principal purpose of a transaction or series of transactions is to allow an eligible taxpayer to avoid gross income. Conversely, an amount of cash paid by a transferee taxpayer will be considered paid in connection with the transfer of a specified credit portion under paragraph (e)(1) of this section if a principal purpose of a transaction or series of transactions is to increase a Federal income tax deduction of a transferee taxpayer.

(ii) *Example 1*. Taxpayer A, an eligible taxpayer, generates $100 of an eligible credit with respect to an eligible credit property in the course of its trade or business. Taxpayer A also provides services to customers. Taxpayer A offers Customer B, a transferee taxpayer that cannot deduct the cost of the services, the opportunity to be transferred $100 of eligible credit for $100 while receiving Taxpayer A's services for free. Taxpayer A normally charges $20 for the same services without the purchase of the eligible credit, and an arm's length price of the eligible credit without regard to other commercial relationships is $80 paid in cash for $100 of the eligible credit. Taxpayer A is engaged in a transaction in which it is

undercharging for services to Customer B to avoid recognizing $20 of gross income. This transaction is subject to recharacterization under the anti-abuse rule in paragraph (e)(4) of this section, and Taxpayer A will be treated as transferring $100 of the eligible credit for $80, and have $20 of gross income from the services provided to Customer B.

(iii) *Example 2*. Taxpayer C, an eligible taxpayer, generates $100 of an eligible credit with respect to an eligible credit property in the course of its trade or business. Taxpayer C also sells property to customers. Taxpayer C offers Customer D, a transferee taxpayer that can deduct the purchase of property, the opportunity to receive the $100 of eligible credit for $20 while purchasing Taxpayer C's property for $80. Taxpayer C normally charges $20 for the same property without the transfer of the eligible credit, and an arm's length price of the eligible credit without regard to other commercial relationships is $80 paid in cash for $100 of the eligible credit. Taxpayer C is willing to accept the higher price for the property because Taxpayer C has a net operating loss carryover to offset any taxable income from the transaction. This transaction is subject to recharacterization under the anti-abuse rule under paragraph (e)(4) of this section, and Taxpayer C will be treated as selling the property for $20 and transferring $100 of the eligible credit for $80, and Customer D will have a $20 deduction related to the purchase of the property instead of $80.

(f) *Transferee taxpayer's treatment of eligible credit*—(1) *Taxable year in which credit taken into account*—(i) *In general*. In the case of any specified credit portion transferred to a transferee taxpayer pursuant to a transfer election under this section, the transferee taxpayer takes the specified credit portion into account in the transferee taxpayer's first taxable year ending with or ending after the taxable year of the eligible taxpayer with respect to which the eligible credit was determined. Thus, to the extent the taxable years of an eligible taxpayer and a transferee taxpayer end on the same date, the transferee taxpayer will take the specified credit portion into account in that taxable year. To the extent the taxable years of an eligible taxpayer and a transferee taxpayer end on different dates, the transferee taxpayer will take the specified credit portion into account in the transferee taxpayer's first taxable year that ends after the taxable year of the eligible taxpayer.

(ii) *Rule for 52–53-week taxable years*. For purposes of determining the taxable year in which a credit is taken into account under section 6418(d) and paragraph (f)(1)(i) of this section, a 52–53-week taxable year of an eligible taxpayer and transferee taxpayer is deemed to end on or close on the last day of the calendar month nearest to the last day of the 52–53-week taxable year, as the case may be.

(2) *No gross income for a transferee taxpayer upon claiming a transferred specified credit portion*. A transferee taxpayer does not have gross income upon claiming a transferred specified credit portion even if the amount of cash paid to the eligible taxpayer was less than the amount of the transferred specified credit portion, assuming all other requirements of section 6418 are met. For example, a transferee taxpayer who paid $9X for $10X of a specified credit portion that the transferee taxpayer then claims on its return does not result in the $1X difference being included in the gross income of the transferee taxpayer.

(3) *Transferee treated as the eligible taxpayer*—(i) *In general*. A transferee taxpayer (and not the eligible taxpayer) is treated as the taxpayer for purposes of the Code with respect to the transferred specified credit portion. An eligible taxpayer must apply the rules necessary to determine the amount of an eligible credit prior to making the transfer election for a specified credit portion, and therefore a transferee taxpayer does not re-apply rules that relate to a determination of an eligible credit, such as the rules in sections 49 or 50(b). However, a transferee taxpayer must apply rules that relate to computing the amount of the specified credit portion that is allowed to be claimed in the taxable year by the transferee taxpayer, such as the rules in section 38 or 469, as applicable.

(ii) *Application of section 469*. A specified credit portion transferred to a transferee taxpayer is treated as determined in connection with the conduct of a trade or business and, if applicable, such transferred specified credit portion is subject to the rules in section 469. In applying section 469, unless a transferee taxpayer owns an interest in the eligible taxpayer's trade or business at the time the work was done, the fact that the specified credit portion is treated as determined in connection with the conduct of a trade or business does not cause the transferee taxpayer to be considered to own an interest in the eligible taxpayer's trade or business at the time the work was done and does not change the characterization of the transferee taxpayer's participation (or lack thereof) in the eligible taxpayer's trade or business by using any of the grouping rules under §1.469-4(c).

(4) *Transferee taxpayer requirements to take into account a transferred specified credit portion*. In order for a transferee taxpayer to take into account in a taxable year (as described in paragraph (f)(1) of this section) a specified credit portion that was transferred by an eligible taxpayer, as part of filing a return (or short year return), an amended return, or a request for an administrative adjustment under section 6227 of the Code, the transferee taxpayer must include the following—

(i) A properly completed Form 3800, *General Business Credit* (or its successor), to take into account the transferred specified credit portion as a current general business credit, and including all registration number(s) related to the transferred specified credit portion;

(ii) The transfer election statement described in paragraph (b)(5) of this section attached to the return; and

(iii) Any other information related to the transfer election specified in guidance.

(g) *Applicability date*. This section applies to taxable years ending on or after April 30, 2024. For taxable years ending before April 30, 2024, taxpayers, however, may choose to apply the rules of this section and §§1.6418-1, -3, and -5, provided the taxpayers apply the rules in their entirety and in a consistent manner.

§1.6418-3 Additional rules for partnerships and S corporations.

(a) *Rules applicable to both partnerships and S corporations*—(1) *Partnerships and S corporations as eligible taxpayers and transferee taxpayers*. Under section 6418, a partnership or an S corporation may qualify as a transferor partnership or a transferor S corporation and may elect to make a transfer election to transfer a specified credit portion to a transferee taxpayer. A partnership or an S corporation may also qualify as a transferee partnership or a transferee S corporation. This section provides rules applicable to transferor partnerships and transferor S corporations and transferee partnerships and transferee S corporations. Paragraph (b) of this section provides rules applicable solely to partnerships. Paragraph (c) of this section provides rules applicable

solely to S corporations. Paragraph (d) of this section provides guidelines for the manner and due date for which a partnership or an S corporation makes an election under section 6418(a). Paragraph (e) of this section contains examples illustrating the operation of the provisions of this section. Except as provided in this section, the general rules under section 6418 and the section 6418 regulations apply to partnerships and S corporations.

(2) *Treatment of cash received for a specified credit portion*. In the case of any specified credit portion determined with respect to any eligible credit property held directly by a partnership or an S corporation, if such partnership or S corporation makes a transfer election with respect to such specified credit portion—

(i) Any amount of cash payment received as consideration for the transferred specified credit portion will be treated as tax exempt income for purposes of sections 705 and 1366 of the Code; and

(ii) A partner's distributive share of such tax exempt income will be as described in paragraphs (b)(1) and (2) of this section.

(3) *No partner or shareholder level transfers*. In the case of an eligible credit property held directly by a partnership or an S corporation, no transfer election by any partner or S corporation shareholder is allowed under §1.6418-2 or this section with respect to any specified credit portion determined with respect to such eligible credit property.

(4) *Disregarded entity ownership*. In the case of an eligible credit property held directly by an entity disregarded as separate from a partnership or an S corporation for Federal income tax purposes, such eligible credit property will be treated as held directly by the partnership or S corporation for purposes of making a transfer election.

(5) *Treatment of tax exempt income*. Tax exempt income resulting from the receipt of consideration for the transfer of a specified credit portion by a transferor partnership or transferor S corporation is treated as arising from an investment activity and not from the conduct of a trade or business within the meaning of section 469(c)(1)(A). As such, any tax exempt income is not treated as passive income to any direct or indirect partners or shareholders who do not materially participate within the meaning of section 469(c)(1)(B).

(6) *Certain recapture events not requiring notice*—(i) *Indirect dispositions under section 50*—(A) *Treatment of transferor partnership or transferor S corporation and transferee taxpayer*. For purposes of section 6418(g)(3)(B) only, the disposition of a partner's interest under §1.47-6(a)(2) or an S corporation shareholder's interest under §1.47-4(a)(2) in an eligible taxpayer that is treated as a transferor partnership or transferor S corporation is disregarded. As such, provided the investment credit property that is eligible credit property owned by the transferor partnership or transferor S corporation is not disposed of, and continues to be investment credit property with respect to such transferor partnership or transferor S corporation, a transferor partnership or transferor S corporation is not required to provide notice to a transferee taxpayer of an interest disposition by the partner or shareholder because the disposition does not result in recapture under section 6418(g)(3)(B) to which the transferee taxpayer is liable, and thus, the transferee taxpayer does not have to calculate a recapture amount.

(B) *Treatment of partner or shareholder*. A partner or an S corporation shareholder that has disposed of an interest in a transferor partnership or transferor S corporation is subject to the rules relating to such disposition under §1.47-6(a)(2) or §1.47-4(a)(2), respectively. Any recapture to a disposing partner is calculated based on the partner's share of the basis (or cost) of the section 38 property to which the specified credit portion was determined in accordance with §1.46-3(f). Any recapture to a disposing shareholder is calculated based on the shareholder's pro rata share of the basis (or cost) of the section 38 property to which the specified credit portion was determined in accordance with §1.48-5.

(ii) *Changes in at-risk amounts under section 49*—(A) *Treatment of transferor partnership or transferor S corporation and transferee taxpayer*. For purposes of section 6418 only, a change in the nonqualified nonrecourse financing (as defined in section 49(a)(1)(D)) amount of any partner or shareholder of a transferor partnership or transferor S corporation, respectively, after the close of the taxable year in which the investment credit property is placed in service and the specified credit portion is determined, is disregarded. A transferor partnership or transferor S corporation is not required to provide notice to a transferee taxpayer of the change because the change does not cause recapture under section 6418(g)(3)(B) to which the transferee taxpayer is liable, and thus, the transferee taxpayer does not have to calculate a recapture amount.

(B) *Treatment of partner or shareholder*. A partner or shareholder in a transferor partnership or transferor S corporation, respectively, must apply the rules under section 49 at the partner or shareholder level if there is a change in nonqualified nonrecourse financing with respect to the partner or shareholder after the close of the taxable year in which the investment credit property is placed in service and the specified credit portion is determined. If there is an increase in nonqualified nonrecourse financing to a partner, any adjustment under the rules of section 49(b) is calculated based on the partner's share of the basis (or cost) of the section 38 property to which the specified credit portion was determined in accordance with §1.46-3(f). If there is an increase in nonqualified nonrecourse financing to a shareholder, any adjustment under the rules of section 49(b) is calculated based on the shareholder's pro rata share of the basis (or cost) of the section 38 property to which the specified credit portion was determined in accordance with §1.48-5. If there is a decrease in nonqualified nonrecourse financing, any increase in the credit base is taken into account by the partner or shareholder as provided under section 49, and any resulting credit is not eligible for transfer under section 6418.

(b) *Rules applicable to partnerships*—(1) *Allocations of tax exempt income amounts generally*. A transferor partnership must generally determine a partner's distributive share of any tax exempt income resulting from the receipt of consideration for the transfer based on such partner's proportionate distributive share of the eligible credit that would otherwise have been allocated to such partner absent the transfer of the specified credit portion (otherwise eligible credit). A partner's distributive share of an otherwise eligi-

ble credit is determined under §§1.46-3(f) and 1.704-1(b)(4)(ii). Tax exempt income resulting from the receipt of consideration for the transfer of a specified credit portion by a transferor partnership is treated as received or accrued, including for purposes of section 705 of the Code, as of the date the specified credit portion is determined with respect to the transferor partnership (such as, for investment credit property, the date the property is placed in service).

(2) *Special rule for allocations of tax exempt income amounts and eligible credits for an election to transfer less than all eligible credits determined with respect to an eligible credit property*. In the event a transferor partnership elects to transfer one or more specified credit portions of less than all eligible credits determined with respect to an eligible credit property held directly by the partnership, the partnership may allocate any tax exempt income resulting from the receipt of consideration for the specified credit portion(s) in accordance with the rules in this paragraph (b)(2).

(i) First, the partnership must determine each partner's distributive share of the otherwise eligible credits with respect to such eligible credit property in accordance with paragraph (b)(1) of this section (partner's eligible credit amount).

(ii) Thereafter, the transferor partnership may determine, in any manner described in the partnership agreement, or as the partners may agree, the portion of each partner's eligible credit amount to be transferred, and the portion of each partner's eligible credit amount to be retained and allocated to such partner. The partnership may allocate to each partner its agreed upon share of eligible credits, tax exempt income resulting from the receipt of consideration for the specified credit portion(s), or both, as the case may be, provided that—

(A) The amount of eligible credits allocated to each partner cannot exceed such partner's eligible credit amount; and

(B) Each partner is allocated its proportionate share of tax exempt income resulting from the transfer(s).

(iii) Each partner's proportionate share of tax exempt income resulting from the transfer(s) is equal to the total amount of tax exempt income resulting from the transfer(s) of the specified credit portion(s) by the partnership multiplied by a fraction—

(A) The numerator of which is such partner's eligible credit amount minus the amount of eligible credits actually allocated to such partner with respect to the eligible credit property for the taxable year; and

(B) The denominator of which is the specified credit portion(s) transferred by the partnership with respect to the eligible credit property for the taxable year.

(3) *Transferor partnerships in tiered structures*. If a partnership (upper-tier partnership) is a direct or indirect partner of a transferor partnership and directly or indirectly receives—

(i) An allocation of an eligible credit, the upper-tier partnership is not an eligible taxpayer under section 6418 with respect to any eligible credit allocated by a transferor partnership; or

(ii) An allocation of tax exempt income resulting from the receipt of consideration for the transfer of a specified credit portion by a transferor partnership, the upper-tier partnership must determine its partners' distributive shares of such tax exempt income in proportion to the partners' distributive shares of the otherwise eligible credit as provided in paragraph (b)(1) of this section.

(4) *Partnership as a transferee taxpayer*—(i) *Eligibility under section 6418*. A partnership may qualify as a transferee partnership to the extent it is not related (within the meaning of section 267(b) or 707(b)(1)) to an eligible taxpayer. A transferee partnership is subject to the no additional transfer rule in §1.6418-2(c)(2), however, an allocation of a transferred specified credit portion to a direct or indirect partner of a transferee partnership under section 704(b) is not a transfer for purposes of section 6418.

(ii) *Treatment of a cash payment for a transferred specified credit portion*. A cash payment by a transferee partnership as consideration for a transferred specified credit portion is treated as an expenditure described in section 705(a)(2)(B).

