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Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-50)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Via Federal eRulemaking Portal: <http://www.regulations.gov>

Subject: bp America Inc. Technical Comments on Notice 2022-50

Office of Associate Chief Counsel:

Pursuant to the request for comments on provisions contained in §§ 6417 and 6418 of the Internal Revenue Code (“Code”) as modified by the Inflation Reduction Act of 2022 (“IRA”), we are submitting comments pursuant to Section 3.02(2)(a) of IRS Notice 2022-50, which seeks taxpayer comment on the following:

(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?

Taxpayers, such as bp, have and will continue to enter into joint venture arrangements taxable as partnerships under Subchapter K of the Code. Partners in these joint ventures may have varying capacity to utilize “eligible credits” as

that term is defined by § 6418(f)(1)(A) thus presenting scenarios where credits and funds raised through transfers pursuant to § 6418 may need to be specially allocated to partners. We therefore request guidance on what happens in a situation where some partners in that partnership can use tax credits allocated to it and other partners cannot.

We propose that in such a situation, the partnership should be allowed to make an election to transfer the credits that one or more partners lack the ability to use and retain the tax credits that other partners can use. The partnership would then allocate tax credits to partners who can use the credits and sell the rest, distributing the sales proceeds to the partners whose tax credits were sold and allocating the tax-exempt income from the sale to the partners who receive the tax credits.

For example, assume a partnership holds energy property on which an investment tax credit of \$100 is generated under § 48. Assume the partnership has two partners (Partner A and Partner B) and the partnership agreement calls for the equal sharing of general profits amongst the two partners (i.e., 50/50). Partner A can use its 50% share of the \$100 of eligible credits to offset its existing tax liability and therefore does not wish to sell its tax credits. Partner B is not able to offset its credits against its tax liability and therefore wishes to transfer its share of such eligible credits pursuant to § 6418. The partnership therefore files an election under § 6418 to transfer \$50 worth of eligible credits and receives \$45 for such credits from an unrelated party. Under the terms of the partnership agreement, the partnership will allocate \$50 of eligible tax credits to Partner A and distribute \$45 of cash received from the transfer to Partner B. Each partner's outside basis and capital accounts will be adjusted downward by \$25 reflecting the required 50% basis adjustment under § 50(c). The inside basis in the energy property held by the partnership will be reduced by \$50 in accordance with § 50(c). The \$45 in cash sales proceeds will be distributed to partner B, and partner B will also be allocated \$45 in tax-exempt sales income as required by § 6418(c)(1)(B).

Allowing partnerships to sell tax credits that would otherwise be allocated to particular partners and distribute to those partners the sales proceeds, and to allocate the remaining tax credits to the other partners, would help provide needed flexibility for financing offshore wind and other renewable projects that are owned in traditional joint ventures by multiple utilities or other large energy companies, who each have differing ability to monetize their tax credits.

Conclusion

We appreciate the opportunity to submit these comments and the opportunity to meet with the IRS and Treasury to discuss these issues further as proposed and final rules are promulgated. Please reach out to Craig Boals and Andy Porter at craig.boals@bp.com and andrew.porter2@bp.com to discuss.

Respectfully submitted,

/s/ Downey Magallanes

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