■ b. Adding a sentence to the end of paragraph (b)(1).

The additions read as follows:

§ 301.6241–1 Definitions.

(a) * * *

(6) * * *

(iii) * * * Notwithstanding the previous two sentences, any tax, penalty, addition to tax, or additional amount imposed on the partnership under chapter 1 is an item or amount with respect to the partnership. * * *

* * * * *

(b) * * *

(1) * * * The third sentence of paragraph (a)(6)(iii) of this section applies to partnership taxable years ending on or after June 21, 2023.

* * * * *

■ **Par. 6.** Section 301.6241–7 is amended by:

■ a. Redesignating paragraph (j) as paragraph (k);

■ b. Adding new paragraph (j);

■ c. Revising the first sentence of newly redesignated paragraph (k)(1); and

■ d. Adding paragraph (k)(3).

The additions and revisions read as follows:

§ 301.6241–7 Treatment of special enforcement matters.

* * * * *

(j) *Elections resulting in payments to a partnership.* The IRS may adjust any election that results or could result in a payment to the partnership in lieu of a Federal tax credit or deduction without regard to subchapter C of chapter 63. The IRS may also make determinations, without regard to subchapter C of chapter 63, about the payment itself as well as any partnership-related item relevant to adjusting the election or the payment.

* * * * *

(k) * * *

(1) * * * Except as provided in paragraphs (k)(2) (relating to paragraph (b) of this section) and (k)(3) of this section (relating to paragraph (j) of this section), this section applies to partnership taxable years ending on or after November 20, 2020. * * *

* * * * *

(3) *Elections resulting in payments to a partnership.* Paragraph (j) of this section applies to taxable years ending on or after June 21, 2023.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

Approved: February 27, 2024.

Aviva Aron-Dine,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2024–04604 Filed 3–5–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9989]

RIN 1545–BQ75

Elective Payment of Advanced Manufacturing Investment Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations concerning the elective payment election of the advanced manufacturing investment credit under the Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act of 2022. The regulations describe rules for the elective payment election, including special rules applicable to partnerships and S corporations, repayment of excessive payments, basis reduction and recapture, and the IRS pre-filing registration process that taxpayers wanting to make the elective payment election are required to follow. These final regulations affect taxpayers eligible to make the elective payment election of the advanced manufacturing investment tax credit in a taxable year. This document also removes temporary regulations published on June 21, 2023 in the **Federal Register**.

DATES:

Effective date: These regulations are effective May 10, 2024.

Applicability dates: For dates of applicability see § 1.48D–6(h).

FOR FURTHER INFORMATION CONTACT: Concerning these final regulations, Lani M. Sinfield of the Office of Associate Chief Counsel (Passthroughs and Special Industries) at (202) 317–4137 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 48D was added to the Internal Revenue Code (Code) on August 9, 2022, by section 107(a) of the CHIPS Act of 2022 (CHIPS Act), which was enacted as Division A of the CHIPS and Science Act of 2022, Public Law 117–167, 136 Stat. 1366, 1393. Section 48D established the advanced manufacturing investment credit (section 48D credit) and section 48D(d) allows taxpayers (other than partnerships and S corporations) to elect to treat the amount of the section 48D credit determined under section 48D(a) as a payment against their Federal income tax liabilities. Section 48D(d) also provides special rules relating to elective payments to partnerships and S corporations and directs the Secretary of the Treasury or her delegate (Secretary) to provide rules for making elections under section 48D and to require information or registration necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments under section 48D. Section 48D applies to qualified property placed in service after December 31, 2022, and, for any property the construction of which began prior to January 1, 2023, only to the extent of the basis thereof attributable to the construction, reconstruction, or erection of such qualified property after August 9, 2022 (the date of enactment of the CHIPS Act). See section 107(f)(1) of the CHIPS Act.

On March 23, 2023, the Treasury Department and the IRS published in the **Federal Register** (88 FR 17451) a notice of proposed rulemaking (REG–120653–22), which contained proposed definitions and rules to implement the general provisions relating to the section 48D credit under proposed §§ 1.48D–1 through 1.48D–6 and the special 10-year recapture rule under proposed § 1.50–2 (March 2023 proposed regulations). Proposed §§ 1.48D–1 through 1.48D–5 and § 1.50–2 addressed who would be an eligible taxpayer, what would qualify as qualified property or an advanced manufacturing facility, whether the beginning of construction requirement would be met, and what would qualify as a significant transaction involving a material expansion of semiconductor manufacturing capacity in a foreign country of concern for purposes of the special 10-year recapture rule under section 50(a)(3) of the Code. In addition, § 1.48D–6 of the March 2023 proposed regulations set forth the general requirements that would apply for making an elective payment election under section 48D(d), and the specific requirement that an eligible taxpayer, partnership, or S corporation would need to comply with the registration procedures in proposed § 1.48D–6(c)(2)

as a condition of, and prior to, any amount being treated as a payment under section 48D(d)(1) or (d)(2)(A)(i)(I). However, the March 2023 proposed regulations under proposed § 1.48D–6(c)(2) reserved on the procedures and additional information required for completing the pre-filing registration process.

Over 40 comments were received by the Treasury Department and the IRS in response to the March 2023 proposed regulations. A public hearing on the March 2023 proposed regulations was held on July 26, 2023. Comments and testimony regarding proposed §§ 1.48D–1 through 1.48D–5 and 1.50–2 will be addressed in a forthcoming Treasury decision containing final regulations under those provisions.

On June 21, 2023, the Treasury Department and the IRS published proposed regulations under section 48D(d) (REG–105595–23) in the **Federal Register** (88 FR 40123) revising proposed § 1.48D–6 of the March 2023 proposed regulations (June 2023 proposed regulations) to set forth the additional information and registration requirements for taxpayers planning to make an elective payment election under section 48D(d) to treat the amount of the section 48D credit as a payment of Federal income tax, or in the case of a partnership or S corporation, to receive a payment in the amount of such credit. The June 2023 proposed regulations also described rules for the elective payment election, including special rules applicable to partnerships and S corporations, repayment of excessive payments, and basis reduction and recapture. Also on June 21, 2023, the Treasury Department and the IRS published temporary regulations (T.D.9975) (temporary regulations) in the **Federal Register** (88 FR 40086) that implement the prefiling registration process described in § 1.48D–6(b) of the June 2023 proposed regulations. The temporary regulations apply to property placed in service on or after December 31, 2022, and during a taxable year ending on or after June 21, 2023. Twelve commenters provided comments to the Treasury Department and the IRS in response to the June 2023 proposed regulations, and a public hearing was held on August 24, 2023.

This Treasury decision removes the temporary regulations effective on May 10, 2024 and adopts § 1.48D–6 of the June 2023 proposed regulations with certain modifications after full consideration of all the comments and testimony received on § 1.48D–6 of the March 2023 proposed regulations and June 2023 proposed regulations, as described in the Summary of Comments and Explanation of Revisions.

Summary of Comments and Explanation of Revisions

I. Overview

The final regulations set forth in § 1.48D–6 retain the basic approach and structure of the June 2023 proposed regulations with certain revisions in response to comments received.

The Treasury Department and the IRS have refined and clarified certain aspects of the June 2023 proposed regulations in these final regulations. Specifically, the final regulations modify the limitations for making an elective payment election in proposed § 1.48D–6(c)(2), modify the denial of double benefit rule in proposed § 1.48D–6(e), and provide an interim rule for determining a partner's distributive share of the tax exempt income described in section 48D(d)(2)(A)(i)(III) and proposed § 1.48D–6(d)(2).

II. Elective Payment Election

One commenter requested that the final regulations clarify whether a taxpayer is considered to have made an elective payment election upon completing the pre-filing registration requirement. The commenter noted that proposed § 1.48D–6(b)(7)(iv) states in relevant part, that, if an eligible taxpayer that is the owner of an advanced manufacturing facility previously registered for an elective payment election for a section 48D credit determined with respect to that advanced manufacturing facility, and if the facility undergoes a change in ownership such that the new owner has a different employer identification number (EIN) than the owner who obtained the original registration, then the original owner of the advanced manufacturing facility must amend the original registration to disassociate its EIN from the advanced manufacturing facility. The commenter suggested that this sentence from proposed § 1.48D–6(b)(7)(iv) creates some confusion as to whether the elective payment election is made pursuant to the pre-filing registration as opposed to on the taxpayer's original tax return as provided in proposed § 1.48D–6(c). The commenter further suggested that an example would be helpful to demonstrate a taxpayer's ability to make an elective payment election per facility not per the taxpayer. The commenter explained that there could be instances in which the taxpayer would make an elective payment election for one advanced manufacturing facility versus another advanced manufacturing facility.

The Treasury Department and the IRS have determined that a modification to the proposed rule is appropriate to clarify that a taxpayer makes an elective payment election pursuant to section 48D(d)(1) in the time and manner required by § 1.48D–6(c) of the final regulations. Accordingly, proposed § 1.48D–(6)(b)(7)(iv) is revised in the final regulations to provide that the taxpayer registers the ''qualified investments in the advanced manufacturing facility or the advanced manufacturing facility'' as opposed to registering for ''an elective payment election for a section 48D credit determined with respect to that advanced manufacturing facility.'' Given this clarification, the Treasury Department and the IRS have determined that an example to demonstrate this point is not needed.

III. Pre-Filing Registration Requirement

A. Qualified Investment

Proposed § 1.48D–6(b)(5) would require a taxpayer to obtain a registration number for each qualified investment in an advanced manufacturing facility of an eligible taxpayer with respect to which an elective payment election is made. Several commenters requested that the final regulations clarify the meaning of the term ''qualified investment'' in proposed § 1.48D–6(b)(5). Some commenters requested that the final regulations allow a taxpayer to obtain a registration number for an advanced manufacturing facility. Other commenters requested that the final regulations allow a taxpayer to obtain a registration number for a single advanced manufacturing facility project that would cover all qualified investments made with respect to such advanced manufacturing facility project within the taxable year. Another commenter requested that the final regulations allow a taxpayer to obtain a registration number for all qualified investments placed in service as a part of an advanced manufacturing facility during the taxable year, or for any reasonable grouping of investments or assets.

Section 48D(a) provides that the section 48D credit for any taxable year is an amount equal to 25 percent of the qualified investment for such taxable year with respect to any advanced manufacturing facility of an eligible taxpayer. Section 48D(b) generally provides that the qualified investment with respect to any advanced manufacturing facility for any taxable

year is the basis of any qualified property placed in service by the taxpayer during such taxable year which is part of an advanced manufacturing facility. Consistent with section 48D(a), proposed § 1.48D–6(b)(5) would require a taxpayer to obtain a registration number for each qualified investment in an advanced manufacturing facility as a prerequisite to making an elective payment election with respect to the section 48D credit determined with respect to such qualified investment for the taxable year. Consequently, a taxpayer must obtain a registration number for any qualified property placed in service during the taxable year. A taxpayer is able to register a single property, properties, or an advanced manufacturing facility. However, a taxpayer must be the owner of an advanced manufacturing facility to register the facility. A taxpayer that places in service qualified property that is part of an advanced manufacturing facility must register the qualified property if such taxpayer is not the owner of the facility. The proposed regulations provide flexibility to taxpayers in determining the appropriate properties, or advanced manufacturing facility, for which it must obtain a registration number.

