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

election by any partner or shareholder shall be allowed under subsection (a) with respect to any eligible credit determined with respect to such facility or property.

(d) Taxable year in which credit taken into account

In the case of any credit (or portion thereof) with respect to which an election is made under subsection (a), such credit shall be 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.

(e) Limitations on election

(1) Time for election

An election under subsection (a) to transfer any portion of an eligible credit shall be made not later than the due date (including extensions of time) for the return of tax for the taxable year for which the credit is determined, but in no event earlier than 180 days after the date of the enactment of this section. Any such election, once made, shall be irrevocable.

(2) No additional transfers

No election may be made under subsection (a) by a transferee taxpayer with respect to any portion of an eligible credit which has been previously transferred to such taxpayer pursuant to this section.

(f) Definitions

For purposes of this section—

(1) Eligible credit

(A) In general

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

(i) 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).

(ii) The renewable electricity production credit determined under section 45(a).

(iii) The credit for carbon oxide sequestration determined under section 45Q(a).

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

(v) The clean hydrogen production credit determined under section 45V(a).

(vi) The advanced manufacturing production credit determined under section 45X(a).

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

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

(ix) The energy credit determined under section 48.

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

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

(B) Election for certain credits

In the case of any eligible credit described in clause (ii), (iii), (v), or (vii) of subparagraph (A), an election under subsection (a) shall 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 clause (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).

(C) Exception for business credit carryforwards or carrybacks

The term ''eligible credit'' shall not include any business credit carryforward or business credit carryback determined under section 39.

(2) Eligible taxpayer

The term ''eligible taxpayer'' means any taxpayer which is not described in section 6417(d)(1)(A).

(g) Special rules

For purposes of this section—

(1) Additional information

As a condition of, and prior to, any transfer of any portion of an eligible credit pursuant to subsection (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 this section.

(2) Excessive credit transfer

(A) In general

In the case of any portion of an eligible credit which is transferred to a transferee taxpayer pursuant to subsection (a) which 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 shall be 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 such excessive credit transfer.

(B) Reasonable cause

Subparagraph (A)(ii) shall not apply if the transferee taxpayer demonstrates to the satisfaction of the Secretary that the excessive credit transfer resulted from reasonable cause.

(C) Excessive credit transfer defined

For purposes of this paragraph, the term ''excessive credit transfer'' means, with respect to a facility or property for which an election is made under subsection (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 which, without application of this section, would be otherwise allowable under this title with respect to such facility or property for such taxable year.

(3) Basis reduction; notification of recapture

In the case of any election under subsection (a) with respect to any portion of an eligible credit described in clauses (ix) through (xi) of subsection (f)(1)(A)—

(A) subsection (c) of section 50 shall apply to the applicable investment credit property (as defined in subsection (a)(5) of such section) 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 subsection (a)(5) of section 50) is disposed of, or otherwise ceases to be investment credit property with respect to the eligible taxpayer, before the close of the recapture period (as described in subsection (a)(1) of such section)—

(i) such eligible taxpayer shall provide notice of such occurrence to the transferee taxpayer (in such form and manner as the Secretary shall prescribe), and

(ii) the transferee taxpayer shall provide notice of the recapture amount (as defined in subsection (c)(2) of such section), if any, to the eligible taxpayer (in such form and manner as the Secretary shall prescribe).

(4) Prohibition on election or transfer with respect to progress expenditures

This section shall not apply with respect to any amount of an eligible credit which is allowed pursuant to rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(h) Regulations

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

(Added Pub. L. 117–169, title I, §13801(b), Aug. 16, 2022, 136 Stat. 2009.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (e)(1), is the date of enactment of Pub. L. 117–169, which was approved Aug. 16, 2022.

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (g)(4), is the date of enactment of title XI of Pub. L. 101–508, which was approved Nov. 5, 1990.

PRIOR PROVISIONS

A prior section 6418, acts Aug. 16, 1954, ch. 736, 68A Stat. 801; May 29, 1956, ch. 342, §21(b), 70 Stat. 221; May 24, 1962, Pub. L. 87–456, title III, §302(c), 76 Stat. 77; Nov. 8, 1965, Pub. L. 89–331, §9(b), 79 Stat. 1278; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1906(b)(13)(A), 90 Stat. 1834, authorized refund of taxes paid on sugar used as livestock feed, for distillation or production of alcohol, or in certain cases where sugar was exported, prior to repeal by Pub. L. 101–508, title XI, §11801(c)(22)(B)(i), Nov. 5, 1990, 104 Stat. 1388–528. For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2022, see section 13801(g) of Pub. L. 117–169, set out as a note under section 6417 of this title.

§ 6419. Excise tax on wagering

(a) Credit or refund generally

No overpayment of tax imposed by chapter 35 shall be credited or refunded (otherwise than under subsection (b)), in pursuance of a court decision or otherwise, unless the person who paid the tax establishes, in accordance with regulations prescribed by the Secretary, (1) that he has not collected (whether as a separate charge or otherwise) the amount of the tax from the person who placed the wager on which the tax was imposed, or (2) that he has repaid the amount of the tax to the person who placed such wager, or unless he files with the Secretary written consent of the person who placed such wager to the allowance of the credit or the making of the refund. In the case of any laid-off wager, no overpayment of tax imposed by chapter 35 shall be so credited or refunded to the person with whom such laid-off wager was placed unless he establishes, in accordance with regulations prescribed by the Secretary, that the provisions of the preceding sentence have been complied with both with respect to the person who placed the laid-off wager with him and with respect to the person who placed the original wager.

(b) Credit or refund on wagers laid-off by taxpayer

Where any taxpayer lays off part or all of a wager with another person who is liable for tax imposed by chapter 35 on the amount so laid off, a credit against such tax shall be allowed, or a refund shall be made to, the taxpayer laying off such amount. Such credit or refund shall be in an amount which bears the same ratio to the amount of tax which such taxpayer paid on the original wager as the amount so laid off bears to the amount of the original wager. Credit or refund under this subsection shall be allowed or made only in accordance with regulations prescribed by the Secretary, and no interest shall be allowed with respect to any amount so credited or refunded.

(Aug. 16, 1954, ch. 736, 68A Stat. 801; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)