



August 14, 2023

SUBMITTED ELECTRONICALLY

The Honorable Lily L. Batchelder
Assistant Secretary for Tax Policy
Department of Treasury
1500 Pennsylvania Ave., NW
Washington, D.C. 20220

The Honorable Daniel Werfel
Commissioner of Internal Revenue
Internal Revenue Service
1111 Constitution Ave., NW
Washington, D.C. 20224

Re: Request for Comment on Section 6417 Elective Payment of Applicable Credits Notice of Proposed Rulemaking (REG-101607-23)

Dear Assistant Secretary Batchelder and Commissioner Werfel:

Thank you for providing the Solar Energy Manufacturers for America Coalition (SEMA) the opportunity to provide comments regarding the Section 6417 Elective Payment of Applicable Credits.¹

Our members are a diverse group of solar manufacturers — those who make panels and components — throughout the entire solar supply chain. SEMA Coalition members either have a significant manufacturing presence in the United States, or intend to shift significant portions of their manufacturing operations to the U.S. following policy supporting growing solar manufacturing and demand in the U.S., including implementation of the Inflation Reduction Act (IRA).

Solar is poised to be the world's leading source of energy by 2040 and, according to the Department of Energy, could provide 40% of the nation's electricity by 2035.²³ Accordingly, we must ensure the U.S. government is taking the necessary steps to reduce the country's reliance on overseas supply chains to meet our future clean energy needs. Despite the incentives provided by the IRA, the solar industry continues to face significant headwinds from foreign competitors who operate with significant government subsidies and are undermining fair competition.⁴

It is critical that manufacturers of solar components be able to take full advantage of the IRA's clean energy tax credits, including the advanced manufacturing tax credit (IRC § 45X), which

¹ [Federal Register :: Section 6417 Elective Payment of Applicable Credits](#)

² [Solar Futures Study](#)

³ [Renewable power's growth is being turbocharged as countries seek to strengthen energy security - News - IEA](#)

⁴ [Solar Manufacturing in the US Is Facing a Bleak Future. Analysts Warn](#)



was strongly supported by the SEMA Coalition, to support the Biden Administration’s stated goals to “unleash a clean energy manufacturing boom” and revitalize American manufacturing communities.⁵ This includes allowing manufacturers to utilize elective payment to ensure they receive the full intended value of these credits and are best incentivized to onshore solar manufacturing operations.

With this perspective in mind, we have commented on portions of the NPRM that will have the greatest impact on SEMA Coalition members and the future of the U.S. solar manufacturing industry. To enhance the benefits of the Sec. 45X credit, we have provided the following suggestions to 1) improve working capital for manufacturers, 2) provide greater tax credit certainty for manufacturers and investors, 3) diminish unreasonable barriers for utilizing elective payment, and 4) enhance the value of tax credits for pilot phase production.

Timing of Payments and Returns

Proposed § 1.6417–2(b) provides rules on when elective payment elections are made. Under the proposed section, those electing for elective pay cannot receive direct pay credits until after they have registered through a web portal, have filed a tax return for next year, and Treasury has processed the return and issued a refund.

- The SEMA Coalition urges the IRS to use its authority under §6417(a) and 6417(d)(4)(B) to allow eligible taxpayers to make and receive quarterly elections and payments. Allowing quarterly payments would more efficiently provide taxpayers with the funds to make and sustain transformative investments and further the IRA’s domestic solar manufacturing goals. This is particularly significant from a working capital perspective for both companies with existing capacity and new market entrants. The more time it takes to realize the value of the credits, the more pressure there will be on cash flows and working capital, undermining the ultimate goals of IRC § 45X in particular. The outlined process could result in a delay of more than 18 months between when the activity generating the credit and when the elective payment is actually received.
- The IRS should align quarterly elections with quarterly returns and replicate the quarterly excise tax reporting mechanism similar to rules under IRC § 6426 and 6427, allowing eligible entities to claim payments every quarter. The SEMA Coalition urges the IRS to clarify the rules in §1.6417–2(b) permitting a taxpayer to make an election in the course of filing quarterly estimated taxes as opposed to only on the annual tax return to allow taxpayers subject to a short tax year to take full advantage of the benefit of claiming

⁵[Remarks by President Biden on How Bidenomics and the Investing in America Agenda are Unleashing a Clean Energy and Manufacturing Boom | The White House](#)



credits against quarterly estimated payments. The guidance should clarify that any credits may be applied, as a reduction, towards a taxpayer's quarterly estimated tax payments and may offset any taxes reported on the taxpayer's corporate income tax return when an elective pay election is in effect.