Section 48D(d)(2)(E) provides that the Secretary may require additional information or registration as a condition of, and prior to, an amount being treated as a payment under section 48D(d)(1) to prevent duplication, fraud, improper payments, or excessive payments. A rule allowing a taxpayer to register a single advanced manufacturing facility project, which could include multiple qualified investments in more than one advanced manufacturing facility, would create an administrative burden on the IRS because the determination of the section 48D credits with respect to the separate facilities could be different. Such a rule could thus increase the risk of duplication, fraud, improper payments, or excessive payments. For the foregoing reasons, these final regulations do not adopt these recommendations. The Treasury Department and the IRS recommend that taxpayers consult Form 3468, *Investment Credit,* and Form 3800, *General Business Credit,* and those form's accompanying instructions, as well as the current version of Publication 5884, *Inflation Reduction Act (IRA) and CHIPS Act of 2022 (CHIPS) Pre-Filing Registration Tool User Guide and Instructions,* for the latest guidance on the pre-filing registration process. Proposed § 1.48D–6(b)(7)(ii) would provide that a registration number is valid only for the taxable year for which it was obtained. Proposed § 1.48D–6(b)(7)(iii) would provide that a taxpayer must renew a previously obtained registration in a subsequent taxable year. A commenter requested that the final regulations allow a taxpayer to obtain one registration number that could be renewed over a period of several taxable years for all qualified progress expenditures in an advanced manufacturing facility. The Treasury Department and the IRS have determined that allowing a taxpayer to obtain one registration number that can be used for a period of several years for all qualified progress expenditures would increase the risk of duplication, fraud, improper payments or excessive payments. Accordingly, the requested change is not adopted.

B. Information Required To Complete the Pre-Filing Registration Process

Commenters recommended that the final regulations modify the information and documentation requirements in proposed § 1.48D–6(b). One commenter requested that the final regulations specify the ''additional information'' that may be required by the IRS electronic portal pursuant to proposed § 1.48D–6(b)(6)(ii) to ensure that taxpayers have clarity and time to prepare all necessary documentation. One commenter requested that the final regulations eliminate all ''open-ended'' categories that do not specify the types of information or documentation as in proposed § 1.48D–6(b)(6)(ii), (vi), (vi)(F), and (ix). The commenter also requested limiting the requirement for information on the beginning of construction and placed in service date in proposed § 1.48D–6(b)(6)(vi)(D). The commenter further requested that the final regulations eliminate or significantly limit the supporting document requirement in § 1.48D–6(b)(6)(vi)(C).

The pre-filing registration process has been designed to help prevent fraud and duplication, while also allowing for more efficient processing and payment upon filing of the return. The information requested is also that which a taxpayer claiming a section 48D credit should have available. Except for a taxpayer making a qualified progress expenditure election pursuant to section 48D(b)(5), a taxpayer must first place in service qualified property before the taxpayer may register the property with the intention of making an elective payment election. Maintaining this proposed requirement ensures that taxpayers are not completing pre-filing registration in an earlier year, before a credit can be determined. Therefore, these final regulations do not adopt these recommendations.

One commenter recommended that the final regulations include information reporting requirements similar to the information reporting requirements in § 1.48–4 (election of lessor to treat the lessee as having acquired investment credit property). More specifically, the commenter suggested that the information requirements should be satisfied when a taxpayer attaches a signed statement to its return that provides, for each unit of property for which an election is made, including a single advanced manufacturing facility, a description of the property, the basis of the property, the year when construction of the property began, and the placed in service date. The commenter also requested that, in the years after the filing of the initial statement, a taxpayer should be able to satisfy the information requirements by reporting changes to any information in the prior year's filed statement such as basis adjustments and any additional property with respect to which additional credits are claimed.

Consistent with section 48D(d)(2)(E), the final regulations provide for a pre-filing registration process that allows the IRS to verify certain information before the election is made and then to process the tax return on which the election is made with minimal delays. Similarly, the final regulations provide the time and manner for making an elective payment election that is consistent with the existing framework for claiming business tax credits; that is, the filing of the annual return including the completed source credit form and completed Form 3800. As previously noted, the pre-filing registration process has been designed to help prevent fraud and duplication, while also allowing for more efficient processing and payment upon filing of the return. For the foregoing reasons, the final regulations adopt the information requirements as proposed.

A commenter asked whether the IRA and CHIPS pre-filing registration portal could handle large files in order to satisfy the information requirements under proposed § 1.48D–6(b)(6)(vi)(C). The Treasury Department and the IRS did not intend for proposed § 1.48D–6(b)(6)(vi)(C) to require all supporting documentation to be provided during the pre-filing registration process. Rather, the intent was to require information sufficient to verify the taxpayer's qualified investment and provide examples of information that may be helpful in doing so. In response to the comment, these final regulations remove the word ''any'' from the

provision. The documentation to support the existence of a valid qualified investment will vary by the property or properties for which the credit is being claimed, and a registrant does not need to provide all information that may be available. However, to the extent the information provided is insufficient for purposes of the pre-filing registration process, the IRS may request further information. *See* Publication 5884.

Another commenter generally recommended that the final regulations ''could be slightly more specific in guiding taxpayers when determining their pre-filing eligibility,'' but did not include any particular recommendations for modifications to the proposed regulations. Consistent with section 48D(d)(2)(E), proposed § 1.48D–6(b) would provide the information and pre-filing registration requirements that the Secretary deems necessary and appropriate for purposes of preventing duplication, fraud, improper payments or excessive payments and which specify pre-filing eligibility. Accordingly, the final regulations do not include any modifications to the specifications for determining pre-filing eligibility.

C. Timing of the Pre-Filing Registration Process

Commenters requested that the final regulations clarify the timeframe for the IRS to review the registration information provided, and notify the taxpayer whether the registration requirements have or have not been satisfied. One commenter recommended that the final regulations: (1) allow the IRS 90 days to determine whether a taxpayer submitted sufficient information required to complete the pre-filing registration process, (2) provide a taxpayer with 14 days to correct the registration, and (3) allow the IRS 45 days to review the corrected information. Because the timeframe and procedures of the pre-filing registration process may be modified over time as both the IRS and taxpayers gain experience with it, these final regulations do not contain any such timeframe or procedure. Instead, the Treasury Department and the IRS recommend that taxpayers consult the current version of Publication 5884 for the latest guidance on the pre-filing registration process. As of February 2024, Publication 5884 states:

> Even though registration is not possible prior to the beginning of the tax year in which the credit will be earned, the IRS recommends that taxpayers register as soon as reasonably practicable during the tax year. The current recommendation is to submit the pre-filing registration at least 120 days prior to when the organization or entity plans to file its tax return. This should allow time for IRS review, and for the taxpayer to respond if the IRS requires additional information before issuing the registration numbers.

One commenter requested that the final regulations clarify the outcome of a missed registration with respect to a portion of a qualified investment. The commenter asked whether a missed registration for a portion of a qualified investment will impact a taxpayer's ability to make an election for the portion of the qualified investment for which registration was properly made and whether a taxpayer may claim a section 48D credit for the portion for which the registration was not properly made. This is a factual matter that cannot be addressed in these final regulations as it depends on the facts and circumstances of the qualified investment made by the taxpayer. However, as further described in part IV.B of this Summary of Comments and Explanation of Revisions, the final regulations provide that a taxpayer may take curative action for an ineffective election prior to the due date of the election (including extensions) by filing a superseding return.

No comments were received on the remaining proposed rules under § 1.48D–6(b). This Treasury decision therefore adopts those proposed regulations as final regulations.

IV. Time and Manner of Election

A. Qualified Progress Expenditures

Commenters requested that the final regulations clarify whether a taxpayer can make an elective payment election with respect to a section 48D credit determined pursuant to a qualified progress expenditure election. Section 48D(b)(5) provides that ''[r]ules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of subsection [48D](a).'' Thus, a taxpayer has the ability to make a qualified progress expenditure election, as provided in § 1.46–5, to increase its qualified investment with respect to an advanced manufacturing facility for the taxable year by any qualified expenditures made during such taxable year. Section 48D(d)(1) allows a taxpayer to make an elective payment election with respect to a section 48D credit determined with respect to such taxpayer. Section 48D(d)(2) allows a partnership or S corporation to make an elective payment election under section 48D(d)(1). The statutory text of sections 48D(b)(5) and (d)(1) and (2) thus permit a taxpayer (or partnership or S corporation) to make an elective payment election with respect to a section 48D credit determined pursuant to a qualified progress expenditure election. For this reason, the Treasury Department and the IRS have determined that a clarification is not necessary in the final regulations. The Treasury Department and the IRS recommend that taxpayers consult the current version of Publication 5884 for the latest guidance on the pre-filing registration with respect to property for which the taxpayer makes a qualified progress expenditure election. As of February 2024, Publication 5884 states:

> If the registrant intends to elect payment for certain progress expenditures under IRC section 48D(b)(5), enter the date of the entity's last progress expenditure made during the tax year.

A commenter stated that a calendar-year taxpayer with qualifying progress expenditures made between August 9, 2022, and December 31, 2022, may not have sufficient time to successfully complete the pre-filing registration requirements as described in the proposed regulations to make a timely elective payment election on an original return. The IRA and CHIPS pre-filing registration portal opened on December 22, 2023. Thus, a calendar-year taxpayer with qualifying progress expenditures made between August 9, 2022, and December 31, 2022, would have been unable to complete the pre-filing registration requirements. In such cases, the taxpayer should anticipate that the tax return on which the elective payment election is made may undergo heightened scrutiny to mitigate the risk of fraud and duplication that pre-filing registration is intended to address before a payment is issued.

One commenter requested that the final regulations or other guidance provide guidance on the definitions of ''self-constructed'' versus ''non-self-constructed property'' and ''integrated unit'' for purposes of determining the construction period under § 1.46–5. Whether a property, including qualified property under section 48D(b)(2) and the section 48D regulations, is progress expenditure property is determined based on the facts known at the close of the first taxable year to which a progress expenditures election is made. Whether property is ''self-constructed'' versus ''non-self-constructed property'' or an ''integrated unit'' pursuant to § 1.46–5(k), (l) and (e)(3), respectively, is also a factual determination. Additional guidance on the definitions of ''self-constructed'' versus ''non-self-

constructed property'' and ''integrated unit,'' would inject significant complexity into the final regulations and likely cause additional uncertainty regarding the scope of those terms. Moreover, such guidance is beyond the scope of these final regulations. Accordingly, the final regulations do not address the modifications requested by the commenter.

B. Manner of Making the Election

A commenter requested that the final regulations clarify whether a taxpayer is ''released from the requirements of an elective payment election'' if the taxpayer completes pre-filing registration but chooses not to make the elective payment election. Proposed § 1.48D–6(c)(1) would provide, in part, that any elective payment election under section 48D(d)(1) must be made on the taxpayer's original return of tax (including a superseding return) filed not later than the due date (including extensions of time) for the taxable year for which the section 48D credit is determined. Proposed § 1.48D–6(b) would provide the requirements for pre-filing registration. Neither section 48D nor the proposed regulations would mandate that a taxpayer is required to make an elective payment election if the taxpayer successfully completed the pre-filing registration requirements set forth in proposed § 1.48D–6(b). As noted in Part II of this Summary of Comments and Explanation of Revisions, the final regulations modify proposed § 1.48D–(6)(b)(7)(iv) by clarifying that the taxpayer previously registered the ''advanced manufacturing facility'' as opposed to previously registering for ''an elective payment election for a section 48D credit determined with respect to that advanced manufacturing facility.'' For the foregoing reasons, the Treasury Department and the IRS have determined that no further clarification is necessary in the final regulations as requested by the commenter.

