INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2022–43
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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

Rev. Proc 2022-31, page 339.
General Rules and Specifications for Substitute Forms and Schedules. This procedure provides guidelines and general requirements for the development, printing, and approval of the 2022 substitute tax forms. This procedure will be reproduced as the next revision of Publication 1167. Rev. Proc. 2021-42 is superseded.

Rev. Proc 2022-37, page 377.
This procedure publishes the amounts of unused housing credit carryovers allocated to qualified states under section 42(h)(3)(D) of the Code for calendar year 2022.

INCOME TAX

Notice 2022-41, page 304.
This notice expands the application of the permitted change-in-status rules for health coverage under a section 125 cafeteria plan (cafeteria plan). In particular, this notice addresses the situation in which, during a period of coverage (typically a plan year), a cafeteria plan participant may wish to revoke the employee's election under the cafeteria plan for other-than-self-only (family) coverage under a group health plan (other than a flexible spending arrangement) in order to allow one or more family members to enroll in a Qualified Health Plan through a Health Insurance Exchange in the individual market.

Notice 2022-46, page 306.
Following enactment of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), this notice requests comments related to the clean vehicles provisions under §§ 25E and 30D of the Internal Revenue Code. Comments received in response to this notice will help to inform development of guidance implementing §§ 30D and 25E.

Notice 2022-47, page 312.
This notice requests comments on issues concerning §§ 45X and 48C, as amended or added by Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA).

Notice 2022-48, page 316.
Following enactment of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), this notice requests comments regarding the provisions of §§ 25C, 25D, 45L and 179D of the Internal Revenue Code. Comments received in response to the notice will help to inform the development of guidance implementing §§ 25C, 25D, 45L and 179D.

Notice 2022-49, page 321.
The notice requests comments on issues concerning §§ 45, 48, 45U, 45Y, and 48E, as amended or added by Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act (IRA).

Notice 2022-50, page 325.
The notice requests comments on the elective payment provisions under § 6417 and the elective credit transfer provisions under § 6418 of the Internal Revenue Code, as added by § 13801 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022.

Finding Lists begin on page ii.

Notice 2022-51, page 331.
This notice requests comments on issues concerning §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D, as amended or added by Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act (IRA) relating to the prevailing wage, apprenticeship, domestic content, and energy community requirements for increased or bonus credit or deduction amounts under those sections.

Notice 2022-52, page 337.
The Department of the Treasury and the Internal Revenue Service are issuing this notice to modify and amplify provisions of Notice 2022–05, 2022–5 I.R.B. 457, by providing additional temporary relief from certain requirements under § 42 of the Internal Revenue Code for qualified low-income housing projects. This additional temporary relief is provided due to unavoidable labor and supply-chain disruptions delaying the construction, rehabilitation, and restoration of properties throughout the United States.

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 III

Additional Permitted Election Changes for Health Coverage under Section 125 Cafeteria Plans

Notice 2022-41

PURPOSE

This notice expands the application of the permitted change-in-status rules for health coverage under a section 125 cafeteria plan (cafeteria plan). In particular, this notice addresses the situation in which, during a period of coverage (typically a plan year), a cafeteria plan participant may wish to revoke the employee's election under the cafeteria plan for other-than-self-only (family) coverage under a group health plan (other than a flexible spending arrangement (FSA)) in order to allow one or more family members to enroll in a Qualified Health Plan (QHP) through a Health Insurance Exchange (Exchange) in the individual market. Under this notice, the employee will be able to elect out of family coverage and into self-only coverage (or family coverage including one or more already-covered related individuals) under that health plan prospectively during a period of coverage, provided specific conditions are satisfied.

The Department of the Treasury and the Internal Revenue Service intend to modify the Income Tax Regulations under section 125 of the Internal Revenue Code (Code) consistent with the provisions of this notice. Taxpayers may rely on the guidance in this notice for plan amendments allowing elections effective on or after January 1, 2023.

This notice is being issued in conjunction with regulations under section 36B, which provide that the affordability of an offer of group health plan coverage for a related individual is based on the employee's cost to cover the employee and the employee's related individuals. See § 1.36B-2(c)(3)(v)(A)(*2*); 87 FR 61979 (Oct. 13, 2022).

BACKGROUND

Section 125(d)(1) defines a cafeteria plan as a written plan maintained by an employer under which all participants are employees and under which all participants may choose among two or more benefits consisting of cash and qualified benefits. Section 125(f) generally defines a qualified benefit as any benefit which, with the application of section 125(a), is not includable in the gross income of the employee by reason of an express provision of the Code (with certain exceptions). Qualified benefits include employer-provided accident and health plans excludable from gross income under sections 106 and 105(b), but exclude long term care insurance and certain QHPs.

Consistent with longstanding rules for cafeteria plans, a written cafeteria plan generally must provide that elections are irrevocable, except to the extent that the optional change-in-status rules in § 1.125-4 have been included in the cafeteria plan.[1] Section 1.125-4 provides rules on the circumstances in which a cafeteria plan may permit changes to elections under the plan. Cafeteria plans are not required to allow any of the changes permitted under § 1.125-4.

Section 1.125-4(c) permits a cafeteria plan to allow an employee to revoke an election during a period of coverage with respect to coverage under an accident or health plan as defined in § 1.105-5 and make a new election for the remaining portion of the period if, under the facts and circumstances, (i) a change in status occurs, and (ii) the election change satisfies the consistency requirements of § 1.125-4(c)(3). A change in status for this purpose includes a change in employment status as described in § 1.125-4(c)(2)(iii). A change in employment status for this purpose includes only a change in an individual's employment status that results in a change in the individual's eligibility for coverage under the group health plan. Thus, under the regulations, a change in employment status that does not result in an employee or a related individual either becoming or ceasing to be eligible for coverage under the group health plan is not a change in status for which a plan may allow the employee to revoke an election of health coverage under the cafeteria plan during a period of coverage.

Even if the change in status results in a change in eligibility for coverage under the group health plan, any revocation of an election must satisfy the consistency requirements of § 1.125-4(c)(3)(i) and (iii). Those requirements provide that if an employee's change in status results in an individual covered by a group health plan due to the individual's relationship to the employee ceasing to satisfy eligibility requirements for coverage, the employee is not permitted to elect to revoke an election of coverage under the cafeteria plan for any individual who did not lose eligibility. Similarly, if a change in status results in an individual gaining eligibility for coverage under a second group health plan, an employee's election to cease or decrease coverage for that individual under the cafeteria plan is permitted only if the individual enrolls in the coverage for which the individual is newly eligible.

Furthermore, § 1.125-4(b) permits a cafeteria plan to allow an employee to revoke an election under a group health plan during a period of coverage and to make a new election that corresponds with the special enrollment rights under section 9801(f).

The Affordable Care Act[2] created the ability to enroll in QHPs through an Exchange. Special enrollment rights under section 9801(f) concern rights to enroll in a group health plan due to loss of other coverage or certain family events, but do not include the ability to enroll in a QHP through an Exchange. The ACA

[1] *See, e.g., Prop. Reg. § 1.125-1(c)(1)(iii); 72 FR 43938, 43948 (Aug. 6, 2007).*

[2] *The Patient Protection and Affordable Care Act, Pub. L. 111–148 (124 Stat. 119 (2010)), and the Health Care and Education Reconciliation Act of 2010, Pub. L. 111–152 (124 Stat. 1029 (2010)), collectively referred to as the Affordable Care Act or ACA.*

includes separate provisions regarding enrollment in QHPs through an Exchange during open and special enrollment periods. In order to allow employees to enroll in a QHP through an Exchange if they would prefer that coverage, Notice 2014-55 (2014-41 IRB 672) expanded the ability of cafeteria plans to allow employees to revoke elections for group health plan coverage in two situations.

The first situation in Notice 2014-55 addresses an employee with a specified reduction in hours. Specifically, a cafeteria plan may allow that employee to revoke prospectively an election for group health plan coverage if (1) the change in that employee's status does not result in the employee ceasing to be eligible under the group health plan; and (2) the revocation of the election of coverage under the group health plan corresponds with the intended enrollment of the employee, and any related individuals who cease coverage due to the revocation, in another plan that provides minimum essential coverage, with the new coverage effective no later than the first day of the second month following the month that includes the date the original coverage is revoked.

The second situation in Notice 2014-55 addresses an employee who is eligible to enroll in a QHP through an Exchange. Specifically, a cafeteria plan may allow an employee to revoke prospectively an election for group health plan coverage if (1) the employee is eligible for a special enrollment period to enroll in a QHP through an Exchange pursuant to guidance issued by the Department of Health and Human Services[3] and any other applicable guidance, or the employee seeks to enroll in a QHP during the Exchange's annual open enrollment period; and (2) the revocation of the election of coverage under the group health plan corresponds to the intended enrollment of the employee, and any related individuals who cease coverage due to the revocation, in a QHP through an Exchange for new coverage that is effective beginning no later than the day immediately following the last day of the original coverage that is revoked. However, Notice 2014-55 does not allow the revocation of an election for group health plan coverage when only related individuals, and not the employee, become eligible to enroll in a QHP through an Exchange.

Section 36B allows a premium tax credit to applicable taxpayers who satisfy certain eligibility requirements, including that an individual in the taxpayer's family enrolls in a QHP through an Exchange for one or more months in which the individual is not eligible for employer-sponsored minimum essential coverage (including group health plan coverage) or certain other minimum essential coverage. See section 36B(c)(2)(B) and § 1.36B-3(c). Section 36B(c)(2)(C) generally provides that an individual is not treated as eligible for group health plan coverage if the coverage offered is unaffordable or does not provide minimum value. However, an individual who enrolls in group health plan coverage is eligible for that coverage, and therefore ineligible for a premium tax credit, irrespective of whether it is affordable or provides minimum value.

Previous regulations under section 36B provided that the affordability of an offer of group health plan coverage for an individual who may enroll in the coverage because of a relationship to an employee of the employer (a related individual) was based on the employee's self-only cost to enroll in the coverage.[4] This rule was changed in recently issued regulations under section 36B, which provide that the affordability of an offer of group health plan coverage for a related individual is based on the employee's cost to cover the employee and the employee's related individuals. See § 1.36B-2(c)(3)(v)(A)(*2*); 87 FR 61979 (Oct. 13, 2022). Affordability of an offer of group health plan coverage to an employee, however, continues to be based on the employee's self-only cost to enroll in the coverage.

Interaction with Current Change-in-Status Rules

Under the current change-in-status rules under § 1.125-4 and Notice 2014-55, a cafeteria plan is not permitted to allow an employee to revoke an election of family coverage under a group health plan during a period of coverage and elect self-only coverage (or family coverage including one or more already-covered related individuals) solely to allow one or more related individuals who had also been enrolled in the group health plan to instead enroll in a QHP through an Exchange (or separate QHPs if there is more than one related individual). This is the case even when the related individuals are newly eligible to enroll in a QHP through an Exchange during a special enrollment period or during the Exchange's annual open enrollment period.

In many instances, the current rules for changes in status would not restrict employees' and related individuals' choices regarding coverage. For a related individual enrolled in a calendar year group health plan through the cafeteria plan offered to an employee, the employee may revoke the related individual's coverage under the plan during the plan's annual open season at the end of the plan year so that the related individual generally may immediately begin coverage the next calendar year under a QHP, enrolling during the Exchange's annual open enrollment period. However, a related individual enrolled through a cafeteria plan in a group health plan with a non-calendar plan year might not be able to synchronize the change in coverage to avoid either an overlapping period of coverage or a gap in coverage because the existing cafeteria plan change-in-status rules do not allow the revocation of coverage when only related individuals, and not the employee, become eligible to enroll in a QHP through an Exchange.

In addition, under § 1.125-4(b), a cafeteria plan may allow an employee to revoke an election under a group health plan during a period of coverage and to make a new election that corresponds with special enrollment rights under section 9801(f). However, special enrollment rights under section 9801(f) relate only to enrollment in group health plan coverage, not a right to enroll in a QHP through an Exchange.

[3] *See 45 CFR § 155.420(d).*
[4] *See 78 FR 7264 (Feb. 1, 2013).*

Finally, there are some circumstances in which a related individual may become eligible for a special enrollment period during a plan year and newly eligible to enroll in a QHP through an Exchange, and a premium tax credit under section 36B may be allowed for the QHP coverage of the related individual (for example, if a related individual relocates to another state). See 45 CFR § 155.420(d). Under the current change-in-status rules, however, an employee would be unable to revoke family coverage in a group health plan to allow any related individuals to enroll in a QHP through an Exchange while at the same time the employee elects to enroll in self-only coverage (or family coverage including one or more already-covered related individuals) under the group health plan.

As noted previously, under § 1.36B-2(c)(3)(v)(A)(*2*), affordability of an offer of group health plan coverage for a related individual is based on the employee's cost to cover the employee and the employee's related individuals. Consequently, an employee may wish to revoke the election of group health plan coverage for one or more related individuals so the related individuals may enroll in a QHP through an Exchange and be allowed a premium tax credit for the related individual's QHP coverage. In the case of group health plan coverage elected through a non-calendar year cafeteria plan, however, or in situations in which a premium tax credit would be allowed for a related individual during the plan year if the related individual was enrolled in a QHP through an Exchange and not in the group health plan coverage, current rules require the employee to delay this change until the plan's annual open enrollment period, even if the employee would prefer to make the change sooner.

GUIDANCE

In addition to the situations described in Notice 2014-55, a non-calendar year cafeteria plan may allow an employee to revoke prospectively an election of family coverage under a group health plan that is not a health FSA and that provides minimum essential coverage (as defined in section 5000A(f)(1)) provided the following conditions are satisfied:

(1) One or more related individuals are eligible for a special enrollment period to enroll in a QHP through an Exchange pursuant to guidance issued by the Department of Health and Human Services[5] and any other applicable guidance, or one or more already-covered related individuals seeks to enroll in a QHP during the Exchange's annual open enrollment period; and

(2) The revocation of the election of coverage under the group health plan corresponds to the intended enrollment of the related individual or related individuals in a QHP through an Exchange for new coverage that is effective beginning no later than the day immediately following the last day of the original coverage that is revoked. If the employee does not enroll in a QHP through an Exchange as set forth in Notice 2014-55, the employee must elect self-only coverage (or family coverage including one or more already-covered related individuals) under the group health plan.

A cafeteria plan may rely on the reasonable representation of an employee that the employee and/or related individuals have enrolled or intend to enroll in a QHP through an Exchange for new coverage that is effective beginning no later than the day immediately following the last day of the original coverage that is revoked.

EFFECTIVE DATE AND PLAN AMENDMENTS

The guidance in this notice is effective for elections effective on or after January 1, 2023. Taxpayers may rely on the guidance in this notice pending further guidance.

To allow the new permitted election changes under this notice, an employer must amend a cafeteria plan to provide for these election changes. An employer must adopt the amendment on or before the last day of the plan year in which the elections are allowed, and the amendment may be effective retroactively to the first day of that plan year, provided that the cafeteria plan operates in accordance with the guidance under this notice and the employer informs participants of the amendment, and provided further that an employer may amend a cafeteria plan to adopt the new permitted election changes for a plan year that begins in 2023 at any time on or before the last day of the plan year that begins in 2024. However, in no event may an employer amend a cafeteria plan to allow an election to revoke coverage on a retroactive basis.

EFFECT ON OTHER DOCUMENTS

Notice 2014-55 is amplified.

DRAFTING INFORMATION

The principal author of this notice is Jennifer Friedman of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this notice, contact Jennifer Friedman at (202) 317-5500 (not a toll-free number).

Request for Comments on Credits for Clean Vehicles

Notice 2022-46

SECTION 1. PURPOSE

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) plan to issue guidance under § 30D and § 25E of the Internal Revenue Code (Code), as amended by §§ 13401 and 13402, respectively, of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). This notice requests general comments on questions under § 25E and the amendments to § 30D, as well as specific comments involving questions described in section 3 of this notice. Comments received in response to this notice will help to inform development of guidance implementing §§ 30D and 25E.

[5] *See 45 CFR § 155.420(d).*

SECTION 2. BACKGROUND

.01 *Section 30D, Clean Vehicle Credit*

Section 30D of the Code was originally enacted by § 205(a) of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110-343, 122 Stat. 3765, 3835 (October 3, 2008), to provide a credit for purchasing and placing in service of new qualified plug-in electric drive motor vehicles. Section 30D of the Code has been amended several times since its enactment, most recently by § 13401 of the IRA. In general, the amendments made by § 13401 of the IRA to § 30D of the Code apply to vehicles placed in service after December 31, 2022, except as provided in § 13401(k)(2) through (5) of the IRA.

Section 13401(a) of the IRA amends § 30D(b) of the Code to provide a maximum credit of $7,500 per vehicle, consisting of $3,750 in the case of a vehicle that meets certain critical minerals requirements and $3,750 in the case of a vehicle that meets certain battery components requirements. The amendments made by § 13401(a) of the IRA are applicable to vehicles placed in service after the date on which the Secretary of the Treasury or her delegate (Secretary) issues proposed guidance described in new § 30D(e)(3)(B) of the Code (proposed battery guidance date) relating to new critical minerals requirements described in new § 30D(e)(1)(A) and new battery components requirements described in new § 30D(e)(2)(A). See § 13401(k)(3) of the IRA.

Section 13401(b) of the IRA amends § 30D(d) of the Code by adding new § 30D(d)(1)(G) and new § 30D(d)(5) applicable to vehicles sold after the date of enactment of the IRA (that is, August 16, 2022). See § 13401(k)(2) of the IRA. Section 30D(d)(1)(G) requires any vehicle eligible for the credit under § 30D to undergo final assembly in North America. For purposes of new § 30D(d)(1)(G), new § 30D(d)(5) defines "final assembly" as the process by which a manufacturer produces a new clean vehicle at, or through the use of, a plant, factory, or other place from which the vehicle is delivered to a dealer or importer with all component parts necessary for the mechanical operation of the vehicle included with the vehicle, whether or not the component parts are permanently installed in or on the vehicle.

Section 13401(c) of the IRA further amends § 30D(d) of the Code by making the credit applicable to "new clean vehicles," instead of "new qualified plug-in electric drive motor vehicles," for vehicles placed in service after December 31, 2022. As amended by § 13401(c) and (g)(2) of the IRA, § 30D(d)(1) of the Code defines a "new clean vehicle" as a motor vehicle that satisfies the following eight requirements set forth in § 30D(d)(1)(A) through (H) of the Code:

(A) The original use of the motor vehicle must commence with the taxpayer.

(B) The motor vehicle must be acquired for use or lease by the taxpayer and not for resale.

(C) The motor vehicle must be made by a qualified manufacturer.

(D) The motor vehicle must be treated as a motor vehicle for purposes of title II of the Clean Air Act.

(E) The motor vehicle must have a gross vehicle weight rating of less than 14,000 pounds.

(F) The motor vehicle must be propelled to a significant extent by an electric motor which draws electricity from a battery that has a capacity of not less than 7 kilowatt hours, and is capable of being recharged from an external source of electricity.

(G) The final assembly of the motor vehicle must occur within North America.

(H) The person who sells any vehicle to the taxpayer must furnish a report to the taxpayer and to the Secretary containing the following six items:

(i) The name and taxpayer identification number of the taxpayer.

(ii) The vehicle identification number of the vehicle, unless, in accordance with any applicable rules promulgated by the Secretary of Transportation, the vehicle is not assigned such a number.

(iii) The battery capacity of the vehicle.

(iv) Verification that original use of the vehicle commences with the taxpayer.

(v) The maximum credit under § 30D allowable to the taxpayer with respect to the vehicle.

(vi) In the case of a taxpayer who makes an election to transfer the credit under § 30D(g)(1) (described below), any amount described in § 30D(g)(2)(C) which has been provided to such taxpayer. The Secretary may prescribe the time and manner of the report.

Section 13401(c) of the IRA further amends § 30D(d)(3) of the Code to replace the term "manufacturer" with "qualified manufacturer" applicable to vehicles placed in service after December 31, 2022. As amended by the IRA, § 30D(d)(3) of the Code defines a "qualified manufacturer" as any manufacturer (within the meaning of the regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.)) that enters into a written agreement with the Secretary under which such manufacturer agrees to make periodic written reports to the Secretary (at such times and in such manner as the Secretary may provide) providing vehicle identification numbers and such other information related to each vehicle manufactured by such manufacturer as the Secretary may require.

Section 13401(c) of the IRA adds new § 30D(d)(6) to the Code, which includes in the definition of the term "new clean vehicle" applicable to vehicles placed in service after December 31, 2022, any "new qualified fuel cell motor vehicle" (as defined in § 30B(b)(3)) that meets the requirements under § 30D(d)(1)(G) and (H). Section 13401(c) of the IRA also makes conforming amendments to § 30D(a) and (b)(1) of the Code to allow a credit for the taxable year with respect to each "new clean vehicle" placed in service by a taxpayer during the taxable year and after December 31, 2022.

Section 13401(d) of the IRA eliminates the manufacturer limitation on the number of vehicles eligible for the § 30D credit by striking former § 30D(e) applicable to vehicles sold after December 31, 2022. See § 13401(k)(5) of the IRA.

Section 13401(e) of the IRA provides new critical minerals requirements and new battery components requirements in new § 30D(e) applicable to vehicles placed in service after the proposed battery guidance date. New § 30D(e)(1)(A) provides that the critical minerals requirement with respect to the battery from which the electric motor of a vehicle draws electricity is satisfied if the percentage of the value of the applicable critical minerals (as defined

in § 45X(c)(6)) contained in such battery that were (i) extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, or (ii) recycled in North America, is equal to or greater than the applicable percentage (as certified by the qualified manufacturer, in such form or manner as prescribed by the Secretary). The applicable percentage for the critical minerals requirement is set forth in § 30D(e)(1)(B)(i) through (v) of the Code and varies based on when the vehicle is placed in service. In the case of a vehicle placed in service after the proposed battery guidance date and before January 1, 2024, the applicable percentage is 40 percent. In the case of a vehicle placed in service during calendar year 2024, 2025, and 2026, the applicable percentage is 50 percent, 60 percent, and 70 percent, respectively. In the case of a vehicle placed in service after December 31, 2026, the applicable percentage is 80 percent.

Section 13401(e) of the IRA amends § 30D(e)(2)(A) of the Code applicable to vehicles placed in service after the proposed battery guidance date to provide that the battery components requirement with respect to the battery from which the electric motor of a vehicle draws electricity is satisfied if the percentage of the value of the components contained in such battery that were manufactured or assembled in North America is equal to or greater than the applicable percentage (as certified by the qualified manufacturer, in such form or manner as prescribed by the Secretary). The applicable percentage for the battery components requirement is set forth in § 30D(e)(2)(B)(i) through (vi) of the Code and varies based on when the vehicle is placed in service. In the case of a vehicle placed in service after the proposed battery guidance date and before January 1, 2024, the applicable percentage is 50 percent. In the case of a vehicle placed in service during calendar year 2024 or 2025, the applicable percentage is 60 percent. In the case of a vehicle placed in service during calendar year 2026, 2027, and 2028, the applicable percentage is 70 percent, 80 percent, and 90 percent, respectively. In the case of a vehicle placed in service after December 31, 2028, the applicable percentage is 100 percent.

New § 30D(e)(3)(A) of the Code authorizes the Secretary to issue such regulations or other guidance as the Secretary determines necessary to carry out the purposes of new § 30D(e), including regulations or other guidance which provides for requirements for recordkeeping or information reporting for purposes of administering the new critical minerals requirements and new battery components requirements of new § 30D(e). New § 30D(e)(3)(B) of the Code requires the issuance of proposed guidance with respect to the new critical minerals requirements and new battery components requirements under new § 30D(e) not later than December 31, 2022.

As amended by § 13401(e) of the IRA, § 30D(d)(7) of the Code excludes, after certain specified dates, vehicles placed in service with batteries containing certain critical minerals or battery components from a foreign entity of concern from the definition of the term "new clean vehicle." In particular, amended § 30D(d)(7) provides that the term "new clean vehicle" does not include (A) any vehicle placed in service after December 31, 2024, with respect to which any of the applicable critical minerals contained in the battery of such vehicle (as described in § 30D(e)(1)(A)) were extracted, processed, or recycled by a foreign entity of concern (as defined in § 40207(a)(5) of the Infrastructure Investment and Jobs Act (42 U.S.C. 18741(a)(5))), or (B) any vehicle placed in service after December 31, 2023, with respect to which any of the components contained in the battery of such vehicle (as described in § 30D(e)(2)(A)) were manufactured or assembled by a foreign entity of concern (as so defined).

Section 13401(f) of the IRA adds four new special rules under § 30D(f) applicable to vehicles placed in service after December 31, 2022. New § 30D(f)(8) provides that the § 30D credit is only allowed once with respect to a vehicle, as determined based upon the vehicle identification number of a vehicle, including any vehicle with respect to which the taxpayer elects the application of § 30D(g) (described below). New § 30D(f)(9) provides that no credit is allowed with respect to any vehicle unless the taxpayer includes the vehicle identification number of such vehicle on the return of tax for the taxable year.

New § 30D(f)(10)(A) provides that no credit is allowed for any taxable year if (i) the lesser of (I) the modified adjusted gross income of the taxpayer for such taxable year, or (II) the modified adjusted gross income of the taxpayer for the preceding taxable year, exceeds (ii) the threshold amount. New § 30D(f)(10)(B) provides that the threshold amount shall be (i) in the case of a joint return or a surviving spouse (as defined in § 2(a) of the Code), $300,000, (ii) in the case of a head of household (as defined in § 2(b) of the Code), $225,000, and (iii) in the case of any other taxpayer, $150,000. New § 30D(f)(10)(C) defines "modified adjusted gross income" as adjusted gross income increased by any amount excluded from gross income under § 911, 931, or 933.

New § 30D(f)(11)(A) provides that no credit is allowed for a vehicle with a manufacturer's suggested retail price in excess of the applicable limitation. New § 30D(f)(11)(B) provides that the applicable limitation for each vehicle classification is as follows: in the case of a van, $80,000; in the case of a sport utility vehicle, $80,000; in the case of a pickup truck, $80,000; and in the case of any other vehicle, $55,000. New § 30D(f)(11)(C) authorizes the Secretary to prescribe such regulations or other guidance as the Secretary determines necessary to determine vehicle classifications using criteria similar to that employed by the Environmental Protection Agency and the Department of the Energy to determine size and class of vehicles.

Section 13401(g) of the IRA amends § 30(D)(g) of the Code applicable to vehicles placed in service after December 31, 2023, to provide that, subject to such regulations or other guidance as the Secretary determines necessary, a taxpayer may elect under § 30D(g) to "transfer" a § 30D credit with respect to a new clean vehicle to an eligible entity (transfer election). If the taxpayer who acquires a new clean vehicle makes a transfer election under § 30D(g) with respect to such vehicle, the § 30D credit that would otherwise be allowed to such taxpayer with respect to such vehicle is allowed to the eligible entity specified in such election (and not the taxpayer). Section 30D(g)(2) defines an "eligible entity" with respect to the

vehicle for which the credit is allowed as the dealer that sold such vehicle to the taxpayer and that satisfies the following four requirements set forth in § 30D(g)(2)(A) through (D):

(A) The dealer, subject to § 30D(g)(4), must be registered with the Secretary for purposes of § 30D(g)(2), at such time, and in such form and manner, as the Secretary prescribes.

(B) The dealer, prior to the transfer election and not later than at the time of sale, must have disclosed to the taxpayer purchasing such vehicle (i) the manufacturer's suggested retail price, (ii) the value of the credit allowed and any other incentive available for the purchase of such vehicle, and (iii) the amount provided by the dealer to such taxpayer as a condition of the transfer election.

(C) The dealer, not later than at the time of sale, must have paid the taxpayer (whether in cash or in the form of a partial payment or down payment for the purchase of such vehicle) an amount equal to the credit otherwise allowable to such taxpayer.

(D) The dealer with respect to any incentive otherwise available for the purchase of a vehicle for which a credit is allowed under § 30D, including any incentive in the form of a rebate or discount provided by the dealer or manufacturer, must have ensured that (i) the availability or use of such incentive does not limit the ability of a taxpayer to make a transfer election and (ii) such election does not limit the value or use of such incentive.

Amended § 30D(g)(3) provides that any transfer election cannot be made by the taxpayer any later than the date on which the vehicle for which the § 30D credit is allowed is purchased. Amended § 30D(g)(4) provides that upon determination by the Secretary that a dealer has failed to comply with the requirements described in § 30D(g)(2), the Secretary may revoke the dealer's registration.

Amended § 30D(g)(5) provides that with respect to any payment described in § 30D(g)(2)(C), such payment (A) is not includible in the gross income of the taxpayer, and (B) with respect to the dealer, is not deductible under the Code. Section 30D(g)(6) provides that, in the case of any transfer election with respect to any vehicle (A) the requirements of § 30D(f)(1) and (2) apply to the taxpayer who acquired the vehicle in the same manner as if the § 30D credit determined with respect to such vehicle were allowed to such taxpayer, (B) § 30D(f)(6) does not apply, and (C) the requirement of § 30D(f)(9) is treated as satisfied if the eligible entity provides the vehicle identification number of such vehicle to the Secretary in such manner as the Secretary may provide.

