turer, producer, or importer of such other article, at the time paid. No credit or refund shall be allowed or made under this subsection unless the manufacturer, producer, or importer of such other article establishes to the satisfaction of the Secretary of the Treasury or his delegate that he did not include the amount of the tax in the price of such other article (and has not collected the amount of the tax from the purchaser of such other article), that the amount of the tax has been repaid to the ultimate purchaser of such other article, or that he has obtained the written consent of such ultimate purchaser to the allowance of the credit or the making of the refund. No interest shall be allowed or paid in respect of any such overpayment.''

§ 6417. Elective payment of applicable credits

(a) In general

In the case of an applicable entity making an election (at such time and in such manner as the Secretary may provide) under this section with respect to any applicable credit determined with respect to such entity, such entity shall be treated as making a payment against the tax imposed by subtitle A (for the taxable year with respect to which such credit was determined) equal to the amount of such credit.

(b) Applicable credit

The term ''applicable credit'' means each of the following:

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

(2) So much of the renewable electricity production credit determined under section 45(a) as is attributable to qualified facilities which are originally placed in service after December 31, 2022.

(3) So much of the credit for carbon oxide sequestration determined under section 45Q(a) as is attributable to carbon capture equipment which is originally placed in service after December 31, 2022.

(4) The zero-emission nuclear power production credit determined under section 45U(a).

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

(6) In the case of a tax-exempt entity described in clause (i), (ii), or (iv) of section 168(h)(2)(A), the credit for qualified commercial vehicles determined under section 45W by reason of subsection (d)(3) thereof.

(7) The credit for advanced manufacturing production under section 45X(a).

(8) The clean electricity production credit determined under section 45Y(a).

(9) The clean fuel production credit determined under section 45Z(a).

(10) The energy credit determined under section 48.

(11) The qualifying advanced energy project credit determined under section 48C.

(12) The clean electricity investment credit determined under section 48E.

(c) Application to partnerships and S corporations

(1) In general

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 subsection (a) shall be made by such partnership or S corporation. If such partnership or S corporation makes an election under such subsection (in such manner as the Secretary may provide) with respect to such credit—

(A) the Secretary shall make a payment to such partnership or S corporation equal to the amount of such credit,

(B) subsection (e) shall be 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 subsection (a) is made shall be treated as tax exempt income for purposes of sections 705 and 1366, and

(D) a partner's distributive share of such tax exempt income shall be based on such partner's distributive share of the otherwise applicable credit for each taxable year.

(2) Coordination with application at partner or shareholder level

In the case of any facility or property held directly by a partnership or S corporation, no election by any partner or shareholder shall be allowed under subsection (a) with respect to any applicable credit determined with respect to such facility or property.

(3) Treatment of payments to partnerships and S corporations

For purposes of section 1324 of title 31, United States Code, the payments under paragraph (1)(A) shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(d) Special rules

For purposes of this section—

(1) Applicable entity

(A) In general

The term ''applicable entity'' means—

(i) any organization exempt from the 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 section 30D(g)(9)),

(v) any Alaska Native Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)), or

(vi) any corporation operating on a cooperative basis which is engaged in furnishing electric energy to persons in rural areas.

(B) Election with respect to credit for production of clean hydrogen

If a taxpayer other than an entity described in subparagraph (A) makes an election under this subparagraph with respect to any taxable year in which such taxpayer has placed in service a qualified clean hydrogen production facility (as defined in section 45V(c)(3)), such taxpayer shall be treated as an applicable entity for purposes of this sec-

tion for such taxable year, but only with respect to the credit described in subsection (b)(5).

(C) Election with respect to credit for carbon oxide sequestration

If a taxpayer other than an entity described in subparagraph (A) makes an election under this subparagraph 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 section 45Q(d)), such taxpayer shall be treated as an applicable entity for purposes of this section for such taxable year, but only with respect to the credit described in subsection (b)(3).

(D) Election with respect to advanced manufacturing production credit

(i) In general

If a taxpayer other than an entity described in subparagraph (A) makes an election under this subparagraph with respect to any taxable year in which such taxpayer has, after December 31, 2022, produced eligible components (as defined in section 45X(c)(1)), such taxpayer shall be treated as an applicable entity for purposes of this section for such taxable year, but only with respect to the credit described in subsection (b)(7).

(ii) Limitation

(I) In general

Except as provided in subclause (II), if a taxpayer makes an election under this subparagraph with respect to any taxable year, such taxpayer shall be treated as having made such election for each of the 4 succeeding taxable years ending before January 1, 2033.

(II) Exception

A taxpayer may elect to revoke the application of the election made under this subparagraph to any taxable year described in subclause (I). Any such election, if made, shall apply to the applicable year specified in such election and each subsequent taxable year within the period described in subclause (I). Any election under this subclause may not be subsequently revoked.