One commenter requested that the final regulations clarify that any additional information and supporting calculations required by any source credit form and Form 3800 may be submitted electronically and will be reviewed by the appropriate persons. Proposed § 1.48D–6(c)(1) would provide a manner for making an elective payment election that is consistent with the existing framework for claiming business tax credits; that is, the filing of the annual return including the completed source credit form and completed Form 3800 which may submitted electronically. The proposed regulations would provide for a pre-filing registration process that would allow the IRS to verify certain information before the election is made and then process the tax return on which the election is made with minimal delays. Additional guidance on this subject is beyond the scope of these final regulations.

Consistent with proposed § 1.48D–6(c)(1)(iv)(A), the final regulations require a taxpayer to include a statement on the taxpayer's original return (including a superseding return) attesting under the penalties of perjury that the taxpayer has not made an applicable transaction as defined in proposed § 1.50–2(b)(3) during the taxable year that the qualified property is placed in service. One commenter recommended that the statement whether the taxpayer has made an applicable transaction should be requested either at pre-filing registration or on the tax return. The commenter explained that including this requirement would allow the IRS and taxpayers to be proactive in preventing any unnecessary claiming of the section 48D credit or the taxpayer making an incorrect elective payment election. Section 48D(a) provides that the section 48D credit for any taxable year is determined with respect to any advanced manufacturing facility of an eligible taxpayer. Section 48D(c) defines an eligible taxpayer, in part, as any taxpayer which has not made an applicable transaction (as defined in section 50(a)) during the taxable year. Requiring the statement on the taxpayer's return as opposed to during pre-filing registration is consistent with the requirements of sections 48D(a) and (c) and allows taxpayers sufficient time for such a determination while deterring erroneous elective payment elections.

One commenter requested clarification on superseding returns. Neither the Code nor regulations define a superseding return, but administrative IRS guidance provides that a superseding return is a return filed subsequent to the originally-filed return but before the due date for filing the return (including extensions). For example, if a taxpayer subject to an automatic extension files an original return on the due date and also files a subsequent return within the automatic extension period, the subsequent return would generally be considered a superseding return. If a return for a particular taxable year is originally filed after the due date (excluding extensions) but during the automatic extension period, then such return would be considered an original return. Unlike a superseding return, an amended return is a return filed subsequent to the originally filed or superseding return and filed after the due date for filing the return (including extensions).

The commenter stated that the reference to a superseding return seems to be an acknowledgment that some taxpayers will use a provisional tax return filed on the due date (before extensions) to hasten the election process. This commenter asked whether, if a taxpayer files a provisional return on March 15, 2024, and files a superseding return on September 15, 2024, the taxpayer would be treated as making payment against tax under section 48D(d)(2)(C) on March 15, 2024. The Treasury Department and the IRS note that the designation ''provisional'' return has no basis in the Code or regulations and accordingly, such returns are not treated differently by the IRS upon filing. Taxpayers are reminded that a tax return is signed under penalties of perjury that the return is true, correct, and complete. If an original return is filed on March 15, 2024, and contains a valid elective payment election, the taxpayer is treated as making a payment against tax on that day. A superseding return could increase or reduce the amount of the net elective payment election. If the amount is increased, the additional elective payment is treated as paid on the date the superseding return was filed. Taxpayers should be aware that filing a superseding return could result in a delay by the IRS in processing the additional elective payment amount. If the net elective payment amount is reduced because of the superseding return, the taxpayer could be subject to interest and, if the taxpayer fails to pay the difference with the superseding return, penalties.

The Treasury Department and the IRS have determined that clarification is needed to address situations in which a taxpayer intended to make an elective payment election but made a reporting error with respect to an element of a valid election (for example, miscalculating the amount of the credit on the original return or making a typographical error in the process of inputting a registration number), and to allow the taxpayer to correct any errors that would result in a disallowance of the election or to correct an excessive payment before an excessive payment determination is made by the IRS. Consistently, it is appropriate to allow taxpayers to correct errors that would result in a larger payment than indicated on the original return as long as such larger amount is accurate. As a result, these final regulations remove the words ''or revised'' in proposed § 1.48D–6(c)(2) and now state ''[n]o elective payment election may be made

for the first time on an amended return, withdrawn on an amended return, or made or withdrawn by filing an administrative adjustment request under section 6227 of the Code, although a numerical error with respect to a properly claimed elective payment election may be corrected on an amended return or by filing an administrative adjustment request under section 6227 if necessary.'' This provision cannot be used to revoke an election or to make an election for the first time on an amended return. In addition, the taxpayer's original return, which must be signed under penalties of perjury, must contain all of the information, including a registration number, required by these final regulations. To properly correct an error on an amended return or in an administrative adjustment request, a taxpayer must have made an error in the information included on the original return such that there is a substantive item to correct; a taxpayer cannot correct an item that is left blank or an item that is described as being ''available upon request.''

These final regulations also modify the proposed regulations to permit an extension of time under § 301.9100–2(b) to allow for an automatic six-month extension of time from the due date of the return (excluding extensions) to make the election prescribed in section 48D(d). The elective payment election is a statutory election in that its due date is prescribed by statute. As such, the section 9100 relief procedures apply only insofar as the late election is being filed pursuant to § 301.9100–2(b), which requires that the taxpayer timely filed its return for the year the election should have been made. Relief under this provision will apply only to taxpayers that have not received an extension of time to file a return after the original due date (excluding extensions). Taxpayers eligible for this relief must take corrective action under § 301.9100–2(c) and follow the procedural requirements of § 301.9100–2(d).

No comments were received on the remaining proposed rules regarding the manner and time of making an elective payment election under § 1.48D–6(c). This Treasury decision therefore adopts those proposed regulations as final regulations.

C. Timing of Payment

Multiple commenters advocated that elective payment amounts be permitted to be used against estimated tax payments or that the Treasury Department and the IRS allow for quarterly elections and payments even though the elective payment is not deemed effective until the later of the due date or filing date of the tax return. Another commenter opined that the IRS could use its authority under section 48D(d)(6) to allow taxpayers to make and receive quarterly elections and payments, align quarterly elections with quarterly returns, and replicate the quarterly excise tax reporting mechanism similar to rules under sections 6426 and 6427, allowing taxpayers to claim payments every quarter.

The distinction between estimated tax installments (which are the obligation of the taxpayer to calculate) versus an end of year estimated tax penalty (that may result if the taxpayer's calculations are not correct and/or if the taxpayer's annual tax liability is not paid on the due date for the return, including a ''payment'' that is made through an elective payment election) appeared to confuse several commenters. For example, one commenter stated that proposed § 1.48D–6(e)(2) could be interpreted to permit a taxpayer to calculate their estimated tax installments and any underpayment by considering properly determined refundable credits in making quarterly estimated tax payments, even though the elective payment amount is not deemed to be paid until the later of the due date or filing date of the tax return.

Commenters asked that section 48D credits be considered to have been estimated tax payments, resulting in no tax liability at the end of the year or, at a minimum, that the final regulations waive estimated tax penalties related to an elective payment election. In other words, commenters requested clarification that the elective payment election may be applied as a reduction to any quarterly estimated tax payments (without penalty) and to offset any taxes that are reported on the taxpayer's income tax return for any taxable year in which those elections are in effect.

These final regulations do not adopt these recommendations. Section 48D(d)(2)(C) contemplates a single payment and clearly states the timing of when the payment is treated as made, which at the earliest, is the return due date (determined without regard to extensions). In that sense, payments made under section 48D are no different than other kinds of payments a taxpayer may make as part of filing a timely return (excluding extensions) or making a payment with a timely filed application for extension. Taxpayers can adequately determine whether their quarterly estimated payments are sufficient based on their projected income and by considering any expected and properly determined credit. For the same reasons, the section 48D credit may not be included to calculate estimated tax for Form 4466, which, under section 6425(a)(1) of the Code must be filed after the close of a corporation's taxable year, on or before the 15th day of the fourth month following the close of such taxable year, and prior to the filing of the corporation's return for such taxable year. Comments requesting examples showing how the full amount of the section 48D credit reduces tax under section 6655 are outside the scope of these final regulations. For the sake of clarity, however, the final regulations modify the examples under § 1.48D–6(e)(4) to better reflect the conclusion that a taxpayer that files its return after the due date for filing (excluding extensions) may also be subject to a penalty under section 6651(a)(2) for the failure to timely pay tax, even if it did not owe tax after applying the net elective payment amount against its net tax liability.

One commenter stated that in the absence of quarterly elections and payments, the final regulations should provide a mechanism for a corporate partner to reduce quarterly estimated taxes for credits generated through partnerships; otherwise, the commenter thought it would be penalizing taxpayers that operate their businesses through partnerships. The Treasury Department and the IRS note that the treatment of partners in a partnership (or shareholders of an S corporation) that makes an elective payment election is different from the treatment of a taxpayer that directly makes an elective payment election. This is a result of the special rules in section 48D(d)(2)(A) that require an elective payment election for section 48D credits determined with respect to any property held directly by a partnership to be made by the partnership. An elective payment election made by a partnership is not reduced by the Federal tax liabilities of its partners. Instead, it is only reduced by any partnership level Federal tax liability. If partners were allowed to reduce their quarterly estimated taxes for section 48D credits determined with respect to property held by a partnership to which the partnership makes an elective payment election, then the amount of the elective payment made to the partnership should be reduced by the partners' corresponding quarterly estimated tax liabilities. Otherwise, the partners would receive a windfall because the same section 48D credit would be used to both reduce the partners' estimated tax payments and

generate an elective payment to the partnership. Section 48D(d)(2)(A) does not allow for such a mechanism. Instead, section 48D(d)(2)(A) provides that if a partnership makes an elective payment election, any elective payment amount is treated as tax exempt income for purposes of section 705 and a partner's distributive share of such tax exempt income is equal to such partner's distributive share of the section 48D credit otherwise available for each taxable year. As the elective payment election results in a section 48D credit being treated as tax exempt income rather than a credit, it is inappropriate to adopt a rule allowing the partners to treat the same amount as a credit for estimated tax purposes. Thus, the final regulations do not adopt the commenter's recommendation of a rule allowing corporate (or any other) partners to reduce quarterly estimated taxes for section 48D credits determined with respect to property held through a partnership that makes an elective payment election.

Commenters asked that the final regulations specify a timeframe within which a taxpayer will receive an elective payment amount. Commenters also requested that the IRS should be required to process the elective payment within 45 days from the date the election is filed, similar to the quick refund process under Form 4466, *Corporation Application for Quick Refund of Overpayment of Estimated Tax.* The Treasury Department and the IRS decline to specify a particular time within which an elective payment election will be processed. Several factors, including the volume of returns on which elective payment elections are made, and whether any particular return contains complete and accurate information, will affect processing time. However, as stated in this preamble, the pre-filing registration is intended to allow the IRS to verify certain information about a taxpayer in a timely manner while mitigating the risk of fraud or improper payments and then process the annual tax return with minimal delays.

