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August 14, 2023

Internal Revenue Service  
1111 Constitution Ave. N.W.  
Washington, D.C. 20224

**Via electronic submission**

**RE: TEI Comments on REG-101607-23**

Dear Sir or Madam:

President Biden signed the Inflation Reduction Act<sup>1</sup> (“IRA”) into law on August 16, 2022, which, among other things, added section 6417 to the Code.<sup>2</sup> Section 6417 allows “applicable entities” to make an election to treat an applicable credit determined with respect to such entity as making a payment against the tax imposed by subtitle A of the Code, for the taxable year with respect to which such credit was determined, equal to the amount of such credit.<sup>3</sup> Section 6417 also grants the U.S. Department of the Treasury (“Treasury”) the authority to provide rules necessary to carry out the purposes of section 6417 and to require information or registration “necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments” under section 6417.

Treasury and the Internal Revenue Service (the “IRS,” and together with Treasury, the “Government”) published REG-101607-23 (the “Proposed Regulations”) in the Federal Register on June 21, 2023.<sup>4</sup> The Proposed Regulations

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<sup>1</sup> Pub. L. No. 117-169.

<sup>2</sup> All “section” references are to the Internal Revenue Code of 1986, as amended (the “Code”).

<sup>3</sup> “Applicable Entities” include tax-exempt organizations, State and local governments, Indian tribal governments, Alaska Native Corporations, the Tennessee Valley Authority, and rural electric cooperatives. Section 6417 also allows certain taxpayers to elect to be treated as applicable entities for limited purposes

<sup>4</sup> 88 F.R. 40528. The Government also published temporary regulations on June 21, 2023 (the “Temporary Regulations”). T.D. 9975, 88 F.R. 40086. Temporary § 1.6417-5T provides mandatory information and pre-filing registration requirements that must be

provide proposed guidance on the treatment of certain tax credits as a payment of Federal income tax. The proposed regulations describe rules for the elective payment of these credit amounts in a taxable year, including special rules applicable to partnerships and S corporations and rules regarding repayment of excessive payments. In addition, the proposed regulations describe rules related to an IRS pre-filing registration process that would be required.

On behalf of Tax Executives Institute, Inc. (“TEI”), I am pleased to present TEI’s comments on the Temporary Regulations and the Proposed Regulations.

#### **About Tax Executives Institute, Inc.**

TEI was founded in 1944 to serve the needs of business tax professionals.<sup>5</sup> Today, the organization has 56 chapters in North and South America, Europe, and Asia. As the preeminent association of in-house tax professionals worldwide, TEI has a significant interest in promoting sound tax policy, as well as the fair and efficient administration of the tax laws, at all levels of government. Our nearly 6,000 individual members represent over 2,900 of the leading companies around the world.

TEI is dedicated to the development of sound tax policy, compliance with and uniform enforcement of tax laws, and minimization of administration and compliance costs to the benefit of both government and taxpayers. These goals can be attained only through the members’ voluntary actions and their adherence to the highest standards of professional competence and integrity. TEI is committed to fostering a tax system that works—one that is administrable and with which taxpayers can comply in a cost-efficient manner. The diversity, professional training, and global viewpoints of our members enable TEI to bring a balanced and practical perspective to the Temporary Regulations and Proposed Regulations.

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completed before an election available under section 6417 can be made. Where the rules overlap in the Temporary Regulations and Proposed Regulations, comments in this letter may apply to both rules. However, this letter addresses the Proposed Regulations, except as otherwise noted.

<sup>5</sup> TEI is organized under the Not-For-Profit Corporation Law of the State of New York. TEI is exempt from U.S. Federal Income Tax under section 501(c)(6) of the Code.