(iii) *Allocations of transferred specified credit portions*. A transferee partnership must determine each partner's distributive share of any transferred specified credit portion based on such partner's distributive share of the nondeductible expenses for the taxable year used to fund the purchase of such transferred specified credit portion. Each partner's distributive share of the nondeductible expenses used to fund the purchase of any transferred specified credit portion is determined by the partnership agreement, or, if the partnership agreement does not provide for the allocation of nondeductible expenses paid pursuant to section 6418, then the allocation of the specified credit portion is based on the transferee partnership's general allocation of nondeductible expenses.

(iv) *Transferred specified credit portion treated as an extraordinary item*. A transferred specified credit portion is treated as an extraordinary item and must be allocated among the partners of a transferee partnership as of the time the transfer of the specified credit portion to the transferee partnership is treated as occurring in accordance with this paragraph (b)(4)(iv) and §1.706-4(e)(1) and (e)(2)(ix). If the transferee partnership and eligible taxpayer have the same taxable years, the transfer of a specified credit portion to a transferee partnership is treated as occurring on the first date that the transferee partnership makes a cash payment to the eligible taxpayer as consideration for the specified credit portion. If the transferee partnership and eligible taxpayer have different taxable years, the transfer of a specified credit portion to a transferee partnership is treated as occurring on the later of–

(A) The first date of the taxable year that the transferee partnership takes the specified credit portion into account under section 6418(d); or

(B) The first date that the transferee partnership makes a cash payment to the eligible taxpayer for the specified credit portion.

(v) *Transferee partnerships in tiered structures*. If an upper-tier partnership is a direct or indirect partner of a transferee partnership and directly or indirectly receives an allocation of a transferred specified credit portion, the upper-tier partnership is not an eligible taxpayer under section 6418 with respect to the transferred specified credit portion. The upper-tier partnership's distributive share of the transferred specified credit portion is treated as an extraordinary item to the

upper-tier partnership and must be allocated among the partners of the upper-tier partnership as of the time the transfer of the specified credit portion to the transferee partnership is treated as occurring in accordance with paragraph (b)(4)(iv) of this section and §1.706-4(e)(1) and (e)(2)(ix), regardless of whether the transferee partnership and upper-tier partnership have different taxable years under section 706(b). The upper-tier partnership must report the credits to its partners in accordance with guidance.

(c) *Rules applicable to S corporations*—(1) *Pro rata shares of tax exempt income amounts*. Each shareholder of a transferor S corporation must take into account such shareholder's pro rata share (as determined under section 1377(a) of the Code) of any tax exempt income resulting from the receipt of consideration for the transfer. Tax exempt income resulting from the receipt of consideration for the transfer of a specified credit portion by a transferor S corporation is treated as received or accrued, including for purposes of section 1366, as of the date the specified credit portion is determined with respect to the transferor S corporation (such as, for investment credit property, the date the property is placed in service).

(2) *S corporation as a transferee taxpayer*—(i) *Eligibility under section 6418*. An S corporation may qualify as a transferee taxpayer to the extent it is not related (within the meaning of section 267(b) or 707(b)(1)) to an eligible taxpayer (transferee S corporation). A transferee S corporation is subject to the no additional transfer rule in §1.6418-2(c)(2), however, an allocation of a transferred specified credit portion to a direct or indirect shareholder of a transferee S corporation is not a transfer for purposes of section 6418.

(ii) *Treatment of a cash payment for a transferred specified credit portion*. A cash payment by a transferee S corporation as consideration for a transferred specified credit portion is treated as an expenditure described in section 1367(a)(2)(D) of the Code.

(iii) *Pro rata shares of transferred specified credit portions*. Each shareholder of a transferee S corporation must take into account such shareholder's pro rata share (as determined under section 1377(a)) of any transferred specified credit portion. If the transferee S corporation and eligible taxpayer have the same taxable years, the transfer of a specified credit portion is treated as occurring to a transferee S corporation during the transferee S corporation's permitted year (as defined under sections 444 and 1378(b)) that the transferee S corporation first makes a cash payment as consideration to the eligible taxpayer for the specified credit portion. If the transferee S corporation and eligible taxpayer have different taxable years, then the transfer of a specified credit portion is treated as occurring to a transferee S corporation during the transferee S corporation's first permitted year (as defined under sections 444 and 1378(b)) ending with or after, the taxable year of the eligible taxpayer to which the transferred specified credit portion was determined.

(d) *Transfer election by a partnership or an S corporation*—(1) *In general*. A partnership or an S corporation may make a transfer election to transfer a specified credit portion under section 6418 if it files an election in accordance with the rules set forth in this paragraph (d). A transfer election is made on the basis of an eligible credit property and only applies to the specified credit portion identified in the transfer election by such partnership or S corporation in the taxable year for which the election is made.

(2) *Manner and due date of making a transfer election*. A transfer election for a specified credit portion must be made in the manner provided in §1.6418-2(b)(1) through (3). All documents required in §1.6418-2(b)(1) through (3) must be attached to the partnership or S corporation return for the taxable year during which the transferred specified credit portion was determined. For the transfer election to be valid, the return must be filed not later than the time prescribed by §§1.6031(a)-1(e) and 1.6037-1(b) (including extensions of time) for filing the return for such taxable year. No transfer election may be made for the first time on an amended return, withdrawn on an amended return, or made or withdrawn by filing an administrative adjustment request under section 6227 of the Code. A numerical error with respect to a properly claimed transfer election may be corrected on an amended return or by filing an administrative adjustment request under section 6227 if necessary; however, the partnership or S corporation's original return, which must be signed under penalties of perjury, must contain all of the information, including a registration number, required by these final regulations. In order to correct an error on an amended return or administrative adjustment request under section 6227, a partnership or an S corporation must have made an error in the information included on the original return such that there is a substantive item to correct; a partnership or an S corporation cannot correct a blank item or an item that is described as being "available upon request." There is no late-election relief available under §§ 301.9100-1 or 301.9100-3 of this chapter for a transfer election that is not timely filed; however, relief under §301.9100-2(b) may apply if the partnership or S corporation has not received an extension of time to file a return after the original due date, has timely filed a return, takes corrective action under §301.9100-2(c) within the six-month extension period, and meets the procedural requirements outlined in §301.9100-2(d).

(3) *Irrevocable election*. A transfer election by a partnership or an S corporation is irrevocable.

(e) *Examples*. The examples in this paragraph (e) illustrate the application of paragraphs (a)(6), (b), and (c) of this section.

(1) *Example 1. Transfer of all eligible credits by a transferor partnership*—(i) *Facts*. A and B each contributed $150X of cash to AB partnership for the purpose of investing in energy property. The partnership agreement provides that A and B share equally in all items of income, gain, loss, deduction, and credit of AB partnership. AB partnership invests $300X in an energy property in accordance with section 48 and places the energy property in service on date X in year 1. As of the end of year 1, AB partnership has $90X of eligible credits under section 48 with respect to the energy property. Before AB partnership files its tax return for year 1, AB partnership transfers the $90X of eligible credits to an unrelated transferee taxpayer, Transferee Taxpayer X for $80X and executes a transfer election statement with Transferee Taxpayer X.

(ii) *Analysis*. Under §1.6418-3(b)(1), AB partnership allocates the tax exempt income resulting from the transfer of the specified credit portion proportionately among the partners based on each partner's distributive share of the otherwise eligible section 48 credit as determined under §§1.46-3(f) and 1.704-1(b)(4)(ii). Under §1.46-3(f)(2), each partner's share of the basis of the energy property is determined in accordance with the ratio in which

the partners divide the general profits (or taxable income) of the partnership. Under the AB partnership agreement, A and B share partnership profits equally. Thus, each partner's share of the basis of the energy property under §1.46-3(f) and distributive share of the otherwise eligible credits under §1.704-1(b)(4)(ii) is 50 percent. The transfer made pursuant to section 6418(a) causes AB partnership's eligible credits under section 48 with respect to the energy property to be reduced to zero, and the consideration of $80X received by AB partnership for the transferred specified credit portion is treated as tax exempt income. Because the tax exempt income is allocated in the same proportion as the otherwise eligible credit would have been allocated, A and B will each be allocated $40X of tax exempt income. Each of partner A's and partner B's basis in its partnership interest and capital account will be increased by $40X. Also in year 1, the basis in the energy property held by AB partnership and with respect to which the credit is calculated is reduced under section 50(c)(3) by 50 percent of the amount of the credit so determined, or $45X. A's and B's basis in their partnership interests and capital accounts will be appropriately adjusted to take into account adjustments made to the energy property under section 50(c)(5) and §1.704-1(b)(2)(iv)(*j*). The tax exempt income received or accrued by AB partnership as a result of the transferred specified credit portion is treated as received or accrued, including for purposes of section 705, as of date X in year 1, which is the date the transferred specified credit portion was determined with respect to AB partnership.

(2) *Example 2. Recapture to a transferor partnership*—(i) *Facts*. Assume the same facts as in paragraph (e)(1)(i) of this section (*Example 1*), except in year 3, within the recapture period related to the energy property, A reduces its proportionate interest in the general profits of the partnership by 50 percent causing a recapture event to A under §1.47-6(a)(2). The energy property is not disposed of by AB partnership and continues to be energy property with respect to AB partnership.

(ii) *Analysis*. AB partnership should not provide notice of recapture to Transferee Taxpayer X as a result of the recapture event under §1.47-6(a)(2) with respect to A. Transferee Taxpayer X is not liable for any recapture amount. A, however, is subject to recapture as provided in §1.47-6(a)(2) and based on its share of the basis (or cost) of the energy property to which the eligible credits were determined under §1.46-3(f)(2).

(3) *Example 3. Transfer of a portion of eligible credits by a transferor partnership*—(i) *Facts*. C and D each contributed cash to CD partnership for the purpose of investing in a qualified wind facility. The partnership agreement provides that until a flip point, C is allocated 99 percent of all items of income, gain, loss, deduction and credit of CD partnership and D is allocated the remaining 1 percent of such items. After the flip point, C is allocated 5 percent of all items of income, gain, loss, deduction and credit of CD Partnership and D is allocated 95 percent of such items. CD partnership invests in a qualified wind facility and places the facility in service in year 1. CD partnership generates $100X of credit under section 45(a) for year 1. Before the due date for CD partnership's year 1 tax return (with extension), C and D agree that D's share of the eligible credit will be transferred, and C will be allocated its share of eligible credit. CD partnership transfers $1X of the eligible credit to an unrelated transferee taxpayer for $1X. The flip point has not been reached by the end of year 1.

(ii) *Analysis*. Under paragraph (b)(2) of this section, CD partnership must first determine each partner's eligible credit amount, which is equal to such partner's distributive share of the otherwise eligible section 45(a) credit as determined under §1.704-1(b)(4)(ii). Under §1.704-1(b)(4)(ii), for an eligible credit that is not an investment tax credit, allocations of credit are deemed to be in accordance with the partner's interest in the partnership if the credit is allocated in the same proportion as the partners' distributive share of the receipts that give rise to the credit. The CD partnership agreement provides that until the flip point, C is allocated 99 percent of all items of income, gain, loss, deduction and credit of CD partnership and D is allocated the remaining 1 percent of such items. Assuming all requirements of the safe harbor provided for in Revenue Procedure 2007-65, 2007-2 CB 967 are met, CD partnership's allocations of the otherwise eligible credits would be respected as in accordance with section 704(b). Thus, partner C's and partner D's distributive share of the otherwise eligible credit is 99 percent and 1 percent, respectively. C and D have agreed to sell D's eligible credit amount of $1X for full value and to allocate to C its eligible credit amount of $99X. The transfer made pursuant to section 6418(a) causes CD partnership's eligible credits under section 45(a) with respect to the wind facility to be reduced to $99X, and the consideration of $1X received by CD partnership is treated as tax exempt income. D is allocated $1X of tax exempt income from the transfer of the eligible credits, and C is allocated $99X of eligible credits under section 45(a) with respect to the wind facility. Neither C nor D is allocated more eligible credits than its eligible credit amount. Additionally, D is allocated an amount of tax exempt income equal to $1X x (1 – 0)/1 and C is allocated none of the tax exempt income. The allocations of eligible credits and tax exempt income are permissible allocations under paragraph (b)(2) of this section.

(4) *Example 4. Upper-tier partnership of a transferor partnership*—(i) *Facts*. E, F, and G each contributed $100X of cash to EFG partnership for the purpose of investing in an energy property. E, F, and G are partnerships for Federal income tax purposes. The partnership agreement provides that E, F and G share equally in all items of income, gain, loss, and deduction of EFG partnership. EFG partnership invests $300X in an energy property in accordance with section 48 and places the energy property in service in year 1. As of the end of year 1, EFG partnership has $90X of eligible credits under section 48 with respect to the energy property. Before the due date for EFG partnership's year 1 tax return (with extension), E, F and G agree that E's share of the eligible credits will be transferred, and F and G will each be allocated their shares of eligible credits (or basis). EFG partnership transfers $30X of the eligible credits to an unrelated transferee taxpayer for $25X. Assuming the allocations to E, F and G of the eligible credits and tax exempt income resulting from the receipt of cash for the transferred specified credit portion are permissible allocations under paragraph (b)(2) of this section, E is allocated $25X of tax exempt income from the transfer of the eligible credits and F and G are each allocated $30X of eligible credits with respect to the energy property.

(ii) *Analysis*. E must allocate the $25X of tax exempt income to its partners as if it had retained its share of the eligible credits. Under §1.46-3(f)(2), each partner's share of the basis of the section 48 energy property is determined in accordance with the ratio in which the partners divide the general profits (or taxable income) of the partnership. The E partnership agreement provides for equal allocations of income, gain, deduction, and loss to its partners, and thus, E partnership must allocate the otherwise eligible credits in the same manner. Therefore, E partnership must allocate the $25X of tax exempt income equally among its partners. In accordance with paragraph (b)(3)(i) of this section, F and G do not qualify as an eligible taxpayer for purposes of section 6418 and thus, are not permitted to make a transfer election for any portion of the $30X of eligible credit allocated to them by EFG partnership. Under §1.46-3(f)(2), each partner's share of the basis of the section 48 energy property is determined in accordance with the ratio in which the partners divide the general profits (or taxable income) of the partnership. The F and G partnership agreements provide for equal allocations of income, gain, deduction, and loss to its partners, and F and G must allocate the basis from the energy property to their partners in the same manner.

(5) *Example 5. Transferee partnership*—(i) *Facts*. Y and Z each contributed $50X of cash to YZ partnership for the purpose of purchasing eligible section 45 credits under section 6418. The partnership agreement provides that all items of income, gain, loss, deduction, and credit are shared equally among Y and Z. The partnership agreement also provides that any nondeductible expenses used to fund the purchase of any transferred specified credit portion will be shared equally among Y and Z. On date X in year 1, YZ partnership qualifies as a transferee taxpayer and makes a cash payment of $80X to an eligible taxpayer for $100X of a transferred specified credit portion. The eligible credits will be determined with respect to the eligible taxpayer as of the end of year 1. Both YZ partnership and the eligible taxpayer are calendar year taxpayers.