(iii) Prohibition on transfer

For any taxable year described in clause (ii)(I), no election may be made by the taxpayer under section 6418(a) for such taxable year with respect to eligible components for purposes of the credit described in subsection (b)(7).

(E) Other rules

(i) In general

An election made under subparagraph (B), (C), or (D) shall be made at such time and in such manner as the Secretary may provide.

(ii) Limitation

No election may be made under subparagraph (B), (C), or (D) with respect to any taxable year beginning after December 31, 2032.

(2) Application

In the case of any applicable entity which makes the election described in subsection (a), any applicable credit shall be determined—

(A) without regard to paragraphs (3) and (4)(A)(i) of section 50(b), 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.

(3) Elections

(A) In general

(i) Due date

Any election under subsection (a) shall be made not later than—

(I) in the case of any government, or political subdivision, described in paragraph (1) and for which no return is required under section 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 return of tax 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 this section.

(ii) Additional rules

Any election under subsection (a), once made, shall be irrevocable and shall apply (except as otherwise provided in this paragraph) with respect to any credit for the taxable year for which the election is made.

(B) Renewable electricity production credit

In the case of the credit described in subsection (b)(2), any election under subsection (a) shall—

(i) apply separately with respect to each qualified facility,

(ii) be made for the taxable year in which such qualified facility is originally placed in service, and

(iii) shall apply to such taxable year and to any subsequent taxable year which is within the period described in subsection (a)(2)(A)(ii) of section 45 with respect to such qualified facility.

(C) Credit for carbon oxide sequestration

(i) In general

In the case of the credit described in subsection (b)(3), any election under subsection (a) shall—

(I) apply separately with respect to the carbon capture equipment originally placed in service by the applicable entity during a taxable year, and

(II)(aa) in the case of a taxpayer who makes an election described in paragraph (1)(C), apply to the taxable year in which such equipment is placed in service and the 4 subsequent taxable years with respect to such equipment which end before January 1, 2033, and

(bb) in any other case, apply to such taxable year and to any subsequent tax-

able year which is within the period described in paragraph (3)(A) or (4)(A) of section 45Q(a) with respect to such equipment.

(ii) Prohibition on transfer

For any taxable year described in clause (i)(II)(aa) with respect to carbon capture equipment, no election may be made by the taxpayer under section 6418(a) for such taxable year with respect to such equipment for purposes of the credit described in subsection (b)(3).

(iii) Revocation of election

In the case of a taxpayer who makes an election described in paragraph (1)(C) with respect to carbon capture equipment, such taxpayer may, at any time during the period described in clause (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, shall apply to the applicable year specified in such election and each subsequent taxable year within the period described in clause (i)(II)(aa). Any election under this subclause may not be subsequently revoked.

(D) Credit for production of clean hydrogen

(i) In general

In the case of the credit described in subsection (b)(5), any election under subsection (a) shall—

(I) apply separately with respect to each qualified clean hydrogen production facility,

(II) 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 this section in the case of facilities placed in service before December 31, 2022), and

(III)(aa) in the case of a taxpayer who makes an election described in paragraph (1)(B), apply to such taxable year and the 4 subsequent taxable years with respect to such facility which end before January 1, 2033, and

(bb) in any other case, apply to such taxable year and all subsequent taxable years with respect to such facility.

(ii) Prohibition on transfer

For any taxable year described in clause (i)(III)(aa) with respect to a qualified clean hydrogen production facility, no election may be made by the taxpayer under section 6418(a) for such taxable year with respect to such facility for purposes of the credit described in subsection (b)(5).

(iii) Revocation of election

In the case of a taxpayer who makes an election described in paragraph (1)(B) with respect to a qualified clean hydrogen production facility, such taxpayer may, at any time during the period described in clause (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, shall apply to the applicable year specified in such election and each subsequent taxable year within the period described in clause (i)(II)(aa). Any election under this subclause may not be subsequently revoked.

(E) Clean electricity production credit

In the case of the credit described in subsection (b)(8), any election under subsection (a) shall—

(i) apply separately with respect to each qualified facility,

(ii) be made for the taxable year in which such facility is placed in service, and

(iii) shall apply to such taxable year and to any subsequent taxable year which is within the period described in subsection (b)(1)(B) of section 45Y with respect to such facility.

(4) Timing

The payment described in subsection (a) shall be treated as made on—

(A) in the case of any government, or political subdivision, described in paragraph (1) and for which no return is required under section 6011 or 6033(a), the later of the date that a return would be due under section 6033(a) if such government or subdivision were described in that section 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 shall provide), and

(B) in any other case, 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.

(5) Additional information

As a condition of, and prior to, any amount being treated as a payment which is made by an applicable entity under subsection (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 this section.