Amended § 30D(g)(7)(A) provides for the establishment of a program to make advance payments to any eligible entity in an amount equal to the cumulative amount of the credits allowed with respect to any vehicles sold by such entity for which a transfer election described in § 30D(g)(1) has been made. Amended § 30D(g)(7)(B) details that rules similar to the rules of § 6417(d)(6) apply for purposes of any excessive payments.

Amended § 30D(g)(8) defines the term "dealer" as a person licensed by a State, the District of Columbia, the Commonwealth of Puerto Rico, any other territory or possession of the United States, an Indian tribal government, or any Alaska Native Corporation (as defined in § 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)) to engage in the sale of vehicles.

Amended § 30D(g)(9) defines the term "Indian tribal government" as the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of § 30D(g) (that is, August 16, 2022) pursuant to § 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Amended § 30D(g)(10) provides that in the case of any taxpayer who has made a transfer election with respect to a new clean vehicle and received a payment from an eligible entity, if the §30D credit would otherwise (but for § 30D(g)) not be allowable to such taxpayer pursuant to the application of § 30D(f)(10), the income tax imposed on such taxpayer under chapter 1 of the Code for the taxable year in which such vehicle was placed in service must be increased by the amount of the payment received by such taxpayer.

Amended § 30D(h) provides that no credit is allowed with respect to any vehicle placed in service after December 31, 2032.

Section 13401(k) of the IRA provides the effective date for the amendments to § 30D of the Code. As noted above, except as provided in § 13401(k)(2) through (5) of the IRA, the amendments made by § 13401 of the IRA apply to vehicles placed in service after December 31, 2022. Section 13401(k)(2) of the IRA provides that the amendments made by § 13401(b) of the IRA relating to final assembly apply to vehicles sold after the date of enactment of the IRA (August 16, 2022). Section 13401(k)(3) of the IRA provides that the amendments made by § 13401(a) and (e) of the IRA relating to the per vehicle dollar limitation and related requirements apply to vehicles placed in service after the date on which the proposed guidance described in new § 30D(e)(3)(B) is issued by the Secretary. Section 13401(k)(4) of the IRA provides that the amendments made by § 13401(g) of the IRA relating to transfers of the § 30D credit apply to vehicles placed in service after December 31, 2023. Section 13401(k)(5) of the IRA provides that the amendment made by § 13401(d) of the IRA eliminating the manufacturer limitation applies to vehicles sold after December 31, 2022.

Section 13401(l) of the IRA provides a transition rule for a taxpayer who purchased or entered into a written binding contract to purchase a new qualified plug-in electric drive motor vehicle (as defined in § 30D(d)(1) of the Code, as in effect on the day before the date of enactment of the IRA (August 15, 2022)) after December 31, 2021 and before the date of enactment of the IRA (August 16, 2022), and placed such vehicle in service on or after the date of enactment of the IRA. The transition rule provides that such a taxpayer may elect (at such time, and in such form and manner as the Secretary may prescribe) to treat such vehicle as having been placed in service on the day before the date of enactment of the IRA.

.02 *Section 25E, Previously Owned Clean Vehicles*

New § 25E of the Code was enacted by § 13402 of the IRA. Section 25E(a) provides that in case of a qualified buyer who during a taxable year, places in service

a previously-owned clean vehicle, an income tax credit is allowed for the taxable year equal to the lesser of (1) $4,000, or (2) the amount equal to 30 percent of the sale price with respect to such vehicle (§ 25E credit).

Section 25E(b)(1) sets a limitation based on modified adjusted gross income and provides that no credit is allowed for any taxable year if (A) the lesser of (i) the modified adjusted gross income of the taxpayer for such taxable year, or (ii) the modified adjusted gross income of the taxpayer for the preceding taxable year, exceeds (B) the threshold amount. The threshold amount is set forth in § 25E(b)(2) and varies based on a taxpayer's filing status. In the case of a taxpayer filing a joint return or who is a surviving spouse (as defined in § 2(a) of the Code), the threshold amount is $150,000. In the case of a taxpayer who is a head of household (as defined in § 2(b) of the Code), the threshold amount is $112,500. In the case of any other taxpayer, the threshold amount is $75,000. Section 25E(b)(3) defines modified adjusted gross income as adjusted gross income increased by any amount excluded from gross income under § 911, 931, or 933.

Section 25E(c) defines certain terms for purposes of the § 25E credit. Section 25E(c)(1) defines "previously-owned clean vehicle" as, with respect to a taxpayer, a motor vehicle that satisfies the following four requirements set forth in § 25E(c)(1)(A) through (D) of the Code:

(A) The model year of the motor vehicle is at least 2 years earlier than the calendar year in which the taxpayer acquires such vehicle.

(B) The original use of the motor vehicle commences with a person other than the taxpayer.

(C) The motor vehicle is acquired by the taxpayer in a qualified sale.

(D) The motor vehicle (i) meets the requirements of § 30D(d)(1)(C), (D), (E), (F), and (H) (except for § 30D(d)(1)(H)(iv)), or (ii) is a motor vehicle which (I) satisfies the requirements under § 30B(b)(3)(A) and (B), and (II) has a gross vehicle weight rating of less than 14,000 pounds.

Section 25E(c)(2) defines a "qualified sale" as a sale of a motor vehicle (A) by a dealer (as defined in § 30D(g)(8)), (B) for a sale price which does not exceed $25,000, and (C) which is the first transfer since the date of enactment to a qualified buyer other than the person with whom the original use of such vehicle commenced.

Section 25E(c)(3) defines "qualified buyer" as, with respect to a sale of a motor vehicle, a taxpayer (A) who is an individual, (B) who purchases such vehicle for use and not for resale, (C) with respect to whom no deduction is allowable with respect to another taxpayer under § 151, and (D) who has not been allowed a credit under § 25E for any sale during the 3-year period ending on the date of the sale of such vehicle.

Section 25E(c)(4) defines "motor vehicle" and "capacity" to have the meaning given such terms in § 30D(d)(2) and (4), respectively. Section 25E(d) provides that no credit is allowed under § 25(a) with respect to any vehicle unless the taxpayer includes the vehicle identification number of such vehicle on the return of tax for the taxable year. Section 25E(e) and (f) provide that rules similar to the rules of § 30D(f) (without regard to paragraph (10) or (11) thereof) and the rules of § 30D(g) apply for purposes of § 25E. Section 25E(g) provides that no credit is allowed with respect to any vehicle acquired after December 31, 2032.

Section 13402(e) of the IRA provides the effective date for the amendments made by § 13402 of the IRA. In general, except as provided in § 13402(e)(2) of the IRA, the amendments made by § 13402 of the IRA apply to vehicles acquired after December 31, 2022. The amendments made by § 13402(b) of the IRA relating to transfers of the § 25E credit apply to vehicles placed in service after December 31, 2023.

SECTION 3. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments on any questions arising from the IRA amendments to § 30D and the enactment of § 25E that should be addressed in guidance. Commenters are encouraged to specify the issues on which guidance is needed most quickly as well as the most important issues on which guidance is needed. In addition to general comments regarding these provisions, the Treasury Department and the IRS request comments that address the following specific questions:

.01 *Clean Vehicles (§ 30D)*

(1) *Definitions*. Section 30D(d)(1)(B) of the Code defines a "new clean vehicle," in part, as a motor vehicle which is acquired for use or lease by the taxpayer and not for resale. As used in this definition, what, if any, guidance is needed as to the meaning of the terms "acquired," "use," and "lease?"

(2) *Critical Minerals*. Section 30D(e)(1) provides the new critical minerals requirements, including the applicable percentage requirements to be phased in over several years.

(a) What factors and definitions should be considered to determine the place of extracting or processing such critical minerals, and, in particular, to determine whether extracting or processing occurred in the United States or in any country with which the United States has a free trade agreement in effect?

(b) What factors and definitions should be considered to determine the place of recycling such critical minerals and, in particular, to determine whether recycling occurred in North America?

(c) What factors and definitions should be considered to determine (i) the total value of the critical minerals contained in a vehicle's battery, and (ii) the percentage of that total value attributable to critical minerals (I) extracted or processed in the United States or a country with which the United States has a free trade agreement in effect, or (II) recycled in North America?

(3) *Battery Components*. Section 30D(e)(2) provides the new battery component requirements, including the applicable percentage requirements to be phased in over several years.

(a) What factors should be considered in defining the components of a battery of a clean vehicle?

(b) What factors and definitions should be considered to determine the place of manufacture or assembly of the components of a battery of a clean vehicle and, in particular, to determine whether manufacture or assembly occurred in North America?

(c) What factors and definitions should be considered to determine (i) the total value of the components contained in the battery of a clean vehicle, and (ii) the percentage of that total value attributable to

components that were manufactured or assembled in North America?

(4) *Applicable Values*. The new critical mineral and battery component requirements in § 30D(e) are based on value. What existing battery technology supply chain tracking methodologies or regulatory frameworks should be considered in determining applicable values?

(5) *Foreign Entity of Concern*. Section 30D(d)(7) provides that some vehicles are excluded from the availability of the credit, including when any of the applicable critical minerals contained in the battery were extracted, processed, or recycled by a foreign entity of concern (defined in 42 U.S.C. 18741(a)(5)), or if any of the components contained in the battery of such vehicle were manufactured or assembled by a foreign entity of concern.

(a) Is guidance needed to clarify the definition of "foreign entity of concern"?

(b) What existing regulatory or guidance frameworks for recordkeeping requirements or supply chain tracking methodologies may be useful for qualified manufacturers to verify that its vehicles are not excluded under § 30D(d)(7)?

(6) *Recordkeeping and Reporting*.

(a) In addition to VIN numbers, what additional information should a qualified manufacturer provide to the Secretary to be considered a qualified manufacturer with respect to a particular vehicle, per § 30D(d)(3)?

(b) What existing regulatory or guidance frameworks for recordkeeping requirements or information reporting or existing battery technology supply chain tracking methodologies may be useful for developing guidance for qualified manufacturers under § 30D(e)(3)?

(c) What information should be included in the report furnished by the seller of the vehicle to the taxpayer and the Secretary under § 30D(d)(1)(H), including the election to transfer the credit under § 30D(g)?

(7) *Tax-exempt Entities*. Section 30D(f)(3) is stricken by § 13401(g) of the IRA with respect to vehicles placed in service after December 31, 2023. How should clean vehicles acquired and used by a tax-exempt entity after this statutory change becomes effective be treated for purposes of § 30D?

(8) *Registered Dealer and Eligible Entity*.

(a) What guidance, if any, is needed to determine who is a licensed dealer who can be registered with the Secretary for purposes of the transfer of the credit under § 30D(g)(2), (7), and (8)?

(b) What guidance, if any, is needed regarding what circumstances may lead to the revocation of such registration under § 30D(g)(4)?

(9) *Final Assembly Requirement*. Is guidance needed to clarify the definition of the term "final assembly" in § 30D(d)(5) or the area included in the term "North America" for purposes of § 30D(d)(1)(G)?

(10) *Vehicle Classifications*.

(a) What, if any, guidance is needed to define how vehicles are classified as vans, sport utility vehicles, pickup trucks, or other designations of vehicles for purposes of the manufacturer's suggested retail price limitation in § 30D(f)(11)?

(b) What criteria employed by the Environmental Protection Agency and Department of Energy, or other factors (for example, Department of Transportation motor vehicle type classification) should be considered in determining the designation of such vehicles?

(c) Is guidance needed to clarify how the manufacturer's suggested retail price is calculated?

(11) *Election to Transfer and Advance Payments*.

(a) What factors should be considered in determining the time and manner of the taxpayer's election under § 30D(g) to transfer the § 30D credit to an eligible entity?

(b) Is guidance needed regarding the definition of "taxpayer," such as whether non-individual taxpayers are eligible for the credit under § 30D?

(c) If an election to transfer the credit is made by the taxpayer, what issues should be considered regarding the transfer of the § 30D credit?

(d) What considerations and factors should be taken into account in determining the time and manner of advance payments made pursuant to §30D(g)(7)(A)?

(e) For purposes of § 30D(g), what guidance, if any, is needed regarding a determination by an eligible entity regarding whether a credit is allowable to the taxpayer?

(12) *Recapture*.

(a) Is guidance needed to coordinate the application of the excess payment provision under § 30D(g)(7)(B) and the recapture provision under § 30D(g)(10) as between the transferors and transferees of the credit under § 30D(g)?

(b) In the event of a recapture event, how should recapture be reported by the taxpayer?

(13) Please provide comments on any other terms that may require definition or additional guidance.

.02 *Previously Owned Cleans Vehicle (§ 25E)*

(1) What, if any, guidance is needed to address how a taxpayer can verify that a vehicle qualifies as a "previously-owned clean vehicle" as defined in § 25E(c)(1)?

(2) Section 25E(e) provides that rules similar to the rules of § 30D(f) (without regard to paragraph (10) or (11) thereof) apply for purposes of the § 25E credit. What rules of § 30D(f) should be applied under § 25E(e) without any modification? What rules of § 30D(f) should be applied in modified form for purposes of § 25E and in what way should they be modified?

(3) Section 25E(f) provides that rules similar to the rules of § 30D(g) apply for purposes of the § 25E credit. What rules of § 30D(g) should be applied under § 25E(f) without any modification? What rules of § 30D(g) should be applied in modified form for purposes of § 25E and in what way should they be modified?

(4) Please provide comments on any other terms that may require definition or additional guidance.

SECTION 4. SUBMISSION OF COMMENTS

.01 Written comments should be submitted by Friday, November 4, 2022. Consideration will be given, however, to any written comment submitted after Friday, November 4, 2022, if such consideration will not delay the issuance of guidance. The subject line for the comments should include a reference to Notice 2022-46. Comments may be submitted in one of two ways:

(1) Electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2022-0046 in the search field on the regulations.gov homepage to find this notice and submit comments).

(2) Alternatively, by mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2022-46), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C., 20044.

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

SECTION 5. RELIANCE ON NOTICE 2009-89

Notice 2009-89, 2009-48 I.R.B. 714 was modified Notice 2016-51, 2016-37 I.R.B. 344, by updating section 6.03 of Notice 2009-89, updating the address to which a manufacturer (or, in the case of a foreign manufacturer, its domestic distributor) sends quarterly reports and/or certifications. Taxpayers may rely on Notice 2009-89, as modified by Notice 2016-51, until additional guidance on these issues is issued.

SECTION 6. PROPOSED GUIDANCE FOR CRITICAL MINERAL AND BATTERY COMPONENT REQUIREMENTS

For purposes of § 30D(e)(3)(B), the publication of this notice requesting comments is not the publication of proposed guidance with respect to the critical mineral and battery component requirements under § 30D(e). The Treasury Department and the IRS will explicitly identify when they have published proposed guidance with respect to the critical mineral and battery component requirements under § 30D(e).

SECTION 7. DRAFTING INFORMATION

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

Request for Comments on Energy Security Tax Credits for Manufacturing Under Sections 48C and 45X

Notice 2022-47

SECTION 1. PURPOSE

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) plan to issue guidance regarding the advanced manufacturing production credit under new § 45X (§ 45X credit) and the qualifying advanced energy project credit under § 48C (§ 48C credit) of the Internal Revenue Code (Code), as added and amended, by §§ 13502 and 13501, respectively, of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). This notice requests general and specific comments on questions pertaining to the implementation and administration of §§ 45X and 48C, which will help to inform the development of guidance implementing §§ 45X and 48C.

SECTION 2. BACKGROUND

.01 *Advanced Manufacturing Production Credit (§ 45X)*

(1) *Overview*

Section 13502(a) of the IRA added new § 45X to the Code to establish the advanced manufacturing production credit. Section 45X(a)(1) and (2) provide that, for purposes of the general business credit under § 38 of the Code, the advanced manufacturing production credit for any taxable year is an amount equal to the sum of the credit amounts determined under § 45X(b) with respect to each eligible component (as defined in § 45X(c)) produced by the taxpayer and sold by such taxpayer to an unrelated person, but only if such production and sale is in a trade or business of the taxpayer.

Section 45X(a)(3) provides rules regarding the sale of components to an unrelated person, and generally provides a special rule that, for purposes of § 45X(a), treats a taxpayer as selling components to an unrelated person if such component is sold to such person by a person related to the taxpayer. Under § 45X(a)(3)(B), a taxpayer may make an election in the form and manner prescribed by the Secretary of the Treasury or her delegate (Secretary) to treat a sale of components by such taxpayer to a related person as made to an unrelated person. As a condition of, and prior to, a taxpayer making this election, the Secretary may require such information or registration as the Secretary deems necessary for purposes of preventing duplication, fraud, or any improper or excessive credit amount.

(2) *Credit amounts*

Section 45X(b)(1)(A) through (M) and § 45X(b)(2)(A) set forth the credit amounts for each type of eligible component, which amounts, except for purposes of determining the credit amount with respect to any applicable critical mineral, are subject to phase out rules set forth in § 45X(b)(3). For any eligible component sold after December 31, 2029, the credit amount with respect to such component equals the product of the amount determined under § 45X(b)(1) with respect to such component multiplied by the phase out percentages under § 45X(b)(3)(B)(i) through (iv). In the case of an eligible component sold during calendar year 2030, 2031, and 2032, the phase out percentages are 75 percent, 50 percent, and 25 percent, respectively. In the case of an eligible component sold after December 31, 2032, the phase out percentage is 0 percent.

Section 45X(b)(4) prescribes capacity limitations used to compute the credit amount for eligible battery cells and battery modules under § 45X(b)(1)(K) and (L), respectively. For purposes of computing the credit for these eligible components, § 45X(b)(4)(A) provides that the capacity determined with respect to a battery cell or battery module must not exceed a capacity-to-power ratio of 100:1. Section 45X(b)(4)(B) defines the term "capacity-to-power-ratio" for this purpose as the ratio of the capacity of a battery cell or battery module to the maximum discharge amount of such cell or module.

(3) *Eligible components*

Section 45X(c) sets forth the different types of eligible components. Section 45X(c)(1)(A) provides that the term "eligible component" means any solar energy component, wind energy component,

inverter described in § 45X(c)(2)(B) through (G), qualifying battery component, and applicable critical mineral. Section 45X(c)(1)(B) clarifies that the term "eligible component" does not include any property that is produced at a facility if the basis of any property that is part of such facility is taken into account for purposes of the qualifying advanced energy project credit allowed under § 48C after August 16, 2022 (that is, the date of enactment of the IRA).

Section 45X(c)(2)(A) generally defines "inverter" as an end product that is suitable to convert direct current electricity from 1 or more solar modules or certified distributed wind energy systems into alternating current electricity. Section 45X(c)(2)(B) through (G) define the following different types of eligible inverters: central inverter, commercial inverter, distributed wind inverter, microinverter, residential inverter, and utility inverter.

Section 45X(c)(3)(A) defines a "solar energy component" as photovoltaic cells, photovoltaic wafers, polymeric backsheets, solar grade polysilicon, solar modules, and torque tubes or structural fasteners. Section 45X(c)(3)(B) defines these different types of eligible solar energy components as well as the term "solar tracker."

Section 45X(c)(4)(A) defines "wind energy component" as blades, nacelles, towers, offshore wind foundations, and related offshore wind vessels. Section 45X(c)(4)(B) defines these different types of eligible wind energy components.

Section 45X(c)(5)(A) defines a "qualifying battery component" as electrode active materials, battery cells, and battery modules. Section 45X(c)(5)(B) defines these different types of qualifying battery components.

Section 45X(c)(6) provides the following list of 50 minerals that when converted or purified to specified purities are considered an "applicable critical mineral" for purposes of the § 45X credit: aluminum, antimony, arsenic, barite, beryllium, bismuth, cerium, cesium, chromium, cobalt, dysprosium, erbium, europium, fluorspar, gadolinium, gallium, germanium, graphite, hafnium, holmium, indium, iridium, lanthanum, lithium, lutetium, magnesium, manganese, neodymium, nickel, niobium, palladium, platinum, praseodymium, rhodium, rubidium, ruthenium, samarium, scandium, tantalum, tellurium, terbium, thulium, tin, titanium, tungsten, vanadium, ytterbium, yttrium, zinc, and zirconium.

(4) *Special rules*

Section 45X(d) prescribes special rules applicable for the § 45X credit. Section 45X(d)(1) provides that persons are treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under the common control rules of § 52(b) of the Code. Section 45X(d)(2) provides that sales of eligible components are taken into account under § 45X only with respect to eligible components the production of which is within the United States (including continental shelf areas described in § 638(1) of the Code), or a U.S. territory (including continental shelf areas described in § 638(2)). Section 45X(d)(3) directs the Secretary to promulgate regulations adopting rules similar to the rules of § 52(d) to apportion credit amounts between estates or trusts and their beneficiaries on the basis of the income of the estates or trusts allocable to each and pass-thru any apportioned credit amounts to the beneficiaries. Section 45X(d)(4) provides that for purposes of the § 45X credit, a person is treated as having sold an eligible component to an unrelated person if such component is integrated, incorporated, or assembled into another eligible component which is sold to an unrelated person.

.02 *Qualifying Advanced Energy Project Credit (§ 48C)*

(1) *Overview*

Section 48C was originally enacted by § 1302(b) of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, Division B, Title I, Subtitle D, 123 Stat. 115, 345 (February 17, 2009), to provide an allocated credit for qualified investments in qualifying advanced energy projects. For purposes of the investment tax credit determined for any taxable year under § 46 of the Code, § 48C generally allows a qualifying advanced energy project credit equal to 30 percent of a taxpayer's qualified investment for such taxable year with respect to any qualifying advanced energy project of the taxpayer.[1] The amount treated as the qualified investment for all taxable years with respect to a qualifying advanced energy project cannot exceed the amount allocated to the project by the Secretary.

Section 48C has been amended several times, most recently by § 13501 of the IRA. Section 13501(a) of the IRA adds new § 48C(e) to the Code to extend the § 48C credit to provide an additional credit allocation of $10 billion. Section 13501(b) of the IRA modifies the definition of a "qualifying advanced energy project" contained in § 48C(c)(1)(A). Section 13501(c) and (d) of the IRA make conforming amendments to § 48C(c)(2)(A) and (f). The amendments made by § 13501 of the IRA are effective on January 1, 2023. See § 13501(e) of the IRA.

(2) *New § 48C(e)*

Section 48C(e)(1) directs the Secretary to establish a program to consider and award certifications for qualified investments eligible for § 48C credits to qualifying advanced energy project sponsors.

Section 48C(e)(2) provides that the total amount of § 48C credits that may be allocated under such program cannot exceed $10 billion, of which no greater than $6 billion may be allocated to qualified investments which (1) prior to August 16, 2022 (the date of enactment of § 48C(e)), have not received a certification and allocation of credits under § 48C(d), and (2) are not located within one of the following census tracts described in § 45(b)(11)(B)(iii):

a) A census tract in which a coal mine has closed after December 31, 1999.

b) A census tract in which a coal-fired electric generating unit has been retired after December 31, 2009.

c) A census tract directly adjoining such a census tract described in a) or b).

Section 48C(e)(3)(A) provides that each applicant for certification must submit an application at such time and containing such information as the Secretary may require. Section 48C(e)(3)(B) provides that each applicant for certification has 2 years from the date of acceptance by

[1] *Section 48C(e)(4)(A) provides a base credit rate of 6 precent for allocations under § 48C(e). The base credit rate is increased to 30 precent for any project that satisfies the prevailing wage requirements of § 48C(e)(5)(A) and the apprenticeship requirements of § 48C(e)(6). See Notice 2022-51 requesting comments on prevailing wage and apprenticeship requirements.*

the Secretary of the application to provide to the Secretary evidence that the requirements of the certification have been met.

Section 48C(e)(3)(C) provides that an applicant who receives a certification has 2 years from the date of issuance of the certification to place the project in service and to notify the Secretary that such project has been so placed in service. If the project is not placed in service within the two year period, then the certification is no longer valid. If any certification is revoked under § 48C(e)(3), the total amount of the credits that may be allocated under § 48C(e)(2) is increased by the amount of § 48C credit with respect to such revoked certification.

Section 48C(e)(3)(D) provides that in the case of an applicant which receives a certification, if the Secretary determines that the project has been placed in service at a location that is materially different than the location specified in the application for such project, the certification is no longer valid.

Section 48C(e)(7) provides that the Secretary must, upon making a certification under § 48C(e), publicly disclose the identity of the applicant and the amount of the § 48C credit with respect to such applicant.

(3) *Amendments to § 48C(c)(1)(A)*

As amended by the IRA, § 48C(c)(1)(A) defines the term "qualifying advanced energy project" as one of the three following project types, any portion of the qualified investment of which is certified by the Secretary under § 48C(e) as eligible for a § 48C credit:

(i) A project that re-equips, expands, or establishes an industrial or manufacturing facility for the production or recycling of one of the following nine property types:

(I) Property designed to be used to produce energy from the sun, water, wind, geothermal deposits or other renewable resources.

(II) Fuel cells, microturbines, or energy storage systems and components.

(III) Electric grid modernization equipment or components.

(IV) Property designed to capture, remove, use, or sequester carbon oxide emissions.

(V) Equipment designed to refine, electrolyze, or blend any fuel, chemical, or product which is renewable or low-carbon and low-emission.

(VI) Property designed to produce energy conservation technologies (including residential, commercial, and industrial applications).

(VII) Light, medium, or heavy-duty electric or fuel cell vehicles, as well as technologies, components, or materials for such vehicles, and associated charging or refueling infrastructure.

(VIII) Hybrid vehicles with a gross vehicle weight rating of not less than 14,000 pounds, as well as technologies, components, or materials for such vehicles.

(IX) Other advanced energy property designed to reduce greenhouse gas emissions as may be determined by the Secretary.

(ii) A project that re-equips an industrial or manufacturing facility with equipment designed to reduce greenhouse gas emissions by at least 20 percent through the installation of (I) low- or zero-carbon process heat systems, (II) carbon capture, transport, utilization, and storage systems, (III) energy efficiency and reduction in waste from industrial processes, or (IV) any other industrial technology designed to reduce greenhouse gas emissions, as determined by the Secretary.

(iii) A project that re-equips, expands, or establishes an industrial facility for the processing, refining, or recycling of critical materials (as defined in § 7002(a) of the Energy Act of 2020 (30 USC § 1606(a)).

Section 48C(c)(2)(A) defines "eligible property" as any property that is necessary for the production or recycling of property described in § 48C(c)(1)(A)(i), re-equipping an industrial or manufacturing facility described in § 48C(c)(1)(A)(ii), or re-equipping, expanding, or establishing an industrial facility described in § 48C(c)(1)(A)(iii).

(4) *Denial of Double Benefit*

As amended by § 13501(c) of the IRA, § 48C(f) provides that a § 48C credit is not allowed for a qualified investment for which a credit is allowed under §§ 48, 48A, 48B, 48E, 45Q or 45V.

SECTION 3. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments on issues arising from new § 45X and the amendments made by the IRA to § 48C that should be addressed in guidance. Commenters are encouraged to specify the issues on which guidance is needed most quickly as well as the most important issues on which guidance is needed. In addition to general comments, the Treasury Department and the IRS request comments that address the following specific issues:

.01 *Section 45X Advanced Manufacturing Production Credit*.

(1) Section 45X(a)(3)(B)(i) allows a taxpayer to make an election to treat a sale of components by such taxpayer to a related person as made to an unrelated person. Is guidance needed to clarify the meaning of the terms "unrelated person" and "related person"? If so, how should these terms be clarified?

(2) Section 45X(d)(4) provides that for purposes of § 45X, a person is treated as having sold an eligible component to an unrelated person if such component is integrated, incorporated, or assembled into another eligible component which is sold to an unrelated person. How should "integrated, incorporated, or assembled" be determined?

(3) What factors should the Treasury Department and the IRS consider in determining what information or registration is necessary for purposes of preventing duplication, fraud, or any improper or excessive credit amount, as referenced in § 45X(a)(3)(B)?

(4) Is guidance needed regarding the capacity-to-power ratio in § 45X(b)(4)? If so, what guidance?

(5) Is additional clarification needed regarding the definitions of an "eligible component" in § 45X(c)?

(a) How should the amount of the § 45X credit be calculated for components that could be used in systems of varying capacities?

(b) In such cases, how should verification of the applicable credit amount be demonstrated?

(6) Section 45X(c)(4) identifies "related offshore wind vessels" as one of the qualifying "wind energy components."

(a) What should the requirements be for establishing that a vessel is for offshore wind development?

(b) Where it is uncertain how much a vessel will be used for offshore wind, how should such situations be addressed?

(7) Section 45X(c)(6) identifies "applicable critical minerals," and includes minimum purity percentages by mass.

(a) How should purity percentages be determined?

(b) Should an independent third party be required to verify the results?

(c) If so, what qualifications should be required of an independent third-party providing such verification?

(8) Is guidance needed regarding the definitions of "converted" and "purified"?

(9) Is guidance needed regarding the apportionment and pass-thru of credit amounts to beneficiaries of estates or trusts as provided in § 45X(d)(3)?

(10) Please provide comments on any other topics under § 45X that may require guidance.