(ii) *Analysis*. The cash payment of $80X made by YZ partnership for the transferred specified credit portion is treated as a nondeductible expenditure under section 705(a)(2)(B). Under paragraph (b)(4)(iii) of this section, YZ partnership must determine each partner's distributive share of the transferred specified credit portion based on such partner's distributive share of the nondeductible expenses for the taxable year used to fund the purchase of such transferred specified credit portion. The YZ partnership agreement provides that nondeductible expenses used to fund the purchase of any transferred specified credit portion will be shared equally among Y and Z and thus, the transferred specified credit portion is also shared equally among Y and Z. The transferred specified credit portion is treated as an extraordinary item under §1.706-4(e)(2)(ix) that is deemed to occur on date X in year 1. As of date X in year 1, each of Y and Z are allocated $40X of a section 705(a)(2)(B) expenditure with respect to the cash payment for

the transferred specified credit portion and $50X of transferred section 45 credits.

(6) *Example 6. Upper-tier partnership of a transferee partnership*—(i) *Facts*. Assume the same facts as in paragraph (e)(5)(i) of this section (*Example 5*), except Y is a partnership for Federal tax purposes, and Z is a U.S. C corporation for Federal tax purposes (as defined in section 1361(a)(2) of the Code).

(ii) *Analysis*. In accordance with paragraph (b)(4)(v) of this section, Y does not qualify as an eligible taxpayer for purposes of section 6418 for that portion of the transferred specified credit portion allocated to it by YZ partnership. Under paragraph (b)(4)(iii) of this section, Y must determine each partner's distributive share of the transferred specified credit portion based on such partner's distributive share of the nondeductible expenses for the taxable year used to fund the purchase of such transferred specified credit portion. The Y partnership agreement provides that all items of income, gain, loss, deduction, and credit are shared equally. The partnership agreement also provides that any nondeductible expenses used to fund the purchase of any specified credit portion are shared equally. Thus, the transferred specified credit portion must be shared equally among the partners of Y. Y's distributive share of the transferred specified credit portion is treated as an extraordinary item to Y and must be allocated among the partners of Y as of date X in year 1, which is when the item is deemed to occur to YZ partnership, regardless of whether Y and YZ partnership have the same taxable years under section 706(b).

(7) *Example 7. Transferor S corporation*—(i) *Facts*. V and W each contributed $150X of cash to an S corporation for the purpose of investing in energy property. The S corporation invests $300X in an energy property in accordance with section 48 and places the energy property in service on date X in year 1. As of the end of year 1, the S corporation has $90X of eligible credits under section 48 with respect to the energy property. Before the due date for the S corporation's year 1 tax return (with extension), the S corporation transfers the $90X of eligible credits to an unrelated transferee taxpayer for $80X.

(ii) *Analysis*. The transfer made pursuant to section 6418(a) causes the S corporation's eligible credits under section 48 with respect to the energy property to be reduced to zero, and the consideration of $80X received by the S corporation for the transferred specified credit portion is treated as tax exempt income. Under paragraph (c)(1) of this section, each of V and W must take into account its pro rata share (as determined under section 1377(a)) of any tax exempt income resulting from the receipt of consideration for the transfer of the eligible credit, or $40X. Under section 1367(a)(1)(A), each of the shareholder's basis in its stock will be increased by $40X. Also in year 1, the basis in the energy property with respect to which the credit is calculated is reduced under section 50(c)(3) by 50 percent of the amount of the credit so determined, or $45X. The tax exempt income received or accrued by the S corporation as a result of the transfer of the specified credit portion is treated as received or accrued, including for purposes of section 1366, as of date X in year 1, which is the date the transferred specified credit portion was determined with respect to the transferor S corporation.

(8) *Example 8. Transferee S corporation*—(i) *Facts*. J and K each contributed $50X of cash to an S corporation for the purpose of purchasing eligible section 48 credits under section 6418. At the beginning of year 2, the S corporation qualifies as a transferee taxpayer and makes a cash payment of $80X to an eligible taxpayer for $100X of a transferred specified credit portion. The transferred specified credit portion was determined with respect to the eligible taxpayer for energy property placed in service in year 1. Both the S corporation and the eligible taxpayer are calendar year taxpayers.

(ii) *Analysis*. The cash payment of $80X made by the S corporation for the transferred specified credit portion is treated as an expenditure described in section 1367(a)(2)(D). Each of J and K must take into account its pro rata share (as determined under section 1377(a)) of the transferred specified credit portion. The transferred specified credit portion is deemed to arise for purposes of sections 1366 and 1377 during year 2 of the S corporation. For year 2, each of J and K take into account $40X of a section 1367(a)(2)(D) expenditure with respect to the cash payment for the transferred specified credit portion and $50X of transferred section 48 credits.

(f) *Applicability date*. This section applies to taxable years ending on or after April 30, 2024. For taxable years ending before April 30, 2024, taxpayers, however, may choose to apply the rules of this section and §§1.6418-1, -2, and -5, provided the taxpayers apply the rules in their entirety and in a consistent manner.

§1.6418-4 Additional information and registration.

(a) *Pre-filing registration and election*. As a condition of, and prior to, any specified credit portion being transferred by an eligible taxpayer to a transferee taxpayer pursuant to an election under §1.6418-2, or a specified credit portion being transferred by a partnership or an S corporation pursuant to §1.6418-3, the eligible taxpayer is required to satisfy the pre-filing registration requirements in paragraph (b) of this section. An eligible taxpayer that does not obtain a registration number under paragraph (c)(1) of this section, and report the registration number on its return pursuant to paragraph (c)(5) of this section, is ineligible to make a transfer election for a specified credit portion under §1.6418-2 or §1.6418-3, with respect to the eligible credit determined with respect to the specific eligible credit property for which the eligible taxpayer has failed to obtain and report a registration number. However, completion of the pre-filing registration requirements and receipt of a registration number does not, by itself, mean the eligible taxpayer is eligible to transfer any specified credit portion determined with respect to the eligible credit property.

(b) *Pre-filing registration requirements*—(1) *Manner of pre-filing registration*. Unless otherwise provided in guidance, eligible taxpayers must complete the pre-filing registration process electronically through an IRS electronic portal and in accordance with the instructions provided therein.

(2) *Pre-filing registration and election for members of a consolidated group*. A member of a consolidated group (as defined in §1.1502-1) is required to complete pre-filing registration to transfer any eligible credit determined with respect to the member. *See* §1.1502-77 (providing rules regarding the status of the common parent as agent for its members).

(3) *Timing of pre-filing registration*. An eligible taxpayer must satisfy the pre-filing registration requirements of this paragraph (b) and receive a registration number under paragraph (c) of this section prior to making a transfer election under §1.6418-2 or §1.6418-3 for a specified credit portion on the taxpayer's return for the taxable year at issue.

(4) *Each eligible credit property must have its own registration number*. An eligible taxpayer must obtain a registration number for each eligible credit property with respect to which a transfer election of a specified credit portion is made.

(5) *Information required to complete the pre-filing registration process*. Unless modified in future guidance, an eligible taxpayer is required to provide the following information to the IRS to complete the pre-filing registration process:

(i) The eligible taxpayer's general information, including its name, address, taxpayer identification number, and type of legal entity;

(ii) Any additional information required by the IRS electronic portal, such as information establishing that the entity is an eligible taxpayer;

(iii) The taxpayer's taxable year, as determined under section 441;

(iv) The type of annual tax return(s) normally filed by the eligible taxpayer, or that the eligible taxpayer does not normally file an annual tax return with the IRS;

(v) The type of eligible credit(s) for which the eligible taxpayer intends to make a transfer election;

(vi) Each eligible credit property that the eligible taxpayer intends to use to determine a specified credit portion for which the eligible taxpayer intends to make a transfer election;

(vii) For each eligible credit property listed in paragraph (b)(5)(vi) of this section, any further information required by the IRS electronic portal, such as—

(A) The type of eligible credit property;

(B) Physical location (that is, address and coordinates (longitude and latitude) of the eligible credit property);

(C) Supporting documentation relating to the construction or acquisition of the eligible credit property (such as State, Indian Tribal, or local government permits to operate the eligible credit property, certifications, evidence of ownership that ties to a land deed, lease, or other documented right to use and access any land or facility upon which the eligible credit property is constructed or housed, and U.S. Coast Guard registration numbers for offshore wind vessels);

(D) The beginning of construction date, and the placed in service date of the eligible credit property; and

(E) Any other information that the eligible taxpayer believes will help the IRS evaluate the registration request;

(viii) The name of a contact person for the eligible taxpayer. The contact person is the person whom the IRS may contact if there is an issue with the registration. The contact person must either:

(A) Possess legal authority to bind the eligible taxpayer; or

(B) Must provide a properly executed power of attorney on Form 2848, *Power of Attorney and Declaration of Representative*;

(ix) A penalties of perjury statement, effective for all information submitted as a complete application, and signed by a person with personal knowledge of the relevant facts that is authorized to bind the registrant; and

(x) Any other information the IRS deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments under this section that is provided in guidance.

(c) *Registration number*—(1) *In general*. The IRS will review the registration information provided and will issue a separate registration number for each eligible credit property for which the eligible taxpayer provided sufficient verifiable information.

(2) *Registration number is only valid for one taxable year*. A registration number is valid with respect to an eligible taxpayer only for the taxable year in which the credit is determined for the eligible credit property for which the registration is completed, and for a transferee taxpayer's taxable year in which the eligible credit is taken into account under §1.6418-2(f).

(3) *Renewing registration numbers*. If an election to transfer an eligible credit will be made with respect to an eligible credit property for a taxable year after a registration number under this section has been obtained, the eligible taxpayer must renew the registration for that subsequent taxable year in accordance with applicable guidance, including attesting that all the facts previously provided are still correct or updating any facts.

(4) *Amendment of previously submitted registration information if a change occurs before the registration number is used*. As provided in instructions to the pre-filing registration portal, if specified changes occur with respect to one or more applicable credit properties for which a registration number has been previously obtained, but not yet used, an eligible taxpayer must amend the registration (or may need to submit a new registration) to reflect these new facts. For example, if the owner of a facility previously registered for a transfer election under §1.6418-2 or §1.6418-3 for eligible credits determined with respect to that facility and the facility undergoes a change of ownership (incident to a corporate reorganization or an asset sale) such that the new owner has a different employer identification number (EIN) than the owner who obtained the original registration, the original owner of the facility must amend the original registration to disassociate its EIN from the eligible credit property and the new owner must submit separately an original registration (or if the new owner previously registered other credit properties, must amend its original registration) to associate the new owner's EIN with the previously registered eligible credit property.

(5) *Reporting of registration number by an eligible taxpayer and a transferee taxpayer*—(i) *Eligible taxpayer reporting*. As part of making a valid transfer election under §1.6418-2 or §1.6418-3, an eligible taxpayer must include the registration number of the eligible credit property on the eligible taxpayer's return (as provided in §1.6418-2(b) or §1.6418-3(d)) for the taxable year the specified credit portion was determined. The IRS will treat a transfer election as ineffective if an eligible taxpayer fails to include the registration number of the eligible credit property on the eligible taxpayer's return.

(ii) *Transferee taxpayer reporting*. A transferee taxpayer must report the registration number received (as part of the transfer election statement as described in §1.6418-2(b) or otherwise) from a transferor taxpayer on the Form 3800, *General Business Credit*, as part of the return for the taxable year that the transferee taxpayer takes the transferred specified credit portion into account. The specified credit portion will be disallowed to the transferee taxpayer if the transferee taxpayer does not include the registration number on the return.

(d) *Applicability date*. This section applies to taxable years ending on or after April 30, 2024.

§1.6418-5 Special rules.

(a) *Excessive credit transfer tax imposed*—(1) *In general*. If any specified credit portion that is transferred to a transferee taxpayer pursuant to an election in §1.6418-2(a) or §1.6418-3 is determined to be an excessive credit transfer (as defined in paragraph (b) of this section), the tax imposed on the transferee taxpayer by chapter 1 (regardless of whether such entity would otherwise be subject to chapter 1 tax) for the taxable year in which such determination is made will be increased by an amount equal to the sum of—

(i) The amount of such excessive credit transfer; and

(ii) An amount equal to 20 percent of such excessive credit transfer.

(2) *Taxable year of the determination*. The taxable year of the determination for purposes of paragraph (a)(1) of this section is the taxable year during which the excessive credit transfer determination is made

and not the taxable year during which the eligible credit was originally determined by the eligible taxpayer, unless those are the same taxable years.

(3) *Payments related to excessive credit transfer*. Any payments made by a transferee taxpayer to an eligible taxpayer that directly relate to the excessive credit transfer (as defined in paragraph (b) of this section) are not subject to section 6418(b)(2), section 6418(b)(3), or §1.6418-2(e). The amount of a payment that directly relates to the excessive credit transfer is equal to the total consideration paid in cash by the transferee taxpayer for the specified credit portion multiplied by the ratio of the amount of the excessive credit transferred to the transferee taxpayer to the amount of the transferred specified credit portion claimed by the transferee taxpayer.

(4) *Reasonable cause*. Paragraph (a)(1)(ii) of this section does not apply if the transferee taxpayer demonstrates to the satisfaction of the IRS that the excessive credit transfer resulted from reasonable cause. Determination of reasonable cause is made based on the relevant facts and circumstances. Generally, the most important factor is the extent of the transferee taxpayer's efforts to determine that the amount of specified credit portion transferred by the eligible taxpayer to the transferee taxpayer is not more than the amount of the eligible credit determined with respect to the eligible credit property for the taxable year in which the eligible credit was determined and has not been transferred to any other taxpayer. Circumstances that may indicate reasonable cause can include, but are not limited to, review of the eligible taxpayer's records with respect to the determination of the eligible credit (including documentation evidencing eligibility for bonus credit amounts), reasonable reliance on third party expert reports, reasonable reliance on representations from the eligible taxpayer that the total specified credit portion transferred (including portions transferred to other transferee taxpayers if an eligible taxpayer makes multiple transfer elections with respect to a single credit property) does not exceed the total eligible credit determined with respect to the eligible credit property for the taxable year, and review of audited financial statements provided to the Securities and Exchange Commission (and underlying information), if applicable.

(5) *Recapture events*. A recapture event under section 45Q(f)(4), 49(b), or 50(a) is not an excessive credit transfer.

(b) *Excessive credit transfer defined*—(1) *In general*. The term *excessive credit transfer* means, with respect to an eligible credit property for which a transfer election is made under §1.6418-2 or §1.6418-3 for any taxable year, an amount equal to the excess of—

(i) The amount of the transferred specified credit portion claimed by the transferee taxpayer with respect to such eligible credit property for such taxable year; over

(ii) The amount of the eligible credit that, without the application of section 6418, would be otherwise allowable under the Code with respect to such eligible credit property for such taxable year.

(2) *Multiple transferees treated as one*. All transferee taxpayers are considered as one transferee for calculating whether there was an excessive credit transfer and the amount of the excessive credit transfer. If there was an excessive credit transfer, then the amount of excessive credit transferred to a specific transferee taxpayer is equal to the total excessive credit transferred multiplied by the ratio of the transferee taxpayer's portion of the total specified credit to the total specified credit portions transferred to all transferees. The rule in this paragraph (b)(2) is applied on an eligible credit property basis, as applicable.