## TEI Comments

### Breadth of Information Required for Pre-filing Registration

Temporary § 1.6417-5T(b)(5)(vii) requires that a taxpayer provide extensive information for each applicable credit property. Specifically, a taxpayer is required to provide for each applicable credit property (a) the type of applicable credit property; (b) the physical location (address and coordinates (longitude and latitude) of the applicable credit property); (c) any supporting documentation relating to the construction or acquisition of the applicable credit property (such as State, District of Columbia, Indian Tribal, U.S. territorial, or local government permits to operate the applicable credit property; certifications; evidence of ownership that ties to a land deed, lease, or other documented right to use and access any land or facility upon which the applicable credit property is constructed or housed; U.S. Coast Guard registration numbers for offshore wind vessels; and the vehicle identification number of an eligible clean vehicle with respect to which a section 45W credit is determined); (d) the beginning of construction date and the placed in service date of the applicable credit property; (e) if an investment-related credit property (as defined in proposed § 1.6417-2(c)(3)), the source of funds the taxpayer used to acquire the property; and (f) any other information that the applicable entity or electing taxpayer believes will help the IRS evaluate the registration request.

The requirement for this additional information is not aligned with other income tax filing requirements outside of the tax return itself. Furthermore, this information would become available for examination after credit claims are filed. In light of the fact that these rules are intended to eliminate complexity and cost inherent in these transactions, TEI implores the Government to consider ways to reduce this burden for taxpayers during the registration period in order to maximize taxpayers that will be able to take advantage of these rules.

In addition, to ease the burdens of registration on distributed generation service providers (which install large volumes of small credit properties), TEI requests that the Government adopt a registration portal that would permit a taxpayer to upload a spreadsheet (or other preferred “flat file” format) with assembled data for all of the taxpayer’s projects that then would enable the portal to extract that data and auto-populate an application form for each project listed in the spreadsheet. This automated system offers several advantages; it would (1) avoid thousands of hours of manual data transfer, (2) reduce the risk of manual

errors committed during that data entry, and (3) promote fairness. A utility-scale solar farm that generates five megawatts of power and a distributed generation solar developer that places in service 1,000 five-kilowatt systems should not face disparate administrative burdens in registering applicable credit properties.

### Partnerships and S Corporations

Section 6417(c)(1) provides that the election for any credit determined with respect to any facility or property held directly by a partnership or S corporation shall be made by such partnership or S corporation. The Government has interpreted this language such that only the partnership or the S corporation, not its owners, may make an elective payment election. The Government focuses on entity-specific rules and considers potential difficulties in applying the election to only a partner's portion of an applicable credit property, particularly in tiered partnership structures. Under these rules, partnerships and S corporations are not applicable entities even if all partners or shareholders would qualify as applicable entities on their own.

The Proposed Regulations provide only one carve out for passthrough arrangements in which the ownership arrangement has properly elected out of subchapter K. In those situations under proposed § 1.6417-2(a)(1)(iii), an applicable entity may make an elective payment election with respect to its share of the applicable credits determined with respect to its share of the underlying applicable credit property.

Many energy projects utilize passthrough structures as individual companies often are not interested or able to assume the entire investment commitment for a project. Therefore, the exclusion of partners in partnerships and shareholders in S corporations from the category of applicable entities will severely limit the ability of investors in energy projects from availing themselves of elective payment elections. The inclusion of section 6417(c) specifically addressing the application of elective payment of applicable credits to partnerships and S corporations does not appear to contemplate such a major limitation on the use of the election by those entities. As partnerships and S corporations are entities frequently utilized for energy projects, the inability of their partners and shareholders to make these elections will drastically limit the utility of this provision and the accessibility of the credit marketplace. Therefore, TEI respectfully requests that the Government reconsider the confines of this limitation.

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TEI appreciates the opportunity to comment on the Temporary Regulations and the Proposed Regulations. TEI's comments were prepared under the aegis of its Federal Tax Committee, whose chair is Julia Lagun. Should you have any questions regarding TEI's comments, please do not hesitate to contact Julia Lagun at [jlagun@comerica.com](mailto:jlagun@comerica.com) or TEI tax counsel Kelly Madigan at [kmadigan@tei.org](mailto:kmadigan@tei.org) or (202) 470-3600.

Respectfully submitted,

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