A commenter requested that the final regulations clarify whether refunds greater than $5 million will require review by the Joint Committee on Taxation. The commenter noted that the review is not necessary because an elective payment is not a refund of tax based on any position taken on the tax return. This comment is outside the scope of these final regulations.

V. Special Rules for Partnerships and S Corporations

Commenters requested that the final regulations allow a partnership to determine a partner's distributive share of the section 48D credit without regard to § 1.46–3(f). For the reasons explained in this Part V of the Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS decline to adopt this request in the final regulations. The Treasury Department and the IRS have determined, however, that an interim rule allowing partnerships that meet certain requirements to determine a partner's distributive share of the tax exempt income resulting from an elective payment election in accordance with the basic principles governing partnership income allocations under the section 704(b) regulations, instead of in accordance with the principles under the section 704(b) regulations and § 1.46–3(f) for allocations of investment tax credits, is appropriate for purposes of section 48D.

Section 48D is among the investment credits listed under section 46. *See* section 46(6). The investment credit under section 46 is a business credit under section 38(b)(1). Thus, property with respect to which a section 48D credit is determined is section 38 property. Section 1.704–1(b)(4)(ii), which requires allocations with respect to the investment credit provided by section 38(b)(1) to be made in accordance with the partners' interests in the partnership, provides that allocations of cost or qualified investment made in accordance with § 1.46–3(f) are deemed to be made in accordance with the partners' interests in the partnership. Pursuant to § 1.46–3(f)(1), in the case of a partnership that owns section 38 property, each partner is treated as the taxpayer with respect to the partner's share of the basis of partnership section 38 property. Section 1.46–3(f)(2)(i) provides that a partner's share of basis of any section 38 property is determined in accordance with the ratio in which the partners share general profits. Pursuant to § 1.46–3(f)(2)(ii), if all related items of income, gain, loss, and deduction with respect to any item of partnership section 38 property are specially allocated in the same manner and if such special allocation is recognized under section 704(a) and (b) and § 1.704–1(b) (that is, the allocation must have substantial economic effect), then each partner's share of the basis of such item of section 38 property is determined by reference to the special allocation effective for the date on which the property is placed in service, rather than in accordance with the ratio in which the partners share general profits. Thus, § 1.46–3(f), as currently in effect, already permits special allocations of a partner's share of the basis of an item of section 38 property independent of the ratio in which the partners divide the general profits of the partnership if all requirements under § 1.46–3(f)(2)(ii) are met. Accordingly, the final regulations do not incorporate the commenter's request to allow a partnership to allocate a partner's distributive share of the section 48D credit without regard to § 1.46–3(f).

Section 48D(d)(2)(A)(i)(IV) provides that a partner's distributive share of the tax exempt income resulting from a partnership receiving an elective payment is based on such partner's distributive share of the otherwise applicable credit (section 48D credit) for each taxable year. Consistent with section 48D(d)(2)(A)(i)(IV), proposed § 1.48D–6(d)(2)(iv) would provide that a partner's distributive share of such tax exempt income is equal to such partner's distributive share of its otherwise allocable basis in qualified property under proposed § 1.48D–2(h)(2)(i) (referring to § 1.46–3(f)) for such taxable year. Notwithstanding section 48D(d)(2)(A)(i)(IV), section 48D(d)(6) expressly authorizes the Secretary to issue regulations or other guidance as may be necessary or appropriate to carry out the purposes of section 48D(d), including regulations or other guidance providing rules for determining a partner's distributive share of the tax exempt income described in section 48D(d)(2)(A)(i)(III). The Treasury Department and the IRS have determined that a general rule in the final regulations that would allow a partnership to determine a partner's distributive share of the tax exempt income described in section 48D(d)(2)(A)(i)(III) without regard to section 48D(d)(2)(A)(i)(IV) is inconsistent with the language in section 48D(d)(2)(A)(i)(IV) and the structure and the purpose of the statute.

The Treasury Department and the IRS are aware that taxpayers may have entered into written binding partnership agreements for the joint ownership and operation of an advanced manufacturing facility or qualified property in anticipation of the enactment of the CHIPS Act on August 9, 2022. Other taxpayers may have entered into such written binding partnership agreements on or after August 9, 2022, and before publication of the proposed regulations under section 48D(d) in the **Federal Register** on June 21, 2023. The Treasury Department and the IRS are also aware that such taxpayers may have made

erroneous assumptions in their partnership agreements concerning the allocation of the tax exempt income described in section 48D(d)(2)(A)(i)(III), and, more specifically, that such tax exempt income could be allocated otherwise than as provided in section 48D(d)(2)(A)(i)(IV). These binding partnership agreements may have the effect of diminishing or negating the benefit of elective pay under section 48D(d) for taxpayers that are engaging in activities incentivized by the CHIPS Act through partnerships if a partner's distributive share under section 704(b) of the tax exempt income must be determined in accordance with its distributive share of the otherwise applicable section 48D credit.

For this reason, the Treasury Department and the IRS have determined that an interim rule allowing a partner's distributive share of the tax exempt income described in section 48D(d)(2)(A)(i)(III) to be determined in accordance with the basic principles for partnership income allocations as described in § 1.704–1(b)(1)(i), as opposed to pursuant to the rules for credits provided in §§ 1.704–1(b)(4)(ii) and 1.46–3(f), is consistent with the structure and purpose of the CHIPS Act to incentivize the manufacture of semiconductors and semiconductor manufacturing equipment within the United States. Accordingly, the final regulations provide that if a written binding partnership agreement was entered into after December 31, 2021, and before June 22, 2023, and if the partnership was formed for the purpose of owning and operating an advanced manufacturing facility or qualified property, a partner's distributive share of the tax exempt income described in section 48D(d)(2)(A)(i)(III) may be determined in accordance with the basic principles for partnership income allocations as described in § 1.704–1(b)(1)(i), instead of in accordance with the manner in which the otherwise applicable section 48D credits would have been allocated under §§ 1.704–1(b)(4)(ii) and 1.46–3(f).

In determining the amount of the section 48D credit that will result in a payment to the partnership or S corporation under section 48D(d)(2)(A)(i)(I) and in § 1.48D–6(d)(2)(ii)(A), the Treasury Department and the IRS have clarified under § 1.48D–6(d)(6)(i) that, in addition to section 469 of the Code, a partnership or S corporation is not subject to section 38(b) and (c) because those sections apply at the partner or S shareholder level.

No comments were received with respect to the remaining special rules for a partnership or S corporation making an elective payment election, including the timing of tax exempt income under proposed § 1.48D–6(d)(2)(vi), the character of tax exempt income under proposed § 1.48D–6(d)(5), the methodology for determining the amount of section 48D credit including the application of sections 49, 50, and 469 under proposed § 1.48D–6(d)(6), and rules applicable to payments made to partnerships subject to the centralized partnership audit regime found in subchapter C of chapter 63 of the Code under proposed § 1.48D–6(d)(7). The Treasury Department and the IRS adopt the proposed regulations without further modification, but their designations have been revised to better accommodate the interim rule.

VI. Denial of Double Benefit Rule

Commenters requested further guidance regarding the method for computing the elective payment amount. One commenter requested additional examples with other general business credits (GBCs) to demonstrate the effect of the ordering rule in determining the elective payment amount. Several commenters requested that the final regulations not include the section 38 ordering rule in proposed § 1.48D–6(e)(2). These commenters stated that section 48D requires, with respect to an elective payment election, that the taxpayer is treated as making a payment against tax equal to the amount of the section 48D credit, and the treatment of the section 48D credit as a payment thereby exempts it from the ordering rule. They also claimed that the inclusion of the ordering rule limits the elective payment amount of the section 48D credit determined for the taxable year subject to elective pay while also limiting the amount of other GBCs that may be claimed.

The Treasury Department and the IRS agree with commenters that the GBC ordering rules can result in a lowered elective payment amount; thus, these final regulations include changes to address that result. Section 48D(d)(1) provides that the taxpayer making an elective payment election will be treated as making a payment against tax equal to the amount of the credit, and section 48D(d)(2)(C) references such payment, as noted by the commenters. It is section 48D(d)(3) that creates a bifurcated treatment for purposes of the Code by reducing the credit to zero, but for any other purposes under the Code, deeming the credit to have been allowed to the taxpayer for such taxable year.

In reviewing these provisions, the Treasury Department and the IRS have determined that section 38 is the section of the Code with respect to which the credit should be reduced to zero as provided under section 48D(d)(3), other than as explained in this paragraph. As section 38 is the operative provision under which the section 48D credit would be taken into account and allowed to reduce tax liability, it is reasonable to read the no double benefit rule in section 48D(d)(3) to reduce the section 48D credit to zero for purposes of section 38. This prevents a direct double benefit that could be achieved from claiming the credit. However, preventing such a double benefit does not require reducing the section 48D credit to zero for purposes of section 38 to the extent a credit is needed to reduce tax liability up to the section 38(c) limitation. In addition, reducing a section 48D credit to zero in such situations would unnecessarily disadvantage a taxpayer filing on extension by preventing them from claiming the section 48D credit as a current year GBC. This is because, to the extent applied as a credit, the section 48D credit will reduce tax liability as of the due date of the return, while the elective payment amount is not treated as being made until the later of the due date of the return or the date of filing. *See* section 48D(d)(2)(C). Treating the entire credit as zero in the case of a taxpayer filing on extension could result in more tax due on the due date of the return and, if not paid, would result in the taxpayer owing interest and could result in penalties assessed against the taxpayer.

The proposed rules accounted for this situation and helped mitigate any potential estimated tax penalties if amounts owed were not paid by the due date. No commenters objected to this aspect of the proposed rule. Thus, the Treasury Department and the IRS conclude that these final regulations should treat the section 48D credit as a credit for section 38 in the limited situation that the credit is needed to reduce tax liability up to the section 38(c) limitation. It is also noted that, for a taxpayer that is filing and making an election by the due date of their return, there should be no difference in outcome between treating the credit as reduced to $0 for section 38, or as a credit that reduces tax liability up to the section 38(c) limitation and a payment beyond the section 38(c) limitation.

Based on these conclusions, the Treasury Department and the IRS have made revisions to the rules and examples in proposed § 1.48D–6(e), including adding two new examples.

Under these final regulations, there is still a description of steps for a taxpayer to complete, but there is a change in the ordering of the steps and in how to calculate the net elective payment amount. The net elective payment amount, consistent with the proposed regulations, is the amount of the credit that is treated as a payment against the tax imposed by subtitle A. In the final regulations, the net elective payment amount is equal to the lesser of (1) the section 48D credit or (2) the total GBC (including the section 48D credit) over the total GBC allowed against tax liability (determined with regard to section 38(c)). Under these final regulations, a taxpayer will calculate the net elective payment amount prior to applying the ordering rules of section 38(d). These revisions allow for a taxpayer that has other GBCs to lower tax liability to the section 38(c) limitation using those GBCs without impact from the section 48D credit. But, the revisions also require a taxpayer to use the section 48D credit as a current year GBC to the extent that it is necessary to reduce tax liability up to the limitation under section 38(c). In all other situations, the section 48D credit will be zero for purposes of section 38 and the credit will be considered a payment of tax on the later of the due date of the return or filing (as prescribed by section 48D(d)(2)(C)).