(3) *Examples*. The following examples illustrate the rules of this paragraph (b):

(i) *Example 1 – No excessive credit transfer*. Taxpayer A claims $40x of an eligible credit and transfers $60x of an eligible credit to Transferee Taxpayer B related to a single facility that was expected to generate $100x of such eligible credit. In a subsequent year it is determined that the facility only generated $60x of such eligible credit. There is no excessive credit transfer in this case because the amount of the eligible credit claimed by Transferee Taxpayer B of $60x is equal to the amount of the credit that would be otherwise allowable with respect to such facility for the taxable year the transfer occurred. Taxpayer A is disallowed the $40x of the eligible credit claimed.

(ii) *Example 2 – Excessive credit transfer*. Same facts as in paragraph (b)(3)(i) of this section (*Example 1*) except that Taxpayer A transfers $75x of the $100x of eligible credit to Transferee Taxpayer B in exchange for a cash payment of $67.5x. Taxpayer A claims $25x of the eligible credit and Transferee Taxpayer B claims $75x of the eligible credit. In this situation, a $40x reduction in credit results in a $15x excessive credit transfer to Transferee Taxpayer B because the amount of the credit claimed by Transferee Taxpayer B ($75x) exceeds the amount of credit otherwise allowable with respect to the facility ($60x) by $15x. Therefore, Transferee Taxpayer B's tax is increased for the determination year by $18x, which is equal to the amount of the excessive credit transfer plus 20 percent of the excessive credit transfer as provided in paragraph (a) of this section and section 6418(g)(2)(A). If Transferee Taxpayer B can show reasonable cause as provided in paragraph (a)(4) of this section and section 6418(g)(2)(B), then Transferee Taxpayer B will only have a tax increase of $15x. Taxpayer A is disallowed the $25x of the eligible credit claimed. Under paragraph (a)(3) of this section, the portion of the cash payment of $67.5x made by Transferee Taxpayer B that is attributable to the excessive credit transfer is $13.5x and is equal to Transferee Taxpayer B's cash payment of $67.5x multiplied by the ratio of the excessive credit transfer ($15x) to the transferred specified credit portion claimed by Transferee Taxpayer B ($75x). Pursuant to paragraph (a)(3) of this section, the payment of $13.5x made to Taxpayer A from Transferee Taxpayer B that directly relate to the excessive credit transfer are not subject to section 6418(b)(2), 6418(b)(3), or §1.6418-2(e).

(iii) *Example 3 – Excessive credit with multiple transferees*. Same facts as in paragraph (b)(3)(i) of this section (*Example 1*) except that Taxpayer A transfers $50x of the eligible credit to Transferee Taxpayer B and $30x of the eligible credit to Transferee Taxpayer C. In exchange for transfer of the credit, Transferee Taxpayer B made a cash payment of $45x and Transferee Taxpayer C made a cash payment of $27x. Taxpayer A claims $20x of the eligible credit, Transferee Taxpayer B claims $50x of the eligible credit, and Transferee Taxpayer C claims $30x of the eligible credit. In this situation, because there are multiple transferees, all transferees are treated as one transferee for determining the excessive credit transfer amount under paragraph (b)(2) of this section. There is a total excessive credit transfer of $20x because the amount of the credit claimed by the transferees in total ($80x) exceeds the amount of credit otherwise allowable with respect to the facility ($60x) by $20x. The excessive credit transfer to Taxpayer B is equal to ($50x/$80x * $20x) = $12.5x, and the excessive credit transfer to Taxpayer C is equal to ($30x/$80x * $20x) = $7.5x. Therefore, Transferee Taxpayer B and Transferee Taxpayer C are subject to the provisions in paragraph (a) of this section. Transferee Taxpayer B's and Transferee Taxpayer C's tax is increased for the determination year by the respective excessive credit transfer amount and 20 percent of the excessive credit transfer amount ($15x for Transferee Taxpayer B and $9x for Transferee Taxpayer C) as provided in paragraph (a) of this section and section 6418(g)(2)(A). If Transferee Taxpayer B or Transferee Taxpayer C can show reasonable cause as provided in paragraph (a)(4) of this section and section 6418(g)(2)(B), then the tax increase will only be $12.5x or $7.5x, respectively. Taxpayer A is disallowed the $20x of eligible credit claimed. Under paragraph (a)(3) of this section, the portion of the cash payment of $45x made by Transferee Taxpayer

B that is attributable to its portion of the excessive credit transfer is $11.25x and is equal to Transferee Taxpayer B's cash payment of $45x multiplied by the ratio of the excessive credit transfer ($12.5x) to the transferred specified credit portion claimed by Transferee Taxpayer B ($50x). Similarly, the portion of the cash payment of $27x made by Transferee Taxpayer C that is attributable to its portion of the excessive credit transfer is $6.75x and is equal to Transferee Taxpayer C's cash payment of $27x multiplied by the ratio of the excessive credit transfer ($7.5x) to the transferred specified credit portion claimed by Transferee Taxpayer B ($30x).Pursuant to paragraph (a)(3) of this section, the payments made to Taxpayer A by Transferee Taxpayer B ($11.25x) and Transferee Taxpayer C ($6.75x) that directly relate to the excessive credit transfer are not subject to section 6418(b)(2), 6418(b)(3), or §1.6418-2(e).

(c) *Basis reduction under section 50(c)*. In the case of any transfer election under §1.6418-2 or §1.6418-3 with respect to any specified credit portion described in §1.6418-1(c)(2)(ix) through (xi), section 50(c) will apply to the applicable investment credit property (as defined in section 50(a)(6)(A)) as if such credit was allowed to the eligible taxpayer.

(d) *Notification and impact of recapture under section 50(a)*—(1) *In general*. In the case of any election under §1.6418-2 or §1.6418-3 with respect to any specified credit portion described in §1.6418-1(c)(2)(ix) through (xi), if, during any taxable year, the applicable investment credit property (as defined in section 50(a)(6)(A)) is disposed of, or otherwise ceases to be investment credit property with respect to the eligible taxpayer, before the close of the recapture period (as described in section 50(a)(1)(A)), other than as described in §1.6418-3(a)(6), such eligible taxpayer and the transferee taxpayer must follow the notification process in paragraph (d)(2) of this section, with recapture impacting the transferee taxpayer and eligible taxpayer as described in paragraph (d)(3) of this section. Rules similar to the rules of this paragraph (d) apply in determining the amount of and liability for any section 49(b) recapture as between an eligible taxpayer and the transferee taxpayer.

(2) *Notification requirements*—(i) *Eligible taxpayer*. The eligible taxpayer must provide notice of the occurrence of recapture to the transferee taxpayer. This notice must provide all information necessary for a transferee taxpayer to correctly compute the recapture amount (as defined under section 50(c)(2)), and the notification must occur in sufficient time to allow the transferee taxpayer to compute the recapture amount by the due date of the transferee taxpayer's return (without extensions) for the taxable year in which the recapture event occurs. The eligible taxpayer and transferee taxpayer can contract with respect to the form of the notice and any specific time periods that must be met, so long as the terms of the contractual arrangement do not conflict with the requirements of this paragraph (d)(2)(i). Any additional information that is required or other specific time periods that must be met may be prescribed by the IRS in guidance issued with respect to this notification requirement.

(ii) *Transferee taxpayer*. The transferee taxpayer must provide notice of the recapture amount (as defined in section 50(c)(2)), if any, to the eligible taxpayer. This must occur in sufficient time to allow the eligible taxpayer to calculate any basis adjustment with respect to the investment credit property by the due date of the eligible taxpayer's return (without extensions) for the taxable year in which the recapture event occurs. The eligible taxpayer and transferee taxpayer can contract with respect to the form of the notice and any specific time periods that must be met, so long as the terms of the contractual arrangement do not conflict with the requirements of this paragraph (d)(2)(ii). Any additional information that is required or other specific time periods that must be met may be provided in guidance prescribed by the IRS issued with respect to this notification requirement.

(3) *Impact of recapture*—(i) *Section 50(a) recapture event*. Except as provided in paragraph (d)(3)(iii) of this section, the transferee taxpayer is responsible for any amount of tax increase under section 50(a) upon the occurrence of a recapture event, provided that if an eligible taxpayer retains any amount of an eligible credit determined with respect to an investment credit property directly held by the eligible taxpayer, the amount of the tax increase under section 50(a) that the eligible taxpayer is responsible for is equal to the recapture amount multiplied by a fraction, the numerator of which is the total credit amount that the eligible taxpayer retained, and the denominator of which is the total credit amount determined for the eligible credit property. The amount of the tax increase under section 50(a) that the eligible transferee is responsible for is equal to the recapture amount multiplied by a fraction, the numerator of which is the specified credit portion transferred to the transferee taxpayer, and the denominator of which is the total credit amount determined for the eligible credit property.

(ii) *Impact of section 50(a) recapture event on basis of investment credit property held by eligible taxpayer*. The eligible taxpayer must increase the basis of the investment credit property (immediately before the event resulting in such recapture) by an amount equal to the recapture amount provided to the eligible taxpayer by the transferee taxpayer under paragraph (d)(2)(ii) of this section and the recapture amount on any credit amounts retained by the eligible taxpayer in accordance with section 50.

(iii) *Impact of partner or shareholder recapture under §1.6418-3(a)(6)*. To the extent that a partner in a transferor partnership or a shareholder in a transferor S corporation recognizes an amount of tax increase under section 50(a) or section 49(b) (that is, a recapture amount) for an investment tax credit determined with respect to investment credit property held directly by the transferor partnership or transferor S corporation that does not result in recapture liability to a transferee taxpayer pursuant to §1.6418-3(a)(6), that amount reduces the remaining recapture amount under paragraph (d)(3)(i) of this section with respect to the investment credit property, and thus reduces the remaining recapture amounts to which a transferee taxpayer and eligible taxpayer (to the extent of retained credit amounts that have not be previously recaptured) is liable. The amount of the reduction to the transferee taxpayer is proportionate to the amount of the tax increase for the transferred specified credit portion (based on the partner's or shareholder's distributive share or pro rata share of tax exempt income, respectively, resulting from the transfer).

(iv) *Example (1). Impact of transferor partner recapture event to transferee taxpayer*—(A) *Facts*. A, B, C, and D are equal partners in ABCD partnership, a partnership for Federal tax purposes that accounts for tax items on a calendar year basis. The partnership agreement provides that A, B, C and D share equally in all items of income, gain, loss, deduction, and credit of ABCD partnership. ABCD

partnership invests $1,000x in an energy property in accordance with section 48 and places the energy property in service on September 30, 2024. As of the end of 2024, ABCD partnership has $300x of eligible credits under section 48 with respect to energy property. Under §1.6418-3(b)(2)(iv), each of A's, B's, C's, and D's distributive shares of the otherwise eligible section 48 credits is determined under §§1.46-3(f) and 1.704-1(b)(4)(ii) and is equal to $75x (based on each of A, B, C and D being allocated $250x of basis). Before the due date for ABCD partnership's 2024 tax return (with extension), A, B, C, and D agree that with respect to A's $75x distributive share of the otherwise eligible section 48 credits, $60x of eligible credits will be transferred and $15x of eligible credits (or $50x basis) will be allocated to A. A, B, C and D also agree that B, C, and D will each be allocated their respective $75x of the $250x of section 48 eligible credits (or basis). On November 15, 2024, ABCD partnership transfers $60x of its eligible section 48 investment credits to Y, an unrelated taxpayer. On January 1, 2025, A sells 50 percent of its interest in ABCD partnership, which results in recapture under §1.47-6(a)(2).

(B) *Analysis – recapture from partner A's disposition*. Pursuant to §1.6418-3(a)(6)(i), A is subject to the rules relating to recapture caused by the disposition of its interest under §1.47-6(a)(2), and A calculates recapture based on half of its share of the basis of the investment credit property ($125x of basis) because A disposed of 50 percent of its interest in ABCD partnership. This results in a recapture amount of $37.5x to A (that is, the amount of the tax increase that A is responsible for due to the recapture event). Of the $37.5x recapture amount, $7.5x relates to $15x of credits retained by A, and $30x relates to the $60x of A's distributive share of the otherwise eligible section 48 credits that were transferred. This recapture event reduces the total potential recapture with respect to the investment credit property from $300x to $262.5x. Y is not subject to recapture because of partner A's disposition, but, if a recapture event with respect to the energy property takes place at a later date, the rules in §1.6418-5(d)(3)(i) will take partner A's disposition and recapture amount into account when determining Y's recapture amount at that date.

(v) *Example (2). Impact of recapture from ABCD partnership's disposition of the investment credit property* — (A) *Facts*. Same facts as Example (1), except that on October 15, 2025, ABCD partnership sells the investment credit property to an unrelated third party.

(B) *Analysis – recapture event from ABCD partnership's disposition*. As a result of ABCD partnership's disposition of the energy property to a third party after one year, but before two years after placing the energy property into service, under section 50(a)(1)(B), the recapture percentage is 80 percent. This means that 80 percent of the remaining $262.5x of eligible section 48 credits (or $210x) is subject to recapture. Because ABCD partnership retained eligible credits related to the energy property, the $210x recapture amount, which is the amount of the tax increase under section 50(a), must be split between ABCD partnership and Y. Under §1.6418-5(d)(3)(i), ABCD partnership must recapture $186x of the $210x credit amount, which is determined by multiplying the $210x by a fraction, the numerator of which is $232.5x ($240x of retained eligible credits less $7.5x of retained eligible credits already recaptured by A) and the denominator of which is $262.5x ($300x of total credits determined for the energy property less $37.5x credits recaptured with respect to A's distributive share of the otherwise eligible section 48 credits transferred by ABCD partnership to Y and A's distributive share of the eligible credits retained by A). Also under §1.6418-5(d)(3)(i), Y has a $24x recapture amount determined by multiplying the $210x recapture amount by a fraction, the numerator of which is $30x ($60x specified credit portion transferred to Y less the $30x recaptured by A that relates to A's distributive share of the otherwise eligible section 48 credits transferred by ABCD partnership to Y), and the denominator of which is $262.5x ($300x of total credits determined for the energy property less $37.5x credits recaptured with respect to A's distributive share of the otherwise eligible section 48 credits transferred by ABCD partnership to Y and A's distributive share of the eligible credits retained by A).

(e) *Notification and impact of recapture under section 45Q(f)(4)*—(1) *In general*. In the case of any election under §1.6418-2 or §1.6418-3 with respect to any specified credit portion described in §1.6418-1(c)(2)(iii), if, during any taxable year, there is recapture of any section 45Q credit allowable with respect to any qualified carbon oxide that ceases to be captured, disposed of, or used as a tertiary injectant in a manner consistent with section 45Q, before the close of the recapture period (as described in §1.45Q-5(f)), such eligible taxpayer and the transferee taxpayer must follow the notification process in paragraph (e)(2) of this section with recapture impacting the transferee taxpayer as described in paragraph (e)(3) of this section.

(2) *Notification requirements*. The notification requirements for the eligible taxpayer are the same as for an eligible taxpayer that must report a recapture event as described in paragraph (d)(2)(i) of this section, except that the recapture amount that must be computed is defined in §1.45Q-5(e).

(3) *Impact of recapture*. The transferee taxpayer is responsible for any amount of tax increase under section 45Q(f)(4) and §1.45Q-5 upon the occurrence of a recapture event, provided that if an eligible taxpayer retains any amount of an eligible credit determined with respect to a component of carbon capture equipment owned by the eligible taxpayer within a single process train described in §1.45Q-2(c)(3), the amount of the tax increase under section 45Q(f)(4) that the eligible taxpayer is responsible for is equal to the recapture amount multiplied by a fraction, the numerator of which is the total credit amount that the eligible taxpayer retained, and the denominator of which is the total credit amount determined for the eligible credit property. The amount of the tax increase under section 45Q(f)(4) that the transferee taxpayer is responsible for is equal to the recapture amount multiplied by a fraction, the numerator of which is the specified credit portion transferred to the transferee taxpayer, and the denominator of which is the total credit amount determined for the eligible credit property.