- The IRS should also ensure that partnerships and joint ventures are able to take advantage of elective payment so as to not disadvantage one business structure over another. While proposed regulations indicate that a corporation would have the ability to take advantage of elective payment by reducing its quarterly estimated tax payments, this option does not appear to be available to partnerships receiving credits. The IRS should not provide undue advantage to one corporate structure over another in implementing this provision.
- Additionally, the SEMA Coalition requests clarity on rules for refund processing time. The guidance and IRS's FAQs indicate that the registration process is intended to facilitate quicker processing and payments are to occur after the tax return is processed but do not provide any further guidance regarding an estimated timeline of how long after the due date a credit will be determined. To meet the intent and goals of the IRA, it is vital elective payments are not delayed by the IRS after timely filing of the taxpayer's returns. Furthermore, we seek clarification on whether refunds greater than \$5 million will require a review by the IRS for the Joint Committee on Taxation (JCT).⁶
- The SEMA Coalition requests that the IRS clarify that a taxpayer may credit the amount of the applicable tax credits against its quarterly estimated tax liability. The IRS should further allow a taxpayer to claim any amount of an elective tax credit greater than its estimated quarterly tax liability as an overpayment, which should be refunded to the taxpayer in the same manner as excess estimated tax payments or a refundable credit, and the taking of a credit in this manner should not be deemed an underpayment by the IRS.

Deficiency Procedure

The NPRM seeks comments on 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 6417.

- In order to prevent duplication, fraud, improper payments, or excessive payments, the Proposed Regulations require electing taxpayers to go through a pre-filing process and acquire a valid registration number. However, the Proposed Regulations do not provide

⁶[Large Tax Refunds and Credits Subject to Review by the Joint Committee on Taxation – What to Expect | Internal Revenue Service](#)



clear guidance regarding the IRS’s pre-registration review process and a taxpayer's ability to appeal any determination in the process. The Proposed Regulations outline nine items of information and subcategories required for completing the pre-filing registration process, including a vague category for “any other information the IRS deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments...”

- The SEMA Coalition requests clear guidance on the scope of the IRS’s pre-filing review process and the scope of additional information deemed necessary by the IRS. Furthermore, guidance should outline a clear deficiency procedure to be followed if the IRS determines that a taxpayer has provided insufficient information during pre-filing registration to be eligible to receive elective payment for a tax credit. The SEMA Coalition also seeks clarification on the procedure for challenging a determination if deemed ineligible during pre-filing registration.

Pre-Filing Registration

Proposed § 1.6417–5 provides an overview of the pre-filing registration process and outlines pre-filing registration requirements.

- The SEMA Coalition recommends the IRS clarify that a taxpayer need not already be in the business of an activity qualifying for one of the tax credits covered by the proposed elective payment regulations to participate in the pre-filing registration process. Such a requirement would block or slow down new entrants to the industry in the United States from accessing the elective payment option as expeditiously as possible. In the case of the credits covered by the NPRM, manufacturers are required to sell their product to receive a credit, meaning there is inherent verifiability and a low chance of fraud.
- The SEMA Coalition requests clarification and more specificity regarding when the pre-filing registration process will be opened for the 2023 tax year and urges the IRS to make the process available as soon as possible to allow taxpayers sufficient time to submit the required information.

Designation of Facilities

Proposed § 1.6417–1(e) defines “Applicable Credit Property” and proposed § 1.6417–3(e)(2) clarifies that the direct pay election is made separately for each Applicable Credit Property.



- The SEMA Coalition requests further clarification regarding the designation of separate and independent Applicable Credit Properties. Guidance should specify what measures must be taken by a taxpayer and what information must be provided to the IRS to designate facilities and Applicable Credit Properties as separate and eligible for their own five-year elective payment period.
- In order to encourage further onshoring of the entire solar supply chain, the SEMA Coalition recommends clarifying the eligibility of an expansion of an existing production facility to qualify as an Applicable Credit Property for the purpose of the elective payment election. The IRS could require that such distinctions between separate facilities and applicable credit properties be made clear during the pre-filing registration process. For example, a taxpayer that has an existing pilot and demonstration line but is seeking to expand to full-scale commercial production, after demonstrating feasibility, in the same building should not be penalized by having to delay elective pay. The commercial scale line should be considered a separate applicable credit property and thus have a separate five year period for elective pay.

Multiple Direct Pay Elections

Proposed § 1.6417–3 provides that the election applies for one five-year period per applicable credit property, but such election may be revoked once per applicable credit property.

- The SEMA Coalition requests clarification as to whether a taxpayer will have the ability to claim a direct pay credit for an applicable credit property a second time after the elapse of the first five-year period. The guidance prescribes that an election applies for five years and does not preclude a second 5-year election. The SEMA Coalition recommends the IRS allow taxpayers the flexibility to make a second election after the expiration of the first five-year period. The SEMA Coalition believes the IRA does not preclude a second five-year election and encourages the IRS to confirm this reading.

Sincerely,

Mike Carr
Executive Director
Solar Energy Manufacturers for America Coalition