In sum, these revisions to proposed § 1.48D–6(e) and the examples ensure two outcomes. First, consistent with commenters' recommendations, the final regulations ensure that taxpayers making an elective payment election will not have to delay using other GBCs because of the section 48D credit. Second, consistent with the proposed rule, these final regulations allow a taxpayer to benefit from a reduction in tax liability as of the due date of the return by treating the section 48D credit as a credit for purposes of section 38, up to the section 38(c) limitation.

A commenter requested that the final regulations clarify why the taxpayer in Example 2 under proposed § 1.48D–6(e)(4)(ii) may owe an estimated tax penalty if the section 48D credit for which an elective payment is made is deemed to have been allowed for purposes of calculating any underpayment of estimated taxes under section 6655 of the Code. The Treasury Department and the IRS note that the final regulations revise and include new examples in § 1.48D–6(e). The revised and new examples in § 1.48D–6(e) of these final regulations clarify that it is this timing rule under section 48D(d)(2)(C), and not the rules in proposed § 1.48D–6(e)(2) and (3) (regarding ordering and use of the section 48D credit) that creates the issue related to penalties for underpayment of estimated taxes. For example, if a taxpayer with a tax liability was solely relying on the elective payment amount to cover the tax liability, such taxpayer would be treated as making a payment related to the section 48D credit but could still incur an estimated tax penalty because section 48D(d)(2)(C) explicitly states that the payment of tax occurs on the date on which such return is filed.

Although no commenters specifically raised the application of potential penalties under section 6651 in the context of proposed § 1.48D–6(e) (denial of double benefit rule), the final regulations modify § 1.48D–6(e)(3) to clarify that a taxpayer may also be subject to a penalty under section 6651(a)(2) of the Code relating to the taxpayer's failure to timely pay tax if a return is filed after the original due date.

The Treasury Department and the IRS requested comments on additional Code sections under which it may be necessary to consider the section 48D credit to have been deemed allowed for the taxable year in which an elective payment election is made. In response, several commenters urged that the final regulations treat the entire elective payment amount as a payment against tax for purposes of determining base erosion minimum tax (known as the base erosion anti-abuse tax or BEAT) under section 59A and corporate alternative minimum tax (CAMT) credit under section 53(c) instead of as an investment tax credit. In contrast with the analysis earlier for section 38, the Treasury Department and the IRS conclude that treatment of the section 48D credit for purposes of BEAT and CAMT falls within the portion of section 48D(d)(3) that provides, for any other purposes under the Code, the credit will be deemed to have been allowed to such taxpayer for such taxable year. In contrast to section 38, BEAT and CAMT are not provisions pursuant to which the section 48D credit would be directly claimed, and treatment of the elective payment amount as suggested by the commenters would conflict with the language in section 48D(d)(3). Further, since section 48D(d)(3) provides that the section 48D credit is treated as a credit for other purposes of the Code, the section 48D credit is not analogous to other credits that are considered pre-payments of tax and for which the BEAT and CAMT regulations have an exception. See, for example, § 1.59A–5(b)(3)(i)(C) of the Income Tax Regulations, which provides that regular tax liability is not reduced for ''[a]ny credits allowed under sections 33, 37, and 53'' of the Code. Section 33 credits are related to withholding of tax at the source with respect to payments to foreign corporations and nonresident aliens. Section 37 is a credit for the overpayment of taxes. Section 53 relates to a credit for alternative minimum tax paid in a prior year. Thus, the final regulations adopt the rule as proposed.

VII. Special Rules

A. Excessive Payments

Proposed § 1.48D–6(f) would define the term ''excessive payment'' consistent with section 48D(d)(2)(F)(iii) and provide an example of an excessive payment, including the year in which the tax is imposed and the calculation of the additional 20 percent tax. The Treasury Department and the IRS requested comments on whether additional guidance on excessive payments is needed.

Commenters requested clarification of the proposed excessive payment rules related to their application, the reasonable cause standard, and appeals rights and deficiency procedures that apply to excessive payments. One commenter asked if the excessive payment addition to tax applies if the taxpayer does not make an elective payment election. Several commenters recommended adopting the reasonable cause standard under section 6664(c) for which the determination is based on the facts and circumstances and providing exceptions for reliance on professional advice and isolated computational or transcriptional error. One commenter specifically requested that the final regulations provide examples of reasonable cause relating to the beginning of construction issues.

The Treasury Department and the IRS recognize that taxpayers desire certainty when operating under tax rules for the first time. The Treasury Department and the IRS anticipate that existing standards of reasonable cause will inform the determination by the IRS of whether reasonable cause has been demonstrated for this purpose, and these final regulations do not create special rules for the elective payment election context. And, as noted by the commenters, existing standards of reasonable cause would be fact specific and including additional examples would inject significant complexity into the final regulations and likely cause additional uncertainty due to the inherently factual nature of the inquiry.

B. Basis Reduction and Recapture

Proposed § 1.48D–6(g)(2) would provide rules for adjusting basis with respect to property for which an election is made under section 48D(d)(1). Proposed § 1.48D–6(g)(3) would provide that any reporting of recapture is made on the taxpayer's annual return in the manner prescribed by the IRS in any guidance. No comments were received in response to proposed § 1.48D–6(g). Therefore, this Treasury decision adopts the proposed rules as final regulations.

Effect on Other Documents

The temporary regulations are removed May 10, 2024.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in these final regulations contain reporting and recordkeeping requirements. The recordkeeping requirements mentioned within these final regulations are considered general tax records under § 1.6001–1(e). These records are required for the IRS to validate that taxpayers have met the regulatory requirements and are entitled to make an elective payment election. For PRA purposes, general tax records are already approved by OMB under 1545–0074 for individuals and 1545–0123 for business entities.

These final regulations also mention reporting requirements related to making elections and calculating the section 48D credit amount as detailed in § 1.48D–6. These elections will be made by eligible taxpayers as part of filing a return (such as the appropriate Form 1040, Form 1120, Form 1120–S, or Form 1065); and credit calculations will be made on Form 3800 and supporting forms. These forms are approved under 1545–0074 for individuals and 1545–0123 for business entities.

These final regulations also describe recapture procedures as detailed in § 1.48D–6 that are required by section 48D(d)(5). The reporting of a recapture event will still be required to be reported using Form 4255, Recapture of Investment Credit. This form is approved under 1545–0074 for individuals and 1545–0123 for business entities. These final regulations are not changing or creating new collection requirements for recapture not already approved by OMB.

These final regulations mention the reporting requirements to complete pre-filing registration with the IRS to be able to make an elective payment election in § 1.48D–6. The pre-filing registration portal and its associated burden has been reviewed and approved by OMB under 1545–2310 for all filers. These final regulations are not changing or creating new collection requirements for the prefiling registration that are already approved by OMB.

III. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. Although these final regulations may affect small entities, data are not readily available about the number of small entities affected. Regardless, the economic impact of these final regulations on small entities is not likely to be significant.

The Deputy Chief Counsel for Advocacy, Small Business Administration, recommended that the Treasury Department and the IRS provide a statement of the factual basis for the certification that the proposed rule will not have a significant economic impact on a substantial number of small entities including, at a minimum, a description of the affected entities, and provide the economic impact that the rules would have on small entities including estimates of the costs of reading and understanding the rules and any reporting and recordkeeping requirements. The Deputy Chief Counsel for Advocacy recommended including an analysis of the semiconductor industry associated with the North American Industry Classification System (NAICS) codes 334413 (Semiconductor and Related Device Manufacturing) and 333242 (Semiconductor Machinery Manufacturing).

The Treasury Department and the IRS agree that industries associated with semiconductor manufacturing are likely to be impacted by these rules but note that not all industries classified with NAICS codes 334413 and 333424 would be eligible for the section 48D credit. The March 2023 proposed regulations would provide proposed definitions for ''semiconductor manufacturing'' and ''semiconductor equipment manufacturing'' that may be different from classifications for NAICS code purposes.

For these reasons, the Treasury Department and the IRS believe that that it would not be appropriate to limit determining the number of impacted taxpayers based on existing data of entities associated with NAICS codes 334413 and 333424. As described in the Paperwork Reduction Act section to the temporary regulations, the Treasury Department and IRS expect 50 taxpayers to be impacted by the reporting requirements contained in the temporary regulations. The Treasury Department and the IRS determined this figure based on the number of entities expected to build or expand semiconductor manufacturing facilities and semiconductor manufacturing equipment facilities. The Treasury Department and the IRS believe this methodology more accurately reflects the number of taxpayers impacted by these final rules because it is based on the number of known projects.

The Treasury Department and the IRS do not have sufficient data to determine the number of small entities included in the estimate that are expected to be impacted by these final regulations. The Treasury Department and IRS are aware of ongoing and proposed projects involving large corporations that are unlikely to meet the definition of a small business, as that term is defined by the Small Business Administration. Nonetheless, the Treasury Department and the IRS recognize that small businesses may be impacted by these final rules but believe the economic impact is not likely to be significant.

Section 48D is an investment credit for taxpayers that make qualified investments in advanced manufacturing facilities the primary purpose of which is manufacturing semiconductors and semiconductor manufacturing equipment. Section 48D(d) allows such taxpayers to make an elective payment election to treat the section 48D credit as a refundable payment against the income tax in lieu of claiming the credit. A partnership of S corporation may elect to receive a payment equal to

the amount of the credit. Section 48D(d)(2)(E) authorizes the IRS to require such information or registration as the Secretary deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments, as a condition of, and prior to, any amount being treated as a payment made or received by the taxpayer, as may be the case.

These final regulations describe the rules for making the elective payment election, the special rules applicable to partnerships and S corporations, the repayment of excessive payments, and basis reduction and recapture. These final regulations provide the manner for making an elective payment election which includes the filing of the annual return including the completed source credit form and completed Form 3800. These final regulations also provide that taxpayers wanting to make the elective payment election must complete the pre-filing registration process and provide the rules relating to the pre-filing registration process. The pre-filing registration process would allow the IRS to verify certain information before the election is made and then process the tax return on which the election is made with minimal delays.

The economic impact associated with these final regulations include administrative costs related to reading and understanding the rules and reporting and recordkeeping requirements. The costs related to reading and understanding the rules is not quantifiable. However, the cost is not likely to be significant because projects seeking to qualify for the section 48D credit will involve complex legal and commercial transactions, and the cost of understanding these final rules would be implicit in such transactions. The reporting and recordkeeping requirements associated with the elective payment election is not likely to be significant because they are consistent with the existing framework for claiming business tax credits absent of an election. The reporting requirements and recordkeeping requirements associated with the pre-filing registration process is not likely to be significant because the information requested at pre-filing registration is that which a taxpayer claiming a section 48D credit should have available, and taxpayers claiming a section 48D credit are likely to have the resources available given the complexity of their projects. The estimated burden of complying with the recordkeeping and reporting requirements are further described in the Paperwork Reduction Act section of the preamble.

For these reasons, the Treasury Department and the IRS certify that the final regulations will not have a significant economic impact on a substantial number of small entities.

