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Internal Revenue Code Section 6418(h)

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) .