(f) [Reserved].

(g) *Impact of an ineffective transfer election by an eligible taxpayer*. An ineffective transfer election means that no transfer of an eligible credit has occurred for purposes of section 6418, including section 6418(b). Section 6418 does not apply to the transaction and the tax consequences are determined under any other relevant provisions of the Code. For example, an ineffective election results if an eligible taxpayer tries to elect to transfer a specified credit portion, but the eligible taxpayer did not register and receive a registration number with respect to the eligible credit property (or otherwise satisfy the requirements for making a transfer election under the section 6418 regulations) with respect to which the specified credit portion was determined.

(h) *Carryback and carryforward*. A transferee taxpayer can apply the rules in section 39(a)(4) of the Code (regarding the carryback and carryforward period for applicable credits) to a specified credit portion to the extent the specified credit portion is described in section 6417(b) (list of applicable credits, taking into account any placed in service requirements in section 6417(b)(2), (3), and (5)).

(i) *Rules applicable to real estate investment trusts*—(1) *Treatment of eligible credits prior to transfer*. If a real estate investment trust has eligible credits that it may transfer, the value of those credits is not included in either the numerator or denominator in determining the value of the REIT's total assets in section 856(c)(4) of the Code.

(2) *Treatment of eligible credit transfer for purposes of section 857 safe harbor*

rules. The transfer of a specified credit portion pursuant to a valid transfer election under section 6418 is not a sale for purposes of section 857(b)(6)(C)(iii) and section 857(b)(6)(D)(iv) of the Code.

(j) *Applicability date*. This section applies to taxable years ending on or after April 30, 2024. For taxable years ending before April 30, 2024, taxpayers, however, may choose to apply the rules of this section and §§1.6418-1 through -3 provided the taxpayers apply the rules in their entirety and in a consistent manner.

§1.6418-4T [Removed]

Par. 4. Section 1.6418-4T is removed.

Douglas W. O'Donnell,
Deputy Commissioner.

Approved: April 18, 2024

Aviva Aron-Dine,
Acting Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register April 25, 2024, 8:45 a.m., and published in the issue of the Federal Register for April 30, 2024, 89 FR 34770)

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26 CFR 300.11: Fee for obtaining a preparer tax identification number

T.D. 9997

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 300

Preparer Tax Identification Number (PTIN) User Fee Update

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule.

SUMMARY: This document contains final regulations relating to the imposition of certain user fees on tax return preparers. The final regulations adopt without change the text of interim final and proposed regulations that reduced the user fee to apply for or renew a preparer tax identification number (PTIN) from $21 to $11. The final regulations affect individuals who apply for or renew a PTIN. The Independent Offices Appropriation Act of 1952 authorizes the charging of user fees.

DATES: *Effective date:* These regulations are effective on June 14, 2024.

Applicability date: For date of applicability, *see* § 300.11(d).

FOR FURTHER INFORMATION CONTACT: Concerning the final regulations, Jamie Song at (202) 317-6845; concerning cost methodology, Michael A. Weber at (202) 803-9738 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 300 – User Fees. On October 4, 2023, the Department of the Treasury (Treasury Department) and the IRS published in the ***Federal Register*** (88 FR 68525) a notice of proposed rulemaking (proposed regulations) by cross-reference to an interim final rule (REG-106203-23) proposing amendments to regulations under 26 CFR part 300. On the same date, the Treasury Department and the IRS published in the ***Federal Register*** (88 FR 68456) an interim final rule (TD 9980) that reduced the PTIN user fee from $21 per application or application for renewal to $11, plus the fee payable directly to a third-party contractor. The interim final rule and the proposed regulations took into account the February 2023 memorandum opinion of the United States District Court for the District of Columbia in *Steele v. United States,* 657 F.Supp.3d 23 (D.D.C. 2023). The preamble to the interim final rule contains a detailed explanation of the legal background and user fee calculations regarding the amendments to these regulations. No public hearing was requested or held, and no comments were received on the proposed regulations. These final regulations therefore adopt the text of the interim final rule and proposed regulations without change.

Special Analyses

I. *Regulatory Planning and Review*

The OMB's Office of Information and Regulatory Analysis has determined that these final regulations are not significant and are not subject to review under section 6(b) of Executive Order 12866, as amended.

II. *Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. These regulations affect all individuals who prepare or assist in preparing all or substantially all of a tax return or claim for refund for compensation. Only individuals, not businesses, can have a PTIN. Thus, the economic impact of these regulations on any small entity generally will be a result of an individual tax return preparer who is required to have a PTIN owning a small business or a small business otherwise employing an individual tax return preparer who is required to have a PTIN. The Treasury Department and the IRS estimate that approximately 847,555 individuals will apply annually for an initial or renewal PTIN. Although these regulations will likely affect a substantial number of small entities, the economic impact on those entities is not significant. These regulations establish an $11 fee per application or application for renewal (plus the fee payable directly to the third-party contractor), which is a reduction from the previously established fee, and will therefore not have a significant economic impact on small entities. Accordingly, a regulatory flexibility analysis is not required.

III. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expendi-

tures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. These final regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

IV. *Executive Order 13132: Federalism*

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These final regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

V. *Submission to Small Business Administration*

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking and the interim final rule that preceded these final regulations was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received on the proposed regulations or the interim final rule.

VI. *Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Drafting Information

The principal author of these regulations is Jamie Song, Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in the development of the regulations.

List of Subjects in 26 CFR Part 300

Estate taxes, Excise taxes, Fees, Gift taxes, Income taxes, Reporting and recordkeeping requirements.

PART 300—USER FEES

Accordingly, the interim rule amending 26 CFR part 300, which was published at 88 FR 68456 on October 4, 2023, is adopted as final without change.

Douglas W. O'Donnell,
Deputy Commissioner.

Approved: April 28, 2024.

Aviva R. Aron-Dine,
Acting Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register May 14, 2024, 8:45 a.m., and published in the issue of the Federal Register for May 15, 2024, 26 FR 42362)

Part III

Updated Static Mortality Tables for Defined Benefit Pension Plans for 2025

Notice 2024-42

PURPOSE

This notice specifies updated static mortality tables to be used for defined benefit pension plans under § 430(h)(3)(A) of the Internal Revenue Code (Code) and section 303(h)(3)(A) of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, as amended (ERISA). These updated static mortality tables, which are being issued pursuant to the regulations under § 430(h)(3)(A) of the Code, apply for purposes of calculating the funding target and other items for valuation dates occurring during the 2025 calendar year.

This notice also includes a modified unisex version of the mortality tables for use in determining minimum present value under § 417(e)(3) and section 205(g)(3) of ERISA for distributions with annuity starting dates that occur during stability periods beginning in the 2025 calendar year.

BACKGROUND

Mortality Tables for Purposes of § 430

Section 412 of the Code provides minimum funding requirements that generally apply for defined benefit plans. Section 412(a)(2) provides that § 430 sets forth the minimum funding requirements that apply to defined benefit plans that are not multiemployer plans or CSEC plans. Section 430(a) defines the minimum required contribution for such a plan by reference to the plan's funding target for the plan year. Under § 430(d)(1), a plan's funding target for a plan year generally is the present value of all benefits accrued or earned under the plan as of the first day of that plan year.

Section 430(h)(3) provides rules regarding the mortality tables that generally are used under § 430. Under § 430(h)(3)(A), except as provided in § 430(h)(3)(C) or (D), the Secretary is to prescribe by regulation mortality tables to be used in determining any present value or making any computation under § 430. Those tables are to be based on the actual experience of pension plans and projected trends in that experience. Section 430(h)(3)(B) requires the Secretary to revise any table in effect under § 430(h)(3)(A) at least every 10 years to reflect the actual experience of pension plans and projected trends in that experience. Pursuant to that instruction, on October 20, 2023, the Department of the Treasury and the Internal Revenue Service issued TD 9983, 88 FR 72357, which amends the regulations to provide updated base mortality tables and mortality improvement rates that apply for valuation dates occurring on or after January 1, 2024.

Section 430(h)(3)(C) provides that, upon request by a plan sponsor and approval by the Secretary, substitute mortality tables that meet the applicable requirements may be used in lieu of the standard mortality tables provided under § 430(h)(3)(A). Section 430(h)(3)(D) provides for the use of separate mortality tables with respect to certain individuals who are entitled to benefits on account of disability.

Section 1.430(h)(3)-1 provides rules regarding the mortality tables used under § 430(h)(3)(A) for valuation dates occurring on or after January 1, 2024. The mortality tables used under § 430(h)(3)(A) are based on the tables in the Pri-2012 Private Retirement Plans Mortality Tables Report,[1] adjusted for mortality improvement. Section 1.430(h)(3)-1(d) sets forth base mortality tables with a base year of 2012.

Section 1.430(h)(3)-1(a)(1) permits plan sponsors to apply the projection of mortality improvement in either of two ways: through use of generational mortality tables or through use of static mortality tables (available only to small plans described in § 1.430(h)-1(c)(1)(ii)) that are updated annually to reflect expected improvements in mortality. Section 1.430(h)(3)-1(b)(1)(iii)(A) provides that, for valuation dates occurring in years after January 1, 2024, the mortality improvement rates used to develop these mortality tables are the 2024 Adjusted Scale MP-2021 Rates. These rates, which are incorporated by reference under § 1.430(h)(3)-1(b)(1)(iv)(A), are available at http://www.irs.gov/retirement-plans/pension-plan-mortality-tables. In addition, Note 1 to § 1.430(h)(3)-1(c)(1)(iv) states that the static mortality tables for valuation dates occurring in later calendar years will be published in the Internal Revenue Bulletin.

Application of § 430 Mortality Tables to Other Funding Rules

Section 431 provides the minimum funding standards for multiemployer plans described in § 414(f) that are subject to § 412. Section 431(c)(6)(D)(iv) provides that the Secretary may by regulation prescribe mortality tables to be used in determining current liability for purposes of § 431(c)(6)(B). Section 1.431(c)(6)-1 provides that the same mortality assumptions that apply for purposes of § 430(h)(3)(A) and § 1.430(h)(3)-1(a)(2) are used to determine a multiemployer plan's current liability for purposes of applying the full-funding rules of § 431(c)(6). For this purpose, either the generational mortality tables or the static mortality tables are permitted to be used without regard to whether the plan is a small plan.

Section 433 provides the minimum funding standards for CSEC plans described in § 414(y). Section 433(h)(3)(B)(i) provides that the Secretary may by regulation prescribe mortality tables to be used in determining current liability for purposes of § 433(c)(7)(C). Section 1.433(h)(3)-1(a) provides that the mortality tables described in § 430(h)(3)(A) are to be used to determine current liability under § 433(c)(7)(C). For this purpose, either the generational mortality tables or

[1] The Pri-2012 Private Retirement Plans Mortality Tables Report is available at https://www.soa.org/49c106/globalassets/assets/files/resources/experience-studies/2019/pri-2012-mortality-tables-report.pdf.

the static mortality tables are permitted to be used without regard to whether the plan is a small plan.

Application of Mortality Tables for Minimum Present Value Requirements under § 417(e)(3)

Section 417(e)(3) generally provides that the present value of certain accelerated forms of benefit under a qualified pension plan (including single-sum distributions) must not be less than the present value of the accrued benefit using applicable interest rates and the applicable mortality table. Section 417(e)(3)(B) defines the term "applicable mortality table" as the mortality table specified for the plan year under § 430(h)(3)(A) (without regard to § 430(h)(3)(C) or (D)), modified as appropriate by the Secretary. Under § 1.417(e)-1(d)(2)(i), the applicable mortality table for a calendar year is the mortality table that is prescribed by the Commissioner in guidance published in the Internal Revenue Bulletin.

Rev. Rul. 2007-67, 2007-2 CB 1047, provides that, except as otherwise stated in future guidance, the applicable mortality table under § 417(e)(3) is a static mortality table set forth in published guidance that is developed based on a fixed blend of 50 percent of the static male combined mortality rates and 50 percent of the static female combined mortality rates used under § 1.430(h)(3)-1. Rev. Rul. 2007-67 also provides that the applicable mortality table for a calendar year applies to distributions with annuity starting dates that occur during stability periods that begin during that calendar year.

STATIC MORTALITY TABLES FOR 2025

The static mortality tables that apply under § 430(h)(3)(A) for valuation dates occurring during 2025 are set forth in the appendix to this notice. The mortality rates in these tables have been developed from the methodology and base mortality rates set forth in § 1.430(h)(3)-1(c) and (d), respectively, using the mortality improvement rates set forth in the 2024 Adjusted Scale MP-2021 Rates.

The static mortality table that applies under § 417(e)(3) for distributions with annuity starting dates occurring during stability periods beginning in 2025 is set forth in the appendix to this notice in the column labeled "417(e)." The mortality rates in this table are derived from the mortality tables specified under § 430(h)(3)(A) for 2025 in accordance with the procedures set forth in Rev. Rul. 2007-67.

Drafting Information

The principal authors of this notice are Arslan Malik and Linda S. F. Marshall of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this notice, contact Arslan Malik or Linda Marshall at (202) 317-6700 (not a toll-free number).