.02 *Qualifying Advanced Energy Project Credit (§ 48C)*

(1) Section 48C(c)(1)(A)(i), as amended by the IRA, includes additional types of equipment and property that may be produced or recycled at a project that re-equips, expands, or establishes an industrial or manufacturing facility.

(a) Is guidance needed to define "equipment designed to refine electrolyze, or blend any fuel, chemical, or product which is renewable, or low-carbon and low-emission"? If so, how should this be defined?

(b) Is guidance needed to define "property designed to produce energy conservation technologies (including residential, commercial, and industrial applications)"? If so, how should this be defined?

(c) What should the Treasury Department and the IRS consider in determining "other advanced energy property designed to reduce greenhouse gas emissions"?

(2) Section 48C(c)(1)(A)(ii) adds to the list of eligible projects any project which re-equips an industrial or manufacturing facility with equipment designed to reduce greenhouse gas emissions by at least 20 percent through the installation of certain systems, including through the installation of energy efficiency and reduction in waste from industrial processes.

(a) Is guidance needed to define "energy efficiency"? If so, how should this be defined?

(b) Is guidance needed to define "reduction in waste from industrial processes"? If so, how should this be defined?

(c) Is guidance needed to define baseline criteria, boundary conditions and/or timeframe to determine achievement of the 20 percent threshold?

(3) What should the Treasury Department and the IRS consider in determining "any other industrial technology designed to reduce greenhouse gas emissions"? Is guidance needed to include eligibility of facilities currently producing industrial materials for use in the construction or alteration of buildings and infrastructure projects (such as concrete, steel, asphalt, and flat glass) that can be retrofitted to produce materials that have substantially lower levels of embodied greenhouse gas emissions?

(4) How should a qualifying advanced energy project substantiate its eligibility based on any of the available criteria, but particularly the criteria provided by § 13501 of the IRA?

(a) Are there industry guidelines currently in place that a taxpayer may use to demonstrate that a project reduces greenhouse gas or other pollutant emissions? If so, what guidelines?

(b) Are there existing industry guidelines or regulatory practices employed by local governments or states that a taxpayer may use to demonstrate that a project reduces greenhouse gas or other pollutant emissions, including submittal of environmental product declarations (EPDs) that include measurements of the embodied greenhouse gas emissions of the relevant material or product and conform with international standards?

(5) Section 48C(e) directs the Secretary to establish a program to consider and award certifications of qualified investments eligible for the § 48C credit.

(a) What should the Treasury Department and the IRS consider in determining the selection criteria for awarding the § 48C credit and to what extent should the Treasury Department and the IRS rely on precedent from previous experience administering the § 48C credit during previous allocation rounds provided in Notice 2009-72, 2009-37 I.R.B. 325 and Notice 2013-12, 2013-10 I.R.B. 543?

(b) What aspects of the previous allocation rounds of the § 48C credit should the Treasury Department and IRS consider revising in establishing a new § 48C program and administering it?

(6) Section 48C(e)(3)(C) provides, in part, that if any certification is revoked, the amount of the limitation under § 48C(e)(2) must be increased by the amount of the credit with respect to such revocation.

(a) Is guidance needed on revocation of certifications? If so, what guidance?

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

SECTION 4. SUBMISSION OF COMMENTS

.01 Written comments should be submitted by Friday, November 4, 2022. Consideration will be given, however, to any written comment submitted after Friday, November 4, 2022, if such consideration will not delay the issuance of guidance. The subject line for the comments should include a reference to Notice 2022-47 Comments may be submitted in one of two ways:

(1) Electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2022-0047 in the search field on the regulations.gov homepage to find this notice and submit comments).

(2) Alternatively, by mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2022-47), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

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

SECTION 5. 60-DAY RULE NOT EFFECTUATED FOR THE PREVAILING WAGE AND APPRENTICESHIP REQUIREMENTS

For purposes of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D, the publication of this notice requesting comments is not the publication of guidance with respect to the prevailing wage and apprenticeship requirements, and it is not relevant in determining whether the prevailing wage and apprenticeship requirements are satisfied under such sections. The Treasury Department and the IRS will explicitly identify when it has published guidance

with respect to the prevailing wage and apprenticeship requirements that is relevant for determining whether such requirements have been satisfied for purposes of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D.

SECTION 6. DRAFTING INFORMATION

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

Request for Comments on Incentive Provisions for Improving the Energy Efficiency of Residential and Commercial Buildings

Notice 2022-48

SECTION 1. PURPOSE

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) plan to issue guidance regarding the provisions of §§ 25C, 25D, 45L, and 179D of the Internal Revenue Code (Code), as amended by §§ 13301, 13302, 13304, and 13303, respectively, of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). This notice requests general comments on questions arising because of these amendments, as well as specific comments involving questions listed in section 3 of this notice. Comments received in response to this notice will help to inform the development of guidance implementing §§ 25C, 25D, 45L, and 179D.

SECTION 2. BACKGROUND

.01 *Energy Efficient Home Improvement Credit (§ 25C)*

Section 25C was originally enacted by § 1333(a) of the Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 594, 1026 (August 8, 2005), to provide the nonbusiness energy property credit for the purchase and installation of certain energy efficient improvements in taxpayers' principal residences. Section 25C has been amended several times, most recently by § 13301 of the IRA, which renamed this provision the "energy efficient home improvement credit" (§ 25C credit).

Before the enactment of the IRA, § 25C had expired after December 31, 2021. Section 13301(a) of the IRA amends § 25C(g) to make the § 25C credit available through December 31, 2032.

Section 13301(b) of the IRA amends § 25C(a) to allow a credit for 30 percent of amounts paid or incurred by individual taxpayers during the taxable year for qualified energy efficiency improvements and residential energy property expenditures. As amended by § 13301(c) of the IRA, the § 25C credit is generally limited to an annual cap of $1,200, with exceptions for certain categories of improvements. The caps and categories of improvements under these exceptions are as follows: $600 for qualified energy property; $600 for exterior windows and skylights; $250 for any single exterior door; and $500 in the aggregate for all exterior doors. Heat pumps, heat pump water heaters, biomass stoves, and biomass boilers are allowed an aggregate annual credit for such improvements of up to $2,000.

Section 13301(d) of the IRA amends the definition of "energy efficient building envelope components" and "building envelope component," terms that help define the types of improvements that are qualified energy efficiency improvements. As amended by the IRA, § 25C(c)(2) defines "energy efficient building envelope component" as a building envelope component that meets, (A) in the case of an exterior window or skylight, Energy Star most efficient certification requirements, (B) in the case of an exterior door, applicable Energy Star requirements, and (C) in the case of any other component, the criteria for such component established by the most recent International Energy Conservation Code standard in effect as of the start of the calendar year 2 years prior to the calendar year in which such component is placed in service. As amended by the IRA, § 25C(c)(3) defines "building envelope component" as (A) any insulation material or system, including air sealing material or system, which is specifically and primarily designed to reduce the heat loss or gain of a dwelling unit when installed in or on the dwelling unit, (B) exterior windows (including skylights), and (C) exterior doors.

Section 13301(e) of the IRA amends the definitions of "residential energy property expenditures" and "qualified energy property." As amended by the IRA, § 25C(d)(1) defines "residential energy property expenditures" as expenditures made by the taxpayer for qualified energy property that is (A) installed on or in connection with a dwelling unit located in the United States and used as a residence by the taxpayer, and (B) originally placed in service by the taxpayer, including labor costs properly allocable to onsite preparation, assembly, or original installation of the property. As amended by the IRA, § 25C(d)(2) defines "qualified energy property" as:

(A) Any of the following that meet or exceed the highest efficiency tier (not including any advanced tier) established by the Consortium for Energy Efficiency that is in effect as of the beginning of the calendar year in which the property is placed in service: (i) an electric or natural gas heat pump water heater, (ii) an electric or natural gas heat pump, (iii) a central air conditioner, (iv) a natural gas, propane, or oil water heater, or (v) a natural gas, propane, or oil furnace or hot water boiler.

(B) A biomass stove or boiler that (i) uses the burning of biomass fuel to heat a dwelling unit located in the United States and used as a residence by the taxpayer, or to heat water for use in such a dwelling unit, and (ii) has a thermal efficiency rating of at least 75 percent (measured by the higher heating value of the fuel).

(C) Any oil furnace or hot water boiler that (i) is placed in service after December 31, 2022 and before January 1, 2027, and (I) meets or exceeds 2021 Energy Star efficiency criteria, and (II) is rated by the manufacturer for use with fuel blends at least 20 percent of the volume of which consists of an eligible fuel, or (ii) is placed in service after December 31, 2026, and (I) achieves an annual fuel utilization efficiency rate of not less than

90, and (II) is rated by the manufacturer for use with fuel blends at least 50 percent of the volume of which consists of an eligible fuel.

(D) Any improvement to, or replacement of, a panelboard, sub-panelboard, branch circuits, or feeders that (i) is installed in a manner consistent with the National Electric Code, (ii) has a load capacity of not less than 200 amps, (iii) is installed in conjunction with (I) any qualified energy efficiency improvements, or (II) any qualified energy property described in § 25C(d)(2)(A) through (C) for which a credit is allowed under this section, and (iv) enables the installation and use of any property described in subclause (I) or (II) of § 25C(d)(2)(D)(iii).

As amended by the IRA, § 25C(d)(3) defines "eligible fuel" as (A) biodiesel and renewable diesel (within the meaning of § 40A), (B) second generation biofuel (within the meaning of § 40), and (C) transportation fuel (as defined in § 45Z(d)(5)).

Section 13301(f) of the IRA expands the types of expenditures eligible for the § 25C credit to include expenditures for home energy audits. Section 25C(e) defines "home energy audit" as an inspection and written report with respect to a dwelling unit located in the United States and owned or used by the taxpayer as the taxpayer's principal residence that (1) identifies the most significant and cost-effective energy efficiency improvements with respect to such dwelling unit, including an estimate of the energy and cost savings with respect to each such improvement, and (2) is conducted and prepared by a home energy auditor that meets the certification or other requirements specified by the Secretary of the Treasury or her delegate (Secretary) in regulations or other guidance. As amended by the IRA, § 25C(b)(6) limits the credit for such expenditures to $150 and imposes a substantiation requirement.

Section 13301(g) of the IRA adds new § 25C(h), which imposes a product identification number requirement. Section 25C(h)(1) provides that no § 25C credit is allowed for any item of specified property placed in service after December 31, 2024, unless (A) such item is produced by a qualified manufacturer, and (B) the taxpayer includes the qualified product identification number of such item on the return of tax for the taxable year. Section 25C(h)(2) defines "qualified product identification number" as, with respect to any item of specified property, the product identification number assigned to such item by the qualified manufacturer pursuant to the methodology referred to in § 25C(h)(3). Section 25C(h)(3) defines "qualified manufacturer" as any manufacturer of specified property that enters into an agreement with the Secretary that provides that such manufacturer will (A) assign a product identification number to each item of specified property produced by such manufacturer utilizing a methodology that will ensure that such number is unique to each such item (by utilizing numbers or letters that are unique to such manufacturer or by such other method as the Secretary may provide), (B) label such item with such number in such manner as the Secretary may provide, and (C) make periodic written reports to the Secretary (at such times and in such manner as the Secretary may provide) of the product identification numbers so assigned and including such information as the Secretary may require with respect to the item of specified property to which such number was so assigned. Section 25C(h)(4) defines "specified property" as any qualified energy property and any property described in § 25C(c)(3)(B) or (C), referencing exterior windows (including skylights) and exterior doors.

Section 13301(i) of the IRA provides the effective dates for the amendments to § 25C. In general, except as provided in § 13301(i)(2) and (3), the amendments apply to property placed in service after December 31, 2022. Section 13301(i)(2) of the IRA provides that amendments made by § 13301(a) of the IRA relating to the extension of the credit apply to property placed in service after December 31, 2021. Section 13301(i)(3) of the IRA provides that amendments made by § 13301(g) of the IRA relating to the requirements for product identification numbers apply to property placed in service after December 31, 2024.

.02 *Residential Clean Energy Credit (§ 25D)*

Section 25D was originally enacted by § 1335(a) of the Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594, 1033 (August 8, 2005) to provide a tax credit for expenditures made to improve the energy efficiency of taxpayers' residential property. Section 25D has been amended several times, most recently by § 13302 of the IRA. Section 25D(a) allows a credit for individual taxpayers for an amount equal to the sum of the applicable percentages of certain qualified expenditures, such as solar electric property and geothermal heat pump property, made during the taxable year (§ 25D credit).

Section 13302(a)(1) of the IRA amends § 25D(h), extending § 25D through December 31, 2034. Section 13302(a)(2) of the IRA amends the phaseout of the tax credit provided in § 25D(g). As amended by the IRA, § 25D(g)(1) through (5) provides that for purposes of calculating the § 25D credit, the applicable percentage of the phaseout is:

(1) in the case of property placed in service after December 31, 2016, and before January 1, 2020, 30 percent;

(2) in the case of property placed in service after December 31, 2019, and before January 1, 2022, 26 percent;

(3) in the case of property placed in service after December 31, 2021, and before January 1, 2033, 30 percent;

(4) in the case of property placed in service after December 31, 2032, and before January 1, 2034, 26 percent, and

(5) in the case of property placed in service after December 31, 2033, and before January 1, 2035, 22 percent.

Section 13302(b) of the IRA amends § 25D(a)(6) to include "qualified battery storage technology expenditures" as eligible for the § 25D credit and amends § 25D(d)(6). As amended by the IRA, § 25D(d)(6) defines the term "qualified battery storage technology expenditure" as an expenditure for battery storage technology that is installed in connection with a dwelling unit located in the United States that is used as a residence by the taxpayer, and has a capacity of not less than 3 kilowatt hours.

Section 13302(d)(1) of the IRA provides that except as provided in § 13302(d)(2) of the IRA, the amendments made to § 25D by § 13302 of the IRA apply to expenditures made after December 31, 2021. Section 13302(d)(2) of the IRA provides that the amendments to § 25D pertaining to qualified battery

energy technology apply to expenditures made after December 31, 2022.

.03 *New Energy Efficient Home Credit (§ 45L)*

Section 45L was originally enacted by § 1332(a) of the Energy Policy Act of 2005, Public Law 109-58, 119 Stat 594, 1024 (on August 8, 2005), to provide a credit for the construction of new energy efficient homes (§ 45L credit). Section 45L has been amended several times, most recently by § 13304 of the IRA.

Section 13304 of the IRA retroactively extends the § 45L credit for dwelling units acquired after December 31, 2021, by retaining the credit requirements in place prior to the enactment of the IRA. For dwelling units acquired after December 31, 2022, the IRA adds new energy efficiency standards, and new credit amounts, some of which are increased based on meeting a prevailing wage requirement.[1] As amended by the IRA, the § 45L credit is available for dwelling units acquired before January 1, 2033.

Section 45L(a)(1) provides that for purposes of the general business credit under § 38 of the Code, in the case of an eligible contractor, the § 45L credit for the taxable year is the applicable amount for each qualified new energy efficient home that is constructed by the eligible contractor and acquired by a person from such eligible contractor for use as a residence during the taxable year.

Section 45L(a)(2) provides that the "applicable amount" ranges from between $500 and $5,000 and is based on a combination of (A) whether the dwelling unit is eligible to participate in the Energy Star Residential New Construction Program, the Energy Star Manufactured New Homes program, or the Energy Star Multifamily New Construction Program; and (B) whether the dwelling unit is certified as a zero energy ready home under the zero energy ready home program of the Department of Energy as in effect on January 1, 2023 (or any successor program determined by the Secretary). In all cases, the dwelling unit must satisfy either the amended energy saving requirements provided in § 45L(c)(2) for single family homes or in § 45L(c)(3) for multifamily homes (whichever applies).

.04 *Energy Efficient Commercial Buildings Deduction (§ 179D)*

Section 179D was originally enacted by § 1331(a) of the Energy Policy Act of 2005, Public Law 109-58, 119 Stat. 594, 1020 (August 8, 2005), to provide a deduction for the cost of energy efficient commercial building property. Section 179D has been amended several times, most recently by § 13303 of the IRA.

Section 13303 of the IRA amends § 179D by changing the deduction amount (subject to prevailing wage and apprenticeship requirements), revising the energy efficiency requirements, removing the partial deduction and the interim rule for lighting systems, broadening the type of entities that may allocate the deduction to a designer, and providing a new alternative deduction for energy efficient building retrofit property (alternative deduction). The amendments are generally effective for taxable years beginning after December 31, 2022. However, the alternative deduction applies to property placed in service after December 31, 2022 (in taxable years ending after such date) if such property is placed in service pursuant to a qualified retrofit plan established after December 31, 2022.

Section 179D(a) allows as a deduction an amount equal to the cost of energy efficient commercial building property (EECBP) placed in service during the taxable year. As amended by § 13303(a) of the IRA, § 179D(b)(1) provides that the deduction with respect to any building for any taxable year cannot exceed the excess (if any) of the product of the applicable dollar value and the square footage of the building, over the aggregate amount of § 179D deductions (including under the alternative deduction) with respect to the building for the 3 taxable years immediately preceding such taxable year (or, in the case of any such deduction allowable to a person other than the taxpayer, for any taxable year ending during the 4-taxable-year period ending with such taxable year). Section 179D(b)(2) provides that the applicable dollar value is an amount equal to $0.50 increased (but not above $1.00) by $0.02 for each percentage point by which the total annual energy and power costs for the building are certified to be reduced by a percentage greater than 25 percent.

Section 179D(b)(3) provides an increased deduction amount for property that satisfies prevailing wage and apprenticeship requirements.[2]

Section 179D(b)(3)(B) provides that in the case of any EECBP, energy efficient building retrofit property, or property installed pursuant to a qualified retrofit plan, such property meets the requirements for an increased deduction amount if installation of such property begins prior to the date that is 60 days after the Secretary publishes guidance with respect to the prevailing wage and apprenticeship requirements of § 179D(b)(4)(A) or (5), or installation of such property satisfies the prevailing wage and apprenticeship requirements.

Section 179D(b)(6) directs the Secretary to issue regulations or other guidance as the Secretary determines necessary to carry out the purposes of § 179D(b), including regulations or other guidance that provides for requirements for recordkeeping or information reporting for purposes of administering the requirements of § 179D(b).

Section 13303(a)(2) of the IRA decreased the minimum energy efficiency savings required for the § 179D deduction by amending the definition of EECBP. As amended by the IRA, § 179D(c)(1) now defines EECBP, in part, as property that is certified as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to the interior lighting systems, heating, cooling, ventilation, and hot water systems of the building by 25 percent or more in comparison to a reference building that meets the minimum requirements of Reference Standard 90.1.

As amended by the IRA, § 179D(c)(2) provides that for purposes of § 179D, the

[1] *Similar prevailing wage requirements were added by the IRA to several other tax credit provisions of the Code. These provisions will be addressed in a separate notice requesting comments.*

[2] *Similar prevailing wage and apprenticeship requirements were added by the IRA to several other tax credit provisions of the Code. These provisions will be addressed in a separate notice requesting comments.*

term "Reference Standard 90.1" means, with respect to any property, the more recent of (A) Standard 90.1-2007 published by the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America; or (B) the most recent Standard 90.1 published by the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America for which the Department of Energy has issued a final determination and that has been affirmed by the Secretary, after consultation with the Secretary of Energy, for purposes of § 179D not later than the date that is 4 years before the date such property is placed in service.

As redesignated and then amended by § 13303(c) of the IRA, § 179D(d)(1) directs the Secretary, after consultation with the Secretary of Energy, to promulgate regulations that describe in detail methods for calculating and verifying energy and power consumption and cost with respect to any property, based on the provisions of the most recent California Nonresidential Alternative Calculation Method Approval Manual affirmed by the Secretary, after consultation with the Secretary of Energy, for purposes of § 179D not later than the date that is 4 years before the date such property is placed in service.

As redesignated and then amended by § 13303(a)(6) of the IRA, § 179D(d)(3)(A) provides that in the case of EECBP installed on or in property owned by a specified tax-exempt entity, the Secretary is to promulgate regulations or guidance to allow the allocation of the deduction to the person primarily responsible for designing the property in lieu of the tax-exempt owner of such property, which person is treated as the taxpayer for purposes of § 179D. As amended by the IRA, § 179D(d)(3)(B) defines "specified tax-exempt entity" as –

(i) the United States, any State or political subdivision thereof, any U.S. territory, or any agency or instrumentality of any of the foregoing;

(ii) an Indian tribal government (as defined in § 30D(g)(9) of the Code) or Alaska Native Corporation (as defined in § 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)); and

(iii) any organization exempt from tax imposed by chapter 1 of the Code.

Section 13303(a)(7) of the IRA adds new § 179D(f) to provide an alternative deduction for energy efficient building retrofit property. Section 179D(f)(1) provides that in the case of a taxpayer that elects (at such time and in such manner as the Secretary may provide) the alternative deduction with respect to any qualified building, the taxpayer is allowed as a deduction for the taxable year that includes the date of the qualifying final certification with respect to the qualified retrofit plan of such building, an amount equal to the lesser of (A) the excess described in § 179D(b) (determined by substituting "energy use intensity" for "total annual energy and power costs" in § 179D(b)(2)); or (B) the aggregate adjusted basis (determined after taking into account all adjustments with respect to such taxable year other than the reduction under § 179D(e)) of energy efficient building retrofit property placed in service by the taxpayer pursuant to such qualified retrofit plan.

Section 179D(f)(2) provides that for purposes of the alternative deduction the term "qualified retrofit plan" means a written plan prepared by a qualified professional that specifies modifications to a building that, in the aggregate, are expected to reduce such building's energy use intensity by 25 percent or more in comparison to the baseline energy use intensity of such building. A qualified retrofit plan must require a qualified professional to –

(A) certify the energy use intensity of such building as of any date during the 1-year period ending on the date on which the property installed pursuant to such a plan is placed in service;

(B) certify the status of property installed pursuant to such plan as meeting the requirements of § 179D(f)(3)(B) and (C); and

(C) certify the energy use intensity of such building as of any date that is more than 1 year after the date on which the property installed pursuant to such plan is placed in service.

Section 179D(f)(3) provides that for purposes of the alternative deduction, the term "energy efficient building retrofit property" means property (A) with respect to which depreciation (or amortization in lieu of depreciation) is allowable; (B) that is installed on or in any qualified building; (C) that is installed as part of (i) the interior lighting systems, (ii) the heating, cooling, ventilation, and hot water systems, or (iii) the building envelope; and (D) that is certified in accordance with § 179D(f)(2)(B) as meeting the requirements of § 179D(f)(3)(B) and (C).

Section 179D(f)(4) provides that for purposes of the alternative deduction, the term "qualified building" means any building that is located in the United States and was originally placed in service not less than 5 years before the establishment of the qualified retrofit plan with respect to such building.

Section 179D(f)(5) provides that for purposes of the alternative deduction, the term "qualifying final certification" means, with respect to any qualified retrofit plan, the certification described in § 179D(f)(2)(C) if the energy use intensity certified in such certification is not more than 75 percent of the baseline energy use intensity of the building.

Section 179D(f)(6)(A) provides that for purposes of the alternative deduction, the term "baseline energy use intensity" means the energy use intensity certified under § 179D(f)(2)(A), as adjusted to take into account weather. Section 179D(f)(6)(B) provides that for purposes of § 179D(f)(6)(A), the adjustments described in § 179D(f)(6)(A) must be determined in such manner as the Secretary provides.

Section 179D(f)(7)(A) provides that for purposes of the alternative deduction, the term "energy use intensity" means the annualized, measured site energy use intensity determined in accordance with such regulations or other guidance as the Secretary provides and measured in British thermal units. Section 179D(f)(7)(B) provides that the term "qualified professional" means an individual who is a licensed architect or a licensed engineer and meets such other requirements as the Secretary may provide.

Section 179D(f)(8)(A) provides that in the case of any building with respect to which an election is made for an alternative deduction, the term EECBP does not include any energy efficient building retrofit property with respect to which a deduction is allowable

under § 179D(f). Section 179D(f)(8)(B)(i) provides that except as provided in § 179D(f)(8)(B)(ii), the special rules provided by § 179D(d) do not apply for purposes of the alternative deduction. Section 179D(f)(8)(B)(ii) provides that rules similar to the rules of § 179D(d)(3) related to the allocation of the deduction for public property apply for purposes of the alternative deduction.

SECTION 3. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments on questions arising from the amendments made by the IRA to §§ 25C, 25D, 45L, and 179D. Commenters are encouraged to specify the issues on which guidance is needed most quickly as well as the most important issues on which guidance is needed. In addition to general comments, the Treasury Department and the IRS request comments that address the following specific questions:

.01 *Energy Efficient Home Improvement Credit (§ 25C)*:

(1) Section 25C(e)(2) directs the Secretary to prescribe "certification or other requirements" for home energy auditors for credit eligibility. What criteria should the Treasury Department and the IRS consider requiring for certification or other requirements for home energy auditors?

(2) Is guidance needed regarding the definition of "qualified energy property" in § 25C(d)(2) as amended by the IRA, such as definitions for the terms "panelboard" or "feeders"? Specifically, § 25C(d)(2)(B) defines "qualified energy property" to include biomass stoves or boilers, but only those that have "a thermal efficiency rating of at least 75 percent (measured by the higher heating value of the fuel)." Is guidance needed to define the term "thermal efficiency rating"? If so, what testing procedures should the Treasury Department and the IRS consider requiring or permitting to be used by manufacturers to measure thermal efficiency and demonstrate ratings that are valid for purposes of the § 25C credit?

(3) Section 25C(h) requires qualified manufacturers to provide unique product identification numbers to each item of specified property and make periodic written reports to the Secretary of the product identification numbers assigned. What should the Treasury Department and the IRS consider (1) in determining the manner of agreements between the IRS and the qualified manufacturer; (2) in developing a methodology to ensure that each product identification number is unique to each item of specified property; (3) in prescribing the manner by which such specified property must be labeled with unique product identification numbers; and (4) in developing the requirements for the qualified manufacturers' periodic written reports?

(4) Please provide comments on any other topics relating to the § 25C credit that may require guidance.

.02 *Residential Clean Energy Credit (§ 25D)*:

(1) Is guidance needed regarding the definition of "qualified battery storage technology expenditure" in § 25D(d)(6)?

(2) Section 25D(b)(2) provides that no credit is allowed under § 25D for an item of property described in § 25D(d)(1) unless such property is certified for performance by the non-profit Solar Rating Certification Corporation, or a comparable entity endorsed by the government of the State in which such property is installed. What information should the Treasury Department and the IRS consider in determining what constitutes a "comparable entity"?

(3) Please provide comments on any other topics relating to the § 25D credit that may require guidance.

.03 *New Energy Efficient Home Credit (§ 45L)*:

(1) Section 45L(b)(3) provides that for purposes of § 45L, the term "construction" includes "substantial reconstruction and rehabilitation." Is guidance defining the term "substantial reconstruction and rehabilitation" needed? If so, how should the term be defined? If needed, should the definition align with requirements or standards used in the qualified Energy Star and Zero Energy Ready Home Programs?

(2) Please provide comments on any other topics relating to the § 45L credit that may require guidance.

.04 *Energy Efficient Commercial Buildings Deduction (§ 179D)*:

(1) Section 179D(d)(3)(A) provides that in the case of EECBP installed on or in property owned by a specified tax-exempt entity, the Secretary is to promulgate regulations or guidance to allow the allocation of the deduction "to the person primarily responsible for designing the property in lieu of the owner of such property." What criteria should the Treasury Department and the IRS consider in providing rules to determine the person that is "primarily responsible for designing the property" under § 179D(3)(A)?

(2) Section 179D(f)(7)(A) provides that for purposes of § 179D(f), the term "energy use intensity" means the annualized, measured site energy use intensity determined in accordance with such regulations or other guidance as the Secretary provides and measured in British thermal units.

(a) What criteria should the Treasury Department and the IRS consider in developing regulations or other guidance addressing this determination?

(b) How should the instruction in § 179D(h)(1) requiring that new technologies regarding renewable energy be taken into account in determining energy efficiency and savings be taken into account in determining energy use intensity?

(3) Section 179D(f)(2) provides detail on a "qualified retrofit plan." Is guidance providing additional definitions or other guidance regarding qualified retrofit plans needed?

(4) Section 179D(f)(7)(B) provides that the term "qualified professional" means an individual who is a licensed architect or a licensed engineer and meets such other requirements as the Secretary provides. Is any guidance providing other requirements that licensed architects or licensed engineers must satisfy needed?

(5) Please provide comments on any other topics relating to the § 179D deduction that may require guidance.

SECTION 4. SUBMISSION OF COMMENTS

.01 Written comments should be submitted by Friday, November 4, 2022. Consideration will be given, however, to any written comment submitted after Friday, November 4, 2022, if such consideration will not delay the issuance of guidance. The subject line for the comments should include a reference to Notice 2022-48. Comments may be submitted in one of two ways:

(1) Electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2022-0048 in the search field on the regulations.gov homepage to find this notice and submit comments).