IV. Section 7805(f)

The Chief Counsel for the Office of Advocacy submitted comments on the proposed regulations, which are discussed in this part III of this Special Analysis section.

V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandate Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars (updated annually for inflation). These final regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

VI. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These final regulations do not have federalism implications and do not impose substantial, direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a major rule as defined by 5 U.S.C. 804(2).

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Drafting Information

The principal author of this regulation is Lani M. Sinfield, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the Treasury Department and the IRS participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, the Treasury Department and the IRS amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry for § 1.48D–6 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Section 1.48D–6 also issued under 26 U.S.C. 48D(d)(6).

* * * * *

■ **Par. 2.** Sections 1.48D–0 through 1.48D–6 are added to read as follows:

Sec.

* * * * *

1.48D–0. Table of contents.
1.48D–1—1.48D–5 [Reserved]
1.48D–6 Elective payment election.

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§ 1.48D–1—1.48D–5 [Reserved]

§ 1.48D–6 Elective payment election.

(a) *Elective payment election*—(1) *In general.* A taxpayer, after successfully completing the pre-filing registration requirements under paragraph (b) of this section, may make an elective payment election with respect to any section 48D credit determined with respect to such taxpayer in accordance with section 48D(d)(1) of the Internal Revenue Code (Code) and this section. A taxpayer, other than a partnership or S corporation, that makes an elective payment election in the manner provided in paragraph (c) of this section will be treated as making a payment against the Federal income taxes imposed by subtitle A of the Code (subtitle A) for the taxable year with respect to which a section 48D credit is determined equal to the amount of the section 48D credit with respect to any qualified property otherwise allowable to the taxpayer (determined without regard to section 38(c) of the Code). The payment described in section 48D(d)(1), and this paragraph (a)(1) will be treated as made on the later of the due date (determined without regard to extensions) of the return of tax imposed by subtitle A for the taxable year or the date on which such return is filed.

(2) *Partnerships and S corporations.* See paragraph (d) of this section for special rules regarding elective payment elections under section 48D(d) applicable to partnerships and S corporations.

(3) *Irrevocable.* Any election under section 48D(d)(1) and this section, once made, will be irrevocable and, except as otherwise provided, will apply with respect to any amount of section 48D credit for the taxable year for which the election is made.

(b) *Pre-filing registration required*—(1) *In general.* Pre-filing registration by any taxpayer (including a partnership or an S corporation) in accordance with this paragraph (b) is a condition that must be successfully completed prior to making an elective payment election under section 48D(d)(1) and this section with respect to qualified property placed in service by the taxpayer as part of an advanced manufacturing facility of an eligible taxpayer. An elective payment election will not be effective with respect to the section 48D credit determined with respect to any such qualified property placed in service by any taxpayer unless the taxpayer received a valid registration number for the taxpayer's qualified investment in the advanced manufacturing facility of an eligible taxpayer in accordance with this paragraph (b) and provided the registration number for each qualified investment in each advanced manufacturing facility on its Form 3800, *General Business Credit* (or its successor), and on any required completed source form(s) with respect to the qualified investment, attached to the tax return in accordance with guidance. For purposes of this section, the term *guidance* means guidance published in the **Federal Register** or Internal Revenue Bulletin, as well as administrative guidance such as forms, instructions, publications, or other guidance on the *IRS.gov* website. *See* §§ 601.601 and 601.602 of this chapter. However, completion of the pre-filing registration requirements and receipt of a registration number does not, by itself, mean the taxpayer is eligible to receive a payment with respect to any section 48D credit determined with respect to the qualified property.

(2) *Manner of registration.* Unless otherwise provided in guidance, a taxpayer must complete the pre-filing registration process electronically through the IRS electronic portal and in accordance with the instructions provided therein.

(3) *Members of a consolidated group.* A member of a consolidated group is required to complete pre-filing registration as a condition of, and prior to, making an elective payment election. *See* § 1.1502–77 (providing rules regarding the status of the common parent as agent for its members).

(4) *Timing of pre-filing registration.* A taxpayer must satisfy the pre-filing registration requirements of this paragraph (b) and receive a registration number under paragraph (b)(7) of this section prior to making any elective payment election under this section on the taxpayer's tax return for the taxable year at issue.

(5) *Each qualified investment in an advanced manufacturing facility must have its own registration number.* A taxpayer must obtain a registration number for each qualified investment in an advanced manufacturing facility of an eligible taxpayer with respect to which an elective payment election is made.

(6) *Information required to complete the pre-filing registration process.* Unless modified in future guidance, a taxpayer must provide the following information to the IRS to complete the pre-filing registration process:

(i) The taxpayer's general information, including its name, address, taxpayer identification number, and type of legal entity;

(ii) Any additional information required by the IRS electronic portal;

(iii) The taxpayer's taxable year, as determined under section 441 of the Code;

(iv) The type of annual return(s) normally filed by the taxpayer with the IRS;

(v) A list of each qualified investment in an advanced manufacturing facility that the taxpayer intends to use to determine a section 48D credit for which the taxpayer intends to make an elective payment election;

(vi) For each qualified investment in an advanced manufacturing facility listed in paragraph (b)(6)(v) of this section, any further information

required by the IRS electronic portal, such as:

(A) The type of qualified investment in the advanced manufacturing facility;

(B) Physical location (that is, address and coordinates (longitude and latitude) of the advanced manufacturing facility);

(C) Supporting documentation relating to the construction, reconstruction or acquisition of the advanced manufacturing facility (such as, State and local government permits to operate the advanced manufacturing facility, certifications, and evidence of ownership that ties to the land deed, lease, or other documented right to use and access any land upon which the advanced manufacturing facility is constructed or housed);

(D) The beginning of construction date and the placed in service date of any qualified property that is part of the advanced manufacturing facility, or the date of the last progress expenditure made during the taxable year;

(E) The source of funds the taxpayer used to acquire the qualified property with respect to which the qualified investment was made; and

(F) Any other information that the taxpayer or entity believes will help the IRS evaluate the registration request;

(vii) The name of a contact person for the taxpayer. The contact person is the person whom the IRS may contact if there is an issue with the registration. The contact person must either:

(A) Possess legal authority to bind the taxpayer; or

(B) Must provide a properly executed power of attorney on Form 2848, *Power of Attorney and Declaration of Representative;*

(viii) A penalties of perjury statement, effective for all information submitted as a complete application, and signed by a person with personal knowledge of the relevant facts that is authorized to bind the registrant; and

(ix) Any other information the IRS deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments under this section that is provided in guidance.

(7) *Registration number*—(i) *In general.* The IRS will review the information provided and will issue a separate registration number for each qualified investment in an advanced manufacturing facility of an eligible taxpayer for which the taxpayer making the registration provided sufficient verifiable information.

(ii) *Registration number is only valid for one year.* A registration number is valid only with respect to the taxpayer that obtained the registration number under this section and only for the taxable year for which it is obtained.

(iii) *Renewing registration numbers.* If an elective payment election will be made with respect to any section 48D credit determined with respect to a qualified investment in an advanced manufacturing facility for a taxable year after a registration number under this section has been obtained, the taxpayer must renew the registration for that subsequent year in accordance with applicable guidance, including attesting that all the facts previously provided are still correct or updating any facts.

(iv) *Amendment of previously submitted registration information if a change occurs before the registration number is used.* As provided in instructions to the pre-filing registration portal, if specified changes occur with respect to a qualified investment in an advanced manufacturing facility for which a registration number has been previously obtained, a taxpayer must amend the registration (or may need to submit a new registration) to reflect these new facts. For example, if an eligible taxpayer that is the owner of an advanced manufacturing facility previously registered qualified investments in the advanced manufacturing facility or the advanced manufacturing facility, and the advanced manufacturing facility undergoes a change of ownership (incident to a corporate reorganization or an asset sale) such that the new owner has a different employer identification number (EIN) than the owner who obtained the original registration, the original owner of the advanced manufacturing facility must amend the original registration to disassociate its EIN from the advanced manufacturing facility and the new owner must submit separately an original registration (or if the new owner previously registered other qualified investments or advanced manufacturing facilities, must amend its original registration) to associate the new owner's EIN with the previously registered advanced manufacturing facility.

(v) *Registration number is required to be reported on the return for the taxable year of the elective payment election.* The taxpayer must include the registration number of the qualified investment in the advanced manufacturing facility on the taxpayer's return as provided in this paragraph (b) for the taxable year. The IRS will treat an elective payment election as ineffective with respect to a section 48D credit determined with respect to a qualified investment in an advanced manufacturing facility for which the taxpayer does not include a valid registration number that was assigned to that particular taxpayer during the pre-registration process on the annual return.

(c) *Time and manner of election*—(1) *In general.* Any elective payment election under section 48D(d)(1) and this section with respect to any section 48D credit determined with respect to a taxpayer's qualified investment must—

(i) Be made on the taxpayer's original return of tax (including a superseding return) filed not later than the due date (including extensions of time) for the taxable year for which the section 48D credit is determined and the election is made in the manner prescribed by the IRS in guidance;

(ii) Include any required completed source credit form(s), a completed Form 3800, and any additional information required in instructions, including supporting calculations;

(iii) Provide on the completed Form 3800 and on any required source credit form(s) a valid registration number for the qualified investment that is placed in service as part of an advanced manufacturing facility of an eligible taxpayer;

(iv) Include a statement attesting under the penalties of perjury that—

(A) The taxpayer claiming to be an eligible taxpayer is not a foreign entity of concern within the meaning of § 1.48D–2(f)(2) and has not made an applicable transaction as defined in § 1.50–2(b)(3) during the taxable year that the qualified property is placed in service; and

(B) The taxpayer will not claim a double benefit (within the meaning of section 48D(d)(3) and paragraphs (d)(2)(ii)(B) and (C) and (e) of this section) with respect to any elective payment election made by the taxpayer; and

(v) Be made not later than the due date (including extensions of time) for the taxable year for which the election is made, but in no event earlier than May 8, 2023.

(2) *Limitations.* No elective payment election may be made for the first time on an amended return, withdrawn on an amended return, or made or withdrawn by filing an administrative adjustment request under section 6227 of the Code, although a numerical error with respect to a properly claimed elective payment election may be corrected on an amended return or by filing an administrative adjustment request under section 6227 if necessary. There is no relief available under § 301.9100–1 or § 301.9100–3 of this chapter for an elective payment election that is not

timely filed; however, relief under § 301.9100–2(b) may apply.

(d) *Special rules for partnerships and S corporations*—(1) *In general.* If a partnership or S corporation directly holds any property for which an advanced manufacturing investment credit is determined, any election under this section must be made by the partnership or S corporation. No election under section 48D(d) and this section by any partner or shareholder is allowed.

(2) *Election*—(i) *Time and manner of election.* An elective payment election by a partnership or S corporation is made at the same time and in the same manner, and subject to the pre-filing registration and other requirements for the election to be effective, as provided in paragraphs (b) and (c) of this section.

