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GrowthEnergy.org

November 4, 2022

Commissioner Charles Rettig
Internal Revenue Service
CC:PA: LPD:PR (Notice 2022-50, Notice 2022-51)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044
Submitted Electronically

RE: Notice 2022-50, Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits; Notice 2022-51, Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022

Dear Commissioner Rettig:

Thank you for the opportunity to comment on the Department's request for comment on its plan to issue guidance regarding important provisions of the Inflation Reduction Act (IRA) that will drive reductions in greenhouse gas emissions and grow American jobs. Growth Energy is the nation's largest association of biofuel producers, representing 90 U.S. plants that each year produce more than 8 billion gallons of low-carbon, renewable fuel; 106 businesses associated with the production process; and tens of thousands of biofuel supporters around the country. Together, we are working to bring better and more affordable choices at the fuel pump to consumers, improve air quality, and protect the environment for future generations. We remain committed to helping our country diversify its energy portfolio in order to grow more American green energy jobs, decarbonize our nation's energy mix, sustain family farms, and drive down the costs of transportation fuels for consumers.

Our industry is poised to work with you and the administration to help achieve the ambitious climate goals sought by the enactment of the IRA. To that end, we look forward to working with you on the implementation of the new law and the various clean energy credits. We offer some specific comments below:

Notice 2022-50: Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits

Elective Payment of Applicable Credits under section 6417 (Direct Pay) and Transfer of Certain Credits under section 6418

- We ask that the Department provide clarity about whether the election under Section 6417 applies to all of the applicable tax credits generated for a particular tax year or whether the taxpayer can apply the election to a portion of the applicable tax credits.
- The Department should make clear the basis reduction rule provided for under Section 6417(g) will not apply to the Section 45Q credit (and other production-based credits) because such credit is not determined under Subpart E of Subtitle A, Chapter 1, Subchapter A, Part IV, as required by Section 50(c).
- The Department should make it clear taxpayers described under Section 6417(d)(1)(B) may elect direct pay for up to five years under Section 6417 and elect to transfer credits under Section 6418 for the remainder of the 12-year credit period provided for under Section 45Q; alternatively, that taxpayers may forgo the direct pay election under Section 6417 altogether, and elect to transfer credits under Section 6418 for the entire 12-year credit period provided for under Section 45Q.
- Growth Energy requests that the taxpayer in which the credit is attributable to under section 45Q(f)(3)(B) be treated as an applicable entity under section 6417(d)(1)(C).
- We respectfully ask the government to clarify that: (i) an eligible taxpayer may transfer all or a portion thereof of an eligible credit to more than one taxpayer; (ii) the taxpayer in which the IRC section 45Q credit is attributable to under section 45Q(f)(3)(B) may be permitted to make an election under section 6418(a).
- The Department should provide guidance on when estimated tax payments associated with direct pay credits will be applied on behalf of taxpayers and when overpayments will be refunded to taxpayers.
- The Department should provide clarity on situations to which the rules on excessive payments and excessive transfers under Sections 6417(d)(6) and 6418(g)(2) will apply and the requirements for showing reasonable cause to avoid the 20-percent penalty thereunder.

Notice 2022-51: Request for Comments on Prevailing Wage and Apprenticeship Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022

Broadly, Growth Energy strongly supports the intent of the IRA to grow clean energy jobs across the country. Our industry already supports more than 350,000 jobs today at more than 200 biorefineries and is poised to grow to help fuel our nation with higher biofuel blends like E15 and E85 as well as provide the foundation for the Administration's Sustainable Aviation Fuel (SAF) Grand Challenge. However, it is critical that the Department recognize the unique labor challenges our industry faces. Our biorefineries are located in the heart of rural America and are among the highest quality jobs in their town, but even still, they already struggle to find and recruit workers, especially in the wake of COVID-19. We would ask that this reality be taken into account as you draft guidance, particularly on the good faith effort exception. Additionally, we ask your consideration on specific provisions below:

Prevailing Wage Requirement Issues Presented for Clarification

- We ask that the government provide definitions of “construction, alteration, or repair” so that a taxpayer may determine which activities constitute the “construction of such facility or equipment” for purposes of IRC section 45Q(h)(3)(A)(i) and which activities constitute the “alteration or repair” of such facility or equipment for purposes of IRC section 45Q(h)(3)(A)(ii). Furthermore, we recommend that such definitions clarify that the scope of construction, alteration, or repair only applies to the single process train of carbon capture equipment as defined under Treas. Reg. section 1.45Q-2(c)(3), and not inclusive of any other construction, alteration, or repair work performed at the facility or plant.
- We ask that you clarify that the prevailing wage rates published by the Secretary of Labor at the time the contract is entered into (or amended) apply for the entire term of the contract.
- We request a safe harbor for taxpayers with existing agreements for the construction, alteration, or repair of the carbon capture equipment or qualified facility. Specifically, if a taxpayer entered into an agreement prior to the date that is 60 days after the Secretary publishes guidance, as referenced under IRC section 45Q(h)(5), then the scope of work subject to such agreement shall be protected under a safe harbor and shall not be subject to IRC section 45Q(h)(3) and (4). Alternatively, if the government deems that such existing agreement should be amended in order to comply, then the taxpayer should have a minimum of 365 days from the date such guidance is published to amend the agreement in conformity with IRC section 45Q(h)(3) and (4) and any guidance promulgated thereunder.
- We ask to clarify that “wages” as used in IRC section 45(b)(7)(A) and 45Q(h)(3) has the same meaning as wage provided under 48 CFR section 22.401 and such wage should be computed according to 48 CFR section 22.406-2.
- We would also ask that the Department provide definitions for contractor and subcontractor.
- We would also ask to clarify that “locality” in which a qualified facility or carbon capture equipment is located means the county in which such facility or equipment is located.
- We would also ask the Department to consider implementing a safe harbor in which a taxpayer may be protected against the correction and penalty mechanism under IRC sections 45(b)(7)(B)(i) and 45Q(h)(3)(B) if such taxpayer contractually ensures, through a binding written contract, that a third party will comply with the rules outlined in IRC sections 45(b)(7)(B)(i) and 45Q(h)(3)(B) and any guidance promulgated thereunder.
- We would ask the Department to consider providing a safe harbor for taxpayers who enter into a binding written contract with a contractor or subcontractor who has a collective bargaining agreement or project labor agreement with labor unions that require the payment of prevailing wages.
- We also believe that the documentation or substantiation required to show compliance with the prevailing wage requirements may be met by the existing substantiation and recordkeeping requirements under IRC section 6001 and Treas. Reg. section 1.6001-1.
- We would ask the Department to clarify that “any qualified facility [or carbon capture equipment] the construction of which begins” as found in IRC sections 45Q(h)(2)(A), (B),

and (C) has the same meaning as the “beginning of construction” requirement provided in IRS Notice 2020-12, 2020-11 IRB 495, for purposes of IRC section 45Q(d).

Apprenticeship Requirement Issues Presented for Clarification

- We would ask the Department not to require a certain duration of employment for purposes of the apprenticeship requirement under IRC section 45(b)(8)(E)(i).
- We ask for clarity on (i) determining which registered apprenticeship program(s) a taxpayer, contractor, or subcontractor should submit a request for qualified apprentices to be deemed to satisfy the good faith effort exception and (ii) whether multiple requests to various apprenticeship programs must be made by a taxpayer or whether one is sufficient.
- Beyond our broad considerations for the good faith effort exception, we would also ask that the Department provide a good faith effort exception for taxpayers who have entered into binding written contracts with a contractor or subcontractor who has a collective bargaining agreement or project labor agreement with labor unions.
- Similar to the prevailing wage and apprenticeship requirements, we would ask that the government clarify that a taxpayer should demonstrate compliance by meeting the substantiation and recordkeeping requirements as provided under IRC section 6001 and Treas. Reg. section 1.6001-1.
- We also ask the Department to clarify that the definition of apprentice has the same meaning as provided in 48 CFR section 22.401.
- We would also ask the Department to reiterate that the taxpayer must comply with established standards and requirements and that a refusal by the taxpayer to utilize a qualified program if it imposes any standards or requirements for this specific project that go beyond their established standards and requirements would satisfy the good faith efforts test.
- We also suggest that the Department provide for establishing the date on which the registered apprenticeship program received the request for apprentices through a proof of receipt from the USPS, UPS, FedEx, or similar delivery service.

We look forward to working with you on implementation of the IRA. Thank you in advance for your consideration.

Sincerely,



Chris Bliley
Senior Vice President of Regulatory Affairs
Growth Energy