(2) Alternatively, by mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2022-48), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

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

SECTION 5. 60-DAY RULE NOT EFFECTUATED FOR THE PREVAILING WAGE AND APPRENTICESHIP REQUIREMENT

For purposes of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D, the publication of this notice requesting comments is not the publication of guidance with respect to the prevailing wage and apprenticeship requirements, and it is not relevant in determining whether the prevailing wage and apprenticeship requirements are satisfied under such sections. The Treasury Department and the IRS will explicitly identify when it has published guidance with respect to the prevailing wage and apprenticeship requirements that is relevant for determining whether such requirements have been satisfied for purposes of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D.

SECTION 6. DRAFTING INFORMATION

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

Request for Comments on Certain Energy Generation Incentives

Notice 2022-49

SECTION 1. PURPOSE

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) plan to issue guidance regarding the provisions of §§ 45, 45U, 45Y, 48, and 48E of the Internal Revenue Code (Code), as amended or added by §§ 13101, 13105, 13701, 13102, and 13702, respectively, of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). This notice requests general as well as specific comments on issues arising under §§ 45, 45U, 45Y, 48, and 48E. Comments received in response to this notice will help to inform development of guidance implementing §§ 45, 45U, 45Y, 48, and 48E.

SECTION 2. BACKGROUND

.01 *Renewable Electricity Production Credit (§ 45)*.

For purposes of computing the general business credit under § 38 of the Code, § 45(a) allows a credit for any taxable year for electricity produced by the taxpayer from qualified energy resources at a qualified facility and sold to an unrelated person during the taxable year. The § 45 credit has been amended many times since its enactment on October 24, 1992. Most recently, §§ 13101(a) to (c), (e)(1) and (2)(A), (f) through (j), 13102(f)(4), and 13204(b)(1) of the IRA made amendments to § 45. These amendments include, but are not limited to: changing the credit rate (and associated rounding convention) for electricity produced by certain facilities; extending the beginning of construction and placed in service deadlines for certain facilities; adding a special rule for electricity used at a clean hydrogen facility; amending the definition of marine and hydrokinetic renewable energy; and providing the Secretary of the Treasury or her delegate (Secretary) with the authority to issue regulations or other guidance as necessary to carry out the purposes of § 45(b), including regulations or other guidance which provides requirements for recordkeeping or information reporting for purposes of administering the requirements of § 45(b).[1]

.02 *Energy Investment Credit (§ 48)*.

For purposes of the investment credit under § 46, § 48(a)(1) provides, in part, that the energy credit for any taxable year is the energy percentage of the basis of each energy property placed in service during such taxable year. Congress has repeatedly amended § 48, including repealing and suspending the credit, changing the amount of the credit and rules for eligibility.

Most recently, §§ 13101(d), (e)(2)(B) and (3), 13102(a) through (f)(3), (g), (h), (j) through (m), (o), (p), 13103(a), and 13204(c)(1) and (2) of the IRA made amendments to § 48. These amendments include, but are not limited to: changing the energy percentage used to calculate the credit; amending the definitions of certain types of energy property; extending the beginning of construction and placed in service deadlines for certain types of energy property; adding a new rule for interconnection property; adding an election to treat clean hydrogen production facilities as energy property; expanding the definition of "energy property" to include certain electrochromic glass, energy storage technology, qualified biogas property, and microgrid controllers; modifying eligibility dates regarding the election to treat as energy property certain types of qualified facilities referred to as

[1] *Other amendments made by the IRA to § 45 increase the credit amount if certain prevailing wage, apprenticeship, domestic content, and energy communities requirements are satisfied. The IRA also provides an election for a taxpayer to receive a direct payment or to transfer the credit. Another amendment made by the IRA addresses the credit phaseout for a taxpayer that makes an election for direct payment. Similar provisions were added by the IRA to several other provisions of the Code discussed in this notice. See Notice 2022-51 requesting comments on prevailing wage, energy communities, and apprenticeship requirements related to several Code sections and Notice 2022-50 requesting comments on direct payment and transferability issues related to several Code sections.*

a "qualified investment credit facility"; establishing a special program to encourage the placement of certain facilities in connection with low-income communities (discussed in section 2.06 of this notice); and providing the Secretary with the authority to issue regulations or other guidance as necessary to carry out the purposes of § 48, including regulations or other guidance providing for recapture of the credit in certain situations and the recordkeeping or information reporting for purposes of administering the requirements of § 48(a).

.03 *Zero-Emission Nuclear Power Production Credit (§ 45U)*.

Section 13105 of the IRA added new § 45U, the zero-emission nuclear power production credit, to provide an income tax credit for electricity produced at a qualified nuclear power facility and sold by the taxpayer to an unrelated person in taxable years beginning after December 31, 2023, and before January 1, 2033. A qualified nuclear power facility is a facility owned by the taxpayer that was placed in service before the enactment of § 45U and uses nuclear energy to produce electricity. A facility that is an advanced nuclear power facility as defined in § 45J(d)(1) is not a qualified nuclear power facility under § 45U.

The credit under § 45U(a) is calculated by multiplying the kilowatt hours of electricity produced and sold during the taxable year by 0.3 cents (adjusted for inflation), and then subtracting the "reduction amount" for such taxable year. Section 45U(b)(2)(A) defines the term "reduction amount" as the lesser of (1) the credit amount determined before application of the reduction amount or (2) the amount equal to 16 percent of the excess of (a) the gross receipts from any electricity produced by the facility and sold to an unrelated person during the taxable year, over (b) the amount equal to the product of 2.5 cents (adjusted for inflation) multiplied by the kilowatt hours of electricity produced by the facility and sold to an unrelated person during the taxable year. Section 45U(b)(2)(B) provides rules regarding the treatment of gross receipts. The credit amount determined under § 45U(a) is multiplied by 5 if certain prevailing wage requirements are met. Section 45U(d)(3) grants the Secretary authority to issue regulations or other guidance to administer the wage requirements of § 45U.

.04 *Clean Electricity Production Credit (§ 45Y)*.

Section 13701 of the IRA added new § 45Y, the clean electricity production credit, to provide a tax credit for electricity produced by the taxpayer at a qualified facility and either (1) sold by the taxpayer to an unrelated person during the taxable year, or (2) in the case of a qualified facility which is equipped with a metering device which is owned and operated by an unrelated person, sold, consumed, or stored by the taxpayer during the taxable year. Section 45Y(b)(1)(A) defines a "qualified facility" as a facility owned by the taxpayer that is used for the production of electricity, placed in service after 2024, and has a greenhouse gas emissions rate of not greater than zero. A facility will be considered a qualified facility for a period of ten years beginning on the date it is placed in service. A facility placed in service before January 1, 2025, also can be considered a qualified facility to the extent of the increased amount of electricity produced at the facility by reason of a new unit placed in service after December 31, 2024, or additions of capacity placed in service after December 31, 2024.

Section 45Y(a)(1) provides that the amount of the credit is equal to the product of (A) the kilowatt hours of electricity produced and sold to an unrelated person (or sold, consumed, or stored if the facility is equipped with a metering device) by the taxpayer during the taxable year, multiplied by (B) the applicable amount with respect to such qualified facility. Section 45Y(a)(2) provides that the applicable amount is generally 0.3 cents (adjusted for inflation), which can be increased to 1.5 cents (adjusted for inflation) if requirements for prevailing wage and apprenticeship are met.

Section 45Y(b)(2) provides that the greenhouse gas emissions rate is the amount of greenhouse gases emitted into the atmosphere by a facility that produces electricity, expressed as grams of CO_2e per KWh. The emissions rate for different types or categories of facilities will be published annually by the Secretary, and to the extent not established by the Secretary, a taxpayer that owns the facility may file a petition for determination of the rate. Section 45Y(b)(2) also provides special greenhouse gas accounting rules allowing calculation of a net greenhouse gas emissions rate for facilities producing electricity through combustion or gasification.

Section 45Y(d) provides a credit phase-out for projects the construction of which begins during the first, second, or third calendar year following the "applicable year," which is the later of (i) the calendar year in which the Secretary determines that the annual greenhouse gas emissions from the production of electricity in the United States are equal to or less than 25 percent of such emissions for calendar year 2022, or (ii) 2032.

Section 45Y(f) directs the Secretary to issue guidance regarding implementation of § 45Y not later than January 1, 2025, including calculation of greenhouse gas emission rates for qualified facilities and determination of clean electricity production credits under § 45Y.

.05 *Clean Electricity Investment Credit (§ 48E)*.

Section 13702 of the IRA added § 48E, the clean electricity investment credit, to provide an investment tax credit for qualified property. The credit amount for any taxable year is equal to the applicable percentage of the qualified investment for such taxable year with respect to any qualified facility and any energy storage technology. The applicable percentage for both qualified facilities and energy storage technology is generally 6 percent. The applicable percentage can be increased to 30 percent if prevailing wage and apprenticeship requirements are met.

A qualified facility is a facility used for the generation of electricity and placed in service after December 31, 2024, for which the anticipated greenhouse gas emissions rate is not greater than zero. Section 48E(b)(3) incorporates the special greenhouse gas accounting rules provided in § 45Y(b)(2) that allow the calculation of a net greenhouse gas emissions rate for facilities producing electricity through combustion or gasification and for facilities that include carbon capture and sequestration equipment.

A taxpayer's qualified investment with respect to any qualified facility for any taxable year is the sum of: the basis of any qualified property placed in service by

the taxpayer during a taxable year that is part of a qualified facility plus, for qualified facilities with a maximum net output of not greater than 5 megawatts, certain expenditures paid or incurred by the taxpayer for qualified interconnection property. A taxpayer's qualified investment with respect to energy storage technology for any taxable year is the basis of the energy storage technology placed in service by the taxpayer during such taxable year.

Section 48E(h) provides a special program for certain facilities placed in service in connection with low-income communities. These rules are discussed in section 2.06 of this notice with the discussion of § 48(e). Section 48E(i) directs the Secretary to issue guidance regarding the implementation of § 48E not later than January 1, 2025.

.06 *Special programs for certain facilities placed in service in connection with low-income communities (§§ 48(e) and 48E(h)).*

Section 13103 of the IRA amended § 48 to add new § 48(e), which establishes a special program for certain solar and wind facilities placed in service in connection with low-income communities, effective January 1, 2023. Section 13702(a) of the IRA also enacted § 48E(h), which provides a similar special program for certain facilities placed in service in connection with low-income communities in calendar years after 2024. These provisions increase the amount of the § 48 credit and § 48E credit for facilities with a maximum net output of less than 5 megawatts (as measured in alternating current) by providing a 10 percent increase in the energy percentage (in the case of § 48(e)) or the applicable percentage (in the case of § 48E(h)), used to calculate the credit amount, for certain facilities located in low-income communities (as defined in § 45D(e) of the Code) or on Indian land (as defined in § 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2))), or a 20 percent increase in the energy percentage or applicable percentage for certain facilities that are part of certain low-income residential building projects or low-income economic benefit projects. These increased credit amounts are limited by the facility's environmental justice solar and wind capacity limitation allocation (§ 48(e)) or its environmental justice capacity limitation allocation (§ 48E(h)).

Section 48(e)(4) directs the Secretary to establish a program to allocate amounts of environmental justice solar and wind capacity limitation to qualified solar and wind facilities within 180 days of enactment of the IRA. The total amount of environmental justice solar and wind capacity allocation available during any calendar year is limited to 1.8 gigawatts of direct current capacity for each of the years 2023 and 2024. If the 1.8-gigawatt capacity limitation for any calendar year exceeds the aggregate amount allocated for such year, the excess is carried forward to the next year, but not beyond a calendar year after 2024. After that, the excess from 2024 may be carried forward and applied to the capacity limitation for 2025 under § 48E(h).

Section 48E(h)(4)(A) directs the Secretary to establish a program to allocate amounts of environmental justice capacity limitation to applicable facilities not later than January 1, 2025. The total amount of environmental justice capacity limitation available during any calendar year is limited to 1.8 gigawatts of direct current capacity for each calendar year during the period beginning on January 1, 2025, and ending on December 31 of the Applicable Year (as defined in § 45Y(d)(3)), and zero thereafter. If the 1.8-gigawatt capacity limitation for any calendar year exceeds the aggregate amount allocated for such year, the excess increases the limitation for the next year. However, no amount may be carried forward to any calendar year after the third calendar year following the Applicable Year. To be eligible for the credit increase, the facility must be placed in service within 4 years after the date of the allocation of environmental justice capacity limitation to the facility.

SECTION 3. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments on any questions arising from the IRA amendments to §§ 45 and 48 and the IRA's enactment of §§ 45U, 45Y, and 48E. Commenters are encouraged to specify the issues on which guidance is needed most quickly as well as the most important issues on which guidance is needed. In addition to general comments, the Treasury Department and the IRS request comments that address the following specific issues:

.01 *IRA Changes to the Renewable Electricity Production Credit (§ 45)*

(1) Section 45(e)(13) provides that electricity produced by a taxpayer will be treated as sold by such taxpayer to an unrelated person during the taxable year if (A) such electricity is used during such taxable year by the taxpayer or a person related to the taxpayer at a qualified clean hydrogen production facility (as defined in § 45V(c)(3)) to produce qualified clean hydrogen (as defined in § 45V(c)(2)), and (B) such use and production is verified (in such form or manner as the Secretary may prescribe) by an unrelated third party.

(a) What existing industry standards, if any, should the Treasury Department and the IRS consider in establishing guidelines for how an unrelated third party will verify that electricity produced by a facility for which the taxpayer is claiming the § 45 credit has been used to produce qualified clean hydrogen?

(b) The term "unrelated person" is used in § 45 (as well as other provisions discussed in this notice that were added or amended by the IRA). Is guidance needed to clarify the meaning of the term "unrelated person"? If so, how should that term be clarified?

(2) Sections 45(b)(3), 48(a)(4), 45Y(g)(8), 48E(d)(2) and several other sections in the IRA include a reduction in the respective credit for tax-exempt bond financing. The reduction is calculated in accordance with § 45(b)(3) (or rules similar to the rule under § 45(b)(3)). What additional guidance would be helpful in determining how to calculate the reduction?

(3) Section 45(c)(10)(A)(v), as amended by the IRA, provides a modified definition of marine and hydrokinetic energy by adding pressurized water used in a pipeline (or similar man-made conveyance) that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity. Is guidance needed to define these qualified facilities? If so, how should these qualified facilities be defined?

(4) Please provide comments on any other topics relating to the § 45 credit that may require guidance.

.02 *The Energy Investment Credit (§ 48)*

(1) *IRA Changes to the Energy Investment Credit (§ 48)*

(a) The IRA expanded the definition of energy property to include electrochromic glass, energy storage technology, qualified biogas property, and microgrid controllers.

(i) What should the Treasury Department and the IRS consider in determining what types of technologies are included in the definitions of these new types of energy property?

(ii) What should the Treasury Department and the IRS consider in determining what components of those technologies are included in energy property?

(b) Section 48(a)(8) provides that for certain energy property amounts paid or incurred for qualified interconnection property may be included in basis.

(i) For interconnection property, what types of additions, modifications, or upgrades to the transmission or distribution system are required for the purpose of accommodating interconnection?

(ii) For interconnection property, what type of documentation, in addition to interconnection agreements and cost certification reports, is readily available for a taxpayer to demonstrate that they have paid or incurred interconnection costs?

(iii) For interconnection property, is guidance needed to define energy property that has a maximum net output of not greater than 5 megawatts (as measured in alternating current)?

(c) Please provide comments on any other topics relating to the § 48 credit that may require guidance.

(2) *Additional Issues Regarding the Energy Investment Credit (§ 48)*

(a) Is guidance needed to determine whether an investment credit facility that elects to claim the § 48 investment tax credit in lieu of the § 45 production tax credit is subject to all of the requirements of § 45, including the requirement that electricity generated by the investment credit facility be sold to an unrelated person? If so, what factors should the Treasury Department and the IRS consider regarding such guidance?

(b) Is clarification needed on the applicability of the 80/20 rule used to determine whether retrofitted or repowered projects may qualify as new energy property? If so, how should this be clarified?

(c) Section 48(a)(3)(A)(i) provides that energy property includes "equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure." Is guidance needed to clarify the meaning of the term "structure"? If so, how should this term be clarified?

(d) Please provide comments on any other topics relating to the § 48 credit that may require guidance.

.03 *IRA Addition of the Zero-Emission Nuclear Power Production Credit (§ 45U)*

(1) Section 45U(a)(2) reduces the amount of the § 45U credit by a "reduction amount" that is calculated, in part, based on the gross receipts from any electricity produced by the facility. Section 45U(b)(2)(B) provides that gross receipts generally include any amount received by a qualified facility that are from a zero-emission credit program, unless an exclusion applies. Is guidance needed to clarify the meaning of the term "gross receipts," especially as it applies to taxpayers receiving revenue through cost-of-service regulation or regulated contracts and who do not sell electricity in a manner attributable to individual nuclear reactors such as through sales into organized electricity markets or via power purchase agreements to third parties? If so, how should "gross receipts" be clarified? Should it be defined by cross reference to § 448(c) of the Code?

(2) Section 45U(b)(2)(B)(ii) defines the term "zero-emission credit program." What should the Treasury Department and the IRS consider in determining whether a payment is as a result of a government program for the zero-emission, zero-carbon, or air quality attributes of any portion of the electricity produced by the facility?

(3) Section 45U(b)(2)(B)(iii) excludes from gross receipts, for purposes of the reduction amount calculation, any amount received by the taxpayer from a zero-emission credit program if the full amount of the § 45U credit (determined without regard to § 45U(b)(2)(B)) is used to reduce payments from such zero-emission credit program. What should the Treasury Department and the IRS consider when determining whether the full amount of the § 45U credit (calculated pursuant to § 45U(a)) is used to reduce payments from a zero-emission credit program?

(4) Please provide comments on any other topics relating to the § 45U credit that may require guidance.

.04 *IRA Addition of the Clean Electricity Production Credit (§ 45Y)*

(1) What existing industry standards, if any, should the Treasury Department and the IRS consider in determining a taxpayer's eligibility for the § 45Y credit?

(2) Section 45Y(b)(2)(C)(i) requires the Secretary to annually publish a table that sets forth the greenhouse gas emissions rates for types or categories of facilities. What should the Treasury Department and the IRS consider in publishing this table, including considerations around scope and the factors?

(3) Section 45Y(a)(1) generally provides a credit for electricity produced by the taxpayer at a qualified facility and either (1) sold by the taxpayer to an unrelated person during the taxable year, or (2) in the case of a qualified facility which is "equipped with a metering device which is owned and operated by an unrelated person, sold, consumed, or stored by the taxpayer during the taxable year." Is guidance needed to clarify when a facility is "equipped with a metering device which is owned and operated by an unrelated person" or when electricity produced at such a facility is "sold, consumed, or stored by the taxpayer during the taxable year"?

(4) Section 45Y(b)(2)(C)(ii) provides that, in the case of any facility for which an emissions rate has not been established by the Secretary, a taxpayer that owns such facility may file a petition with the Secretary for a determination of the emissions rate with respect to such facility. What procedures should be provided by the Treasury Department and the IRS for taxpayers to file such a petition? What should the Secretary consider when making such determinations?

(5) Please provide comments on any other topics relating to the § 45Y credit that may require guidance.

.05 *IRA Addition of the Clean Electricity Investment Credit (§ 48E)*

(1) What industry mechanisms currently exist for a taxpayer to demonstrate eligibility for the credit?

(2) Please provide comments on any other topics relating to the § 45E credit that may require guidance.

.06 *IRA Addition of Special Programs for Certain Facilities Placed in Service in Connection with Low-income Communities (§§ 48(e) and 48E(h))*

(1) Sections 48(e)(4)(A) and 48E(h)(4)(A) require the Secretary to establish a program to allocate amounts of environmental justice capacity limitation to applicable facilities. In establishing such program, the Secretary must provide procedures to allow for an efficient allocation process.

(a) What should the Treasury Department and the IRS consider in providing guidance regarding the application process for taxpayers seeking an allocation of the environmental justice capacity limitation?

(b) How can the application procedures and application process be made accessible to taxpayers?

(c) How can the process incorporate community input, engagement, and benefit for projects seeking an allocation of the environmental justice capacity limitation?

(2) What stage of completion, if any, should be required of the taxpayer at the time of application for or allocation of amounts of environmental justice capacity limitation (since the taxpayer will have four years to place the facility in service)?

(3) What methods currently exist or need to be designed for a taxpayer to certify that a project is being built in a low-income community, on Indian land, or as part of a low-income residential building project or a qualified low-income economic benefit project?

(4) What mechanisms exist for a taxpayer to demonstrate that the financial benefits of the electricity produced by an applicable facility are allocated equitably among the occupants of a low-income residential building project and do not impact the occupants' eligibility for their housing? Similarly, what mechanisms exist for a taxpayer to demonstrate that at least 50 percent of the financial benefits of electricity produced by an applicable facility which is part of a low-income economic benefit project are provided to households within certain income thresholds?

(5) Is guidance needed to clarify the meaning of the term "financial benefit"?

(6) What is a financial benefit of the electricity produced by an applicable facility other than electricity acquired at a below-market rate for occupants of low-income residential building projects and low-income economic benefit projects?

(7) What should the Treasury Department and the IRS consider in providing guidance regarding the recapture of the benefits of the credit increase allowed under §§ 48(e) and 48E(h) when property ceases to be property eligible for such credit increase? How should the one-time restoration of eligibility be documented before recapture?

(8) Please provide comments on any other topics relating to the environmental justice capacity limitation under §§ 48(e) and 48E(h) that may require guidance.

SECTION 4: SUBMISSION OF COMMENTS

.01 Written comments should be submitted by Friday, November 4, 2022. Consideration will be given, however, to any written comment submitted after Friday, November 4, 2022, if such consideration will not delay the issuance of guidance. The subject line for the comments should include a reference to Notice 2022-49. Comments may be submitted in one of two ways:

(1) Electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2022-0049 in the search field on the regulations.gov homepage to find this notice and submit comments).

(2) Alternatively, by mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2022-49), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

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

SECTION 5. 60-DAY RULE NOT EFFECTUATED FOR THE PREVAILING WAGE AND APPRENTICESHIP REQUIREMENT

For purposes of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D, the publication of this notice requesting comments is not the publication of guidance with respect to the prevailing wage and apprenticeship requirements, and it is not relevant in determining whether the prevailing wage and apprenticeship requirements are satisfied under such sections. The Treasury Department and the IRS will explicitly identify when they have published guidance with respect to the prevailing wage and apprenticeship requirements that is relevant for determining whether such requirements have been satisfied for purposes of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D.

SECTION 6. DRAFTING INFORMATION

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

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

Notice 2022-50

SECTION 1. PURPOSE

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) anticipate issuing guidance to implement the elective payment provisions under § 6417 and the elective credit transfer provisions under § 6418 of the

Internal Revenue Code (Code), as added by § 13801 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). This notice requests general comments on questions arising under new §§ 6417 and 6418, as well as specific comments on questions listed in section 3 of this notice. Comments received in response to this notice will help to inform development of future guidance implementing §§ 6417 and 6418.

SECTION 2. BACKGROUND

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

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

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

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

(1) so much of the credit for alternative fuel vehicle refueling property allowed under § 30C that, pursuant to § 30(d)(1), is treated as a credit listed in § 38(b);
(2) so much of the renewable electricity production credit determined under § 45(a) as is attributable to qualified facilities that are originally placed in service after December 31, 2022;
(3) so much of the credit for carbon oxide sequestration determined under § 45Q(a) as is attributable to carbon capture equipment that is originally placed in service after December 31, 2022;
(4) the zero-emission nuclear power production credit determined under § 45U(a);
(5) so much of the credit for production of clean hydrogen determined under § 45V(a) as is attributable to qualified clean hydrogen production facilities that are originally placed in service after December 31, 2012;
(6) in the case of a tax-exempt entity described in § 168(h)(2)(A)(i), (ii), or (iv), the credit for qualified commercial vehicles determined under § 45W by reason of § 45W(d)(3);
(7) the credit for advanced manufacturing production under § 45X(a);
(8) the clean electricity production credit determined under § 45Y(a);
(9) the clean fuel production credit determined under § 45Z(a);
(10) the energy credit determined under § 48;
(11) the qualifying advanced energy project credit determined under § 48C; and
(12) the clean electricity investment credit determined under § 48E.

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

Section 6417(c)(2) provides that, in the case of any facility or property held directly by a partnership or S corporation, no election by any partner or shareholder is allowed under § 6417(a) with respect to any applicable credit determined with respect to such facility or property.

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

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

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

Section 6417(d)(1)(D)(i) provides that, if a taxpayer other than an entity described in § 6417(d)(1)(A) makes an election under § 6417(d)(1)(D) with respect to any taxable year in which such taxpayer has, after December 31, 2022, produced eligible components (as defined in § 45X(c)(1)), such taxpayer is treated as an applicable entity for purposes of § 6417 for such taxable year, but only with respect to the credit under § 45X to the extent described in § 6417(b)(7).

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

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

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

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

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

Section 6417(d)(2) provides that, in the case of any applicable entity that makes the election described in § 6417(a), any applicable credit is determined (A) without regard to § 50(b)(3) and (4)(A)(i), and (B) by treating any property with respect to which such credit is determined as used in a trade or business of the applicable entity.

Section 6417(d)(3)(A)(i) provides that, any election under § 6417(a) cannot be made later than (I) in the case of any government, or political subdivision, described in § 6417(d)(1) and for which no return is required under § 6011 or § 6033(a), such date as is determined appropriate by the Secretary, or (II) in any other case, the due date (including extensions of time) for the tax return for the taxable year for which the election is made, but in no event earlier than 180 days after the date of the enactment of § 6417 by § 13801(a) of the IRA (that is, in no event earlier than 180 days after August 16, 2022).

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

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

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

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

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

Section 6417(d)(3)(D)(i) provides that, in the case of the credit described in § 6417(b)(5) (that is, the credit for production of clean hydrogen under § 45V(a)), any election under § 6417(a): (i) applies separately with respect to each qualified clean hydrogen production facility; (ii) must be made for the taxable year in which such facility is placed in service (or within the 1-year period subsequent to the date of enactment of § 6417 in the case of facilities placed in service before December 31, 2022), and (iii)(I) in the case of a taxpayer who makes an election described in § 6417(d)(1)(B), applies to such taxable year and the 4 subsequent taxable years with respect to such facility that end before January 1, 2033, and (II) in any other case, applies to the taxable year and all subsequent taxable years with respect to such facility.

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

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

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

and (iii) applies to such taxable year and to any subsequent taxable year that is within the period described in § 45Y(b)(1)(B) with respect to such facility.

Section 6417(d)(4)(A) provides that, in the case of any government, or political subdivision described in § 6417(d)(1), and for which no return is required under § 6011 or § 6033(a), the payment described in § 6417(a) is treated as made on the later of the date that a return would be due under § 6033(a) if such government or subdivision were described in § 6033 or the date on which such government or subdivision submits a claim for credit or refund. Any claim for credit or refund must be made at such time and in such manner as the Secretary provides. Section 6417(d)(4)(B) provides that, in any other case, the payment described in § 6417(a) is treated as made on the later of the due date (determined without regard to extensions) of the return of tax for the taxable year or the date on which such return is filed.

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

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

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

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

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

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

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

.02 *Transfer of Certain Credits (§ 6418).*

Section 6418 of the Code was enacted by § 13801(b) of the IRA to permit eligible credits to be transferred from eligible taxpayers to an unrelated taxpayer.

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

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

Section 6418(c)(1) provides that, in the case of any eligible credit determined with respect to any facility or property held directly by a partnership or S corporation, such partnership or S corporation may make an election under § 6418(a) with respect to such credit in such manner as the Secretary may provide. If such partnership or S corporation makes an election under § 6418(a) with respect to such credit, (A) any amount received as consideration for a transfer described in § 6418(a) is treated as tax exempt income for purposes of §§ 705 and 1366, and (B) a partner's distributive share of such tax exempt income is based on such partner's distributive share of the otherwise eligible credit for each taxable year.

Section 6418(c)(2) provides that, in the case of any facility or property held directly by a partnership or S corporation, no election by any partner or shareholder is allowed under § 6418(a) with respect to any eligible credit determined with respect to such facility or property.

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

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

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

Section 6418(f)(1)(A) defines the term "eligible credit" to mean each of the following: (i) so much of the credit for alternative fuel vehicle refueling

property allowed under § 30C that, pursuant to § 30(d)(1), is treated as a credit listed in § 38(b); (ii) the renewable electricity production credit determined under § 45(a); (iii) the carbon oxide sequestration credit determined under § 45Q(a); (iv) the zero-emission nuclear power production credit determined under § 45U(a); (v) the clean hydrogen production credit determined under § 45V(a); (vi) the advanced manufacturing production credit determined under § 45X(a); (vii) the clean electricity production credit determined under § 45Y(a); (viii) the clean fuel production credit determined under § 45Z(a); (ix) the energy credit determined under § 48; (x) the qualifying advanced energy project credit determined under § 48C; and (xi) the clean electricity investment credit determined under § 48E.

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

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

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

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

Section 6418(g)(2)(A) provides that, in the case of any portion of an eligible credit that is transferred to a transferee taxpayer pursuant to § 6418(a) that the Secretary determines constitutes an excessive credit transfer, the tax imposed on the transferee taxpayer by chapter 1 (regardless of whether such entity would otherwise be subject to tax under such chapter) for the taxable year in which such determination is made is increased by an amount equal to the sum of (i) the amount of such excessive credit transfer, plus (ii) an amount equal to 20 percent of the excessive credit transfer.