(ii) *Effect of election.* If a partnership or S corporation makes an elective payment election with respect to a section 48D credit, the following rules will apply:

(A) The Internal Revenue Service will make a payment to such partnership or S corporation equal to the amount of such credit, determined in accordance with paragraph (d)(6) of this section (unless the partnership or S corporation owes a Federal tax liability, in which case the payment may be reduced by such tax liability);

(B) Before determining any partner's distributive share, or S corporation shareholder's pro rata share, of such credit, such credit is reduced to zero and is, for any other purposes under the Code, deemed to have been allowed solely to such entity (and not allocated or otherwise allowed to its partners or shareholders) for such taxable year; and

(C) Any partner's or S corporation shareholder's share of any qualified investment in an advanced manufacturing facility for which an elective payment election has been made for the taxable year, is reduced to zero for such taxable year.

(iii) *Coordination with sections 705 and 1366.* Any amount with respect to which the election is made is treated as tax exempt income for purposes of sections 705 and 1366 of the Code.

(iv) *Partner's distributive share*—(A) *In general.* Except as provided in paragraphs (d)(2)(iv)(B) and (C) of this section, a partner's distributive share of such tax exempt income is equal to such partner's distributive share of its otherwise allocable basis in qualified property under regulations under section 48D that apply for purposes of allocating a partner's share of its basis in qualified property placed in service by the partnership for such taxable year.

(B) *Interim rule.* If a partnership meets the requirements of paragraph (d)(2)(iv)(C) of this section, a partner's distributive share of the tax exempt income resulting from a section 48D(d) elective payment election made by the partnership with respect to property held directly by the partnership, may be determined in accordance with the basic principles for partnership income allocations as described in § 1.704–1(b)(1)(i) instead of in accordance with the partner's distributive share of the otherwise applicable section 48D credits as determined under §§ 1.704–1(b)(4)(ii) and 1.46–3(f).

(C) *Partnership requirements.* A partnership meets the requirements of this paragraph (d)(2)(iv)(C) if its partnership agreement is a written binding contract that was entered into after December 31, 2021, and before June 22, 2023, and it was formed for the purpose of owning and operating an advanced manufacturing facility or qualified property.

(v) *S corporation shareholder's pro-rata share.* An S corporation shareholder's pro rata share (as determined under section 1377(a) of the Code) of such tax exempt income is taken into account by the S corporation shareholder in the taxable year (as determined under sections 444 and 1378(b) of the Code) in which the section 48D credit is determined and is based on the shareholder's otherwise apportioned basis in qualified property under regulations under section 48D that apply for purposes of allocating an S corporation shareholder's pro-rata share of basis in qualified property placed in service by the S corporation for the taxable year.

(vi) *Timing of tax exempt income.* Such tax exempt income resulting from such election is treated as received or accrued, including for purposes of sections 705 and 1366 of the Code, as of the date the qualified property is placed in service with respect to the partnership or S corporation.

(3) *Disregarded entity ownership.* In the case of a qualified property held directly by an entity disregarded as separate from a partnership or S corporation for Federal income tax purposes, such qualified property will be treated as held directly by the partnership or S corporation for purposes of making an elective payment election.

(4) *Electing partnerships in tiered structures*—(i) *In general.* If a partnership (upper-tier partnership) is a direct or indirect partner of a partnership that makes an elective payment election (lower-tier partnership) and directly or indirectly receives an allocation of tax exempt income resulting from the elective payment election made by the lower-tier partnership, the upper-tier partnership must determine its partners' distributive shares of such tax exempt income in proportion to each partner's distributive share of its otherwise allocable basis in qualified property under regulations under section 48D that apply for purposes of allocating a partner's share of its basis in qualified property placed in service by a partnership for such taxable year.

(ii) *Electing partnerships in tiered structures; interim rule.* If a lower-tier partnership determined its partners' distributive shares of the tax exempt income described in paragraph (d)(2)(iii) of this section using the interim rule described in paragraph (d)(2)(iv)(B) of this section, an upper-tier partnership that is a direct or indirect partner in such lower-tier partnership may determine its partners' distributive shares of the tax exempt income in accordance with the basic principles for partnership income allocations as described in § 1.704–1(b)(1)(i).

(5) *Character of tax exempt income.* Tax exempt income resulting from an elective payment election by an S corporation or a partnership is treated as arising from an investment activity and not from the conduct of a trade or business within the meaning of section 469(c)(1)(A). As such, the tax exempt income is not treated as passive income to any partners or shareholders who do not materially participate within the meaning of section 469(c)(1)(B).

(6) *Determination of amount of the section 48D credit*—(i) *In general.* In determining the amount of the section 48D credit that will result in a payment under paragraph (d)(2)(ii)(A) of this section, the partnership or S corporation must compute the amount of the credit allowable (without regard to section 38(c)) as if an elective payment election were not made. Because a partnership or S corporation is not subject to sections 38(b) and (c) and 469 (that is, those sections apply at the partner or shareholder level), the amount of the credit determined by a partnership or S corporation is not subject to limitation by those sections. Because the section 48D credit is an investment credit under section 46, sections 49 and 50 apply to limit the amount of the credit.

(ii) *Application of section 49 at-risk rules to determination of section 48D credit for partnerships and S corporations.* Any amount of section 48D credit determined with respect to qualified property held directly by a partnership or S corporation must be determined by the partnership or S

corporation taking into account the section 49 at-risk rules at the partner or shareholder level as of the close of the taxable year in which the qualified property is placed in service. Thus, if the credit base of a qualified property is limited to a partner or S corporation shareholder by section 49, then the amount of the section 48D credit determined by the partnership or S corporation is also limited. A partnership or S corporation that directly holds qualified property must request from each of its partners or shareholders, respectively, that is subject to section 49, the amount of such partner's or shareholder's nonqualified nonrecourse financing with respect to the qualified property as of the close of the taxable year in which the property is placed in service. Additionally, the partnership or S corporation must attach to its tax return for the taxable year in which the qualified property is placed in service, the amount of each partner's or shareholder's section 49 limitation with respect to any qualified property. Changes to at-risk amounts under section 49 for partners or S corporation shareholders after the close of the taxable year in which the qualified property is placed in service do not impact the section 48D credit determined by the partnership or S corporation, but do impact the partner(s) or S corporation shareholder(s) as provided in paragraph (d)(6)(iii) of this section.

(iii) *Changes in at-risk amounts under section 49 at partner or shareholder level.* A partner or shareholder in a partnership or S corporation, respectively, must apply the rules under section 49 at the partner or shareholder level if there is a change in nonqualified nonrecourse financing with respect to the partner or shareholder after the close of the taxable year in which the qualified property is placed in service and the section 48D credit is determined. If there is an increase in nonqualified nonrecourse financing to a partner, any adjustment under the rules of section 49(b) is calculated based on the partner's share of the basis (or cost) of the qualified property to which the section 48D credit was determined in accordance with regulations under section 48D that apply for purposes of allocating a partner's share of its basis in qualified property placed in service by the partnership. If there is an increase in nonqualified nonrecourse financing to a shareholder, any adjustment under the rules of section 49(b) is calculated based on the shareholder's pro rata share of the basis (or cost) of the qualified property to which the section 48D credit was determined in accordance with regulations under section 48D that apply for purposes of allocating an S corporation shareholder's pro-rata share of basis in qualified property placed in service by the S corporation. If there is a decrease in nonqualified nonrecourse financing, any increase in the credit base is taken into account by the partner or shareholder as provided under section 49, and any resulting credit is not eligible for an elective payment election under section 48D(d).

(7) *Partnerships subject to subchapter C of chapter 63 of the Code.* See § 301.6241–7(j) of this chapter for rules applicable to payments made to partnerships subject to subchapter C of chapter 63 of the Code for a partnership taxable year.

(8) *Example.* P is a calendar-year partnership consisting of partners A and B, each 50 percent owners. P constructs Facility A, an advanced manufacturing facility, at V. P completes the pre-filing registration with respect to Facility A at V for 2024 in accordance with paragraph (b) of this section. In 2024, P places in service qualified property that is part of Facility A at V. P timely files its 2024 Form 1065 and properly makes the elective payment election in accordance with paragraph (c) of this section. On its Form 1065, P properly determines that the amount of section 48D credit with respect to the qualified property placed in service at Facility A for 2024 is $100,000. The IRS processes P's return and makes a $100,000 payment to P. Before determining A's and B's distributive shares, P reduces the section 48D credit to zero. However, for other purposes of the Code, the $100,000 section 48D credit is deemed to have been allowed to P for 2024. P does not qualify for the interim rule described in paragraph (d)(2)(iv)(B) of this section. The $100,000 is treated as tax exempt income for purposes of section 705, and A's and B's distributive shares of such tax exempt income is based on each partner's otherwise allocable basis in qualified property under regulations under section 48D that apply for purposes of allocating a partner's share of its basis in qualified property placed in service by the partnership for the 2024 taxable year ($50,000 each). A's and B's basis in their partnership interests and capital accounts will be appropriately adjusted to take into account basis adjustments made to the qualified property under section 50(c)(5) and § 1.704–1(b)(2)(iv)(*j*). See paragraph (g)(2) of this section. The tax exempt income received or accrued by P as a result of the elective payment election is treated as received or accrued, including for purposes of section 705, as of date P placed in service the qualified property in 2024.

(e) *Denial of double benefit*—(1) *In general.* In the case of a taxpayer making an election under section 48D(d) and this section with respect to any section 48D credit determined under section 48D(a) and regulations under section 48D that apply for purposes of determining the section 48D credit, such credit is reduced to zero and is, for any other purposes under the Code, deemed to have been allowed to the taxpayer for such taxable year. Paragraphs (e)(2) and (3) of this section explain the application of the section 48D(d)(3) denial of a double benefit rule to a taxpayer (other than a partnership or S corporation). The application of section 48D(d)(3) to a partnership or S corporation is provided in paragraphs (d)(2)(ii)(B) and (C) of this section.

(2) *Application of the denial of double benefit rule.* A taxpayer (other than a partnership or S corporation) making an elective payment election applies section 48D(d)(3) by taking the following steps:

(i) Compute the amount of the Federal income tax liability (if any) for the taxable year, without regard to the general business credit under section 38 of the Code (GBC), that is payable on the due date of the tax return (without regard to extensions), and the amount of the Federal income tax liability that may be offset by GBCs pursuant to the limitation based on the amount of tax under section 38.

(ii) Compute the allowed amount of the GBC carryforwards carried to the taxable year under section 38(a)(1) plus the amount of the current year GBCs (including the current section 48D credit) for the taxable year under section 38(a)(2) and (b). Because the election is made on an original return for the taxable year for which the section 48D credit is determined, any business credit carrybacks are not considered when determining the elective payment amount for the taxable year.

(iii) Calculate the net elective payment amount for the section 48D credit, which equals the lesser of the section 48D credit for which an elective payment election is made or the excess (if any, otherwise the excess is zero) of the total GBC credits described in paragraph (e)(2)(ii) of this section over the amount of the Federal income tax liability that may be offset by GBCs pursuant to the limitation based on amount of tax under section 38 computed in paragraph (e)(2)(i) of this section. Treat the net elective payment

amount of the section 48D credit for which an elective payment election is made as a payment against the tax imposed by subtitle A for the taxable year with respect to which such credit is determined.

(iv) Excluding the net elective payment amount determined under paragraph (e)(2)(iii) of this section, but including any portion of the section 48D credit that is not part of the net elective payment amount, compute the allowed amount of GBC carryforwards carried to the taxable year plus the amount of current year GBCs allowed for the taxable year under section 38 (including, for clarity purposes, the ordering rules in section 38(d)). Apply these GBCs against the tax liability computed in paragraph (e)(2)(i) of this section.