APPENDIX

Mortality Tables for 2025

Valuation Dates Occurring During 2025 and Distributions Subject to § 417(e)(3) with Annuity Starting Dates During Stability Periods Beginning in 2025

	430(h)(3)(A) Static Tables		
Age	Males	Females	417(e)
0	0.00353	0.00304	0.00329
1	0.00025	0.00021	0.00023
2	0.00017	0.00013	0.00015
3	0.00012	0.00010	0.00011
4	0.00011	0.00008	0.00010
5	0.00009	0.00007	0.00008
6	0.00008	0.00006	0.00007
7	0.00008	0.00006	0.00007
8	0.00006	0.00005	0.00006
9	0.00005	0.00005	0.00005
10	0.00005	0.00005	0.00005
11	0.00005	0.00006	0.00006
12	0.00008	0.00006	0.00007
13	0.00010	0.00007	0.00009
14	0.00013	0.00008	0.00011
15	0.00017	0.00008	0.00013
16	0.00021	0.00009	0.00015
17	0.00025	0.00010	0.00018
18	0.00029	0.00010	0.00020
19	0.00033	0.00010	0.00022
20	0.00036	0.00010	0.00023
21	0.00036	0.00010	0.00023
22	0.00037	0.00011	0.00024
23	0.00037	0.00013	0.00025
24	0.00039	0.00014	0.00027
25	0.00039	0.00014	0.00027
26	0.00041	0.00014	0.00028
27	0.00042	0.00016	0.00029
28	0.00044	0.00016	0.00030
29	0.00046	0.00017	0.00032
30	0.00048	0.00018	0.00033
31	0.00050	0.00019	0.00035
32	0.00053	0.00021	0.00037
33	0.00056	0.00023	0.00040
34	0.00058	0.00024	0.00041
35	0.00061	0.00026	0.00044
36	0.00064	0.00028	0.00046

37	0.00067	0.00031		0.00049
38	0.00069	0.00032		0.00051
39	0.00072	0.00035		0.00054
40	0.00073	0.00037		0.00055
41	0.00075	0.00039		0.00057
42	0.00076	0.00041		0.00059
43	0.00079	0.00043		0.00061
44	0.00080	0.00045		0.00063
45	0.00083	0.00047		0.00065
46	0.00087	0.00051		0.00069
47	0.00091	0.00054		0.00073
48	0.00097	0.00058		0.00078
49	0.00103	0.00064		0.00084
50	0.00112	0.00070		0.00091
51	0.00123	0.00079		0.00101
52	0.00136	0.00089		0.00113
53	0.00152	0.00101		0.00127
54	0.00172	0.00114		0.00143
55	0.00204	0.00136		0.00170
56	0.00251	0.00169		0.00210
57	0.00293	0.00193		0.00243
58	0.00341	0.00223		0.00282
59	0.00394	0.00256		0.00325
60	0.00454	0.00297		0.00376
61	0.00519	0.00341		0.00430
62	0.00610	0.00406		0.00508
63	0.00698	0.00474		0.00586
64	0.00768	0.00532		0.00650
65	0.00854	0.00614		0.00734
66	0.00949	0.00702		0.00826
67	0.01046	0.00779		0.00913
68	0.01154	0.00864		0.01009
69	0.01273	0.00960		0.01117
70	0.01408	0.01074		0.01241
71	0.01563	0.01207		0.01385
72	0.01736	0.01357		0.01547
73	0.01934	0.01528		0.01731
74	0.02158	0.01729		0.01944
75	0.02415	0.01959		0.02187
76	0.02708	0.02223		0.02466
77	0.03045	0.02520		0.02783
78	0.03433	0.02856		0.03145
79	0.03882	0.03229		0.03556
80	0.04408	0.03686		0.04047
81	0.04969	0.04125		0.04547

82	0.05605	0.04614		0.05110
83	0.06323	0.05161		0.05742
84	0.07137	0.05777		0.06457
85	0.08066	0.06477		0.07272
86	0.09115	0.07282		0.08199
87	0.10295	0.08197		0.09246
88	0.11615	0.09244		0.10430
89	0.13069	0.10416		0.11743
90	0.14650	0.11723		0.13187
91	0.16317	0.13071		0.14694
92	0.18022	0.14477		0.16250
93	0.19758	0.15936		0.17847
94	0.21499	0.17426		0.19463
95	0.23232	0.18953		0.21093
96	0.25065	0.20589		0.22827
97	0.26924	0.22289		0.24607
98	0.28813	0.24064		0.26439
99	0.30750	0.25903		0.28327
100	0.32701	0.27800		0.30251
101	0.34652	0.29740		0.32196
102	0.36577	0.31688		0.34133
103	0.38470	0.33639		0.36055
104	0.40330	0.35579		0.37955
105	0.42090	0.37505		0.39798
106	0.43800	0.39383		0.41592
107	0.45424	0.41213		0.43319
108	0.46975	0.42960		0.44968
109	0.48458	0.44636		0.46547
110	0.49379	0.46232		0.47806
111	0.49492	0.47751		0.48622
112	0.49606	0.49181		0.49394
113	0.49721	0.49790		0.49756
114	0.49845	0.49880		0.49863
115	0.49960	0.49970		0.49965
116	0.49980	0.49985		0.49983
117	0.49990	0.49995		0.49993
118	0.49995	0.50000		0.49998
119	0.50000	0.50000		0.50000
120	1.00000	1.00000		1.00000

Section 59A Qualified Derivative Payments Reporting Extension

Notice 2024-43

I. PURPOSE

This Notice announces that the Department of the Treasury ("Treasury Department") and the Internal Revenue Service ("IRS") intend to amend the regulations under sections 59A and 6038A to defer the applicability date of certain provisions of the regulations relating to the reporting of qualified derivative payments ("QDPs") until taxable years beginning on or after January 1, 2027.

II. BACKGROUND

On December 6, 2019, the Treasury Department and the IRS published TD 9885 in the **Federal Register** (84 FR 66968), which contains final regulations addressing the base erosion and anti-abuse tax ("BEAT") of section 59A (the "2019 final regulations"). The 2019 final regulations generally apply to taxable years ending on or after December 17, 2018. The 2019 final regulations included rules under sections 59A and 6038A addressing the reporting of QDPs, which are not base erosion payments.

Under §1.59A-6(b)(2)(i), a payment does not qualify as a QDP unless the taxpayer reports the information required in §1.6038A-2(b)(7)(ix) for the taxable year. Section 1.6038A-2(b)(7)(ix) requires a taxpayer subject to the BEAT to report on Form 8991 (*Tax on Base Erosion Payments of Taxpayers with Substantial Gross Receipts*) the aggregate amount of QDPs for the taxable year and make a representation that all payments satisfy the requirements of §1.59A-6(b)(2). If a taxpayer fails to satisfy the reporting requirements of §1.59A-6(b)(2)(i) with respect to any payments, §1.59A-6(b)(2)(ii) (the reporting failure exclusion) provides that those payments are not eligible for the QDP exception described in §1.59A-3(b)(3)(ii) and are base erosion payments unless another exception applies.

Section 1.6038A-2(b)(7)(ix) applies to taxable years beginning on or after June 7, 2021. Section 1.6038A-2(g). Before §1.6038A-2(b)(7)(ix) is applicable (the "transition period"), a taxpayer is treated as satisfying the QDP reporting requirements to the extent that the taxpayer reports the aggregate amount of QDPs on Form 8991, Schedule A, provided that the taxpayer reports this amount in good faith. See §1.59A-6(b)(2)(iv) and §1.6038A-2(g).

In Notice 2022-30, 2022-28 I.R.B. 70, the Treasury Department and the IRS announced the intention to extend the transition period through taxable years beginning on or after January 1, 2025, while the Treasury Department and the IRS study the interaction of the QDP exception, the BEAT netting rule in §1.59A-2(e)(3)(vi), and the QDP reporting requirements in §§1.59A-6 and 1.6038A-2(b)(7)(ix). The Treasury Department and the IRS have not yet issued regulations amending the applicability date of §1.6038A-2(g). The Treasury Department and the IRS continue to study these provisions and have determined that it is appropriate to further extend the transition period.

III. AMENDED APPLICABILITY DATE

The Treasury Department and the IRS intend to amend §1.6038A-2(g) to provide that §1.6038A-2(b)(7)(ix) will apply to taxable years beginning on or after January 1, 2027. Until §1.6038A-2(b)(7)(ix) applies, the rules described in §1.59A-6(b)(2)(iv) that apply during the transition period will continue to apply.

IV. TAXPAYER RELIANCE

Taxpayers may rely on the provisions of this Notice before the issuance of the amendments to the final regulations described in section III of this Notice.

V. EFFECT ON OTHER DOCUMENTS

Notice 2022-30 is modified, and as so modified, is superseded.

VI. DRAFTING INFORMATION

The principal author of this notice is Sheila Ramaswamy of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Sheila Ramaswamy at (202) 317-6938 (not a toll-free number).

Extension of the Phase-in Period for the Enforcement and Administration of Section 871(m)

Notice 2024-44

I. PURPOSE

This Notice provides taxpayers with additional guidance for complying with the final regulations with respect to dividend equivalents under sections 871(m), 1441, 1461, and 1473 of the Internal Revenue Code (the Code) (collectively referred to as the section 871(m) regulations) in 2025,[1] 2026, and 2027. Specifically, this Notice extends the transition relief provided in Notice 2022-37, 2022-37 I.R.B. 234, for two years, as described in more detail below. The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to amend the section 871(m) regulations to delay the effective/applicability date of certain rules in those final regulations.

The anti-abuse rule provided in §1.871-15(o) will continue to apply during the phase-in years described in this Notice. As a result, a transaction that would not otherwise be treated as a section 871(m) transaction (including as a result of this Notice) may be a section 871(m) transaction under §1.871-15(o).[2]

[1] Unless otherwise provided, all references to years refer to calendar years.

[2] The terms used in this Notice have the meanings provided in the section 871(m) regulations.

II. BACKGROUND

On June 14, 2010, the Treasury Department and the IRS published Notice 2010-46, which addresses potential overwithholding in the context of securities lending and sale-repurchase agreements. Notice 2010-46 provides a two-part solution to the problem of overwithholding on a chain of dividends and dividend equivalents. First, it provides an exception from withholding for payments to a qualified securities lender (QSL). Second, it provides a proposed framework to credit forward prior withholding on a chain of substitute dividends paid pursuant to a chain of securities loans or stock repurchase agreements. The QSL regime requires a person that agrees to act as a QSL to comply with certain withholding and documentation requirements. The Treasury Department and the IRS permitted withholding agents to rely on transition rules described in Notice 2010-46, Part III, until guidance was developed that would include documentation and substantiation of withholding.

On September 18, 2015, the **Federal Register** published final regulations and temporary regulations (TD 9734, 80 FR 56866) (2015 final regulations and 2015 temporary regulations, respectively). The 2015 final regulations finalized a portion of a 2013 notice of proposed rulemaking (78 FR 73128). The 2015 temporary regulations were based on comments received with respect to the 2013 notice of proposed rulemaking and were accompanied by a notice of proposed rulemaking cross-referencing the 2015 temporary regulations (80 FR 56415). The Treasury Department and the IRS stated in the preamble to the 2015 temporary regulations that the final qualified derivatives dealer ("QDD") regulations would supplant the proposed regulatory framework described in Notice 2010-46. 80 FR at 56878.

On July 18, 2016, the Treasury Department and the IRS published Notice 2016-42, 2016-29 I.R.B. 67, which contained the proposed qualified intermediary agreement (QI Agreement) that included provisions relating to the QDD regime and reiterated the intent to replace the proposed regulatory framework described in Notice 2010-46 with the QDD regime.

On December 19, 2016, the Treasury Department and the IRS published Notice 2016-76, which provided for the phased-in application of certain provisions of the section 871(m) regulations to allow for the orderly implementation of those final regulations and announced that taxpayers may continue to rely on Notice 2010-46 until January 1, 2018.

On January 17, 2017, the Treasury Department and the IRS published Revenue Procedure 2017-15, 2017-3 I.R.B. 437, which sets forth the final QI Agreement (2017 QI Agreement), including the requirements and obligations applicable to QDDs, and provided that taxpayers may continue to rely on Notice 2010-46 during 2017. The 2017 QI Agreement expired on December 31, 2022.

On January 24, 2017, the **Federal Register** published final regulations and temporary regulations (TD 9815, 82 FR 8144) (2017 final regulations and 2017 temporary regulations, respectively, and together, the 2017 regulations). The 2017 final regulations finalized the 2015 notice of proposed rulemaking (80 FR 56415) that was issued in conjunction with the 2015 temporary regulations. On the same day, the **Federal Register** also published a notice of proposed rulemaking cross-referencing the 2017 temporary regulations (82 FR 8172), with correcting amendments published in the **Federal Register** on October 26, 2017 (82 FR 49508) (together, the 2017 proposed regulations).

The effective/applicability dates in the 2017 regulations reflect the phased-in application described in Notice 2016-76. See Treas. Reg. §1.871-15(r). Also, consistent with Notice 2016-76 and other announcements, the "Effect on Other Documents" section of the preamble to the 2017 regulations obsoleted Notice 2010-46 as of January 1, 2018. In response to a comment requesting that the QSL regime remain, the preamble to the 2017 regulations noted that "[w]hile the Treasury Department and the IRS understand that the QSL regime was administratively more convenient for taxpayers than the QI regime, it created administrability problems, particularly with respect to verification, for the IRS. That regime is being replaced by incorporating the QDD rules into the existing QI framework, including the specific rules for pooled reporting on Form 1042-S, and the QI requirements for compliance review and certification." 82 FR at 8153.

On August 21, 2017, the Treasury Department and the IRS published Notice 2017-42, 2017-34 I.R.B. 212, which extended certain transition relief.

On February 5, 2018, the Treasury Department and the IRS published Notice 2018-5, 2018-6 I.R.B. 341, which permitted withholding agents to apply the transition rules from Notice 2010-46 in 2018 and 2019.

On October 1, 2018, the Treasury Department and the IRS published Notice 2018-72, 2018-40 I.R.B. 522, which further extended certain transition relief and permitted withholding agents to apply the transition rules from Notice 2010-46 in 2020.

On December 17, 2019, the **Federal Register** published final regulations (TD 9887, 84 FR 68790), which finalized the 2017 proposed regulations.

On January 13, 2020, the Treasury Department and the IRS published Notice 2020-2, 2020-3 I.R.B. 327, which extended the phase-in period described in Notice 2018-72 through 2022.

On September 12, 2022, the Treasury Department and the IRS published Notice 2022-37, 2022-37 I.R.B. 234, which extended the phase-in period described in Notice 2020-2 through 2024.

On December 27, 2022, the Treasury Department and the IRS published Revenue Procedure 2022-43, 2022-52 I.R.B. 570, which sets forth the new QI Agreement (2023 QI Agreement), including the requirements and obligations applicable to QDDs and the relevant transition rules for the phase-in period in Notice 2022-37 applicable to QDDs and to QIs acting as QSLs in 2023 and 2024.

This Notice further extends the phase-in period described in Notice 2022-37 through 2026.

The Treasury Department and the IRS continue to evaluate the section 871(m) regulations and will take into account comments already received, and welcome any additional comments regarding tax policy considerations, legal authority for, and the IRS administrative feasibility of any suggested modifications to the section 871(m) regulations. The Treasury Department and the IRS intend to provide suffi-

cient time for taxpayers and withholding agents to implement any changes to the section 871(m) regulations.

III. EXTENSION OF THE PHASE-IN YEAR FOR DELTA-ONE AND NON-DELTA-ONE TRANSACTIONS

This section describes the extension to the phased-in application of the section 871(m) regulations to delta-one and non-delta-one transactions. This Notice does not apply to any transaction that is a section 871(m) transaction pursuant to §1.871-15(d)(1) (providing that before January 1, 2017, a notional principal contract (NPC) is a specified NPC if certain factors are present).

The Treasury Department and the IRS have determined that it is appropriate for taxpayers and withholding agents to delay the implementation of certain provisions in the section 871(m) regulations for non-delta-one transactions, including transactions that are combined transactions under §1.871-15(n). Therefore, the Treasury Department and the IRS intend to revise the effective/applicability date for §1.871-15(d)(2) and (e) to provide that these rules will not apply to any payment made with respect to any non-delta-one transaction issued before January 1, 2027. As noted in Part I of this Notice, the anti-abuse rule continues to apply to the phased-in application of the section 871(m) regulations, including for the purpose of determining whether a transaction is a delta-one transaction.

Notice 2016-76 provided that the IRS will take into account the extent to which the taxpayer or withholding agent made a good faith effort to comply with the section 871(m) regulations with respect to delta-one transactions in 2017 and non-delta-one transactions in 2018 when it enforces the section 871(m) regulations. As a result of extensions in Notice 2017-42, Notice 2018-72, Notice 2020-2, and Notice 2022-37 (together, the Prior Notices), the good faith effort standard applies to (1) any delta-one transaction in 2017 through 2024, and (2) any non-delta-one transaction that is a section 871(m) transaction pursuant to §1.871-15(d)(2) or (e) in 2025. This Notice further extends the periods during which the enforcement standards provided by Notice 2022-37 will apply. Consistent with this extension, the IRS will take into account the extent to which the taxpayer or withholding agent made a good faith effort to comply with the section 871(m) regulations in enforcing the section 871(m) regulations for (1) any delta-one transaction in 2017 through 2026, and (2) any non-delta-one transaction that is a section 871(m) transaction pursuant to §1.871-15(d)(2) or (e) in 2027.