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

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

Section 6418(g)(3) provides that, in the case of any election under § 6418(a) with respect to any portion of an eligible credit described in § 6418(f)(1)(A)(ix) through (xi), (A) § 50(c) will apply to the applicable investment credit property (as defined in § 50(a)(5)) as if such eligible credit was allowed to the eligible taxpayer, and (B) if, during any taxable year, the applicable investment credit property (as defined in § 50(a)(5)) is disposed of, or otherwise ceases to be investment credit property with respect to the eligible taxpayer, before the close of the recapture period described in § 50(a)(1), (i) such eligible taxpayer must provide notice of such occurrence to the transferee taxpayer (in such form and manner as the Secretary prescribes), and (ii) the transferee taxpayer must provide notice of the recapture amount (as defined in § 50(c)(2)), if any, to the eligible taxpayer (in such form and manner as the Secretary prescribes).

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

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

SECTION 3. REQUEST FOR COMMENTS

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

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

(1) What, if any, guidance is needed to clarify the meaning of certain terms in § 6417, such as applicable credit and excessive payment? Is there any term not defined in § 6417 that should be defined in future guidance? If so, what is the term and how should it be defined?

(2) With respect to the Secretary's discretion to determine the time and manner for making an election under § 6417(a):

(a) What, if any, issues could arise when an applicable entity described in § 6417(d)(1)(A) makes an election under § 6417(a) and what, if any, guidance is needed with respect to such issues?

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

(3) In determining the amount treated as making a payment against tax under § 6417(a), is guidance needed to clarify the application of any other Code provision? If so, what is the Code provision and what clarification is needed?

(4) With respect to an election under § 6417(a) made by a partnership or S corporation pursuant to § 6417(c)(1) for any

applicable credit determined with respect to any facility or property held directly by a partnership or S corporation:

(a) What, if any, issues could arise when a partnership or S corporation makes an election under § 6417(a) and what, if any, guidance is needed with respect to such issues?

(b) Is guidance needed to clarify the treatment of a payment made pursuant to § 6417(c)(1)(A) to the electing partnership or S corporation? If so, what clarification is needed?

(5) With respect to the definition of the term "applicable entity" in § 6417(d)(1):

(a) What, if any, guidance is needed to clarify which entities are applicable entities for purposes of § 6417(d)(1)(A), and which taxpayers may elect to be treated as applicable entities under § 6417(d)(1)(B), (C), or (D) for purposes of § 6417?

(b) What types of structures are anticipated to be used by applicable entities, and taxpayers who have elected to be treated as applicable entities under § 6417(d)(1)(B), (C), or (D), when seeking to apply § 6417(a)?

(c) Is guidance needed to clarify the application of any Code provision other than § 6417 to an applicable entity, or a taxpayer electing to be treated as an applicable entity, that makes an election under § 6417(a)? If so, what is the Code provision and what clarification is needed?

(d) Are there specific issues that the Treasury Department and the IRS should address for applicable entities that are subject to non-tax legal requirements or other rules that may affect such entities' ability to make an election under § 6417(a)?

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

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

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

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

(d) Is guidance needed to clarify the prohibition of a transfer described in § 6418(a) by a taxpayer who has made an election under § 6417(d)(1)(B), (C), or (D)? If so, what clarification is needed?

(7) Section 6417(d)(3)(A)(i)(I) provides that, in the case of any government, or political subdivision, described in § 6417(d)(1), and for which no return is required under § 6011 or 6033(a), any election made by these applicable entities under § 6417(a) must be made no later than such date as is determined appropriate by the Secretary. What factors should the Treasury Department and the IRS consider when providing guidance on the due date of the election for these applicable entities?

(8) Section 6417(d)(4)(A) provides that, in the case of any government, or political subdivision described in § 6417(d)(1), and for which no return is required under § 6011 or 6033(a), the payment described in § 6417(a) is treated as made on the later of the date that a return would be due under § 6033(a) if such government or subdivision were described in § 6033 or the date on which such government or subdivision submits a claim for credit or refund at such time and in such manner as the Secretary provides. What factors should the Treasury Department and the IRS consider when providing guidance to clarify the timing and manner of a payment made by these governments or political subdivisions?

(9) For purposes of preventing duplication, fraud, improper payments, or excessive payments under § 6417, what information, including any documentation created in or out of the ordinary course of business, or registration, should the IRS require as a condition of, and prior to, any amount being treated as a payment made by an applicable entity under § 6417(a)? What factors should the Treasury Department and the IRS consider as to when documentation or registration should be required? Should the IRS require the same documentation or registration as a condition of, and prior to, any amount being treated as a payment made by both an applicable entity as well as a taxpayer who is treated as an applicable entity after making an election under § 6417(d)(1)(B), (C), or (D)? Should the IRS require the same documentation or registration for all applicable credits? If not, how should the information or registration differ between applicable credits? What other processes could be implemented by the IRS to prevent duplication, fraud, improper payments, or excessive payments under § 6417?

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

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

(12) The advanced manufacturing investment credit under § 48D also contains an elective payment provision under § 48D(d). The Treasury Department and the IRS seek comments on whether the elective payment provisions of § 6417 should operate similarly or differently than the elective payment provision under § 48D.

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

.02 *Transfer of Certain Credits (§ 6418).*

(1) What, if any, guidance is needed to clarify the meaning of certain terms in § 6418, such as eligible credit, eligible taxpayer, and excessive credit transfer? Is there any term not defined in § 6418 that should be defined in guidance? If so, what is the term and how should it be defined?

(2) Section 6418(c)(1) provides that, in the case of any eligible credit determined with respect to any facility or property held directly by a partnership or S corporation, the Secretary determines the manner in which such partnership or S corporation makes an election under § 6418(a) with respect to such credit.

(a) What, if any, issues could arise when a partnership or S corporation makes an election under § 6418(a) and what, if any, guidance is needed with respect to such issues?

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

(3) Section 6418(c)(2) provides that, in the case of any facility or property held directly by a partnership or S corporation, no election by any partner or shareholder is allowed under § 6418(a) with respect to any eligible credit determined with respect to such facility or property. If the election is made, what issues should be considered regarding the transfer of any portion of an eligible credit and what, if any, guidance is needed with respect to such issues? Further, what, if any, guidance is needed on allocating any amount received as consideration for transferring any portion of an eligible credit?

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

(5) For purposes of § 6418(d), what, if any, guidance is required to determine the proper taxable year in which to claim any credit that was transferred pursuant to an election made under § 6418(a)?

(6) In determining the amount of eligible credit transferred under § 6418(a), is guidance needed to clarify the application of any other Code provision? If so, what is the Code provision and what clarification is needed?

(7) Is guidance needed to clarify how any other Code provision applies to an eligible taxpayer or a transferee taxpayer when an election is made under § 6418? If so, what is the Code provision and what clarification is needed?

(8) For purposes of preventing duplication, fraud, improper payments, or excessive credit transfers under § 6418, what information, including any documentation created in or out of the ordinary course of business, or registration, should be required by the IRS as a condition of, prior to, or after any transfer of any portion of an eligible credit pursuant to § 6418(a)? What factors should the Treasury Department and the IRS consider as to when documentation or registration should be required? Should the IRS require the same documentation or registration for all eligible credits? If not, how should the information or registration differ between eligible credits? What other processes could be implemented by the IRS to prevent duplication, fraud, improper payments, or excessive credit transfers under § 6418?

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

(10) For purposes of § 6418(g)(3), what, if any, guidance is needed to clarify the application of § 50 for purposes of credit recapture, basis adjustments, and eligibility related to § 50(b)(3)? Pursuant to § 6418(g)(3)(B)(i), an eligible taxpayer must notify the transferee taxpayer if, during any taxable year, the applicable investment credit property is disposed of, or otherwise ceases to be investment credit property with respect to the eligible taxpayer, before the close of the recapture period. What factors should be considered in determining the form and manner of this notice? Likewise, pursuant to § 6418(g)(3)(B)(ii), the transferee taxpayer must notify the eligible taxpayer of the recapture amount. What factors should be considered in determining the form and manner of this notice?

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

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

SECTION 4. SUBMISSION OF COMMENTS

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

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

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

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

SECTION 5. DRAFTING INFORMATION

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

Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022

Notice 2022-51

SECTION 1. PURPOSE

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) plan to issue guidance regarding the provisions of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D of the Internal Revenue Code (Code), as amended or added by Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). This notice requests comments on general as well as specific questions pertaining to the prevailing wage, apprenticeship,

domestic content, and energy community requirements for increased or bonus credit (or deduction) amounts under those respective provisions of the Code. Comments received in response to this notice will help to inform development of guidance implementing the provisions of the IRA relating to §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D.

SECTION 2. BACKGROUND

.01 *Overview*.

Taxpayers may qualify for increased credit amounts under §§ 30C, 45, 45Q, 45V, 45Y, 45Z, 48, 48C, and 48E, or an increased deduction amount under § 179D, if certain prevailing wage and apprenticeship requirements are satisfied.[1] In addition, taxpayers may claim an increased credit amount under §§ 45L and 45U for satisfying prevailing wage requirements.[2] Further, taxpayers may qualify for bonus credit amounts under §§ 45, 48, 45Y, and 48E if certain domestic content requirements are satisfied.[3] Finally, taxpayers may qualify for increased credit amounts under §§ 45, 48, 45Y, and 48E for investment in energy communities.[4]

.02 *Prevailing Wage Requirement*.

Sections 45(b)(7), 30C(g)(2), 45L(g), 45Q(h)(3), 45U(d)(2), 45V(e)(3), 45Y(g)(9), 45Z(f)(6), 48(a)(10), 48C(e)(5), and 48E(d)(3) include prevailing wage requirements that taxpayers must satisfy to qualify for increased credit amounts under those sections of the Code. Section 179D(b)(4) includes prevailing wage requirements that taxpayers must satisfy to qualify for an increased deduction amount under that section. The prevailing wage requirements under these various provisions are described below.

Section 45(b)(7)(A) provides, in general, that a taxpayer satisfies the prevailing wage requirements with respect to a qualified facility if the taxpayer ensures that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction of such facility, and with respect to any taxable year for any portion of such taxable year that is within the period described in § 45(a)(2)(A)(ii), the alteration or repair of such facility, are paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such facility is located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code. To determine an increased credit amount for a taxable year, the requirement under § 45(b)(7)(A)(ii) is applied to the taxable year in which the alteration or repair of the qualified facility occurs.

Section 45(b)(7)(B)(i) generally provides a correction and penalty mechanism for a taxpayer that claims the increased credit amount but fails to satisfy the prevailing wage requirement under § 45(b)(7)(A). Section 45(b)(7)(B)(ii) provides that the deficiency procedures under subchapter B of chapter 63 of the Code do not apply with respect to the assessment or collection of any penalty imposed by § 45(b)(7). Section 45(b)(7)(B)(iii) increases the penalty if the Secretary of the Treasury or her delegate (Secretary) determines that any failure to satisfy the prevailing wage requirement under § 45(b)(7)(A) is due to intentional disregard of the requirements under § 45(b)(7)(A).

Section 48(a)(10) provides, in general, that a taxpayer satisfies the prevailing wage requirements with respect to an energy project if the taxpayer ensures that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction of such energy project, and for the 5-year period beginning on the date such project is originally placed in service the alteration or repair of such project, are paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such project is located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40 of the United States Code. Subject to § 48(a)(10)(C), for purposes of any determination under § 48(a)(9)(A)(i) for the taxable year in which the energy project is placed in service, the taxpayer will be deemed to satisfy the requirement under § 48(a)(10)(A)(ii) at the time such project is placed in service. Section 48(a)(10)(B) provides that rules similar to the rules of § 45(b)(7)(B) (that is, the correction and penalty mechanism for failure to satisfy the prevailing wage requirement) apply. Section 48(a)(10)(C) provides that the Secretary is to, by regulations or other guidance, provide for recapturing the benefit of any increase in the credit allowed under § 48(a) by reason of § 48(a)(10) with respect to any project that does not satisfy the requirements under § 48(a)(10)(A) (after application of § 48(a)(10)(B)) for the period described in § 48(a)(10)(A)(ii) (but which does not cease to be investment credit property within the meaning of § 50(a)). The period and percentage of such recapture are determined under rules similar to the rules of § 50(a).

The prevailing wage requirements under §§ 30C(g)(2), 45L(g),[5] 45Q(h)(3),[6] 45U(d)(2),45V(e)(3),45Y(g)(9), 45Z(f)(6)(A), 48C(e)(5), 48E(d)(3), and 179D(b)(4) are similar to the requirements under § 45(b)(7) and § 48(a)(10).

.03 *Apprenticeship Requirements*.

Sections 45(b)(8), 30C(g)(3), 45Q(h)(4), 45V(e)(4), 45Y(g)(10), 45Z(f)(7), 48(a)(11), 48C(e)(6), and 48E(d)(4) include apprenticeship requirements that taxpayers must satisfy to qualify for

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[1] *See § 13404(d) of the IRA for the prevailing wage and apprenticeship requirements under § 30C(g); § 13101(f) of the IRA for the prevailing wage and apprenticeship requirements under § 45(b)(7); § 13104(d) of the IRA for the prevailing wage and apprenticeship requirements under § 45Q(h)(3) and (h)(4); § 13204(a)(1) of the IRA for the prevailing wage and apprenticeship requirements under § 45V(e)(3) and (e)(4); § 13701(a) of the IRA for the prevailing wage and apprenticeship requirements under § 45Y(g)(10); § 13704(a) of the IRA for the prevailing wage and apprenticeship requirements under § 45Z(f)(7); § 13102(k) of the IRA for the prevailing wage and apprenticeship requirements under § 48(a)(10) and (a)(11); § 13501(a) of the IRA for the prevailing wage and apprenticeship requirements under § 48C(e)(5) and (e)(6); § 13702(a) of the IRA for the prevailing wage and apprenticeship requirements under § 48E(c)(3) and (c)(4); and § 13303(a)(1) of the IRA for the prevailing wage and apprenticeship requirements under § 179D(b)(4) and (b)(5).*

[2] *See § 13304(d) of the IRA for the prevailing wage requirement under § 45L(g) and § 13105(a) for the prevailing wage requirements under § 45U(d)(2).*

[3] *See § 13101(g) of the IRA for the domestic content requirements under § 45(b)(9), § 13102(l) of the IRA for the domestic content requirements under § 48(a)(12), § 13701(a) of the IRA for the domestic content requirements under § 45Y(g)(11), and § 13702(a) of the IRA for the domestic content requirements under § 48E(a)(3)(B).*

[4] *See § 13101(g) of the IRA for the energy community provisions under § 45(b)(11), § 13102(o) of the IRA for the energy community provisions under § 48(a)(14), § 13701(a) of the IRA for the energy community provisions under § 45Y(g)(7), and § 13702(a) of the IRA for the energy community provisions under § 48E(a)(3)(A).*

increased credit amounts under those sections of the Code. Section 179D(b)(5) includes apprenticeship requirements that taxpayers must satisfy to qualify for an increased deduction amount. The apprenticeship requirements under these various provisions are described below.

Section 45(b)(8)(A)(i) provides that a taxpayer satisfies the apprenticeship requirements with respect to the construction of any qualified facility if the taxpayer ensures that not less than the applicable percentage of the total labor hours of the construction, alteration, or repair work (including such work performed by any contractor or subcontractor) with respect to such facility is, subject to § 45(b)(8)(B), performed by qualified apprentices. Section 45(b)(8)(E)(ii) defines "qualified apprentice" as "an individual who is employed by the taxpayer or by any contractor or subcontractor and who is participating in a registered apprenticeship program, as defined in section 3131(e)(3)(B)." Section 3131(e)(3)(B) of the Code defines a "registered apprenticeship program" as an "apprenticeship registered under the Act of August 16, 1937 (commonly known as the "National Apprenticeship Act"; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.) that meets the standards of subpart A of part 29 and part 30 of title 29, Code of Federal Regulations."

Under § 45(b)(8)(A)(ii), the applicable percentage of total labor hours to be performed by a qualified apprentice is (1) in the case of a qualified facility the construction of which begins before January 1, 2023, 10 percent, (2) in the case of a qualified facility the construction of which begins after December 31, 2022, and before January 1, 2024, 12.5 percent, and (3) in the case of a qualified facility the construction of which begins after December 31, 2023, 15 percent.

Section 45(b)(8)(B) provides that the requirement under § 45(b)(A)(i) is subject to any applicable requirements for apprentice-to-journeyworker ratios of the Department of Labor or the applicable State apprenticeship agency.

Section 45(b)(8)(C) provides that each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with respect to the construction of a qualified facility must employ one or more qualified apprentices to perform such work.

Section 45(b)(8)(D)(i) provides that a taxpayer will not be treated as failing to satisfy the apprenticeship requirements if the taxpayer (1) satisfies the good faith effort requirements described in § 45(b)(8)(D)(ii), or (2) subject to § 45(b)(8)(D)(iii), in the case of any failure by the taxpayer to satisfy the requirements under § 45(b)(8)(A) and (C) with respect to the construction, alteration, or repair work on any qualified facility to which § 45(b)(8)(D)(i)(I) does not apply, makes payment to the Secretary of a penalty in an amount equal to the product of $50, multiplied by the total labor hours for which the requirement was not satisfied with respect to the construction, alteration, or repair work on such qualified facility.

Section 45(b)(8)(D)(ii) provides that a taxpayer will be deemed to have satisfied the requirements under § 45(b)(8)(A) with respect to a qualified facility if such taxpayer has requested qualified apprentices from a registered apprenticeship program and (1) such request has been denied, provided that such denial is not the result of a refusal by the taxpayer or any contractors or subcontractors engaged in the performance of construction, alteration, or repair work with respect to such qualified facility to comply with the established standards and requirements of the registered apprenticeship program, or (2) the registered apprenticeship program fails to respond to such request within 5 business days after the date on which such registered apprenticeship program received such request.

Section 45(b)(8)(D)(iii) provides that if the Secretary determines that any failure described in § 45(b)(8)(D)(i)(II) is due to intentional disregard of the apprenticeship requirements, § 45(b)(8)(D)(i)(II) must be applied by substituting $500 for $50 for purposes of computing the penalty.

Section 45(b)(8)(E)(i) defines the term "labor hours."

Sections 30C(g)(3), 45Q(h)(4), 45V(e)(4), 45Y(g)(10), 45Z(f)(7), 48(a)(11), 48C(e)(6) (effective for taxable years beginning after January 1, 2023), 48E(d)(4), and 179D(b)(5) apply rules similar to those under § 45(b)(8).

.04 *Domestic Content Requirement*.

Sections 45(b)(9), 48(a)(12), 45Y(g)(11) and 48E(a)(3)(B) provide domestic content requirements that taxpayers must satisfy to qualify for bonus credit amounts under those sections of the Code. Sections 45(b)(9)(A) and 45Y(g)(11)(A) provide for a 10 percent domestic content bonus credit amount if the domestic content requirements are satisfied. Under §§ 48(a)(12)(C) and 48E(a)(3)(B), the domestic content bonus credit amount is reduced from 10 percent to 2 percent if certain other requirements are not satisfied.

Section 45(b)(9)(B)(i) provides that with respect to any qualified facility, the domestic content requirement is satisfied if the taxpayer certifies to the Secretary (at such time, and in such form and manner, as the Secretary may prescribe) that any steel, iron, or manufactured product that is a component of such facility (upon completion of construction) was produced in the United States (as determined under 49 C.F.R. § 661).

Section 45(b)(9)(B)(ii) provides that in the case of steel or iron, § 45(b)(9)(B)(i) is applied in a manner consistent with 49 C.F.R. § 661.5. For purposes of § 45(b)(9)(B)(i), § 45(b)(9)(B)(iii) provides that the manufactured products that are components of a qualified facility upon completion of construction are deemed to have been produced in the United States if not less than the adjusted percentage (as determined under § 45(b)(9)(C)) of the total costs of all such manufactured products of such facility are attributable to manufactured products (including components) that are mined, produced, or manufactured in the United States.

Section 45(b)(9)(C)(i) provides that the adjusted percentage is 40 percent. Section 45(b)(9)(C)(ii) provides an exception for a qualified facility that is an offshore wind facility, for which the adjusted percentage is 20 percent.[7]

[5] *Section 45L (New energy efficient home credit) includes a modified prevailing wage requirement under § 45L(g). Section 45L(g)(3) provides that the Secretary is to issue such regulations or other guidance necessary to carry out the purposes of § 45L(g).*

[6] *Section 45Q(h)(3)(A) applies with respect to any qualified facility and any carbon capture equipment.*

Section 45(b)(10) provides for the phaseout of elective payments. Section 45(b)(10)(A) provides that in the case of a taxpayer making an election under § 6417 with respect to a credit under § 45, the amount of such credit will be replaced with the value of such credit (determined without regard to § 45(b)(10)), multiplied by the applicable percentage. Section 45(b)(10)(B) provides that in the case of any qualified facility (1) that satisfies the requirements under § 45(b)(9)(B), or (2) with a maximum net output of less than 1 megawatt (as measured in alternating current), the applicable percentage is 100 percent. Section 45(b)(10)(C) provides for a phased domestic content requirement, and states that subject to the exceptions in § 45(b)(10)(D), for any qualified facility that is not described in § 45(b)(10)(B), the applicable percentage is (1) 100 percent if construction of such facility begins before January 1, 2024, and (2) 90 percent if construction of such facility begins in calendar year 2024.[8]

Section 45(b)(10)(D)(i) provides that the Secretary is to provide exceptions to the requirements under § 45(b)(10)(D) if (1) the inclusion of steel, iron, or manufactured products that are produced in the United States increases the overall costs of construction of qualified facilities by more than 25 percent, or (2) relevant steel, iron, or manufactured products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality. Section 45(b)(10)(D)(ii) provides that in any case in which the Secretary provides an exception pursuant to § 45(b)(10)(D)(i), the applicable percentage is 100 percent.

Sections 48(a)(12), 45Y(g)(11), and 48E(a)(3)(B) apply similar rules to those under § 45(b)(9). Sections 48(a)(13), 45Y(g)(12), and 48E(d)(5) apply similar elective payments rules to those under § 45(b)(10).

.05 *Energy Community Requirement*. Sections 45(b)(11), 48(a)(14), 45Y(g)(7), and 48E(a)(3)(A) provide energy community requirements that taxpayers must satisfy to qualify for increased credit amounts under those provisions of the Code. Section 45(b)(11)(A) provides that in the case of a qualified facility located in an energy community, the credit determined under § 45(a) (determined after the application of § 45(b)(1) through (10), without the application of § 45(b)(9)) is increased by an amount equal to 10 percent of the amount so determined. Section 45Y(g)(7) provides a similar rule. Under §§ 48(a)(14) and 48E(a)(3)(A), the increase in the credit amount for satisfying the energy community requirements is reduced from 10 percent to 2 percent if certain other requirements are not satisfied.

Section 45(b)(11)(B) provides that for purposes of § 45(b)(11), the term energy community means: (1) A brownfield site (as defined in 42 U.S.C. 9601(39)(A), (B), and (D)(ii)(III)), (2) A metropolitan statistical area or non-metropolitan statistical area that has (or had, at any time after December 31, 2009) 0.17 percent or greater direct employment or 25 percent or greater local tax revenues related to the extraction, processing, transport, or storage of coal, oil, or natural gas (as determined by the Secretary), and has an unemployment rate at or above the national average unemployment rate for the previous year (as determined by the Secretary), or (3) A census tract (i) in which a coal mine has closed after December 31, 1999; or (ii) in which a coal-fired electric generating unit has been retired after December 31, 2009; or (iii) that is directly adjoining to any census tract described in § 45(b)(11)(B)(iii)(I).

The definition of an energy community in § 45(b)(11)(B) is adopted by §§ 45Y(g)(7), 48(a)(14) (subject to certain modifications), and 48E(a)(3)(A).

SECTION 3. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments on questions arising from the amendments in the IRA regarding prevailing wage, apprenticeship, domestic content, and energy community requirements that should be addressed in guidance. Commenters are encouraged to specify the issues on which guidance is needed most quickly as well as the most important issues on which guidance is needed. In addition to general comments, the Treasury Department and the IRS request comments that address the following specific questions:

.01 *Prevailing Wage Requirement*

(1) Section 45(b)(7)(A) provides that a taxpayer must ensure that any laborers and mechanics employed by the taxpayer, or any contractor or subcontractor, are paid wages at rates not less than the prevailing wage rates for construction, alteration, or repair of a similar character in the locality in which such facility is located as most recently determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, which is commonly known as the Davis-Bacon Act. Is guidance necessary to clarify how the Davis-Bacon prevailing wage requirements apply for purposes of § 45(b)(7)(A)?

(2) Section 45(b)(7)(B)(i) generally provides a correction and penalty mechanism for failure to satisfy prevailing wage requirements. What should the Treasury Department and the IRS consider in developing rules for taxpayers to correct a deficiency for failure to satisfy prevailing wage requirements?

(3) What documentation or substantiation should be required to show compliance with the prevailing wage requirements?

(4) Is guidance for purposes of § 45(b)(7)(A) needed to clarify the treatment of a qualified facility that has been placed in service but does not undergo alteration or repair during a year in which the prevailing wage requirements apply?

(5) Please provide comments on any other topics relating to the prevailing wage requirements for purposes of § 45(b)(7)(A) that may require guidance.

.02 *Apprenticeship Requirement*

(1) Section 45(b)(8)(C) provides that each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with respect to a qualified facility must employ one or more

[7] *For purposes of §§ 45, 48, and 48E, the adjusted percentage is 40 percent (20 percent in the case of offshore wind facilities). For purposes of § 45Y, § 45Y(g)(11)(C) provides the adjusted percentages, ranging from 40 precent (20 percent in the case of offshore wind facilities) to 55 percent depending on when construction of a facility begins.*

[8] *For purposes of §§ 45Y(g)(12) and 48E(d)(5), the applicable percentages are the same as for §§ 45 and 48 for facilities that begin construction in 2024 or earlier, but the applicable percentages decrease from 85 percent for facilities that begin construction in 2025 to 0 percent for facilities that begin construction after 2025.*

qualified apprentices from a registered apprenticeship program to perform that work. What factors should the Treasury Department and the IRS consider regarding the appropriate duration of employment of individuals for construction, alteration, or repair work for purposes of this requirement?

(2) Section 45(b)(8)(D)(ii) provides for a good faith effort exception to the apprenticeship requirement.

(a) What, if any, clarification is needed regarding the good faith effort exception?

(b) What factors should be considered in administering and promoting compliance with this good faith effort exception?

(c) Are there existing methods to facilitate reporting requirements, for example, through current Davis-Bacon reporting forms, current performance reporting requirements for contracts or grants, and/or through DOL's Registered Apprenticeship Partners Information Management Data System (RAPIDS) database or a State Apprenticeship Agency's database?

(3) What documentation or substantiation do taxpayers maintain or could they create to demonstrate compliance with the apprenticeship requirements in § 45(b)(8)(A), (B), and (C), or the good faith effort exception?

(4) Please provide comments on any other topics relating to the apprenticeship requirements in § 45(b)(8)(B) that may require guidance.

.03 *Domestic Content Requirement*

(1) Sections 45(b)(9)(B) and 45Y(g)(11)(B) provide that a taxpayer must certify that any steel, iron, or manufactured product that is a component of a qualified facility (upon completion of construction) was produced in the United States (as determined under 49 C.F.R. 661).

(a) What regulations, if any, under 49 C.F.R. 661 (such as 49 C.F.R. 661.5 or 661.6) should apply in determining whether the requirements of section §§ 45(b)(9)(B) and 45Y(g)(11)(B) are satisfied? Why?

(b) What should the Treasury Department and the IRS consider when determining "completion of construction" for purposes of the domestic content requirement? Should the "completion of construction date" be the same as the placed in service date? If not, why?

(c) Should the definitions of "steel" and "iron" under 49 C.F.R. 661.3, 661.5(b) and (c) be used for purposes of defining those terms under §§ 45(b)(9)(B) and 45Y(g)(11)(B)? If not, what alternative definitions should be used?

(d) What records or documentation do taxpayers maintain or could they create to substantiate a taxpayer's certification that they have satisfied the domestic content requirements?

(2) Sections 45(b)(9)(B)(iii) and 45Y(g)(11)(B)(iii) provide that manufactured products that are components of a qualified facility upon completion of construction will be deemed to have been produced in the United States if not less than the adjusted percentage of the total costs of all of such manufactured products of such facility are attributable to manufactured products (including components) that are mined, produced, or manufactured in the United States.

(a) Does the term "component of a qualified facility" need further clarification? If so, what should be clarified and is any clarification needed for specific types of property, such as qualified interconnection property?

(b) Does the determination of "total costs" with regard to all manufactured products of a qualified facility that are attributable to manufactured products (including components) that are mined, produced, or manufactured in the United States need further clarification? If so, what should be clarified? Is guidance needed to clarify the term "mined, produced, or manufactured"?

