

Part III - Administrative, Procedural, and Miscellaneous

Request for Comments on Situations in Which a Section 6417(a) Election Could Be Made for Credits Purchased in Transfers Under Section 6418(a)

Notice 2024-27

SECTION I. PURPOSE

This notice requests additional comments on any situations in which an election under § 6417(a) of the Internal Revenue Code (Code)¹ could be made for a credit that was purchased in a transfer for which an election under § 6418(a) is made. Such sequence of events is referred to as “chaining” in this notice. Comments regarding chaining will inform the ongoing review by the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) of the tax credit transfer market for eligible credits under § 6418(f)(1) and any potential future rules that would be consistent with the statutory framework, as well as the legislative purposes, of §§ 6417 and 6418.

SECTION II. BACKGROUND

Sections 6417 and 6418 of the Code were enacted by § 13801 of Public Law 117-169, 136 Stat. 2003 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), to provide two novel credit monetization mechanisms. Generally, § 6417

¹ Unless otherwise specified, all “Section” or “§” references are to sections of the Code and the Income Tax Regulations (26 CFR part 1).

allows applicable entities to elect to treat the amount of applicable credits defined in § 6417(b) for a taxable year as a payment of such an amount of Federal income tax made by the applicable entity to the IRS rather than a credit against their Federal income tax liabilities. Generally, § 6418 permits eligible taxpayers defined in § 6418(f)(2) (transferor taxpayers) to elect to transfer the use of eligible credits defined in § 6418(f)(1) (transferred credits) to unrelated taxpayers in exchange for cash.

On October 24, 2022, the Treasury Department and the IRS published Notice 2022-50, 2022-43 I.R.B. 325 to, among other things, request general comments on questions arising under new §§ 6417 and 6418, and to inform development of future guidance implementing §§ 6417 and 6418. In response to Notice 2022-50, multiple stakeholders asked that regulations clarify whether chaining is permissible.

On June 21, 2023, the Treasury Department and the IRS published two sets of proposed regulations, as well as temporary regulations, in the *Federal Register*. The first set of proposed regulations (REG-101607-23; 88 FR 40528) provided guidance on § 6417 (§ 6417 Proposed Regulations). The second set of proposed regulations (REG-101610-23; 88 FR 40496) provided guidance on § 6418 (§ 6418 Proposed Regulations). The temporary regulations (TD 9975; 88 FR 40086) in §§ 1.6417-5T and 1.6418-4T implement the pre-filing registration process also described in proposed §§ 1.6417-5 and 1.6418-4.

After noting that multiple stakeholders asked that regulations clarify whether applicable entities may engage in chaining by making an election under § 6417(a) for tax credits purchased in the transfer market, the § 6417 Proposed Regulations proposed that such chaining would not be permissible and sought further comment on

the issue. The preamble to the § 6417 Proposed Regulations noted several potential obstacles to permitting chaining and requested comments on limited situations in which exceptions to this proposed rule may be appropriate because they are consistent with the text, design, and intent of the IRA, while also ensuring that such exceptions are not subject to fraud or abuse.

On March 5, 2024, final regulations under § 6417 (TD 9988) were filed for public inspection (§ 6417 Final Regulations). The § 6417 Final Regulations adopt the position of the Treasury Department and the IRS set forth in the § 6417 Proposed Regulations on chaining, expressing the view that §§ 6417 and 6418, when read together, are most straightforwardly understood as creating two separate, mutually exclusive regimes regarding credit monetization. While the Treasury Department and the IRS acknowledged in the preamble to the § 6417 Final Regulations that no specific language in §§ 6417 or 6418 directly prohibits chaining, not permitting chaining allows for more straightforward application of the statute as a whole. The Treasury Department and the IRS also remain concerned about the administrability of chaining and potential for fraud and abuse. Thus, the § 6417 Final Regulations do not permit chaining.

SECTION III. REQUEST FOR COMMENTS

As discussed in section II of this notice, the § 6417 Final Regulations reflect the current view of the Treasury Department and the IRS that chaining is impermissible under §§ 6417 and 6418. This view is based, in part, on the text “determined with respect to” in both statutes, which is more straightforwardly interpreted as requiring an applicable entity to own the underlying applicable credit property and conduct the

activities for which the applicable credit is “determined with respect to,” or in the case of the credit that is determined under § 45X (§ 45X credit), for which ownership of applicable credit property is not required, requiring an applicable entity to be considered the taxpayer with respect to which the § 45X credit is determined.

The Treasury Department and the IRS recognize that a robust market for transferred credits (credit transfer market) that helps support a broad array of projects and investment is consistent with Congress’s intent in enacting the IRA. There are early indications that a robust market for transferring credits under § 6418 is forming under the current rule; however, the market is relatively nascent, economic conditions are strong, and allowing chaining could further increase demand in and access to that market. The Treasury Department and the IRS will continue to evaluate whether potential chaining rules would be consistent with the statutory framework, as well as the legislative purposes, of §§ 6417 and 6418. At the same time, the Treasury Department and the IRS will be reviewing administrability challenges associated with elective payment elections and transfer elections and will be carefully monitoring for fraud and improper payments, which could undermine the credit transfer market. To that end, the Treasury Department and the IRS request comments that address the following specific questions:

.01 Impacts on credit transfer market. If chaining were ultimately permitted, how would it specifically impact the credit transfer market? Would demand for transferred credits significantly increase? How would the cost of transferred credits be affected? Some commenters have suggested that chaining would increase market participation. Commenters are requested to provide specific examples of entities that lack access to

the current transfer market and transactions that could be entered into should chaining be permitted.