Similarly, for purposes of the IRS's enforcement and administration of the QDD rules in the section 871(m) regulations and the relevant provisions of the 2023 QI Agreement, this Notice extends through 2026 the period during which the IRS will take into account the extent to which the QDD made a good faith effort to comply with the section 871(m) regulations and the relevant provisions of the 2023 QI Agreement. In addition, the IRS will consider a QDD to satisfy the obligations that apply specifically to a QDD under its 2023 QI Agreement for years before 2027 provided that the QDD makes a good faith effort to comply with the relevant provisions of the 2023 QI Agreement, to the extent applicable to the QDD.

IV. EXTENSION OF THE SIMPLIFIED STANDARD FOR DETERMINING WHETHER TRANSACTIONS ARE COMBINED TRANSACTIONS

Notice 2016-76 and the Prior Notices provided a simplified standard for withholding agents to determine whether transactions are combined transactions entered into in 2017 through 2024. Specifically, a withholding agent is required to combine transactions entered into in those years for purposes of determining whether the transactions are section 871(m) transactions only when the transactions are over-the-counter transactions that are priced, marketed, or sold in connection with each other. Withholding agents are not required to combine any transactions that are listed securities entered into in those years.

This Notice further extends the period during which this simplified standard for combined transactions applies to include 2025 and 2026. Transactions that are entered into in 2017 through 2026 that are combined under this simplified standard will continue to be treated as combined transactions for future years and will not cease to be combined transactions as a result of applying §1.871-15(n) or disposing of less than all of the potential section 871(m) transactions that are combined under this rule. Transactions that are entered into in 2017 through 2026 that are not combined under this simplified standard will not become combined transactions as a result of applying §1.871-15(n) to these transactions in future years, unless a reissuance or other event causes the transactions to be retested to determine whether they are section 871(m) transactions. See §1.871-15(g)(2) (providing that the delta of a potential section 871(m) transaction generally is determined on the earlier of when the transaction is (1) priced or (2) issued); see also §1.871-15(a)(6) (defining the term "issue" to include "an issuance as a result of a deemed exchange pursuant to section 1001"). This simplified standard applies only to withholding agents and does not apply to taxpayers that are long parties to potential section 871(m) transactions. As noted in Part I of this Notice, the anti-abuse rule continues to apply to the phased-in application of the section 871(m) regulations, including for the purpose of determining whether multiple transactions should be combined.

V. EXTENSION OF PHASE-IN RELIEF FOR QUALIFIED DERIVATIVES DEALERS

Section 1.871-15T(q)(1) of the 2015 temporary regulations provided that when a QDD received a dividend or dividend equivalent payment and the QDD was contractually obligated to make an offsetting dividend equivalent payment on the same underlying security in an amount that was less than the dividend and dividend equivalent amount received, the QDD would be liable for tax under section 871(a) or section 881 for the difference. The 2015 final regulations provided that a withholding agent who made a payment of a dividend to a qualified intermediary acting as a QDD was not required to withhold on that payment if the withholding agent reliably associated the payment with a valid qualified intermediary withholding form containing a certification described in §1.1441-1(e)(3)(ii)(E). See §1.1441-1(b)(4)(xxii) of the 2015 final regulations.

Comments requested that the Treasury Department and the IRS adopt a different method of determining a QDD's tax liability. Those comments generally requested that this method be based on the QDD's net delta exposure for each underlying security. The Treasury Department and the IRS agreed that the net delta exposure method was an administrable and accurate method for a QDD to determine its residual exposure to underlying securities, and the 2017 final regulations adopted the net delta exposure method.

In adopting the net delta exposure method, the Treasury Department and the IRS were concerned that the exemption from withholding on dividends paid to a QDD, when combined with the net delta exposure method, could result in U.S. source dividends escaping U.S. tax completely in certain circumstances. Therefore, the 2017 final regulations revised §§1.871-15(q)(1) and 1.1441-1(b)(4)(xxii) to provide that a QDD remains liable for tax under section 881(a)(1) and subject to withholding under chapters 3 and 4 on dividends. However, to allow taxpayers time to implement the net delta exposure method, the 2017 QI Agreement and the 2017 final regulations provided that dividends and dividend equivalents received by a QDD in its equity derivatives dealer capacity in 2017 would not be subject to tax under section 881(a)(1) or subject to withholding under chapters 3 and 4.

The Prior Notices announced that the Treasury Department and the IRS intend to amend §§1.871-15(q)(1) and (r)(3), and 1.1441-1(b)(4)(xxii)(C) to provide that a QDD will not be subject to tax on dividends and dividend equivalents received in 2017 through 2024 in its equity derivatives dealer capacity or withholding on those dividends (including deemed dividends). This Notice announces that the Treasury Department and the IRS intend to amend those provisions to provide that a QDD will not be subject to tax on dividends and dividend equivalents received in 2025 and 2026 in its equity derivatives dealer capacity or withholding on those dividends (including deemed dividends) as well.

Section 4.01(1) of Rev. Proc. 2017-15 provided that a QDD would be required to compute its section 871(m) amount using the net delta exposure method beginning in 2018. The Prior Notices provided that a QDD would be required to compute its section 871(m) amount using the net delta exposure method beginning in 2025. The 2023 QI Agreement retains this rule in section 3.09(A). This Notice provides that a QDD will be required to compute its section 871(m) amount using the net delta exposure method beginning in 2027.

A QDD will remain liable for tax under section 881(a)(1) on dividends and dividend equivalents that it receives in any capacity other than as an equity derivatives dealer, and on any other U.S. source FDAP payments that it receives (whether or not in its equity derivatives dealer capacity). In addition, a QDD is responsible for withholding on dividend equivalents it pays to a foreign person on a section 871(m) transaction, whether acting in its capacity as an equity derivatives dealer or otherwise.

Finally, section 10.01(C) of the 2017 QI Agreement provided that: "For calendar year 2017, a QDD is not required to perform a periodic review with respect to its QDD activities (as otherwise required by section 10.04 of this Agreement) or provide the factual information specified in Appendix I." The Prior Notices provided that a QDD is not required to perform a periodic review with respect to its QDD activities for 2017 through 2024. Section 10.01(C) of the 2023 QI Agreement provides that: "For calendar years 2023 and 2024, a QDD is not required to perform a periodic review with respect to its QDD activities (as otherwise required by section 10.04 of this Agreement) or provide factual information in Appendix I with respect to its QDD activities." This Notice provides that a QDD is not required to perform a periodic review or provide factual information in Appendix I with respect to its QDD activities for 2025 or 2026. The Treasury Department and the IRS will consider incorporating into the 2023 QI Agreement the waiver of a QDD's periodic review and the other transitional provisions for QDDs for 2025 and 2026.

VI. EXTENSION OF TRANSITION RULES FROM NOTICE 2010-46

Notice 2018-5, Notice 2018-72, Notice 2020-2, and Notice 2022-37 provided that notwithstanding the preamble to the 2017 regulations, withholding agents may apply the QSL transition rules described in Notice 2010-46, Part III, for payments made in 2018 through 2024. This Notice provides that withholding agents may also apply the QSL transition rules described in Notice 2010-46, Part III, for payments made in 2025 and 2026.

VII. TAXPAYER RELIANCE

Before the promulgation of the amendments to the section 871(m) regulations or the issuance of other guidance, taxpayers and withholding agents (including QIs for purposes of the 2023 QI Agreement) may rely on the provisions of this Notice regarding the proposed amendments described in sections III and V. Withholding agents may rely on the simplified standard for determining whether transactions are combined transactions as described in section IV and may apply the QSL transition rules described in section VI.

VIII. DRAFTING INFORMATION

The principal authors of this Notice are Karen Walny and Peter Merkel of the Office of Associate Chief Counsel (International). For further information regarding this Notice, contact Karen Walny or Peter Merkel at (202) 317-6938 (not a toll-free number).

Part IV

Low-Income Communities Bonus Credit Program Unallocated Environmental Justice Solar and Wind Capacity Limitation Carryover from the 2023 Program Year to the 2024 Program Year

Announcement 2024-25

This announcement provides the total amount of unallocated environmental justice solar and wind capacity limitation (Capacity Limitation) for the Low-Income Communities Bonus Credit Program (Program) under § 48(e) of the Internal Revenue Code and § 1.48(e)-1 of the Income Tax Regulations that has been carried over from the 2023 Program year to the 2024 Program year. Additionally, this announcement sets forth the distribution of the carried over Capacity Limitation among the facility categories, category 1 sub-reservations, and application options for the 2024 Program year.

Because the annual Capacity Limitation for the 2023 Program year exceeds the amount of Capacity Limitation allocated in that Program year, the excess is carried over to the 2024 Program year and increases the Capacity Limitation available for allocation in the 2024 Program year under § 48(e)(4)(D). The total amount of unallocated Capacity Limitation from the 2023 Program year is 324.785 megawatts (MW). This amount is distributed as follows for the 2024 Program year:

Category, Category 1 sub-reservation, or application option	Carried over Capacity Limitation amount
Category 1: Located in a Low-Income Community, Eligible Residential Behind-the-Meter (BTM)[1] Sub-Reservation, Non-Additional Selection Criteria Application Option	50 MW
Category 1: Located in a Low-Income Community, Eligible Residential Behind-the-Meter[2] Sub-Reservation, Additional Selection Criteria Application Option	50 MW
Category 1: Located in a Low-Income Community, Other Facilities[3] Sub-Reservation, Additional Selection Criteria Application Option	100 MW
Category 3: Qualified Low-Income Residential Building Project, Additional Selection Criteria Application Option	24.785 MW
Category 4: Low-Income Economic Benefit Project, Additional Selection Criteria Application Option	100 MW
TOTAL	**324.785 MW**

The above table reflects only the distribution of the carried over unallocated Capacity Limitation for the 2023 Program year among the facility categories, category 1 sub-reservations, and application options to which unallocated 2023 Program year Capacity Limitation has been assigned in the 2024 Program year. Rev. Proc. 2024-19, 2024-16 I.R.B. 899, provided the distribution for the 2024 Program year of the 1.8 gigawatts of annual Capacity Limitation.

DRAFTING INFORMATION

The principal author of this announcement 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 announcement, call the energy security guidance contact number at (202) 317-5254 (not a toll-free number).

[1] Eligible residential BTM facilities are described in § 1.48(e)-1(i)(2)(ii).
[2] Eligible residential BTM facilities are described in § 1.48(e)-1(i)(2)(ii).
[3] Other facilities are front of the meter facilities described in § 1.48(e)-1(i)(2)(iii) as well as non-residential BTM facilities that meet the requirements of § 1.48(e)-1(i)(2)(i).

Notice of Proposed Rulemaking

Interest Capitalization Requirements for Improvements to Designated Property

REG-133850-13

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would remove the associated property rule and similar rules from the existing regulations on the interest capitalization requirements for improvements to designated property. In addition, this document contains proposed regulations that would modify the definition of "improvement" for purposes of applying those existing regulations. Lastly, this document contains proposed regulations that would modify other rules in those existing regulations in light of the proposed removal of the associated property rule. The proposed regulations would affect taxpayers making improvements to real or tangible personal property that constitute the production of designated property.

DATES: Written or electronic comments and requests for a public hearing must be received by July 15, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG-133850-13) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the "Comments and Requests for a Public Hearing" section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG-133850-13), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Livia Piccolo of the Office of Associate Chief Counsel (Income Tax and Accounting), at (202) 317-7007; concerning submissions of comments or a public hearing, Vivian Hayes, (202) 317-6901 (not toll-free numbers) or by email at *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document proposes amendments to § 1.263A-11(e)(1)(ii) and (iii) of the Income Tax Regulations (26 CFR part 1) to remove the "associated property rule" and similar rules from the interest capitalization requirements for improvements that constitute the production of property under section 263A(f) of the Internal Revenue Code (Code). In addition, this document proposes amendments to § 1.263A-11(f) to clarify that § 1.263A-11(f) applies only to property purchased and further produced before it is placed in service. Finally, this document proposes to amend § 1.263A-8(d)(3) to update the definition of "improvement" so that it is consistent with the definition of "improvement", including the exceptions, safe harbors, and elections provided under § 1.263(a)-3.

Sections 263A(a) and (b) of the Code generally require the capitalization of direct and indirect costs of real or tangible personal property produced by the taxpayer. Under section 263A(g)(1) and § 1.263A-8(d)(3), the term "produce" includes "improve."

Section 263A(f) contains rules for capitalizing interest with respect to certain property produced by the taxpayer and for determining the amount of interest required to be capitalized. In general, section 263A(f)(1) limits capitalization to interest that is paid or incurred during the production period and that is allocable to real property or certain tangible personal property produced by the taxpayer, referred to as "designated property" in the section 263A regulations. *See* § 1.263A-8(b)(1). Under section 263A(f)(2)(A), in determining the amount of interest required to be capitalized to any property, (i) interest on any indebtedness directly attributable to production expenditures with respect to the property is assigned to the property, and (ii) interest on any other indebtedness is assigned to the property to the extent that the taxpayer's interest cost could have been reduced if production expenditures not attributable to indebtedness described in clause (i) had not been incurred (avoided cost method).

Section 1.263A-8(a) provides that taxpayers must use the avoided cost method described in § 1.263A-9 in determining the amount of interest required to be capitalized with respect to the production of designated property. Section 1.263A-9(a)(1) explains that, under the avoided cost method, any interest that the taxpayer theoretically would have avoided if accumulated production expenditures (as defined in § 1.263A-11) (APEs) had been used to repay or reduce the taxpayer's outstanding debt must be capitalized. Under § 1.263A-11(a), APEs generally mean the cumulative amount of direct and indirect costs described in section 263A(a) that are required to be capitalized with respect to a unit of property.

Section 1.263A-9(c) provides that, to the extent a taxpayer's APEs exceed traced debt (that is, debt that is allocated to APEs with respect to the unit of property), the general formula for determining the amount of interest that must be capitalized is the average excess expenditures multiplied by the weighted average interest rate on the debt during the time the production occurs. A larger base of production expenditures leads to more interest capitalized.

Section 1.263A-11(e)(1)(i) provides that, if an improvement constitutes the production of designated property under § 1.263A-8(d)(3), APEs with respect to the improvement consist of all direct and indirect costs required to be capitalized with respect to the improvement. In the case of an improvement to a unit of real property qualifying as the production of designated property under § 1.263A-8(d)(3), § 1.263A-11(e)(1)(ii) provides that APEs include an allocable portion of the cost of

land, and for any measurement period, the adjusted basis of any existing structure, common feature, or other property that is not placed in service, or must be temporarily withdrawn from service to complete the improvement (associated property) during any part of the measurement period if the associated property directly benefits the property being improved, the associated property directly benefits from the improvement, or the improvement was incurred by reason of the associated property (associated property rule). In the case of an improvement to a unit of tangible personal property qualifying as the production of designated property under § 1.263A-8(d)(3), § 1.263A-11(e)(1)(iii) provides that APEs include the adjusted basis of the asset being improved if that asset either is not placed in service or must be temporarily withdrawn from service to complete the improvement.

