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March 20, 2023

Internal Revenue Service
CC:PA:LPD:PR (Notice 2023-7)
Room 5203, P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: Comments on Notice 2023-7, Initial Guidance Regarding the Application of the Corporate Alternative Minimum Tax under Sections 55, 56A, and 59 of the Internal Revenue Code

Dear Madam or Sir:

The American Chemistry Council (ACC), based in Washington, D.C., represents the leading companies engaged in the business of chemistry. ACC member companies apply the science of chemistry to create and manufacture innovative products that make people's lives better, healthier, and safer. A complete listing of our member companies can be found at our website www.americanchemistry.com.

On December 27, 2022, the Department of the Treasury (Treasury) and the Internal Revenue Service issued Notice 2023-7 (the Notice) providing interim guidance on the application of the new corporate alternative minimum tax (CAMT) enacted by the law known as the Inflation Reduction Act of 2022 (IRA).¹ The IRA amended Internal Revenue Code (Code) §55 to impose a new CAMT on an applicable corporation's "adjusted financial statement income" (AFSI) for taxable years beginning after December 31, 2022. As a starting point, a covered corporation is required to make a series of adjustments to its applicable financial statement (AFS) to compute its AFSI. Section 56A contains 14 adjustments to compute AFSI, and Treasury is granted broad authority to make adjustment to AFSI as necessary to carry out the purposes of Section 56A.²

We welcome the opportunity to comment on the interim guidance provided in the Notice and respectfully request that our comments be considered in the forthcoming proposed regulations.

¹ Public Law 117-169, 136 Stat. 1818 (August 16, 2022).

² Section 56A(c)(15).

Repairs. Under Code §56A(c)(13)(A), AFSI is reduced by depreciation deductions allowed under §167 with respect to property to which §168 applies, to the extent of the amount allowed as a deduction for Federal income tax purposes for the taxable year. The Notice provides in section 4.05 that expenditures for repairs that are deducted for Federal income tax purposes but are capitalized on an applicable financial statement will not be considered for purposes of the §56A(c)(13) adjustment to AFSI because the expenditure does not qualify as §168 property.

ACC recommends the Secretary exercises her authority under section 56A(c)(15) to allow for an adjustment to AFSI to negate the tax and book differences for repairs. ACC members are capital intensive companies where a significant portion of their expenses relate to the repair and maintenance of their chemical facilities. These types of expenses are crucial to the industry and incentivize the investment in the facilities in order to provide to the public the most updated technologies and products. As a result, disregarding repair expenditures as §168 property will have the unintended effect of disproportionately affecting this industry and the increased tax will act as a deterrent to the upkeep of their facilities. The proposed regulations or guidance should address this effect by allowing an adjustment to AFSI for the repair expenditures incurred by taxpayers.

Dispositions. Section 4.07 of the Notice provides that if a taxpayer disposes of §168 property, AFSI must be adjusted to redetermine any gain or loss accounted for in the net income/loss of the taxpayer's AFS with respect to such disposition. The adjustment is achieved by taking into account all current and prior §56A(c)(13) adjustments, including those that would have been made in taxable years prior to the effective date of the CAMT.

This provision is particularly burdensome to taxpayers in capital intensive industries that benefit from the immediate expensing provisions under the Code. Section 168 was enacted to incentivize taxpayers to invest in their U.S. infrastructure and provide a relief from the cost of acquiring such property, will now work against taxpayers given the recapture nature of the adjustments to AFSI upon disposition of such property. Proposed guidance should address this issue so as to limit the effect of the recapture to depreciation taken after the enactment of the CAMT and prevent the loss of the historical benefit that immediate expensing provisions intended to provide taxpayers.

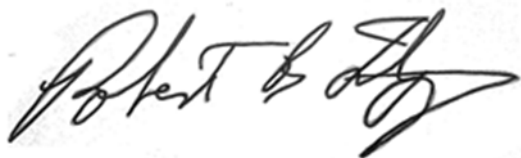
Amortization of Goodwill. Goodwill generally is generated by the acquisition of businesses where its purchase price is higher than the value of the businesses' tangible assets. In other words, goodwill typically is a large component of the value of an acquired business. Section 56A is silent on adjustments to AFSI to address other timing differences, other than bonus depreciation and accelerated cost recovery for wireless spectrum. Similar to repairs, amortization of goodwill under §197 currently is not explicitly addressed as an adjustment to AFSI, even when amortization is treated as "depreciation" for purposes of §167. This is because goodwill is not subject to the accelerated depreciation rules under §168. The treatment of acquired goodwill is particularly relevant to those companies that are not allowed to amortize goodwill on a financial statement, specifically those that utilize certain accounting methods that prohibit the deduction. Specifically, a publicly traded corporation that follows U.S. Generally Accepted Accounting Principles or any entity that follows the International Financial Reporting Standards cannot deduct or amortize goodwill on a financial statement. .

The Secretary should exercise her authority under section 56A(c)(15) and provide for an adjustment to AFSI for acquired goodwill amortized under section 197. Companies like ACC

members who are active in the acquisition of businesses are significantly affected by the absence of an adjustment for goodwill amortization for purposes of the CAMT. This effect will dissuade investment and expansion in the U.S. by "industrial buyers" in favor of foreign companies that do not exceed the \$100 million AFSI threshold and/or private equity firms and portfolio companies of private equity firms that, as a result of the amortization methods used for financial accounting purposes or because they do not meet the AFSI threshold, are able to avoid its negative effect. At a minimum, the CAMT effect related to the amortization of goodwill should be made effective the date of enactment of the CAMT (August 16, 2022) such that taxpayers can consider the tax consequences of the lack of AFSI adjustment for goodwill amortization in their financial modeling for business acquisitions in the future.

ACC appreciates the opportunity to provide this feedback on Notice 2023-7. We look forward to working with you to address these and other issues related to the implementation of the CAMT. Thank you for your time and attention.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert B. Flagg", written in a cursive style.

Robert B. Flagg
Senior Director, Federal Affairs
American Chemistry Council

cc: Lily Batchelder, Assistant Secretary, Office of Tax Policy, U.S. Department of the Treasury

Thomas West, Deputy Assistant Secretary (Tax Policy)

Krishna Vallabhaneni, Tax Legislative Counsel

Brett York, Deputy Tax Legislative Counsel