(c) Does the term "manufactured product" with regard to the various technologies eligible for the domestic content bonus credit need further clarification? If so, what should be clarified? Is guidance needed to clarify what constitutes an "end product" (as defined in 49 C.F.R. 661.3) for purposes of satisfying the domestic content requirements?

(d) Does the adjusted percentage threshold rule that applies to manufactured products need further clarification? If so, what should be clarified?

(e) Does the treatment of subcomponents with regard to manufactured products need further clarification? If so, what should be clarified?

(3) Solely for purposes of determining whether a reduction in an elective payment amount is required under § 6417, §§ 45(b)(10)(D) and 45Y(g)(12)(D) provide an exception for the requirements contained in §§ 45(b)(9)(B) and 45Y(g)(10)(B) (respectively) if the inclusion of steel, iron, or manufactured productions that are produced in the United States increases the overall costs of construction of qualified facilities by more than 25 percent or relevant steel, iron, or manufactured products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality.

(a) Does the determination of "overall costs" and increases in the overall costs with regard to construction of a qualified facility need further clarification? If so, what should be clarified?

(b) What factors should the Secretary include in guidance to clarify when an exception to the requirements under section §§ 45(b)(10)(D) and 45Y(g)(12)(D) applies? What existing regulatory or guidance frameworks, such as the Federal Acquisition Regulation (FAR) and Build America Buy America (BABA) guidance, may be useful for developing guidance to grant exceptions under §§ 45(b)(10)(D) and 45Y(g)(12)(D)?

(c) Do the "sufficient and reasonably available quantities" and "satisfactory quality" standards need further clarification? If so, what should be clarified?

(4) Sections 48 and 48E have domestic content bonus amount rules similar to other provisions of the Code. Section 48(a)(12) has domestic content requirement rules similar to § 45(b)(9)(B) and § 48E(a)(3)(B) has domestic content rules similar to the rules of § 48(a)(12). What should the Treasury Department and the IRS consider in providing guidance regarding the similar domestic content requirements under § 48(a)(12) and § 48E(a)(3)(B)?

(5) Please provide comments on any other topics relating to the domestic content requirements that may require guidance.

.04 *Energy Community Requirement*

(1) Section 45(b)(11)(A) provides an increased credit amount for a qualified facility located in an energy community. What further clarifications are needed regarding the term "located in" for this purpose, including any relevant timing considerations for determining whether a qualified facility is located in an energy

community? Should a rule similar to the rule in § 1397C(f) (Enterprise Zones rule regarding the treatment of businesses straddling census tract lines), the rules in 26 C.F.R. §§ 1.1400Z2(d)-1 and 1.1400Z2(d)-2, or other frameworks apply in making this determination?

(2) Does the determination of a brownfield site (as defined in subparagraphs (A), (B), and (D)(ii)(III) of § 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(39))) need further clarification? If so, what should be clarified?

(3) Which source or sources of information should the Treasury Department and the IRS consider in determining a "metropolitan statistical area" (MSA) and "non-metropolitan statistical area" (non-MSA) under § 45(b)(11)(B)(ii)? Which source or sources of information should be used in determining whether an MSA or non-MSA meets the threshold of 0.17 percent or greater direct employment related to the extraction, processing, transport, or storage of coal, oil, or natural gas, and an unemployment rate at or above the national average unemployment rate for the previous year? What industries or occupations should be considered under the definition of "direct employment" for purposes of this section?

(4) Which source or sources of information should the Treasury Department and the IRS consider in determining census tracts that had a coal mine closed after December 31, 1999, or had a coal-fired electric generating unit retired after December 31, 2009, under § 45(b)(11)(B)(iii)? How should the closure of a coal mine or the retirement of a coal-fired electric generating unit be defined under § 45(b)(11)(B)(iii)?

(5) For each of the three categories of energy communities allowed under § 45(b)(11)(B), what past or possible future changes in the definition, scope, boundary, or status of a "brownfield site" under § 45(b)(11)(B)(i), a "metropolitan statistical area or non-metropolitan statistical area" under § 45(b)(11)(B)(ii), or a "census tract" under § 45(b)(11)(B)(iii) should be considered, and why?

(6) Under § 45(b)(11)(B)(ii)(I), what should the Treasury Department and the IRS consider in determining whether a metropolitan statistical area or non-metropolitan statistical area has or had 25 percent or greater local tax revenues related to the extraction, processing, transport, or storage of coal, oil, or natural gas? What sources of information should be used in making this determination? What tax revenues (for example, municipal, county, special district) should be considered under this section? What, if any, consideration should be given to the unavailability of consistent public data for some of these types of taxes?

(7) Please provide comments on any other topics relating to the energy community requirement that may require guidance.

.05 *Increased Credit Amount for Qualified Facility With Maximum Net Output of Less than 1 Megawatt*

Section 45(b)(6)(A) provides for an increased credit amount in the case of any qualified facility that satisfies the requirements of § 45(b)(6)(B). One way that a qualified facility can satisfy the requirements of § 45(b)(6)(B) is if it is a facility with a maximum net output of less than 1 megawatt (as measured in alternating current). Similarly, § 48(a)(9)(A) provides for an increased credit amount in the case of any energy project that satisfies the requirements of § 48(a)(9)(B), and one way that an energy project can satisfy the requirements of § 48(a)(9)(B) is if it is a project with a maximum net output of less than 1 megawatt of electrical (as measured in alternating current) or thermal energy. Sections 45Y(a)(2)(B) and 48E(a)(2)(A) also provide similar rules. Does the determination of when a facility or project will be considered to have a maximum net output of less than 1 megawatt need further clarification? If so, what should be clarified?

SECTION 4. SUBMISSION OF COMMENTS

.01 Written comments should be submitted by Friday, November 4, 2022. Consideration will be given, however, to any written comment submitted after Friday, November 4, 2022, if such consideration will not delay the issuance of guidance. The subject line for the comments should include a reference to Notice 2022-51. Comments may be submitted in one of two ways:

(1) Electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2022-51 in the search field on the regulations.gov homepage to find this notice and submit comments).

(2) Alternatively, by mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2022-51), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

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

SECTION 5. 60-DAY RULE NOT EFFECTUATED FOR THE PREVAILING WAGE AND APPRENTICESHIP REQUIREMENTS

For purposes of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 48, 48C, 48E, and 179D, the publication of this notice requesting comments is not the publication of guidance with respect to the prevailing wage and apprenticeship requirements, and it is not relevant in determining whether the prevailing wage and apprenticeship requirements are satisfied under such sections. The Treasury Department and the IRS will explicitly identify when it has published guidance with respect to the prevailing wage and apprenticeship requirements that is relevant for determining whether such requirements have been satisfied for purposes of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 48, 48C, 48E, and 179D.

SECTION 6. DRAFTING INFORMATION

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

Extension of Section 42 Relief

Notice 2022-52

SECTION I. PURPOSE

This notice modifies and amplifies sections IV.C, IV.D, IV.F, and V.B of Notice 2022-05, 2022–5 I.R.B. 457, by providing additional temporary relief from certain requirements under § 42 of the Internal Revenue Code (Code) for qualified low-income housing projects. The Internal Revenue Service and the Department of the Treasury have received numerous inquiries related to unavoidable labor and supply-chain disruptions delaying the construction, rehabilitation, and restoration of properties throughout the United States. In view of the unique circumstances resulting from the labor and supply-chain disruptions and their effect on the existing relief provided in Notice 2022-05, it is appropriate to provide the additional temporary relief in this notice.

SECTION II. EXTENSION OF CERTAIN TEMPORARY RELIEF IN NOTICE 2022-05

.01 *Extension of certain placed-in-service deadlines.* This notice modifies and amplifies section IV.C of Notice 2022-05 by designating the four bullets under section IV.C of Notice 2022-05 as section IV.C.(1) through (4), revising section IV.C.(2) and (4), and adding new section IV.C.(5) to extend placed-in-service deadlines for projects receiving allocations in 2019, 2020, and 2021. As so modified and amplified, section IV.C of Notice 2022-05 now reads:

C. PLACED-IN-SERVICE DEADLINE

(1) For purposes of § 42(h)(1)(E)(i), if the original deadline for a low-income building to be placed in service is the close of calendar year 2020, the new deadline is the close of calendar year 2022 (that is, December 31, 2022).

(2) If the original placed-in-service deadline is the close of calendar year 2021 and the original deadline for the 10-percent test in § 42(h)(1)(E)(ii) was before April 1, 2020, the new placed-in-service deadline is the close of calendar year 2023 (that is, December 31, 2023).

(3) If the original placed-in-service deadline is the close of calendar year 2021 and the original deadline for the 10-percent test in § 42(h)(1)(E)(ii) was on or after April 1, 2020, and on or before December 31, 2020, then the new placed-in-service deadline is the close of calendar year 2023 (that is, December 31, 2023).

(4) If the original placed-in-service deadline is the close of calendar year 2022 (and thus the original deadline for the 10-percent test in § 42(h)(1)(E)(ii) was in 2021), then the new placed-in-service deadline is the close of calendar year 2024 (that is, December 31, 2024).

(5) If the original placed-in-service deadline is the close of calendar year 2023 (and thus the original deadline for the 10-percent test in § 42(h)(1)(E)(ii) was in 2022), then the new placed-in-service deadline is the close of calendar year 2024 (that is, December 31, 2024).

.02 *Extension of Agency-set reasonable restoration periods*. This notice modifies and amplifies section IV.D of Notice 2022-05 by permitting a twenty-four-month extension of reasonable restoration periods set by an Agency. As so modified and amplified, section IV.D of Notice 2022-05 now reads:

D. REASONABLE PERIOD FOR RESTORATION OR REPLACEMENT IN THE EVENT OF CASUALTY LOSS

For purposes of § 42(j)(4)(E) both in the case of a casualty loss not due to a pre-COVID-19-pandemic Major Disaster and in situations governed by section 8.02 of Rev. Proc. 2014-49 in the case of a casualty loss due to a pre-COVID-19-pandemic Major Disaster, if a low-income building's qualified basis is reduced by reason of the casualty loss and the reasonable period to restore the loss by reconstruction or replacement that was originally set by the Agency (original Reasonable Restoration Period) ends on or after April 1, 2020, then the last day of the Reasonable Restoration Period is postponed by twenty-four months but not beyond December 31, 2023. Notwithstanding the preceding sentence, the Agency may require a shorter extension, or no extension at all.

For purposes of determining the credit amount allowable under § 42(a) in the case of a credit year that ends on or after April 1, 2020, and not later than the end of the Reasonable Restoration Period (taking into account any extension under the preceding paragraph), if the Owner restores the building by the end of that extended Reasonable Restoration Period, then for taxable years ending after the first day of the casualty and before the completion of the restoration, the Owner must use the building's qualified basis at the end of the taxable year immediately preceding the first day of the casualty as the building's qualified basis for that credit year.

.03 *Extension of Agency-set correction periods*. This notice modifies and amplifies section IV.F of Notice 2022-05 by extending the correction period set by an Agency by twelve months. As so modified and amplified, section IV.F of Notice 2022-05 now reads:

F. CORRECTION PERIOD

For purposes of § 1.42-5, if a correction period that was set by the Agency ends on or after April 1, 2020, and before December 31, 2022, then the end of the correction period (including as already extended, if applicable) is extended by a year, but not beyond December 31, 2023. If the correction period originally set by the Agency ends during 2023, the end of the period is extended to December 31, 2023. Notwithstanding the preceding sentences, the Agency may require a shorter extension, or no extension at all.

.04 *Extension of waivers of compliance monitoring physical inspections*. This notice modifies and amplifies section V.B of Notice 2022-05 by extending the temporary waiver for compliance monitoring physical inspections. As so modified and amplified, section V.B of Notice 2022-05 now reads:

B. COMPLIANCE-MONITORING—PHYSICAL INSPECTIONS

For purposes of § 1.42-5, an Agency is not required to conduct compliance-monitoring physical inspections in the period beginning on April 1, 2020, and ending on June 30, 2022. Because of high State-to-State and intra-State variability of COVID-19 transmission, an Agency, consistent with a general or specific health and safety recommendation of a State or local public health authority, may extend the waiver in the preceding sentence if the level of transmission makes such an extension appropriate. Depending on varying rates of transmission, the extension may be State-wide, may be limited to specific locales, or may be on a project-by-project basis. No such extension may go beyond December 31, 2023. The Agency must resume compliance-monitoring reviews as due under § 1.42-5 once the waiver expires.

For purposes of § 1.42-5(c)(2)(iii)(C)(3), between April 1, 2020, and the end of 2022 only, when the Agency gives an Owner reasonable notice that it will physically inspect not-yet-identified low-income units, it may treat reasonable notice as being up to 30 days. Beginning on January 1, 2023, for this purpose reasonable notice again is generally no more than 15 days

SECTION III. EFFECT ON OTHER DOCUMENTS

Notice 2022-05 is modified and amplified.

SECTION IV. DRAFTING INFORMATION

The principal author of this notice is Dillon Taylor, Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, please contact Dillon Taylor at (202) 317-4137 (not a toll-free number).

NOTE. This revenue procedure will be reproduced as the next revision of IRS Publication 1167, General Rules and Specifications for Substitute Forms and Schedules.

Rev. Proc. 2022-31

TABLE OF CONTENTS

Part 1
Introduction to Substitute Forms

Section 1.1 – Overview of Revenue Procedure 2022-31

1.1.1
Purpose

The purpose of this revenue procedure is to provide guidelines and general requirements for the development, printing, and approval of the 2022 substitute tax forms. Approval will be based on these guidelines. After review and approval, submitted forms will be accepted as substitutes for official IRS forms.

1.1.2
Unique Forms

Certain unique specialized forms require the use of other publications that supplement this publication. See *Part 4*.

1.1.3
Scope

The IRS accepts quality substitute tax forms that are consistent with the official forms and have no adverse impact on processing. The IRS Substitute Forms Program (the Program) administers the formal acceptance and processing of these forms nationwide. While this Program deals with paper documents, it also reviews for approval other processing and filing forms used in electronic filing.

Only those substitute forms that fully comply with these requirements are acceptable. This revenue procedure is updated as required to reflect pertinent tax year form changes and to meet processing and/or legislative requirements.

1.1.4
Forms Covered by This Revenue Procedure

The following types of forms are covered by this revenue procedure.

- IRS tax forms and their related schedules.
- Worksheets as they appear in the instructions.
- Applications for permission to file returns electronically and forms used as required documentation for electronically filed returns.
- Powers of Attorney.
- Over-the-counter estimated tax payment vouchers.
- Forms and schedules relating to partnerships, exempt organizations, and employee plans.

1.1.5
Forms Not Covered by This Revenue Procedure

The following types of forms are not covered by this revenue procedure. Refer to the publication for questions.

- W-2 and W-3. See Pub. 1141, General Rules and Specifications for Substitute Forms W-2 and W-3.
- W-2c and W-3c. See Pub. 1223, General Rules and Specifications for Substitute Forms W-2c and W-3c.

- 941 and attached schedules. See Pub. 4436, General Rules and Specifications for Substitute Form 941, Schedule B (Form 941), Schedule D (Form 941), Schedule R (Form 941), and Form 8974.
- 1096, 1097-BTC, 1098 series, 1099 series, 3921, 3922, 5498 series, W-2G, and 1042-S. See Pub. 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns.
- 1095-A, 1094-B, 1095-B, 1094-C, and 1095-C. See Pub. 5223, General Rules and Specifications for Affordable Care Act Substitute Forms 1095-A, 1094-B, 1095-B, 1094-C, and 1095-C.
- 8027. See Pub. 1239, Specifications for Electronic Filing of Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips.
- Forms 1040-ES (OCR) and 1041-ES (OCR), which may not be reproduced.
- Form 5500 series (for more information on these forms, see the Department of Labor website at www.efast.dol.gov).
- Forms 5300, 5307, 8717, and 8905, bar-coded forms requiring separate approval.
- Forms used internally by the IRS.
- State tax forms.
- Forms developed outside the IRS.

1.1.6 Other Information Not Covered by This Revenue Procedure

The following information is not covered by this revenue procedure.

- Requests for information or documentation initiated by the IRS.
- General Instructions and Specific Instructions (these are not reviewed by the Program).

Section 1.2 – IRS Contacts

1.2.1 Where To Send Substitute Forms

Send your substitute forms for **approval** to the following offices. Do not send forms with taxpayer data.

Form	Office and Address
5500	Check EFAST2 information at the Department of Labor website at www.efast.dol.gov.
5300, 5307, 8717, and 8905	Sandra.K.Barnes@irs.gov
Software developer vouchers (see *Sections 2.3.7–2.3.9*)	Internal Revenue Service Attn: Doris Bethea 5000 Ellin Road, C5-226 Lanham, MD 20706 Doris.E.Bethea@irs.gov
ACA Forms 1094-B, 1095-B, 1094-C, and 1095-C (for more information, see Pub. 5223), and Schedule K-1 forms must be emailed for scannability testing	scrips@irs.gov

Form	Office and Address
Schedule K-1 2-D bar-coded forms	For mailing addresses for sending Schedule K-1 2-D bar-coded forms for testing, see *Section 7.1.6*.
All others covered by this publication (see *Section 1.1.4*)	Internal Revenue Service Attn: Substitute Forms Program SE:W:CAR:MP:P:TP:TP 5000 Ellin Road, Mail Stop C-110 Lanham, MD 20706 substituteforms@irs.gov

Section 1.3 – What's New

1.3.1 What's New

The following changes have been made to this year's revenue procedure.

- **.01 Editorial changes.** We made editorial changes as needed and eliminated repetitive information.
- **.02 Required 3-letter FFF code.** The IRS requires tax preparation software firms that participate in the IRS Free File Program include the 3-letter FFF code on all paper Form 1040 returns created by their individual tax preparation software.

Section 1.4 – Definitions

1.4.1 Substitute Form

A tax form (or related schedule) that differs in any way from the official version and is intended to replace the form that is printed and distributed by the IRS. This term also covers those approved substitute forms exhibited in this revenue procedure.

1.4.2 Printed/ Preprinted Form

A form produced using conventional printing processes or a printed form which has been reproduced by photocopying or a similar process.

1.4.3 Preprinted Pin- Fed Form

A printed form that has marginal perforations for use with automated and high-speed printing equipment.

1.4.4 Computer- Prepared Substitute Form

A preprinted form in which the taxpayer's tax entry information has been inserted by a computer, computer printer, or other computer-type equipment.

1.4.5 Computer- Generated Substitute Tax Return or Form

A tax return or form that is entirely designed and printed using a computer printer on plain white paper. This return or form must conform to the physical layout of the corresponding IRS form, although the typeface may differ. The text should match the text on the officially printed form as closely as possible. Condensed text and abbreviations will be considered on a case-by-case basis.

Exception. All jurats (perjury statements) must be reproduced verbatim.

1.4.6 **Manually Prepared Form**	A preprinted reproduced form in which the taxpayer's tax entry information is entered by an individual using a pen, a pencil, or other nonautomated equipment.
1.4.7 **Graphics**	Parts of a printed tax form that are not tax amount entries or required text. Examples of graphics are line numbers, captions, shadings, special indicators, borders, rules, and strokes created by typesetting, photographics, photocomposition, etc.
1.4.8 **Acceptable Reproduced Form**	A legible photocopy or an exact replica of an original form.
1.4.9 **Supporting Statement (Supplemental Schedule)**	A document providing detailed information to support a line entry on an official or approved substitute form and filed with (attached to) a tax return. **Note.** A supporting statement is not a tax form and does not take the place of an official form.
1.4.10 **Specific Form Terms**	The following specific terms are used throughout this revenue procedure in reference to all substitute forms: format, sequence, line reference, item caption, and data entry field.
1.4.11 **Format**	The overall physical arrangement and general layout of a substitute form.
1.4.12 **Sequence**	Sequence is an integral part of the total format requirement. The substitute form should show the same numeric and logical placement order of data as shown on the official form.
1.4.13 **Line Reference**	The line numbers, letters, or alphanumerics used to identify each captioned line on an official form. These line references are printed to the immediate left of each caption and/or data entry field.
1.4.14 **Item Caption**	The text on each line of a form, which identifies the data required.
1.4.15 **Data Entry Field**	Designated areas for the entry of data such as dollar amounts, quantities, responses, and checkboxes.
1.4.16 **Advance Draft**	A draft version of a new or revised form may be posted to the IRS website (IRS.gov/DraftForms) for information purposes. Substitute forms may be submitted based on these advance drafts, but any submitter that receives forms approval based on these early drafts is responsible for monitoring and revising forms to reflect any revisions in the final forms provided by the IRS.

1.4.17
Approval

Generally, approval could be in writing or assumed after 20 business days from our receipt for forms that have not been substantially changed by the IRS. This does not apply to newly created or substantially revised IRS forms. However, the Program reserves the right to notify vendors of any inaccuracies even after 20 business days have lapsed.

1.4.18
National Association of Computerized Tax Processors (NACTP)

The National Association of Computerized Tax Processors (NACTP) is a nonprofit association that represents tax processing software and hardware developers, electronic filing processors, tax form publishers, tax processing service bureaus, and payroll processors. The association promotes standards in tax processing to advance efficient and effective tax filing. For more information, see NACTP.org.

Section 1.5 – Agreement

1.5.1
Important Stipulation of This Revenue Procedure

Any person or company who uses substitute forms and makes all or part of the changes specified in this revenue procedure agrees to the following stipulations.

- The IRS presumes that any required changes are made in accordance with these procedures and will not be disruptive to the processing of the tax return.
- Should any of the changes be disruptive to the IRS's processing of the tax return, the person or company agrees to accept the determination of the IRS as to whether the form may continue to be filed.
- The person or company agrees to work with the IRS in correcting noted deficiencies. Notification of deficiencies may be made by any combination of letter, email, or phone contact and may include the request for the resubmission of unacceptable forms.

1.5.2
Response Policy and Stipulations

The Program will email confirmation of receipt of your forms submission, if possible. Even if you do not receive emailed confirmation of receipt, you will receive an emailed "submission receipt," which will provide feedback on your submission. If the Program anticipates problems in completing the review of your submission within the 20-business-day period, the Program will send an interim email notifying you of the extended period for review.

Once the substitute forms have been approved by the Program, you can release them after the final versions of the forms have been issued by the IRS. Before releasing the forms, you are responsible for updating forms approved as draft and for making form changes requested.

The policy has the following stipulations.

- This 20-business-day policy applies to electronic submissions only. It does not apply to substitute submissions mailed to the Program.
- The policy applies to submissions of 15 (optimal) or fewer items and submissions containing 75 pages or less. Submissions of more than 15 items may require additional review time.
- If you send a large number of submissions within a short period of time, processing may be delayed.

- Delays in processing could occur if the Program finds significant errors in your submission or has experienced an increase in submissions. The Program will send you an interim email in this case.

- Any anticipated problems in processing your submission within the 20-business-day period will generate an interim email on or about the 15th business day.

- If any significant inaccuracies are discovered after the 20-business-day period, the Program reserves the right to inform you and will require that changes be made to correct the inaccuracies.

- The policy does not apply to substantially revised forms or to new forms created by the IRS for which you have already made an initial submission.

Part 2
General Guidelines for Submissions and Approvals

Section 2.1 – General Specifications for Approval

2.1.1
Overview

If you produce any substitute tax forms that fully comply or follow the changes specifically outlined by the Program, then you can generate your own substitute forms without further approval. Also, if your substitutes have received approval in the past, and there are no substantial formatting or text changes for the tax year, then changes can be made without additional approval. If your changes are more extensive, you must get IRS approval before using substitute forms. More extensive changes include different font style, decreasing or increasing the font size of caption titles, adjusting or omitting format/layout elements, changing page orientation, and repositioning line items, tables, and legends.

2.1.2
Email Submissions

The Program accepts submissions of substitute forms for review and approval via email. The email address is substituteforms@irs.gov. Please include the term "PDF Submissions" on the subject line.

Follow these guidelines.

- Email submission should include all the forms you wish to submit in one Portable Document Format (PDF) file. Do not email or attach each form individually.

- The emailed submission should include a maximum of 3 PDFs to include a checksheet, a cover letter or accompanying statement, and a single PDF that includes all of the forms listed on your checksheet, cover letter, or accompanying statement.

- A submission should contain a maximum of 15 forms.

- An approval checksheet listing the forms you are submitting should always be included in the PDF file along with the forms. Excluding the checksheet can slow the reviewing process down, which can result in a delayed response to your submission. See a sample checksheet in *Exhibit B*.

- Optimize PDF files before submitting.

- The maximum allowable email attachment is 2.5 megabytes.
- The Program accepts zip files.
- To alleviate delays during the peak time of September through December, submit advance draft forms as early as possible.

If the guidelines are not followed, you may need to resubmit.

Emailing PDF submissions will not expedite review and approval. Submitting your substitute forms package via email is the preferred and suggested method for submitting forms for review. If, for some reason, you are not able to email your submission(s), you can mail your submission(s) to:

Internal Revenue Service
Attn: Substitute Forms Program
SE:W:CAR:MP:P:TP:TP
5000 Ellin Road, Mail Stop C-110
Lanham, MD 20706

2.1.3
Expediting the Process

Follow these basic guidelines for expediting the process.

- Always include a checksheet for the Program's response.
- Include an accompanying statement identifying most, if not all, of the deviations your substitute forms may have from the official IRS versions.
- Follow the guidance in this publication for general substitute form guidelines. Follow the guidance in specialized publications produced by the Program for other specific forms.
- To spread out the workload, send in draft versions of substitute forms when they are posted. **Note.** Be sure to make any changes to approved drafts before releasing final versions.

2.1.4
Schedules

Some schedules are considered to be an integral part of a complete tax return and must be submitted as part of the form. Other schedules may be submitted separately and do not need to be included with the tax form.

2.1.5
Examples of Schedules That Must Be Submitted With the Return

Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, is an example of this situation. Its Schedules A through U have pages numbered as part of the basic return. For Form 706 to be considered for approval, the entire form, including Schedules A through U, as well as Schedule PC, must be submitted.

2.1.6
Examples of Schedules That Can Be Submitted Separately

Schedules C, D, and E for Form 1040 or 1040-SR are examples of schedules that can be submitted separately. Although printed by the IRS as a supplement to Form 1040 or 1040-SR, these schedules are not required to be submitted for approval with Form 1040 or 1040-SR. These schedules may be separated from Form 1040 or 1040-SR and submitted as substitute forms.

2.1.7
Use and Distribution of Unapproved Forms

The IRS is continuing a program to identify and contact tax return preparers, forms developers, and software publishers who use or distribute unapproved forms that do not conform to this revenue procedure. The use of unapproved forms hinders the processing of the returns.

Section 2.2 – Highlights of Permitted Changes and Requirements

2.2.1
Methods of Reproducing IRS Forms

There are methods of reproducing IRS printed tax forms suitable for use as substitutes without prior approval.

- You can photocopy most tax forms and use them instead of the official ones. The entire substitute form, including entries, must be legible.
- You can reproduce any current tax form as cut sheets, snap sets, and marginally punched, pin-fed forms as long as you use an official IRS version as the master copy.
- You can reproduce a form that requires a signature as a valid substitute form. Many tax forms (including returns) have a taxpayer signature requirement as part of the form layout. The jurat/ perjury statement/ signature line areas must be retained and worded exactly as on the official form. The requirement for a signature, by itself, does not prohibit a tax form from being properly computer generated.

Section 2.3 – Vouchers

2.3.1
Overview

All payment vouchers (Forms 940-V, 941-V, 943-V, 944-V, 945-V, 1040-ES, 1040-V, 1041-V, and 2290-V) must be reproduced in conjunction with their forms. Substitute vouchers must be the same size as the officially printed vouchers. Vouchers that are prepared for printing on a laser printer may include a scan line.

2.3.2
Scan Line Specifications

	NNNNNNNNN	AA	XXXX	NN	N	NNNNNN	NNN
Item:	A	B	C	D	E	F	G

A. Social Security Number/Employer Identification Number/Individual Taxpayer Identification Number (SSN/EIN/ITIN) has 9 numeric (N) spaces.

B. Check Digits have 2 alpha (A) spaces.

C. Name Control has 4 alphanumeric (X) spaces.

D. Master File Tax (MFT) Code has 2 numeric (N) spaces (see *Section 2.3.3*).

E. Taxpayer Identification Number (TIN) Type has 1 numeric (N) space (see *Section 2.3.4*).

F. Tax Period has 6 numeric (N) spaces in year/month format (YYYYMM).

G. Transaction Code has 3 numeric (N) spaces.

2.3.3
MFT Code

Code Number for Forms:

- 1040 (family) – 30,
- 940 – 10,
- 941 – 01,
- 943 – 11,

- 944 – 14,
- 945 – 16,
- 1041-V – 05,
- 2290 – 60, and
- 4868 – 30.

2.3.4
TIN Type

Type Number for:

- Form 1040 (family) and Form 4868 – 0; and
- Forms 940, 941, 943, 944, 945, 1041-V, and 2290 – 2.