(6) Excessive payment

(A) In general

In the case of any amount treated as a payment which is made by the applicable entity under subsection (a), or the amount of the payment made pursuant to subsection (c), which 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 shall 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.

(B) Reasonable cause

Subparagraph (A)(ii) shall not apply if the applicable entity demonstrates to the satis-

faction of the Secretary that the excessive payment resulted from reasonable cause.

(C) Excessive payment defined

For purposes of this paragraph, the term ''excessive payment'' means, with respect to a facility or property for which an election is made under this section for any taxable year, an amount equal to the excess of—

(i) the amount treated as a payment which is made by the applicable entity under subsection (a), or the amount of the payment made pursuant to subsection (c), with respect to such facility or property for such taxable year, over

(ii) the amount of the credit which, without application of this section, would be otherwise allowable (as determined pursuant to paragraph (2) and without regard to section 38(c)) under this title with respect to such facility or property for such taxable year.

(e) Denial of double benefit

In the case of an applicable entity making an election under this section with respect to an applicable credit, such credit shall be reduced to zero and shall, for any other purposes under this title, be deemed to have been allowed to such entity for such taxable year.

(f) Mirror code possessions

In the case of any possession of the United States with a mirror code tax system (as defined in section 24(k)), this section shall not be treated as part of the income tax laws of the United States for purposes of determining the income tax law of such possession unless such possession elects to have this section be so treated.

(g) Basis reduction and recapture

Except as otherwise provided in subsection (c)(2)(A), rules similar to the rules of section 50 shall apply for purposes of this section.

(h) Regulations

The Secretary shall issue such regulations or other guidance as may be necessary to carry out the purposes of this section, including guidance to ensure that the amount of the payment or deemed payment made under this section is commensurate with the amount of the credit that would be otherwise allowable (determined without regard to section 38(c)).

(Added Pub. L. 117–169, title I, §13801(a), Aug. 16, 2022, 136 Stat. 2003.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (d)(3)(A)(i)(II), (D)(i)(II), is the date of enactment of Pub. L. 117–169, which was approved Aug. 16, 2022.

PRIOR PROVISIONS

A prior section 6417, act Aug. 16, 1954, ch. 736, 68A Stat. 801, related to a tax credit or refund to any person who has sold to a State, or a political subdivision thereof, any article containing any oil, combination, or mixture, upon the processing of which a tax has been paid under former section 4511, and to a refund to the exporter of the tax paid under former subchapter B of chapter 37, prior to repeal by Pub. L. 94–455, title XIX, §1906(a)(25), (d)(1), Oct. 4, 1976, 90 Stat. 1827, 1835, effective on the first day of the first month beginning more than 90 days after Oct. 4, 1976.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 117–169, title I, §13801(g), Aug. 16, 2022, 136 Stat. 2013, provided that: ''The amendments made by this section [enacting this section and section 6418 of this title and amending sections 39 and 50 of this title] shall apply to taxable years beginning after December 31, 2022.''

GROSS-UP OF DIRECT SPENDING

Pub. L. 117–169, title I, §13801(f), Aug. 16, 2022, 136 Stat. 2013, provided that: ''Beginning in fiscal year 2023 and each fiscal year thereafter, the portion of any payment made to a taxpayer pursuant to an election under section 6417 of the Internal Revenue Code of 1986, or any amount treated as a payment which is made by the taxpayer under subsection (a) of such section, that is direct spending shall be increased by 6.0445 percent.''

§ 6418. Transfer of certain credits

(a) In general

In the case of an eligible taxpayer which 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 a taxpayer (referred to in this section as the ''transferee taxpayer'') which is not related (within the meaning of section 267(b) or 707(b)(1)) to the eligible taxpayer, the transferee taxpayer specified in such election (and not the eligible taxpayer) shall be treated as the taxpayer for purposes of this title with respect to such credit (or such portion thereof).

(b) Treatment of payments made in connection with transfer

With respect to any amount paid by a transferee taxpayer to an eligible taxpayer as consideration for a transfer described in subsection (a), such consideration—

(1) shall be required to be paid in cash,

(2) shall not be includible in gross income of the eligible taxpayer, and

(3) with respect to the transferee taxpayer, shall not be deductible under this title.

(c) Application to partnerships and S corporations

(1) In general

In the case of any eligible credit determined with respect to any facility or property held directly by a partnership or S corporation, if such partnership or S corporation makes an election under subsection (a) (in such manner as the Secretary may provide) with respect to such credit—

(A) any amount received as consideration for a transfer described in such subsection shall be treated as tax exempt income for purposes of sections 705 and 1366, and

(B) a partner's distributive share of such tax exempt income shall be based on such partner's distributive share of the otherwise eligible credit for each taxable year.

(2) Coordination with application at partner or shareholder level

In the case of any facility or property held directly by a partnership or S corporation, no