Section 1.263A-12(a) explains that under § 1.263A-9, a taxpayer must capitalize interest for computation periods that include the production period of a unit of designated property. In the case of property produced for self-use, § 1.263A-12(d)(1) generally provides that the production period for a unit of property ends on the date that the unit is placed in service and all production activities reasonably expected to be undertaken are completed.

In *Dominion Resources, Inc. v. United States*, 681 F.3d 1313 (Fed. Cir. 2012), the Federal Circuit invalidated the associated property rule of § 1.263A-11(e)(1)(ii)(B) for property temporarily withdrawn from service. The court concluded that the regulation was not a reasonable interpretation of the avoided cost rule in section 263A(f)(2)(A)(ii) and that it violated the *State Farm* requirement that the Treasury Department and the IRS provide a reasoned explanation for adopting a regulation. *See Motor Vehicles Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

The taxpayer in *Dominion Resources* was a public utility that replaced coal burners in two of its electric generating plants. This action required the taxpayer to temporarily withdraw the two electric generating plants from service. During that time, Dominion incurred interest on debt unrelated to the improvements. Dominion deducted some of that interest, and the IRS disagreed with the taxpayer's computations. The IRS argued that pursuant to § 1.263A-11(e)(1)(ii)(B), the taxpayer's APEs should include the cost of the improvements (that is, the amount spent to replace the coal burners), as well as the adjusted basis of the property temporarily withdrawn from service to complete the improvement (that is, the electric generating plants).

The taxpayer and the IRS ultimately reached a settlement agreement, pursuant to which Dominion deducted 50 percent and capitalized 50 percent of the disputed amount. The taxpayer subsequently filed a claim for refund, asserting that the entire amount was deductible. The taxpayer challenged the validity of § 1.263A-11(e)(1)(ii)(B) as applied to its improvements. In *Dominion Resources, Inc. v. United States*, 97 Fed. Cl. 239 (Fed. Cl. 2011), the United States Court of Federal Claims upheld the validity of the associated property rule and denied the taxpayer's claim for refund.

On appeal, the United States Court of Appeals for the Federal Circuit (Federal Circuit) reversed the lower court decision and invalidated the associated property rule of § 1.263A-11(e)(1)(ii)(B) for property temporarily withdrawn from service. The Federal Circuit explained that the regulation "unreasonably links" the interest capitalized when a taxpayer makes an improvement to the adjusted basis of the property temporarily withdrawn from service to complete the improvement. The court reasoned that to implement the avoided cost principle, the interest to be capitalized is the amount that could have been avoided if funds had not been expended for the improvement. However, the adjusted basis of the temporarily withdrawn property does not represent an "avoided" amount. The court found that "[a] property owner does not expend funds in an amount equal to the adjusted basis [of the temporarily withdrawn property] when making the improvement. Instead, she expends funds in an amount equal to the cost of the improvement itself." *Dominion Resources*, 681 F.3d at 1318; *see also* S. Rep. No. 99-313, at 144 (1986) (interest to be capitalized is the amount "that could have been avoided if funds had not been expended for construction."); H.R. Rep. No. 99-426, at 628 (1985) (same). Thus, the court concluded that the regulation contradicts the avoided cost rule.

Section 1.263A-8(d)(3) provides that any improvement to property described in §1.263(a)-1(b) constitutes the production of property. Final regulations under sections 162 and 263(a) of the Code (TD 9636) were published in the **Federal Register** (78 FR 57686) on September 19, 2013. The final regulations clarified the definition of "improvement" and moved the definition to § 1.263(a)-3. Section 1.263(a)-3 did not change the meaning of the term "improvement" but synthesized applicable case law and prior administrative rules into a framework to ease determinations of whether a cost must be capitalized as an improvement cost or deducted as a repair and maintenance expense. These final regulations also clarified that a cost capitalized as an improvement cost can include only the cost of activities performed after the property is placed in service. *See* § 1.263(a)-3(d).

Explanation of Provisions

The Treasury Department and the IRS have considered the Federal Circuit's opinion in *Dominion Resources* and agree with its rationale. Under this rationale, treating the adjusted basis of any associated property that is temporarily withdrawn from service to complete the improvement as a component of APEs contradicts the avoided cost rule because the adjusted basis of the temporarily withdrawn property does not represent an "avoided" amount. Accordingly, these proposed regulations would remove the associated property rule at §1.263A-11(e)(1)(ii)(B) (for improvements to real property) and § 1.263A-11(e)(1)(iii) (for improvements to tangible personal property) for property temporarily withdrawn from service. For similar reasons, these proposed regulations would remove the rule at § 1.263A-11(e)(1)(ii)(A) (APEs with respect to an improvement to real property includes an allocable portion of the cost of land).

In *Dominion Resources*, the challenge to § 1.263A-11(e)(1)(ii)(B) applied only to improvements to property "temporarily withdrawn from service" and not to improvements to property that is

"not placed in service." However, the Treasury Department and the IRS have determined that the associated property rule at §§ 1.263A-11(e)(1)(ii)(B) and 1.263A-11(e)(1)(iii) for improvements to property "not placed in service" also should be removed because under § 1.263(a)-3(d), the definition of "improvement" is limited to amounts paid for activities performed *after* the property is placed in service. Amounts paid for activities performed prior to the date that property is placed in service are characterized as acquisition or production costs (rather than improvement costs) and are generally capitalized under § 1.263(a)-2 and section 263A. *See* §§ 1.263(a)-2(d) and (c)(1). In addition, the APE rules in § 1.263A-11(f) already address a situation in which a taxpayer incurs production costs with respect to property that has not been placed in service. Accordingly, these proposed regulations would remove the associated property rule at §§ 1.263A-11(e)(1)(ii)(B) and 1.263A-11(e)(1)(iii) for improvements to property not placed in service.

Because these proposed regulations would remove the associated property rule at § 1.263A-11(e)(1)(ii)(B), the de minimis rule of § 1.263A-11(e)(2) would be irrelevant. Accordingly, these proposed regulations also would remove this de minimis rule.

As a result of the proposed amendments to § 1.263A-11(e) to remove from APEs the adjusted basis of associated real property, the adjusted basis of associated tangible personal property, and an allocable portion of the cost of the land when the taxpayer makes an improvement, a taxpayer would be required to include in APEs only the direct and indirect costs of the improvement itself.

The proposed regulations would not change the substance of the rules in § 1.263A-11(f) concerning interest capitalized with respect to property purchased and further produced before it is placed in service. Section 1.263A-11(f) provides that if a taxpayer purchases a unit of property for further production, the taxpayer's APEs include the full purchase price of the property plus additional direct and indirect costs incurred by the taxpayer.

The Treasury Department and the IRS considered whether the rules in § 1.263A-11(f) should be modified to exclude the purchase price of such property from the taxpayer's APEs in light of the holding in *Dominion Resources*. That is, the Treasury Department and the IRS considered whether the rationale of *Dominion Resources* should apply to situations in which a taxpayer purchases property for further production prior to placing the property in service. As noted previously in the Background and this Explanation of Provisions, the holding in *Dominion Resources* was limited to improvements to property "temporarily withdrawn from service" and did not address situations in which a taxpayer purchases property for further production prior to placing the property in service. Further, unlike the cost of property that is temporarily withdrawn from service to be improved, the cost of property purchased for further production prior to being placed in service represents an "avoided" amount under avoided cost principles because the cost of such property is a component cost of the original production activity. In contrast, the cost of property that is temporarily withdrawn from service to be improved is not a component cost of the subsequent production activity. Accordingly, these proposed regulations would retain the substantive rules in § 1.263A-11(f). However, these proposed regulations would modify § 1.263A-11(f) to clarify that § 1.263A-11(f) applies only to situations in which property is purchased and further produced before the property is placed in service.

The Treasury Department and the IRS recognize that the proposed amendments to remove from APEs the adjusted basis of associated real property, the adjusted basis of associated tangible personal property, and an allocable portion of the cost of the land when the taxpayer makes an improvement may increase the potential for abuse. For example, a taxpayer may attempt to treat property produced for self-use as having been placed in service (even though the placed-in-service requirements have not yet been met) and then attempt to characterize subsequent production activities as an improvement, thereby improperly excluding relevant costs from APEs. Section 1.263A-12(d)(1) provides that in the case of property produced for self-use, the production period for a unit of property does not end until the taxpayer places the property in service and all production activities reasonably expected to be undertaken are completed. The proposed regulations contain a cross-reference to § 1.263A-12(d)(1) to emphasize that taxpayers must comply with the rules of that section when determining whether the production period has ended and therefore whether the taxpayer's production activities constitute an improvement.

The final regulations under sections 162 and 263(a), published in 2013, clarify the definition of "improvement" and change the specific citations for the definition. Specifically, § 1.263(a)-3 now governs the definition of "improvement" for purposes of section 263(a). In addition, § 1.263(a)-3 includes certain exceptions, safe harbors, and elections that may be applied in determining whether certain amounts must be treated as improvement costs. The treatment afforded by the application of § 1.263(a)-3, including these exceptions, safe harbors, and elections, should also apply in determining whether costs must be treated as improvements for the computation of APEs for section 263A interest capitalization purposes. Accordingly, these proposed regulations would amend § 1.263A-8(d)(3) to update the definition of "improvement" so that it is consistent with the definition of "improvement", including the exceptions, safe harbors, and elections provided under § 1.263(a)-3. Note, however, the de minimis safe harbor election, as provided by § 1.263(a)-1(f), is not an election under § 1.263(a)-3 and generally does not apply to amounts paid for tangible property subject to section 263A if these amounts comprise the direct or allocable indirect costs of other property produced by the taxpayer. *See* § 1.263(a)-1(f)(3)(v). Accordingly, the de minimis safe harbor election under § 1.263(a)-1(f) generally would not apply in determining whether amounts should be included in the computation of APEs for interest capitalization under section 263A.

Proposed Applicability Dates

These regulations are proposed to apply to taxable years beginning after the date that final regulations are published in the **Federal Register**. However, taxpayers may choose to apply these proposed

regulations for taxable years beginning after May 15, 2024, and on or before the date that final regulations are published in the **Federal Register**.

Special Analyses

I. *Regulatory Planning and Review*

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. *Paperwork Reduction Act*

1. Collections of Information

These proposed regulations do not impose additional recordkeeping or reporting burden related to section 263A for taxpayers. A change in a taxpayer's treatment of interest to a method consistent with §§ 1.263A-8(d)(3) and 1.263A-11(e) and (f), as applicable, is a change in method of accounting to which sections 446 and 481 apply. Taxpayers change methods of accounting by filing Form 3115 (OMB 1545-2070). For purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (PRA), the reporting burden associated with Form 3115 will be reflected in the PRA submission for OMB 1545-2070, so no estimate is provided here.

2. Burden Estimates

These regulations impose 0 hours and $0 of additional recordkeeping or reporting burden related to section 263A for taxpayers. Taxpayers who change their accounting method based on the revised requirements do so by filing Form 3115 (OMB 1545-2070). For purposes of the PRA, the reporting burden associated with Form 3115 will be reflected in the PRA submission for OMB 1545-2070, so no estimate is provided here.

Because businesses with gross receipts of up to $25 million (as adjusted for inflation pursuant to sections 263A(i) and 446(c)) are exempted from the requirement to capitalize costs, including interest, under section 263A, businesses with gross receipts in excess of $25 million (as adjusted for inflation) are impacted by these proposed regulations. Approximately 30,000 taxpayers with gross receipts in excess of $25 million (as adjusted for inflation) reported that they were subject to section 263A during the past five years. This number is based upon the number of taxpayers who reported that they were subject to section 263A on Forms 1120, 1125-A, and 4562.

It is estimated that no more than 1 percent of these businesses will make improvements to real or tangible personal property that constitute the production of designated property for which a change in accounting method will be made in any one year. Therefore, it is estimated that approximately 300 taxpayers may be impacted by the changes in these proposed regulations.

III. *Regulatory Flexibility Act*

Small business taxpayers, those with gross receipts of up to $ 25 million (as adjusted for inflation), are exempted from the requirement to capitalize costs, including interest, under section 263A. Therefore, very few, if any, small business taxpayers will be affected by these proposed regulations. It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Treasury Department and the IRS invite comments about the potential impacts of this proposed rule on small entities.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel of the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

IV. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). This proposed rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

V. *Executive Order 13132: Federalism*

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS, as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any comments will be made available at *https://www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Livia Piccolo of the Office of the Associate Chief Counsel (Income Tax and Accounting). However, other personnel

from the Treasury Department and IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

§ 1.263A-0 [Amended]

Par. 2. Section 1.263A-0 is amended by removing the entries for § 1.263A-11(e)(1) and (2).

Par. 3. Section 1.263A-8 is amended by revising paragraph (d)(3)(i) to read as follows:

§ 1.263A-8 Requirement to capitalize interest.

* * * * *

(d) * * *

(3) *Improvements to existing property*--(i) *In general*. Any improvement to property owned by the taxpayer that is treated as an improvement under § 1.263(a)-3 constitutes the production of property. Generally, any improvement to designated property constitutes the production of designated property. An improvement is not treated as the production of designated property, however, if the de minimis exception described in paragraph (b)(4) of this section applies to the improvement. Paragraph (d)(3)(iii) of this section provides an exception for certain improvements to tangible personal property. In addition, improvements to designated property under this paragraph (d)(3)(i) do not include repairs and maintenance described in § 1.162-4(a).

* * * * *

Par. 4. Section 1.263A-11 is amended by revising paragraphs (e) and (f) to read as follows:

§ 1.263A-11 Accumulated production expenditures.

* * * * *

(e) *Improvements*. If an improvement constitutes the production of designated property under § 1.263A-8(d)(3), accumulated production expenditures with respect to the improvement consist of all direct and indirect costs required to be capitalized with respect to the improvement. *See* § 1.263A-12(d)(1) to determine when the production period for a unit of property has ended.

(f) *Mid-production purchases*. If a taxpayer purchases a unit of property for further production before the purchased unit of property is placed in service, the taxpayer's accumulated production expenditures include the full purchase price of the purchased unit of property plus all the additional direct and indirect production costs incurred by the taxpayer that are required to be capitalized with respect to the purchased unit of property.

* * * * *

Par. 5. Section 1.263A-15 is amended by adding paragraph (a)(6) to read as follows:

§ 1.263A-15 Effective dates, transitional rules, and anti-abuse rule.

(a) * * *

(6) Sections 1.263A-8(d)(3) and 1.263A-11(e) and (f) apply to taxable years beginning after [DATE OF PUBLICATION OF FINAL RULE]. A change in a taxpayer's treatment of interest to a method consistent with §§ 1.263A-8(d)(3) and 1.263A-11(e) and (f), as applicable, is a change in method of accounting to which sections 446 and 481 apply.

* * * * *

Douglas W. O'Donnell,
Deputy Commissioner.

(Filed by the Office of the Federal Register May 14, 2024, 8:45 a.m., and published in the issue of the Federal Register for May 15, 2024, 89 FR 42404)

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2023–27 through 2023–52 is in Internal Revenue Bulletin 2023–52, dated December 26, 2023.

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2023–27 through 2023–52 is in Internal Revenue Bulletin 2023–52, dated December 26, 2023.

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