2.3.5
Voucher Size

The voucher size must be exactly 8.0″ x 3.25″ (Forms 1040-ES and 1041-ES must be 7.625″ x 3.0″). The document scan line must be vertically positioned 0.25 inch from the bottom of the scan line to the bottom of the voucher. The last character on the right of the scan line must be placed 3.5 inches from the right leading edge of the document. The minimum required horizontal clear space between characters is 0.014 inch. The line to be scanned must have a clear band 0.25 inch in height from top to bottom of the scan line, and from border to border of the document. "Clear band" means no printing except for dropout ink.

2.3.6
Print and Paper Weight

Vouchers must be imaged in black ink using OCR A, OCR B, or Courier 10. These fonts may not be mixed in the scan line. The horizontal character pitch is 10 CPI. The preferred paper weight is 20 to 24 pound OCR bond.

2.3.7
Specifications for Software Developers

Certain vouchers may be reproduced for use in the IRS lockbox system. These include the 1040-V, 1040-ES, 1041-V, the 94X family, and 2290 vouchers. Software developers must follow these specific guidelines to produce scannable vouchers strictly for lockbox purposes. Also see *Exhibit A*.

- The total depth must be 3.25 inches.
- The scan line must be 0.5 inch from the bottom edge and 1.75 inches from the left edge of the voucher and left justified.
- Software developers' vouchers must be 8.5 inches wide (instead of 8 inches with a cut line). Therefore, no vertical cut line is required.
- Scan line positioning must be exact.
- Do not use the over-the-counter format voucher and add the scan line to it.
- All scanned data must be in 12-point OCR A font.
- The 4-digit NACTP ID code or IRS source code should be placed under the payment indicator arrow.
- Windowed envelopes must not display the scan line in order to avoid disclosure and privacy issues.

Note. All software developers must ensure that their software uses OCR A font so taxpayers will be able to print the vouchers in the correct font.

2.3.8
Specific Line Positions

Follow these line specifications for entering taxpayer data in the lockbox vouchers.

	Start Row	Start Column	Width	End Column
Line Specifications forTaxpayer Data:				
Taxpayer Name	56	6	36	41
Taxpayer Address, Apt.	57	6	36	41
Taxpayer City, State, ZIP	58	6	36	41
Foreign Country Name	59	6	36	41
Foreign Province/County	60	6	17	22
Foreign Postal Code	60	26	16	41
Line Specifications for MailTo Data:				
Mail Name	56	43	38	80
Mail Address	57	43	38	80
Mail City, State, ZIP	58	43	38	80
Line Specifications for:				
Scan Line	63	26	n/a	n/a

2.3.9
How To Get Approval

To receive approval, the following procedures are in effect due to COVID-19.

Please send an approval sheet with each form type for IRS signature to Doris Bethea at Doris.E.Bethea@irs.gov. You should include in the email an example of each type of voucher the site will be testing. **Note.** Do not mail any test vouchers to Doris Bethea.

You are required to send 25 voucher samples of each form in PDF format. You should email the test vouchers to raul.t.mariduena@jpmorgan.com. You can also print the vouchers and send them to his mailing address at:

JP Morgan Chase
Attn: Raul Mariduena
830 Tyvola Road, Suite 114
Charlotte, NC 28217

To receive approval under regular circumstances, please send in 25 voucher samples yearly for each form type or scenario, by December 8, 2022, for testing to the following address.

Internal Revenue Service
Attn: Doris Bethea, C5-226
5000 Ellin Road
Lanham, MD 20706

For further information, contact Doris Bethea at Doris.E.Bethea@irs.gov, or at 240-613-5922 (not toll free); or Kathryn Wheelock at Kathryn.F.Wheelock@irs.gov, or at 816-499-4443 (not toll free); or Dorothy Bazemore at Dorothy.B.Bazemore@irs.gov, or at 240-613-3351 (not toll free).

Section 2.4 – Restrictions on Changes

2.4.1
What You Cannot Do to Forms Suitable for Substitute Tax Forms

You cannot, without prior IRS approval, change any IRS tax form or use your own (nonapproved) versions including graphics, unless specifically permitted by this revenue procedure. See *Sections 2.5.7* through *2.5.11*.

You cannot adjust any of the graphics on Form 1040 or 1040-SR (except in those areas specified in *Part 5* of this revenue procedure) without prior approval from the Program.

You cannot rearrange or redistribute data entry fields, and/or allow data entry fields to flow from one page onto the next (that is, each page of a substitute form must contain the exact number of data entry fields as there are on the official IRS form). The order of information on the substitute form must be identical to the IRS version of the form. Publications for specific substitute forms will state allowances for those respective forms.

Note. The 20-business-day turnaround policy may not apply to extensive changes.

Section 2.5 – Guidelines for Obtaining IRS Approval

2.5.1
Basic Requirements

Preparers who submit substitute privately designed, privately printed, computer-generated, or computer-prepared tax forms must develop these substitutes using the guidelines established in this part. These forms, unless there is an exception outlined by the revenue procedure, must be approved by the IRS before being filed.

2.5.2
Conditional Approval Based on Advance Drafts

The IRS cannot grant final approval of your substitute form until the official form has been published. However, the IRS posts advance draft forms on its website at IRS.gov/DraftForms.

Submission of proposed substitutes of these advance draft forms is encouraged, and conditional approval will be granted based solely on these early drafts. These advance drafts are subject to significant change before forms are finalized. If these advance drafts are used as the basis for your substitute forms, you will be responsible for subsequently updating your final forms to agree with the final official version. These revisions need not be resubmitted for further approval.

Note. Approval of forms based on advance drafts will not be granted after the final version of an official form is published.

2.5.3
Submission Procedures

Follow these general guidelines when submitting substitute forms for approval.

- Any alteration of forms must be within the limits acceptable to the IRS. It is possible that, from one filing period to another, a change in law or a change in internal need (processing, audit, compliance, etc.) may change the allowable limits for the alteration of the official form.

- When approval of any substitute form (other than those exceptions specified in *Part 1*, *Section 1.2 – IRS Contacts*) is requested, a sample of the proposed substitute form should be emailed for consideration to the Program at the address shown in *Section 1.2.1*.

- Schedules and forms (for example, Forms 3468, 4136, etc.) that can be used with more than one type of return (for example, Forms 1040, 1040-SR, 1041, 1120, etc.) should be submitted only once for approval, without regard to the number of different tax returns with which they may be associated. Also, all pages of multi-page forms or returns should be submitted in the same package.

2.5.4
Approving Offices

Because only the Program is authorized to approve substitute forms, unnecessary delays may occur if forms are sent to the wrong office. You may receive an interim letter about the delay. The Program may then coordinate the response with the originator responsible for revising that particular form. Such coordination may include allowing the originator to officially approve the form. No IRS office is authorized to allow deviations from this revenue procedure.

2.5.5
IRS Review of Software Programs, etc.

The IRS does not review or approve the logic of specific software programs, nor does the IRS confirm the calculations on the forms produced by these programs. The accuracy of the program remains the responsibility of the software package developer, distributor, or user.

The Program is primarily concerned with the pre-filing quality review of the final forms that are expected to be processed by IRS field offices. For this purpose, you should submit forms without including any taxpayer information such as names, addresses, monetary amounts, etc.

If the software used is programmed to produce copies with populated fields, then you must use dummy information. This will allow the Program to review and provide feedback or approval. Vendors should use "0" for all number values and "X" for any information that requires alpha characters.

2.5.6
When To Send Proposed Substitutes

Proposed substitutes, which are required to be submitted per this revenue procedure, should be sent as much in advance of the filing period as possible. This is to allow adequate time for analysis and response.

2.5.7
Accompanying Statement

When submitting sample substitutes, you should include an accompanying statement that lists each form number and its changes from the official form (position, arrangement, appearance, line numbers, additions, deletions, etc.). With each of the items, you should include a detailed reason for the change.

When requesting approval, please include a checksheet. Checksheets expedite the approval process. The checksheet may look like the example in *Exhibit B* displayed in the back of this procedure or may be one of your own design.

Please include your email address on the checksheet.

2.5.8
Approval/ Nonapproval Notice

The Program will email the checksheet or an approval letter to the originator, unless:

- The requester has asked for a formal letter, or
- Significant corrections to the submitted forms are required.

Notice of approval may impose qualifications before using the substitutes. Notices of unapproved forms may specify the changes required for approval and require resubmission of the form(s) in question. When appropriate, you will be contacted by telephone.

2.5.9
Duration of Approval

Most signature tax returns and many of their schedules and related forms have the tax year printed in the upper right corner. Approvals for these annual forms are usually good for 1 calendar year (January through December of the year of filing). Quarterly tax forms in the 94X series and Form 720 require approval for any quarter in which the form has been revised.

Because changes are usually made to an annual form every year, each new filing season generally requires a new submission of a substitute form. Very rarely is updating the preprinted year the only change made to an annual form. However, if no significant content, formatting, or layout changes were made to a tax form, then review and approval received for the prior tax year can be carried over into the current tax year.

2.5.10
Limited Continued Use of an Approved Change

Limited changes approved for one tax year may be allowed for the same form in the following tax year. Examples are the use of abbreviated words, revised form spacing, compressed text lines, shortened captions, etc., which do not change the integrity of lines or text on the official forms.

If the vendor or filer makes substantial changes to the form, new substitutes must be submitted for approval. If the vendor or filer makes only minor editorial changes to the form, or makes any changes that mirror changes the IRS makes to the form's official version, the new substitute does not need to be submitted for approval. It is the responsibility of each vendor who has been granted permission to produce substitute forms to monitor and revise forms to mirror any revisions to the official forms made by the IRS. If there are any questions, please contact the Program.

2.5.11
When Approval Is Not Required

If you received approval for a specific change on a form last year, you may make the same change this year if the item is still present on the official form.

- The new substitute form does not have to be submitted to the IRS and approval based on that change is not required.
- However, the new substitute form must conform to the official current year IRS form in other respects, such as date, Office of Management and Budget (OMB) approval number, attachment sequence number, Paperwork Reduction Act Notice statement, arrangement, item caption, line number, line reference, data sequence, etc.
- The new substitute form must also comply with changes to the guidelines in this revenue procedure. The procedure may have eliminated, added to, or otherwise changed the guideline(s) that affected the change approved in the prior year.
- An approved change is authorized only for the period from a prior tax year substitute form to a current tax year substitute form.

Exception. Forms with temporary, limited, or interim approvals (or with approvals that state a change is not allowed in any other tax year) are subject to review in subsequent years.

2.5.12
Required Copies

Generally, you must send us one copy of each form being submitted for approval. However, if you are producing forms for different computer platforms (for example, Microsoft vs. Apple),

different tax preparation software (for example, TurboTax® vs. TaxSlayer®), or different types of printers (for example, inkjet vs. impact), and these forms differ **significantly** in appearance, submit one copy for each type of platform, tax preparation software, or printer.

2.5.13
Requestor's Responsibility

Following receipt of an initial approval for a substitute forms package or a software output program to print substitute forms, it is the responsibility of the originator (designer or distributor) to provide client firms or individuals with forms that meet the IRS's requirements for continuing acceptability. Examples of this responsibility include:

- Using the prescribed print paper, font size, legibility, state tax data deletion, etc.; and
- Informing all users of substitute forms of the legal requirements of the Paperwork Reduction Act Notice, which is generally found in the instructions for the official IRS forms.

2.5.14
Source Code

The Program will assign a unique source code to each firm that submits substitute forms for approval. This source code will be a permanent identifier that must be used on every submission by a particular firm.

The source code consists of three alpha characters and should generally be printed under or to the left of the "Paperwork Reduction Act" statement. Vendors must ensure that the source code is not printed too close to or within the left or bottom 0.5 inch margin to avoid the source code from being cut off during printing.

Section 2.6 – Office of Management and Budget (OMB) Requirements for All Substitute Forms

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2.6.1
OMB
Requirements for All
Substitute Forms

There are legal requirements of the Paperwork Reduction Act of 1995 (the Act). Public Law 104-13 requires the following.

- OMB approves all IRS tax forms that are subject to the Act.
- Each IRS form contains (in the upper right corner) the OMB number, if assigned.
- Each IRS form (or its instructions) states why the IRS needs the information, how it will be used, and whether or not the information is required to be furnished to the IRS.

This information must be provided to every user of official or substitute IRS forms or instructions.

2.6.2
Application of the
Paperwork Reduction Act

On forms that have been assigned OMB numbers:

- All substitute forms must contain in the upper right corner the OMB number that is on the official form, and
- The required format is: OMB No. 1545-XXXX (preferred) or OMB # 1545-XXXX (acceptable).

2.6.3
Required Explanation to Users

You must inform the users of your substitute forms of the IRS use and collection requirements stated in the instructions for official IRS forms.

- If you provide your users or customers with the official IRS instructions, each form must retain either the Paperwork Reduction Act Notice (or Disclosure, Privacy Act, and Paperwork Reduction Act Notice), or a reference to it as the IRS does on the official forms (usually in the lower left corner of the forms).

- This notice reads, in part, "We ask for tax return information to carry out the tax laws of the United States. "

Note. If no IRS instructions are provided to users of your forms, the exact text of the Paperwork Reduction Act Notice (or Disclosure, Privacy Act, and Paperwork Reduction Act Notice) must be furnished separately or on the form.

2.6.4
Finding the OMB Number and Paperwork Reduction Act Notice

The OMB number and the Paperwork Reduction Act Notice, or references to it, may be found printed on an official form (or its instructions). The number and the notice are included on the official paper format and in other formats produced by the IRS.

Part 3
Physical Aspects and Requirements

Section 3.1 – General Guidelines for Substitute Forms

3.1.1
General Information

The official form is the standard. Because a substitute form is a variation from the official form, you should know the requirements of the official form for the year of use before you modify it to meet your needs. To obtain the most frequently used tax forms, visit IRS.gov/Forms.

3.1.2
Design

Each form must follow the design of the official form as to format arrangement, item caption, line numbers, line references, and sequence.

3.1.3
State Tax Information Prohibited

Generally, state tax information must not appear on the federal tax return, associated form, or schedule that is filed with the IRS. Exceptions occur when amounts are claimed on, or required by, the federal return (for example, state and local income taxes on Schedule A (Form 1040)).

IF a form is to be...	THEN...
manually prepared and the official IRS form still has a separate cents entry field	1. the entry column must have a vertical line or some type of indicator in the amount field to separate dollars from cents, and 2. the cents column must be at least 0.3 inch wide.
computer generated	1. vertically align the amount entry fields where possible, and 2. use one of the following amount formats. a) 0,000,000. b) 0,000,000.00.

3.1.4
Vertical Alignment of Amount Fields

IF a form is to be...	THEN...
computer prepared	1. you may remove the vertical line in the amount field that separates dollars from cents, and 2. use one of the following amount formats. a) 0,000,000. b) 0,000,000.00.

3.1.5
Attachment Sequence Number

Many individual income tax forms have a required "attachment sequence number" located just below the year designation in the upper right corner of the form. The IRS uses this number to indicate the order in which forms are to be attached to the tax return for processing. Some of the attachment sequence numbers may change from year to year.

The following apply to computer-prepared forms.

- The sequence number may be printed in no less than 12-point boldface type and centered below the form's year designation.
- The sequence number may also be placed following the year designation for the tax form and separated with an asterisk.
- The actual number may be printed without labeling it the "Attachment Sequence Number."

3.1.6
Assembly of Forms

When developing software or forms for use by others, please inform your customers/clients that the order in which the forms are arranged may affect the processing of the package. A return must be arranged in the order indicated below.

IF the form is...	**THEN the sequence is...**
1040 or 1040-SR	Form 1040 or 1040-SR, and schedules and forms in attachment sequence number order.
any other tax return (Form1120, 1120-S, 1065, 1041, etc.)	the tax returns, directly associated schedules (Schedule D, etc.), directly associated forms, additional schedules in alphabetical order, and additional forms in numerical order.

Supporting statements should then follow in the same sequence as the forms they support. Additional information required should be attached last.

In this way, the forms are received in the order in which they must be processed. If you do not send returns to the IRS in order, processing may be delayed.

3.1.7
Paid Preparer's Information and Signature Area

On Forms 1040, 1040-SR, and 1120, and any other applicable tax forms, the "Paid Preparer Use Only" area may not be rearranged or relocated. You may, however, add three extra lines to the paid preparer's address area, and remove the horizontal rules in that area without prior approval.

3.1.8
Some Common Reasons for Requiring Changes to Substitute Forms

Some reasons that substitute form submissions may require changes include the following.

- Shading areas incorrectly.

- Failing to include a reference to the location of the Paperwork Reduction Act Notice.
- Not including parentheses for losses.
- Not including "Attach Statement" when appropriate.
- Including line references or entry spaces that do not match the official form.
- Printing text that is different from the official form.
- Altering the jurat (perjury statement).
- Having an incorrect OMB number.
- Including the IRS catalog number (Cat. No.) on the form.
- Failing to include preprinted amounts in entry fields.
- Missing IRS source code or NACTP software ID.
- Missing 3-letter FFF code on paper Form 1040 from tax software companies that participate in the IRS Free File Program.
- Incorrect dimensions.

Section 3.2 – Paper

3.2.1
Paper Content

The paper must be:

- Chemical wood writing paper that is equal to or better than the quality used for the official form,
- At least 18 pound (17″ x 22″, 500 sheets), or
- At least 50 pound offset book (25″ x 38″, 500 sheets).

3.2.2
Paper With Chemical Transfer Properties

There are several kinds of paper prohibited for substitute forms. These are:

1. Carbon-bonded paper, and
2. Chemical transfer paper except when the following specifications are met.
    a. Each ply within the chemical transfer set of forms must be labeled.
    b. Only the top ply (ply one and white in color), the one that contains chemical on the back only (coated back), may be filed with the IRS.

Example. A set containing three plies would be constructed as follows: ply one (coated back), "Federal Return, File with IRS"; ply two (coated front and back), "Taxpayer's copy"; and ply three (coated front), "Preparer's copy."

The file designation, "Federal Return, File with IRS" for ply one, must be printed in the bottom right margin (just below the last line of the form) in 12-point boldface type.

It is not mandatory, but recommended, that the file designation "Federal Return, File with IRS" be printed in a contrasting ink for visual emphasis.

3.2.3
Paper and Ink Color

It is preferred that the color and opacity of paper substantially duplicate that of the original form. This means that your substitute must be printed in black ink and may be on white paper or on the colored paper the IRS form is printed on. Form 1040 or 1040-SR substitute reproductions may be in black ink without the colored shading. The only exception to this rule is Form 1041-ES, which should be printed with a PMS 100 yellow shading in the color screened area. This is necessary to assist us in expeditiously separating this form from the very similar Form 1040-ES.

3.2.4
Page Size

Substitute or reproduced forms and computer-prepared/-generated substitutes may be the same size as the official form or they may be the standard commercial size (8.5″ x 11″). The thickness of the stock cannot be less than 0.003 inch.

Section 3.3 – Printing

3.3.1
Printing Medium

The private printing of all substitute tax forms must be by conventional printing processes, photocopying, computer graphics, or similar reproduction processes.

3.3.2
Legibility

All forms must have a high standard of legibility as to printing, reproduction, and fill-in matter. Entries of taxpayer data may be no smaller than 8 points. The IRS reserves the right to reject those with poor legibility. The ink and printing method used must ensure that no part of a form (including text, graphics, data entries, etc.) develops "smears" or similar quality deterioration. This standard must be followed for any subsequent copies or reproductions made from an approved master substitute form, either during preparation or during IRS processing.

3.3.3
Type Font

Many federal tax forms are printed using Helvetica as the basic type font. It is preferred that you use this type font when composing substitute forms.

3.3.4
Print Spacing

Substitute forms should be printed using a 6 lines/inch vertical print option. They should also be printed horizontally in 10-pitch pica (that is, 10 print characters per inch) or 12-pitch elite (that is, 12 print positions per inch).

3.3.5
Image Size

The image size of a printed substitute form should be as close as possible to that of the official form. You may omit any text on both computer-prepared and computer-generated forms that is solely instructional.

3.3.6
Title Area Changes

To allow a large top margin for marginal printing and more lines per page, the title line(s) for all substitute forms (not including the form's year designation and sequence number, when present) may be photographically reduced by 40% or reset as one line of type. When reset as one line, the type size may be no smaller than 14 points. You may omit "Department of the Treasury—Internal Revenue Service" and all references to instructions in the form's title area.

3.3.7
Remove Government Printing Office Symbol and IRS Catalog Number

When privately printing substitute tax forms, the Government Printing Office (GPO) symbol and/or jacket number must be removed. In the same place using the same type size, print the employer identification number (EIN) of the printer or designer or the IRS-assigned source code. (Preferably, this last number should be printed in the lower left area of the first page of each form.) Also, remove the IRS catalog number (Cat. No.) and the recycle symbol if the substitute is not produced on recycled paper.

3.3.8
Printing Single- Page Forms

Substitute single-page forms should be reproduced the same as IRS single-page forms. Other forms or schedules should not be printed on the back or on blank portions of a single-page form. However, printing instructions on the back or on blank portions of a single-page form is acceptable.

3.3.9
Photocopy Equipment

The IRS does not undertake to approve or disapprove the specific equipment or process used in reproducing official forms. Photocopies of forms must be entirely legible and satisfy the conditions stated in this and other revenue procedures.

3.3.10
Reproductions

Reproductions of official forms and substitute forms that do not meet the requirements of this revenue procedure may not be filed instead of the official forms. Illegible photocopies are subject to being returned to the filer for resubmission of legible copies.

3.3.11
Removal of Instructions

Generally, you may remove references to instructions. No prior approval is needed. However, in some instances, you may be requested to include references to instructions.

Exception. The words "For Paperwork Reduction Act Notice, see instructions" must be retained, or a similar statement indicating the location of the Notice must be provided on each form.

Section 3.4 – Margins

3.4.1
Margin Size

The format of a reproduced tax form when printed on the page must have margins on all sides at least as large as the margins on the official form. This allows room for IRS employees to make necessary entries on the form during processing.

- A 0.5 inch to 0.25 inch margin must be maintained across the top, bottom, and both sides of all substitute forms.
- The marginal, perforated strips containing pin-fed holes must be removed from all forms prior to filing with the IRS.

3.4.2
Marginal Printing

Prior approval is not required for the marginal printing allowed when printed on an official form or on a photocopy of an official form.

- With the exception of the actual tax return forms (for example, Forms 1040, 1040-SR, 1120, 940, 941, etc.), you may print in the left vertical margin and in the left half of the bottom margin.
- Printing is never allowed in the top right margin of the tax return form (for example, Forms 1040, 1040-SR, 1120, 940, 941, etc.). The IRS uses this area to imprint a Document Locator Number for each return. There are no exceptions to this requirement.

Section 3.5 – Miscellaneous Information for Substitute Forms

3.5.1
Filing Substitute Forms

To be acceptable for filing, a substitute form must print out in a format that will allow the filer to follow the same instructions that accompany official forms.

The form must be legible, must be on the appropriately sized paper, and must include a jurat (perjury statement) where one appears on the published form.

3.5.2
Caution to Software Publishers

The IRS has received returns produced by software packages with approved output where either the form heading was altered or the lines were spaced irregularly. This produces an illegible or unrecognizable return or a return with the wrong number of pages. While many of these problems are caused by individual printer differences, they may delay input of return data and, in some cases, generate correspondence to the taxpayer. Therefore, in the instructions to the purchasers of your product, both individual and professional, please stress that their returns will be processed more efficiently if they are properly formatted. This includes:

- Having the correct form numbers, six-digit form identifying numbers, and titles at the top of the return; and
- Submitting the same number of pages as if the form were an official IRS form with the line items on the proper pages.

3.5.3
Caution to Producers of Software Packages

If you are producing a software package that generates name and address data onto the tax return, do not, under any circumstances, program either the IRS preprinted check digits or a practitioner-derived name control to appear on any return prepared and filed with the IRS.

3.5.4
Programming to Print Forms

Whenever applicable:

- Use only the following label information format for single filers: JOHN Q. DOE 000 OAK DRIVE HOMETOWN, STATE 00000
- Use only the following label information format for joint filers: JOHN Q. DOE MARY Q. DOE 000 OAK DRIVE HOMETOWN, STATE 00000
- Use “0” for number values and “X” for alpha characters entered in data entry fields as dummy copy.

Part 4
Additional Resources

Section 4.1 – Guidance From Other Revenue Procedures

4.1.1
General

The IRS publications listed below provide guidance for substitute tax forms not covered in this revenue procedure. These publications are available on the IRS website. Use the publication number listed below to search for the requested document.

- Pub. 1141, General Rules and Specifications for Substitute Forms W-2 and W-3.
- Pub. 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns.
- Pub. 1223, General Rules and Specifications for Substitute Forms W-2c and W-3c.
- Pub. 4436, General Rules and Specifications for Substitute Form 941, Schedule B (Form 941), Schedule D (Form 941), Schedule R (Form 941), and Form 8974.
- Pub. 5223, General Rules and Specifications for Affordable Care Act Substitute Forms 1095-A, 1094-B, 1095-B, 1094-C, and 1095-C.

Section 4.2 – Electronic Tax Products

4.2.1
The IRS Website

Copies of tax forms, their instructions, publications, fillable forms, and prior year forms and publications may be found on the IRS website at IRS.gov/Forms.

Draft forms and instructions may be found at IRS.gov/DraftForms.

Other tax-related information may be found at IRS.gov.

4.2.2
System Requirements and Ordering Forms and Instructions

For system requirements, contact the National Technical Information Service (NTIS) at NTIS.gov. Prices are subject to change.

You can order IRS forms and other tax material at IRS.gov/OrderForms.

Part 5
Requirements for Specific Tax Returns

Section 5.1 – Tax Returns (Forms 1040, 1040-SR, 1120, etc.)

5.1.1
Acceptable Forms

Tax return forms (such as Forms 1040, 1040-SR, and 1120) require a signature and establish tax liability. Computer-generated versions are acceptable under the following conditions.

- These substitute forms must be printed on plain white paper.
- Substitute forms must conform to the physical layout of the corresponding IRS form although the typeface may differ. The text should match the text on the officially published form as closely as possible. Condensed text and abbreviations will be considered on a case-by-case basis. **Caution.** All jurats (perjury statements) must be reproduced verbatim. No text can be added, deleted, or changed in meaning.
- Various computer graphic print media such as laser printing, inkjet printing, etc., may be used to produce the substitute forms.
- The substitute form must be the same number of pages and contain the same text on the lines as the official form.
- All substitute forms must be submitted for approval prior to their original use. You do not need approval for a substitute form if its only change is the preprinted year and you had received a prior year approval letter. **Exception.** If the approval letter specifies a one-time exception for your form, the next year's form must be approved.

5.1.2
Prohibited Forms

The following are prohibited.

- Computer-generated tax forms (for example, Form 1040, 1040-SR, etc.) on lined or color-barred paper.
- Tax forms that differ from the official IRS forms in a manner that makes them nonstandard or unable to process.

5.1.3
Changes Permitted to Form 1040

Certain changes (listed in *Section 5.2*) are permitted to the graphics of the form without prior approval, but these changes apply to only acceptable preprinted forms. Changes not requiring prior approval are good only for the annual filing period, which is the current tax year. Such changes are valid in subsequent years only if the official form does not change.

5.1.4
Other Changes Not Listed

All changes not listed in *Section 5.2* require approval from the IRS before the form can be filed.

Section 5.2 – Changes Permitted to Graphics (Form 1040 or 1040-SR)

5.2.1
Adjustments

You may make minor vertical and horizontal spacing adjustments to allow for computer or word processing printing. This includes widening the amount columns or tax entry areas if the adjustments comply with other provisions stated in revenue procedures. No prior approval is needed for these changes.

Schedules 1–3 cannot be combined for filing purposes. For the client copy of the return, the numbered schedules may be printed two to a page (for example, Schedule 3 below Schedule 2, if both are completed as part of the return). If numbered schedules are combined on the client copy, it must include a statement that it is "Not for Filing."

5.2.2
Name and Address Area

The horizontal rules and instructions within the name and address area may be removed and the entire area left blank. No line or instruction can remain in the area. The heavy-ruled border (when present) that outlines the name, address area, and SSN must not be removed, relocated, expanded, or contracted.

5.2.3
Required Format

When the name and address area is left blank, the following format must be used when printing the taxpayer's name and address.

- 1st name line (35 characters maximum).
- 2nd name line (35 characters maximum).
- In-care-of name line (35 characters maximum).
- City, state (25 characters maximum), one blank character, and ZIP code.

5.2.4
Conventional Name and Address Data

When there is no in-care-of name line, the name and address will consist of only three lines (single filer) or four lines (joint filer).

Example of joint filer. Name and address (joint filer) with no in-care-of name line:

JOHN Q. DOE
MARY Q. DOE
000 ANYWHERE ST., APT. 000
ANYTOWN, STATE 00000

Example of in-care-of name line. Name and address (single filer) with in-care-of name line:

JOHN Q. DOE
C/O JOHN R. DOE
0000 SOMEWHERE AVE.
SAMETOWN, STATE 00000

5.2.5
SSN and EIN Area

The broken vertical lines separating the format arrangement of the SSN/EIN may be removed. When the vertical lines are removed, the SSN and EIN formats must be 000-00-0000 or 00-0000000, respectively.