(v) Reduce the section 48D credit for which an elective payment election is made by the net elective payment amount, as provided in paragraph (e)(2)(iii) of this section, and by the amount (if any) allowed as a GBC under section 38 for the taxable year, as provided in paragraph (e)(2)(iv) of this section, which results in the section 48D credit being reduced to zero.

(3) *Use of the section 48D credit for other purposes.* The full amount of the section 48D credit for which an elective payment election is made is deemed to have been allowed for all other purposes of the Code, including, but not limited to, the basis reduction and recapture rules imposed by section 50 and the calculation of tax, calculation of the amount of any underpayment of estimated tax under sections 6654 and 6655 of the Code, and the addition to tax for the failure to pay under section 6651(a)(2) of the Code (if any).

(4) *Examples.* The following examples illustrate the rules of this paragraph (e).

(i) *Example 1.* Z Corp is a calendar-year C corporation. Z Corp places in service qualified property that is part of an advanced manufacturing facility in June of 2024. Z Corp completes the pre-filing registration in accordance with this section and receives a registration number for the qualified property. Z Corp timely files (with extension) its 2024 Form 1120 on October 15, 2025, properly making the elective payment election with respect to the section 48D credit earned with respect to the qualified property in accordance with this section. On its return, Z Corp properly determines that it has $500,000 of tax imposed by subtitle A of the Code (see paragraph (e)(2)(i) of this section). For simplicity, assume the maximum amount of GBCs that can be claimed for the taxable year is $375,000. Z Corp properly determines that the amount of the section 48D credit determined with respect to the qualified property (its GBC for the taxable year) is $100,000 (see paragraph (e)(2)(ii) of this section). Under paragraph (e)(2)(iii) of this section, the net elective payment amount is $0, so the section 48D credit is considered a credit that reduces Z Corp's tax liability to $400,000 under paragraph (e)(2)(iv) of this section. Z Corp pays its $400,000 tax liability on October 15, 2025. Under paragraph (e)(2)(v) of this section, the $100,000 of section 48D credit is reduced by the $100,000 of section 48D credit claimed as GBCs for the taxable year, which results in the section 48D credit being reduced to zero. However, the $100,000 of the current year section 48D credit is deemed to have been allowed to Z Corp for 2024 for all other purposes of the Code (paragraph (e)(3) of this section). Because Z Corp paid its tax liability after the original due date for the filing of its Form 1120, Z Corp will owe a failure to pay penalty under section 6651(a)(2) and interest. Z Corp may also owe a penalty for failure to pay estimated income tax under section 6655.

(ii) *Example 2.* Assume the same facts as in paragraph (e)(4)(i) of this section (*Example 1*), except that Z Corp has $80,000 of tax imposed by subtitle A (paragraph (e)(2)(i) of this section) and calculates its limitation of GBC under section 38(c) (simplified) is $60,000 (paragraph (e)(2)(i) of this section), and Z Corp timely files its Form 1120 on April 15 instead of October 15. Under paragraph (e)(2)(iii) of this section, the net elective payment amount is $40,000 (lesser of $100,000 section 48D credit or $100,000 of total GBC credits described in paragraph (e)(2)(ii) of this section minus $60,000 of section 38(c) limitation). Under paragraph (e)(2)(iv) of this section, Z Corp uses $60,000 of its $100,000 of section 48D credit against its tax liability. Z Corp reduces the section 48D credit by the $40,000 net elective payment amount determined in paragraph (e)(2)(iii) of this section and by the $60,000 section 48D credit claimed against tax in paragraph (e)(2)(iv) of this section, resulting in the credit being reduced to zero (paragraph (e)(2)(v) of this section). When the IRS processes Z Corp's 2024 Form 1120, the net elective payment amount results in a $20,000 refund to Z Corp (after applying $20,000 of the $40,000 net elective payment amount to cover Z Corp's tax shown on the return). However, for other purposes of the Code, the $100,000 section 48D credit is deemed to have been allowed to Z Corp for 2024 (paragraph (e)(3) of this section). Even though Z Corp did not owe tax after applying the net elective payment amount against its net tax liability, Z Corp may be subject to the section 6655 penalty for failure to pay estimated income tax. The net elective payment is not an estimated tax installment, rather, it is treated as a payment made at the filing of the return.

(iii) *Example 3.* X Corp is a calendar-year C corporation. X Corp places in service qualified property that is part of an advanced manufacturing facility in June of 2025. X Corp completes the pre-filing registration in accordance with this section and receives a registration number for the qualified property. In 2026, X Corp timely files its 2025 return (without extension), calculating its federal income tax before GBCs of $125,000 and that its limitation of GBC under section 38(c) (simplified) is $100,000 (paragraph (e)(2)(i) of this section). X Corp attaches Form 3468 to claim a current section 48D credit of $50,000. X Corp also attaches Form 5884 to claim a current work opportunity tax credit (WOTC) of $50,000. X Corp also has business credit carryforwards of $25,000, which together with the 48D credit and WOTC results in a total of $125,000 of GBC for the taxable year (paragraph (e)(2)(ii) of this section). Under paragraph (e)(2)(iii) of this section, the net elective payment amount is $25,000. Under paragraph (e)(2)(iv) of this section, including using the ordering rules in section 38(d), X Corp is allowed $25,000 of the carryforwards, $25,000 of section 48D credit (as its section 46 investment credit) plus $50,000 of WOTC against net income tax, as defined under section 38(c)(1)(B). The $25,000 of unused section 48D credit is the net elective payment amount that results in a $25,000 payment against tax by X Corp (paragraph (e)(2)(iii) of this section). On its return, X Corp shows net tax liability of $25,000 ($125,000 − $100,000 allowed GBC) and the net elective payment of $25,000 which X Corp applied to net tax liability, resulting in zero tax owed on the return. Under paragraph (e)(2)(v) of this section, X Corp's section 48D credit is reduced by the $25,000 of the net elective payment amount, as well as by the $25,000 of section 48D credit claimed as a GBC for the taxable year, resulting in the $50,000 of section 48D credit being reduced to zero. However, for all other purposes of the Code, the $50,000 of section 48D credit is deemed to have been allowed to X Corp for 2025 (paragraph (e)(3) of this section). Even though X Corp did not owe tax after applying the net elective payment amount against its net tax liability, X

Corp may be subject to the section 6655 penalty for failure to pay estimated income tax. The net elective payment is not an estimated tax installment, rather, it is treated as a payment made at the filing of the return.

(iv) *Example 4.* Assume the same facts as in paragraph (e)(4)(iii) of this section (*Example 3*), except X Corp filed the return on a timely filed extension after the due date of the return (without extensions). Even though X Corp did not owe tax after applying the net elective payment amount against its net tax liability, X Corp may be subject to the section 6651(a)(2) penalty for failure to pay tax.

(f) *Excessive payment*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, in the case of any amount treated as a payment which is made by the taxpayer under section 48D(d)(1) and paragraph (a) of this section, or any payment made pursuant to section 48D(d)(2)(A)(i)(I) and paragraph (d) of this section, with respect to any property, which amount the Commissioner determines constitutes an excessive payment as defined in paragraph (f)(3) of this section, the tax imposed on such taxpayer by chapter 1 of the Code for the taxable year in which such determination is made is 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.

(2) *Reasonable cause.* Paragraph (f)(1)(ii) of this section will not apply if the taxpayer demonstrates to the satisfaction of the Commissioner that the excessive payment resulted from reasonable cause.

(3) *Excessive payment defined.* For purposes of section 48D(d) and this paragraph (f), the term *excessive payment* means, with respect to any property for which an election is made under section 48D(d) and 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 taxpayer pursuant to section 48D(d)(1) and paragraph (a) of this section, or any payment made by the Commissioner pursuant to section 48D(d)(2)(A)(i)(l) and paragraph (d) of this section, with respect to such property for such taxable year; over

(ii) The amount of the section 48D credit which, without application of section 48D(d) and this section, would be otherwise allowable (determined without regard to section 38(c)) under section 48D(a) and the section 48D regulations with respect to such property for such taxable year.

(4) *Example.* A Corp is a calendar-year C corporation. A Corp places in service qualified property that is part of Facility A, an advanced manufacturing facility in 2023. A Corp properly completes the pre-filing registration in accordance with paragraph (b) of this section and receives a registration number for the advanced manufacturing facility. A Corp timely files its 2023 Form 1120, properly providing the registration number for Facility A on Form 3800 and the relevant source credit form and otherwise complying with paragraph (c) of this section. On its return, A Corp calculates that the amount of the section 48D credit with respect to the qualified property is $100,000 and that the net elective payment amount is $100,000. A Corp receives a refund in the amount of $100,000. In 2025, the IRS determines that the amount of the section 48D credit properly allowable to A Corp in 2023 with respect to Facility A (as determined pursuant to § 1.48D–1(b) and without regard to the limitation based on tax in section 38(c)) was $60,000. A Corp is not able to show reasonable cause for the difference. The excessive payment amount is $40,000 ($100,000 treated as a payment − $60,000 allowable amount). In 2025, the tax imposed under chapter 1 on A Corp is increased in the amount of $48,000 ($40,000 + (20% * $40,000 = $8,000)).

(g) *Basis reduction and recapture*—(1) *In general.* The rules in section 50(a) and (c) of the Code apply with respect to elective payments under paragraphs (a) and (d) of this section.

(2) *Basis adjustment*—(i) *In general.* If a section 48D credit is determined with respect to property for which a taxpayer makes an election under section 48D(d)(1), then the adjusted basis of the property must be reduced by the amount of the section 48D credit determined for which the taxpayer made an election under section 48D(d)(1).

(ii) *Basis adjustment by partnership or S corporation.* If an advanced manufacturing investment credit is determined with respect to property for which a partnership or S corporation makes an election under section 48D(d)(1), then the adjusted basis of the property must be reduced by the amount of the advanced manufacturing investment credit determined with respect to the property held by the partnership or S corporation, for which the IRS made a payment to the partnership or S corporation pursuant to section 48D(d)(2)(A)(i)(I).

(iii) *Basis adjustment of partners and S corporation shareholders.* The adjusted basis of a partner's interest in a partnership, and stock in an S corporation, must be appropriately adjusted pursuant to section 50(c)(5) to take into account adjustments made under paragraph (g)(2)(ii) of this section in the basis of property held by the partnership or S corporation, as the case may be.

(3) *Recapture reporting.* Any reporting of recapture is made on the taxpayer's annual return in the manner prescribed by the IRS in any guidance.

(h) *Applicability dates*—(1) *In general.* Except as provided in paragraph (h)(2) of this section, this section applies to taxable years ending on or after March 11, 2024.

(2) *Prior taxable years.* For taxable years ending before March 11, 2024 taxpayers may choose to apply the rules of this section to property that is placed in service after December 31, 2022, provided the taxpayers apply the rules in their entirety and in a consistent manner.

§ 1.48D–6T [Removed]

■ **Par. 3.** Section 1.48D–6T is removed.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

Approved: February 27,2024.

Aviva Aron-Dine,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2024–04605 Filed 3–5–24; 8:45 am]

BILLING CODE 4830–01–P