.02 “Determined with respect to” interpretation

(1) How can the language in § 6417(a) and § 6418(a) regarding a credit being “determined with respect to” an applicable entity or transferor taxpayer be reasonably interpreted to refer to a taxpayer that does not own the underlying applicable credit property and conduct the activities giving rise to the credit or, in the case of a § 45X credit (in which case ownership of applicable credit property is not required), be considered the taxpayer with respect to which the § 45X credit is determined?

(2) How should basis reduction and recapture rules under §§ 6417(g) and 6418(g)(3) work in the case of a chaining rule if credits that are purchased by an applicable entity must be treated as “determined with respect to” an applicable entity for that purpose?

.03 Administrability challenges

(1) Under § 1.6418-4T, a transferor taxpayer will complete pre-filing registration without identifying a transferee taxpayer. Under proposed § 1.6418-2, a transferee taxpayer may file a tax return and claim a transferred credit on its tax return before or after a transferor taxpayer files its own return, so long as the transferee taxpayer has the pre-filing registration number for the eligible credit property and a transfer election statement. Different rules would be necessary should the Treasury Department and the IRS conclude chaining is allowable. If chaining were permissible, the Treasury Department and the IRS would potentially propose that a transferor taxpayer could not obtain a pre-filing registration number for the eligible credit property without first

identifying the transferee taxpayer. There may also be impacts on the time at which a transferee taxpayer can file its tax return for the “chained” transferred credit, including the possibility that a transferee taxpayer could be prohibited from obtaining the transferred credit until the transferor taxpayer files its own return. The Treasury Department and the IRS seek comments on how a potential rule requiring identification of a transferee taxpayer during a transferor taxpayer’s pre-filing registration process would impact taxpayers and how the IRS could administer such a system.

(2) Can the statutory text of §§ 6417 and 6418 be interpreted to allow for chaining for any particular type(s) or group(s) of taxpayers, or for certain situations? If so, what type(s) or group(s) of taxpayers and in which scenarios should such taxpayers be allowed to “chain”? What clear and objective factors could criteria for determining eligibility be based on, and how administrable for taxpayers and the IRS would compliance with such criteria be? What additional information and documentation would be needed for the IRS to identify chaining-eligible and chaining-ineligible taxpayers through the pre-filing registration process?

(3) Can the statutory text of §§ 6417 and 6418 be reasonably interpreted to limit application of both an excessive credit transfer addition to tax under § 6418(g)(2) and an excessive payment addition to tax under § 6417(d)(6) to a taxpayer that is both an applicable entity under § 6417 and a transferee taxpayer under § 6418?

(4) In what ways could the IRS limit the risk for fraudulent elective payment elections with respect to transferred credits? For example, how could the IRS limit the risk that an entity would make an election under § 6417(a) for a purportedly transferred credit and receive payment, and then dissolve?

(5) In the case of a chaining rule, the IRS would need to conduct additional diligence of applicable entities and electing taxpayers, as well as transferor taxpayers, during the pre-filing registration process. How could such additional diligence avoid being treated as a determination or an examination by the IRS, such that the provisions of § 7605(b) are not implicated?

.04 Other issues

(1) If chaining is permitted generally, what rules should apply with respect to the transferred credits for which the election under § 6417(a) is made for multiple years (the credits under §§ 45, 45Q, 45V, and 45Y)?

(2) The elective payment election with regard to the credits under §§ 45, 45Q, 45V, and 45Y must be made in the taxable year the facility is placed in service under § 6417(d)(3)(B), (C), (D), and (E). In instances in which A (a transferor taxpayer) and B (a transferee taxpayer) have differing taxable years, A places a facility in service before B's taxable year begins, and A subsequently transfers an eligible credit arising from production at the facility to B, if chaining is permitted generally, should B be permitted to make a § 6417(a) election with regard to the transferred credit?

(3) Section 6418(a) does not permit transfers between related parties. The § 6418 Proposed Regulations would also provide for anti-abuse rules for situations in which a transaction is intended to decrease the transferor taxpayer's gross income or increase a transferee taxpayer's deductions. See proposed § 1.6418-2(e)(4). An example of when the anti-abuse rule may apply is a transaction in which a transferor taxpayer undercharges for services to a customer who is also purchasing credits from the transferor taxpayer as a transferee taxpayer at an inflated price. How should this

dynamic inform a potential chaining rule? What safeguards would be necessary for a chaining rule to prevent the avoidance of any Federal tax liability beyond the intent of § 6418?

SECTION IV. SUBMISSION OF COMMENTS

.01 Deadline. Written comments should be submitted by December 1, 2024.

.02 Form and manner. The subject line for the comments should include a reference to Notice 2024-27. All commenters are strongly encouraged to submit comments electronically. However, comments may be submitted in one of two ways:

(a) Electronically via the Federal eRulemaking Portal at <https://www.regulations.gov> (type IRS-2024-0008 in the search field on the regulations.gov homepage to find this notice and submit comments); or

(b) By mail to: Internal Revenue Service, CC:PA:01:PR (Notice 2024-27), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C., 20044.

.03 Publication of comments. The Treasury Department and the IRS will publish for public availability any comment submitted electronically and on paper to its public docket on <https://www.regulations.gov>.

SECTION V. DRAFTING INFORMATION

The principal author of this notice is the Office of the Associate Chief Counsel (Passthrough and Special Industries). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, contact Waheed Olayan at (202) 317-4137 (not a toll-free number).