5.2.6
Entering Cents

- You may remove the vertical rule that separates the dollars from the cents if it is still included on the official IRS form.
- All entries in the amount column should have a decimal point following the whole dollar amounts whether or not the vertical line that separates the dollars from the cents is present.
- You may omit printing the cents, but all amounts entered on the form must follow a consistent format. You are strongly urged to round off the figures to whole dollar amounts, following the official form instructions.

- When several amounts are added together, the total should be rounded off after addition (that is, individual amounts should not be rounded off for computation purposes).
- When printing money amounts, you must use one of the following formats: (a) 0,000,000; or (b) 0,000,000.00.
- When there is no entry for a line, leave the line blank.

5.2.7
Changes to Lines

No prior approval is needed for the following changes (for use with computer-prepared forms only). Specific line numbers in the following headings may have changed due to tax law changes.

5.2.8
Dependents on Form 1040

The vertical lines separating columns (1) through (4) may be removed. The captions may be shortened to allow a one-line caption for each column.

5.2.9
Other Lines

Any other line with text that takes up two or more vertical lines may be compressed to one line by using contractions, etc., and by removing instructional references.

5.2.10
Form 1040 – Tax

You may change the line caption to read "Tax" and computer print the words "Total includes tax from" and either "Form(s) 8814" or "Form 4972" or "962 election." If both forms are used, print both form numbers. This specific line number may have changed.

5.2.11
Color Screening

It is not necessary to duplicate the color screening used on the official form. A substitute Form 1040 or 1040-SR may be printed in black and white only with no color screening.

5.2.12
Other Changes Prohibited

No other changes to the Form 1040 or 1040-SR graphics are permitted without prior approval except for the removal of instructions and references to instructions.

Part 6
Format and Content of Substitute Returns

Section 6.1 – Acceptable Formats for Substitute Forms and Schedules

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6.1.1
Exhibits and Use of Acceptable Formats

Exhibit A is an acceptable format for Form 1040-ES.

- If your computer-generated Form 1040-ES appears exactly like *Exhibit A*, no prior authorization is needed.
- You may computer-generate forms not shown here, but you must design them by following the manner and style discussed in *Part 3*.

- Take care to observe the other requirements and conditions in this revenue procedure. The IRS encourages the submission of all proposed forms covered by this revenue procedure.

6.1.2
Instructions

The format of each substitute form or schedule must follow the format of the official form or schedule as to item captions, line references, line numbers, sequence, form arrangement and format, etc. Basically, try to make the form look like the official one, with readability and consistency being primary factors. You may use periods and/or other similar special characters to separate the various parts and sections of the form. Do not use alpha or numeric characters for these purposes. All line numbers and items must be printed even though an amount is not entered on the line.

6.1.3
Line Numbers

When a line on an official form is designated by a number or a letter, that designation (reference code) must be used on a substitute form. The reference code must be printed to the left of the text of each line and immediately preceding the data entry field, even if no reference code precedes the data entry field on the official form. If an entry field contains multiple lines and shows the line references once on the left and right side of the form, use the same number of line references on the substitute form.

In addition, the reference code that is immediately before the data field must either be followed by a period or enclosed in parentheses. There must also be at least two blank spaces between the period or the right parenthesis and the first digit of the data field. (See *Section 6.1.4*.)

6.1.4
Decimal Points

A decimal point (a period) should be used for each money amount regardless of whether the amount is reported in dollars and cents or in whole dollars, or whether or not the vertical line that separates the dollars from the cents is present. The decimal points must be vertically aligned when possible.

Example.

5 State and local taxes		
a State and local income taxes.....	5a.	000.00
b State and local real estate taxes.....	5b.	
c State and local personal property taxes....	5c.	000.00
or		
a State and local income taxes.....	(5a)	000.00
b State and local real estate taxes.....	(5b)	
c State and local personal property taxes....	(5c)	000.00

6.1.5
Multi-Page Forms

When submitting a multi-page form, send all its pages in the same package. If you will not be producing certain pages, please note that in your cover letter.

Section 6.2 – Additional Instructions for All Forms

6.2.1
Use of Your Own Internal Control Numbers and Identifying Symbols

You may show the computer-prepared internal control numbers and identifying symbols on the substitute if using such numbers or symbols is acceptable to the taxpayer and the taxpayer's representative. Such information must not be printed in the top 0.5 inch clear area of any form or schedule requiring a signature.

Except for the actual tax return form (Forms 1040, 1040-SR, 1120, 940, 941, etc.), you may print in the left vertical and bottom left margins. The bottom left margin you may use extends 3.5 inches from the left edge of the form. You may print internal control numbers in place of the removed IRS catalog number.

6.2.2
Required Software ID Number (Source Code) on Computer- Prepared Substitutes

In the February 2009 Government Accountability Office (GAO) report, "Many Taxpayers Rely on Tax Software and IRS Needs to Assess Associated Risks" (GAO-09-297), the GAO recommended that the IRS require a software identification number on all individual returns to specifically identify the software package used to prepare each tax return. The IRS already has this capability for all *e-filed* returns. In addition, many tax preparation software firms already print an IRS-issued 3-letter source code on paper returns that are generated by their individual tax software. This source code was assigned when the firms were seeking substitute forms approval under this current publication.

In order to follow this GAO recommendation, the IRS will require that all tax preparation software firms include the 3-letter source code on all paper tax returns created by their individual tax preparation software. The many firms that currently have and display their source code on paper returns generated from their software should continue to do so, and no change is necessary.

We have reviewed all software companies that passed Assurance Testing System (ATS) testing last filing season and have determined that some firms do not currently have a source code. To save you the burden of contacting us and for your convenience, we have assigned source codes to those firms.

You should program your source code to be placed in the bottom left-hand corner of page one of each paper form that will be generated by your individual tax return package. You do not need to apply for a new source code annually.

If you already use a 3-letter source code and we have issued you one in error, you are unsure if you were ever issued one, or have other questions or concerns, you may contact Tax Forms and Publications Special Services Section at substituteforms@irs.gov.

The IRS requires tax preparation software firms that participate in the IRS Free File Program include the 3-letter FFF code on all paper Form 1040 returns created by their individual tax preparation software.

If you participate in the IRS Free File Program, you should program the 3-letter FFF code to be placed in the bottom left-hand corner of the first page of each paper Form 1040 that will be generated by your individual tax return package. The 3-letter FFF code and the 3-letter source code should be placed next to each other for consistency. If placing the 3-letter FFF code and the 3-letter source code next to each other is not possible, then above or below will be acceptable.

Example. The 3-letter FFF code and the 3-letter source code could be BCA-FFF or BCA FFF. A dash or a space is needed to separate the 3-letter FFF code and the 3-letter source code.

6.2.3
Descriptions for Captions, Lines, etc.

Descriptions for captions, lines, etc., appearing on the substitute forms may be limited to one print line by using abbreviations and contractions, and by omitting articles, prepositions, etc. However, sufficient keywords must be retained to permit ready identification of the caption, line, or item.

6.2.4
Determining Final Totals

Explanatory detail and/or intermediate calculations for determining final line totals may be included on the substitute. Preferably, such calculations should be submitted in the form of a

supporting statement. If intermediate calculations are included on the substitute, the line on which they appear may not be numbered or lettered. Intermediate calculations may not be printed in the right column.

This column is reserved only for official numbered and lettered lines that correspond to the ones on the official form. Generally, you may choose the format for intermediate calculations or subtotals on supporting statements to be submitted.

6.2.5
Instructional Text on the Official Form

Text on the official form, which is solely instructional (for example, "See instructions," etc.), may generally be omitted from the substitute form.

6.2.6
Intermingling Is Prohibited

Showing more than one form or schedule on the same printout page is prohibited. Both sides of the paper may be used for multi-page forms, but it is unacceptable to intermingle forms.

For instance, Schedule E can be printed on both sides of the paper because the official form is multi-page, with page 2 continued on the back. However, do not print Schedule E on the front page and Schedule SE on the back page, or Schedule A on the front and Form 8615 on the back, etc. Both pages of a substitute form must match the official form. The back page may be left blank if the back page of the official form contains only the instructions.

6.2.7
Identifying Substitutes

Identify all computer-prepared substitutes clearly. Print the form designation 0.5 inch from the top margin and 1.5 inches from the left margin. Print the title centered on the first line of print. Print the tax year and, where applicable, the sequence number on the same line 0.5 inch to 1 inch from the right margin.

Include the taxpayer's name and SSN on all forms and attachments. Also, print the OMB number as reflected on the official form.

6.2.8
Negative Amounts

Negative (or loss) amount entries should be enclosed in brackets or parentheses or include a minus sign. This assists in accurate computation and input of form data. The IRS preprints parentheses in negative data fields on many official forms. These parentheses should be retained or inserted on printouts of affected substitute forms.

Part 7
Miscellaneous Forms and Programs

Section 7.1 – Specifications for Substitute Schedules K-1

7.1.1
Requirements for Schedules K-1 That Accompany Forms 1041, 1065, and 1120-S

Because of significant changes to improve processing, prior approval is now required for substitute Schedules K-1 that accompany Form 1041 (for estates and trusts), Form 1065 (for partnerships), or Form 1120-S (for S corporations). Substitute Schedules K-1 should be as close as possible to exact replicas of copies of the official IRS schedules and follow the same process for submitting other substitute forms and schedules. Before releasing their substitute forms, software vendors are responsible for making any subsequent changes that have been made to the final official IRS forms after the draft forms have been posted.

Submit substitute Schedule K-1 forms, in PDF format, to scrips@irs.gov for scannability acceptance. Schedule K-1 forms that require testing do not need to be mailed to the Program. You must include information on the substitute that can be tested. This information should be dummy information. Use an "X" for alpha characters and "0" for numbers. The IRS will review and provide feedback of any changes needed so that your forms can be recognized correctly.

Include the 6-digit form ID code in the upper right of Schedules K-1 of Forms 1041, 1065, and 1120-S. Please allow at least 0.25 inch of white space around the 6-digit code.

- 661117 for Form 1041.
- 651121 for Form 1065.
- 671121 for Form 1120-S.

Schedules K-1 that accompany Forms 1041, 1065, or 1120-S must meet all specifications. The specifications include, but are not limited to, the following requirements.

- You will no longer be able to produce Schedules K-1 that contain only those lines or boxes that taxpayers are required to use. All lines must be included.
- The words "*See attached statement for additional information." must be preprinted in the lower right-hand side on Schedules K-1 of Forms 1041, 1065, and 1120-S.
- All Schedules K-1 that are filed with the IRS should be printed on standard 8.5" x 11" paper (the international standard (A4) of 8.27" x 11.69" may be substituted).
- 10-point Helvetica Light Standard is preferred for all entries that are typed or made using a computer.
- Submissions should include the IRS source code or NACTP vendor ID code printed on the lower left corner of the form or in place of the IRS catalog number.
- Each recipient's information must be on a separate sheet of paper. Therefore, you must separate all continuously printed substitutes, by recipient, before filing with the IRS.
- No carbon copies or pressure-sensitive copies will be accepted.
- The Schedule K-1 must contain the name, address, and SSN or EIN of both the entity (estate, trust, partnership, or S corporation) and the recipient (beneficiary, partner, or shareholder).
- The Schedule K-1 must contain the tax year, the OMB number, the schedule number (K-1), the related form number (1041, 1065, or 1120-S), and the official schedule name in substantially the same position and format as shown on the official IRS schedule.
- The Schedule K-1 must contain all the line items as shown on the official form, except for the instructions, if any are printed on the back of the official Schedule K-1.
- The line items or boxes must be in the same order and arrangement as those on the official form.
- The amount of each recipient's share of each item must be shown. A partial percent should be reflected as a decimal (for example, 50½% should be 50.5%). Furnishing a total amount of each item and a percentage (or decimal equivalent) to be applied to such total amount by the recipient does not satisfy the law and the specifications of this revenue procedure.

- State or local tax-related information may not be included on the Schedules K-1 filed with the IRS.
- The entity may have to pay a penalty if substitute Schedules K-1 are filed that do not conform to specifications.
- Additionally, the IRS may consider the Schedules K-1 that do not conform to specifications as not being able to be processed and may return Form 1041, 1065, or 1120-S to the filer to be filed correctly.

Schedules K-1 that are 2-D bar-coded will continue to require prior approval from the IRS. (See *Sections 7.1.3* through *7.1.5.*)

7.1.2
Special Requirements for Recipient Copies of Schedules K-1

Standardization for reporting information is required for recipient copies of substitute Schedules K-1 of Forms 1041, 1065, and 1120-S. Uniform visual standards are provided to increase compliance by allowing recipients and practitioners to more easily recognize a substitute Schedule K-1. The entity must furnish to each recipient a copy of Schedule K-1 that meets the following requirements.

- Include the 6-digit form ID code in the upper right of Schedules K-1 of Forms 1041, 1065, and 1120-S. Please allow white space around the 6-digit code.
  - 661117 for Form 1041.
  - 651121 for Form 1065.
  - 671121 for Form 1120-S.
- You will no longer be able to produce Schedules K-1 that contain only those lines or boxes that taxpayers are required to use. All lines must be included.
- The words "*See attached statement for additional information." must be preprinted in the lower right-hand side on Schedules K-1 of Forms 1041, 1065, and 1120-S.
- The Schedule K-1 must contain the name, address, and SSN or EIN of both the entity and recipient.
- The Schedule K-1 must contain the tax year, the OMB number, the schedule number (K-1), the related form number (1041, 1065, or 1120-S), and the official schedule name in substantially the same position and format as shown on the official IRS schedule.
- All applicable amounts and information required to be reported must be titled and numbered in the same manner as shown on the official IRS schedule. The line items or boxes must be in the same order and arrangement and must be numbered like those on the official IRS schedule.
- The Schedule K-1 must contain all items required for use by the recipient. The instructions for the schedule must identify the line or box number and code, if any, for each item as shown in the official IRS schedule.
- The amount of each recipient's share of each item must be shown. A partial percent should be reflected as a decimal (for example, 50½% should be 50.5%). Furnishing a total amount of each line item and a percentage (or decimal equivalent) to be applied to such total amount by the recipient does not satisfy the law and the specifications of this revenue procedure.

- Instructions to the recipient that are substantially similar to those on or accompanying the official IRS schedule must be provided to aid in the proper reporting of the items on the recipient's income tax return. Where items are not reported to a recipient because they do not apply, the related instructions may be omitted.

- The quality of the ink or other material used to generate recipients' schedules must produce clearly legible documents. In general, black chemical transfer inks are preferred.

- In order to assure uniformity of substitute Schedules K-1, the paper size should be standard 8.5" x 11" (the international standard (A4) of 8.27" x 11.69" may be substituted).

- The paper weight, paper color, font type, font size, font color, and page layout must be such that the average recipient can easily decipher the information on each page. The preferred font is Helvetica and a minimum of 10-point font.

- State or local tax-related information may be included on recipient copies of substitute Schedules K-1. All non-tax-related information should be separated from the tax information on the substitute schedule to avoid confusion for the recipient.

- The legend "Important Tax Return Document Enclosed" must appear in a bold and conspicuous manner on the outside of the envelope that contains the substitute recipient copy of Schedule K-1.

- The entity may have to pay a penalty if a substitute Schedule K-1 furnished to any recipient does not conform to the specifications of this revenue procedure and results in impeding processing.

7.1.3
Requirements for Schedules K-1 With Two- Dimensional (2- D) Bar Codes

Electronic filing is the preferred method of filing; however, 2-D bar code is the best alternative method for paper processing.

In an effort to improve efficiency and increase data accuracy, the IRS partnered with the tax software development community on a two-dimensional bar code project in 2003. Certain tax software packages have been modified to generate 2-D bar codes on Schedules K-1. As a result, when Schedules K-1 are printed using these programs, a bar code will print on the page.

Rather than manually transcribe information from the Schedule K-1, the IRS will scan the bar code and electronically upload the information from the Schedule K-1. This will result in more efficient operations within the IRS and fewer transcription errors for your clients.

Note. If software vendors do not want to produce bar-coded Schedules K-1, they may produce the official IRS Schedules K-1 but cannot use the expedited process for approving bar-coded Schedules K-1 and their parent returns as outlined in *Section 7.1.6*.

In addition to the requirements in *Sections 7.1.1* and *7.1.2*, the bar-coded Schedules K-1 must meet the following specifications.

- The bar code should print in the space labeled "For IRS Use Only" on each Schedule K-1. The entire bar code must print within the "For IRS Use Only" box surrounded by a white space of at least 0.25 inch.

- Bar codes must print in PDF 417 format.

- The bar codes must always be in the specified format with every field represented by at least a field delimiter (carriage return). Leaving out a field in a bar code will cause every subsequent field to be misread.

- Be sure to include the 6-digit form ID code in the upper right of Schedules K-1 of Forms 1041, 1065, and 1120-S. Please allow white space around the 6-digit code.
  - 661117 for Form 1041.
  - 651121 for Form 1065.
  - 671121 for Form 1120-S.

7.1.4
2-D Bar Code Specifications for Schedules K-1

Follow these general specifications for preparing all 2-D bar-coded Schedules K-1.

- Numeric fields.
  - Do not include leading zeros (except TINs, ZIP codes, and percentages).
  - If negative value, the minus sign "–" must be present immediately to the left of the number and part of the 12-position field.
  - Do not use non-numeric characters except that the literal "STMT" can be put in money fields.
  - All money fields should be rounded to the nearest whole dollar amount—if a money amount ends in 00 to 49 cents, drop the cents; if it ends in 50 to 99 cents, truncate the cents and increment the dollar amount by one. Use the same rounding technique for the bar-coded and the printed Schedules K-1.
  - All numeric-only fields are right justified (except TINs and ZIP codes).
- All field lengths are expressed as maximum lengths. If the value in the field has fewer positions or the software program does not support that many positions, put in the bar code only those positions actually used.
- Alpha fields.
  - Do not include leading blanks (left justified).
  - Do not include trailing blanks.
  - Use uppercase alpha characters only.
- Variable fields.
  - Do not include leading blanks (left justified).
  - Do not include trailing blanks.
  - Use uppercase alpha characters, numerics, and special characters as defined in each field.
- Delimit each field with a carriage return.
- Express percentages as 6-digit numbers without the percent sign. Left justify with a leading zero(s) (for percentages less than 100%) and no decimal point (decimal point is assumed between 3rd and 4th positions). Examples: 25.32% expressed as "025320"; 105% expressed as "105000"; 8.275% expressed as "008275"; 10.24674% expressed as "010247."

- It is vital that the print routine reinitialize the bar code prior to printing each succeeding Schedule K-1. Failure to do this will result in each Schedule K-1 for a parent return having the same bar code as the document before it.

7.1.5
Approval Process for Bar-Coded Schedules K-1

Prior to releasing commercially available tax software that creates bar-coded Schedules K-1, the printed schedule and the bar code must both be tested. If your company is creating bar-coded Schedules K-1, you must receive certification for both the printed Schedule K-1, as well as the bar code, before offering your product for sale. Bar-code testing must be done using the final official IRS Schedule K-1. Bar-code approval requests must be resubmitted for any subsequent changes to the official IRS form that would affect the bar code. Below are instructions and a sequence of events that will comprise the testing process.

- The IRS has released the final Schedule K-1 bar-code specifications by publishing them on the IRS.gov website (see IRS.gov/E-file-Providers/K-1-Bar-Code-Certification-Process).
- The IRS will publish a set of test documents that will be used to test the ability of tax preparation software to create bar codes in the correct format.
- Software developers will submit two identical copies of the test documents—one to the IRS and one to a contracted testing vendor.
- The IRS will use one set to ensure the printed schedules comply with standard substitute forms specifications.
- If the printed forms fail to meet the substitute forms criteria, the IRS will inform the software developer of the reason for noncompliance.
- The software developer must resubmit the Schedule(s) K-1 until it passes the substitute forms criteria.
- The testing vendor will review the bar codes to ensure they meet the published bar-code specifications.
- If the bar code(s) does not meet published specifications, the testing vendor will contact the software developer directly, informing them of the reason for noncompliance.
- Software developers must submit new bar-coded schedules until they pass the bar-code test.
- When the bar code passes, the testing vendor will inform the IRS that the developer has passed the bar-code test and the IRS will issue an overall approval for both the substitute form and the bar code.
- After receiving this consolidated response, the software vendor is free to release software for tax preparation as long as any subsequent revisions to the schedules do not change the fields.
- Find the mailing address for the testing vendor below. Separate and simultaneous mailings to the IRS and the vendor will reduce testing time.

7.1.6
Procedures for Reducing Testing Time

In order to help provide incentives to the software development community to participate in the Schedule K-1 2-D project, the IRS has committed to expediting the testing of bar-coded Schedules K-1 and their associated parent returns. To receive this expedited service, follow the instructions below.

- Mail the parent returns (Forms 1065, 1120-S, 1041) and associated bar-coded Schedule(s) K-1 to the appropriate address below in a separate package from all other approval requests.

  Internal Revenue Service
  Attn: Bar-Coded K-1
  SE:W:CAR:MP:T:M:S, IR-6526
  1111 Constitution Ave. NW
  Washington, DC 20224

- Mail one copy of the parent form(s) and Schedule(s) K-1 to the IRS and another copy to the testing vendor at the address below.

  Leidos-IRS Paper and Remittance
  Processing Support (PRPS II)
  Attn: Dane Hawkins
  9737 Washington Blvd.
  Gaithersburg, MD 20878

- Include multiple email and phone contact points in the packages.
- While the IRS can expedite bar-coded Schedules K-1 and their associated parent returns, it cannot expedite the approval of nonassociated tax returns.
- Vendors are encouraged to visit NACTP.org for compliance guidelines in regards to file size and error-correction level.
- Submissions should include the IRS source code or NACTP vendor ID code printed on the lower left corner of the form or in place of the IRS catalog number.
- If a change is made to the bar code after approval, be sure to increment the version number.

Section 7.2 – Guidelines for Substitute Forms 8655

7.2.1
Increased Standardization for Forms 8655

Increased standardization for reporting information on substitute Forms 8655 is now required to aid in processing and for compliance purposes. Please follow the guidelines in *Section 7.2.2*.

7.2.2
Requirements for Substitute Forms 8655

Please follow these specific requirements when producing substitute Forms 8655.

- The first line of the title must be "Reporting Agent Authorization."
- If you want to include a reference to "State Limited Power of Attorney," it can be in parentheses under the title. "State" must be the first word within the parentheses.
- You must include "Form 8655" on the form.
- While the line numbers do not have to match the official form, the sequence of the information must be in the same order.
- The size of any variable data must be printed in a font no smaller than 10 points.
- For adequate disclosure checks, the following must be included for each taxpayer.

- Name.
- EIN.
- Address.

- At this time, Form 944 will not be required if Form 941 is checked. Only those forms that the reporting agent company supports need to be listed.
- The jurat (perjury statement) must be identical with the exception of references to line numbers.
- A contact name and number for the reporting agent is not required.
- Any state information included should be contained in a separate section of the substitute form. Preferably, this information will be in the same area as line 19 of the official form.
- All substitute Forms 8655 must be approved by the Program as outlined in the Form 8655 specifications in this current publication.
- If you have not already been assigned a 3-letter source code, you will be given one when your substitute form is submitted for approval. This source code should be included in the lower left corner of the form.
- The 20-business-day assumed approval policy does not apply to Form 8655 approvals.

7.2.3
Exception for Form 8655

Because of how Form 8655 is processed and distributed to recipients, vendors are allowed to affix their logo onto the substitute version of the form. **This exception is for Form 8655 only.**

Part 8
Additional Information

Section 8.1 – Forms for Electronically Filed Returns

8.1.1
Electronic Filing Program

Electronic filing is a method by which authorized providers transmit tax return information to an IRS Service Center in the format of the official IRS forms. The IRS accepts both refund and balance due forms that are filed electronically.

8.1.2
Applying To Participate in IRS e-file

Anyone wishing to participate in IRS *e-file* of tax returns must submit an *e-file* application. The application can be completed and submitted electronically on the IRS website at IRS.gov after first registering for e-services on the website.

8.1.3
Obtaining the Taxpayer Signature/ Submission of Required Paper Documents

Taxpayers choosing to electronically prepare and file their return will be required to use the Self-Select PIN method as their signature.

Electronic return originators (EROs) can *e-file* individual income tax returns only if the returns are signed electronically using either the Self-Select or Practitioner PIN method.

Taxpayers must use Form 8453, U.S. Individual Income Tax Transmittal for an IRS *e-file* Return, to send supporting documents that are required to be submitted to the IRS.

For specific information about electronic filing, refer to Pub. 1345, Handbook for Authorized IRS *e-file* Providers of Individual Income Tax Returns.

8.1.4
Guidelines for Preparing Substitute Forms in the Electronic Filing Program

A participant in the electronic filing program who wants to develop a substitute form should follow the guidelines throughout this publication and send a sample form for approval to the Program at substituteforms@irs.gov. If you do not prepare substitute Form 8453 using a font in which all IRS wording fits on a single page, the form will not be accepted.

Note. Use of unapproved forms could result in suspension of the participant from the electronic filing program.

Section 8.2 – Effect on Other Documents

8.2.1
Effect on Other Documents

This revenue procedure supersedes Revenue Procedure 2021-42, 2021-43 I.R.B. 666.

Section 8.3 – Exhibits

Exhibit A — Form 1040-ES Voucher 2022

Exhibit B — Substitute Form Checksheet

Exhibit A

Form 1040-ES Voucher

Form 1040-ES (OCR)	20XX	Estimated Tax	Payment Voucher 1	Calendar year— Due April XX, 20XX
Department of the Treasury Internal Revenue Service	OMB No. 1545-0074			

Make your check or money order payable to "**United States Treasury**."
Enter your SSN and "20XX Form 1040-ES" on your payment.
If your name, address, or SSN is incorrect, see instructions.

Amount of estimated tax you are paying by check or money order. Dollars 0,000 Cents

For Privacy Act and Paperwork Reduction Act Notice, see instructions.

Pay online at IRS.gov/epay. Simple. Fast. Secure.

John Q. Doe
000 Someplace Somewhere Blvd.
City, St 00000

P0 Box 00000
City, St 00000 - 0000

000000000 XX D0E 00 0 20XX12 000

Exhibit B

Substitute Forms Checksheet

Checksheet of IRS Substitute Forms
Submitted on:
Enter the following information:
Company:
Contact:
Phone:
Fax:
Source Code:

Form Number	Approved	Approved With Corrections	Comments

Authorized Name: _____
Title: _____
Reviewer's Name: _____
Telephone: _____
Date: _____

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also: Part I, §§ 6011, 6662, 6662A, 6707A; 1-6011-4.)

Rev. Proc. 2022-37

SECTION 1. PURPOSE

This revenue procedure publishes the amounts of unused housing credit carryovers allocated to qualified states under § 42(h)(3)(D) of the Internal Revenue Code for calendar year 2022.

SECTION 2. BACKGROUND

Rev. Proc. 2019-45, 2019-48 I.R.B. 524, provides guidance to state housing credit agencies of qualified states on the procedure for requesting an allocation of unused housing credit carryovers under § 42(h)(3)(D). The amount of unused housing credit carryovers allocated to qualified states for a calendar year from a national pool of unused credit authority (the National Pool) is published by the Internal Revenue Service in the Internal Revenue Bulletin. This revenue procedure publishes these amounts for calendar year 2022.

SECTION 3. PROCEDURE

The unused housing credit carryover amount allocated from the National Pool by the Secretary to each qualified state for calendar year 2022 is as follows:

Qualified State	*Amount Allocated*
Alabama	126,203
California	982,548
Connecticut	90,287
Delaware	25,126
Florida	545,418
Georgia	270,430
Illinois	317,304
Indiana	170,428
Maine	34,362
Massachusetts	174,903
Michigan	251,681
Minnesota	142,918
Missouri	154,457
Montana	27,652
Nebraska	49,172
New Mexico	52,983
New York	496,708
North Carolina	264,210
Ohio	294,981
Oregon	106,327
Pennsylvania	324,631
Rhode Island	27,435
South Dakota	22,421
Vermont	16,166
Virginia	216,410
Washington	193,783
West Virginia	44,647

EFFECTIVE DATE

This revenue procedure is effective for allocations of housing credit dollar amounts attributable to the National Pool component of a qualified state's housing credit ceiling for calendar year 2022.

DRAFTING INFORMATION

The principal author of this revenue procedure is YoungNa Lee, formerly at Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact James A. Holmes at (202) 317-4137 (not a toll-free number).

Section 42—Low-Income Housing Credit.

26 CFR 1.42-14. Allocation rules for post-1989 State housing credit ceiling amounts.

Guidance is provided to state housing credit agencies of qualified states that request an allocation of unused housing credit carryover under section 42(h)(3)(D) of the Internal Revenue Code. See Rev. Proc. 2022-37

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.

Numerical Finding List[1]

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2021–27 through 2021–52 is in Internal Revenue Bulletin 2021–52, dated December 27, 2021.

Finding List of Current Actions on Previously Published Items[1]

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2021–27 through 2021–52 is in Internal Revenue Bulletin 2021–52, dated December 27, 2021.

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INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at *www.irs.gov/irb/*.

We Welcome Comments About the Internal Revenue Bulletin

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