



September 6, 2024

The Honorable Janet Yellen  
 Secretary  
 U.S. Department of the Treasury  
 1500 Pennsylvania Avenue, NW  
 Washington, DC 20220

The Honorable Daniel Werfel  
 Commissioner  
 Internal Revenue Service  
 1111 Constitution Avenue, NW  
 Washington, DC 20224

Dear Secretary Yellen and Commissioner Werfel,

On October 5, 2022, the Department of Treasury (Treasury) issued six notices to inform the implementation of key clean energy provisions of the historic Inflation Reduction Act (IRA), including § 30C, which extended and modified the Alternative Fuel Vehicle Refueling Property tax credit. In the factsheet that accompanied those notices, Treasury committed to “work expeditiously to provide clarity and certainty to taxpayers, so the climate and economic benefits of this historic legislation can be felt as quickly as possible.” Treasury and the Internal Revenue Service (IRS) partially delivered on this promise for the § 30C tax credit in January 2024 by providing initial guidance (Notice 2024-20) defining census tracts eligible for § 30C. This was a critical step to realizing the vision of the IRA and we strongly support Notice 2024-20’s inclusive

approach that will ensure more American consumers and business qualify for the tax credits. However, more guidance is needed to allow taxpayers to take advantage of this important policy.

**We urge Treasury and IRS to define single item of property, capitalization of costs, and low-population census tracts so that the rulemaking process can begin and guidance can be finalized and implemented by the end of this tax year, allowing people and businesses to access this vital tax credit.**

### *Urgency of Action*

The IRA was signed into law nearly two years ago and since has spurred unprecedented private investment through strategic tax credits. However, the lack of guidance on critical aspects of § 30C is stalling investment in public and residential EV charging infrastructure in non-urban and low-income areas, which is a key factor in achieving the Administration’s vehicle emission standards and electrification and equity goals. Although Treasury and the IRS have announced their intent for a rulemaking for § 30C, additional needed guidance on the topics detailed below should be proposed as soon as possible. Without preliminary guidance proposed in the next month, charging credits from public charging infrastructure deployed in tax year 2023 could potentially be rendered valueless to those looking to claim them.

In addition to issuing preliminary guidance within a month on the issues discussed below, Treasury and IRS should also file a Notice of Proposed Rulemaking to provide appropriate time for a public comment period while ensuring a final rule is released by the end of the tax year. Having finalized guidance for all aspects of § 30C by December 31, 2024 will allow individuals and businesses to begin claiming the credit on their 2024 taxes and invest in much needed new infrastructure with certainty.

### *Single Item*

Treasury and IRS must clarify the definition of a “single item” of qualified alternative fuel vehicle refueling property. This definition should align with the Federal Highway Administration’s definition of a charging port for the National Electric Vehicle Infrastructure Program, which considers a port as a system within a charger that can charge only one EV at a time, even if it has multiple connectors.<sup>1</sup> It should be flexible enough to accommodate both current practices and future developments in the industry, recognizing that some chargers can serve multiple EVs simultaneously through shared infrastructure, which offers significant cost savings. To illustrate, if a charger has two connectors and can charge two EVs simultaneously (e.g. a 350 kilowatt or “kW” fast charger can charge one vehicle at 350 kW or two vehicles at 175 kW), it should be considered two single items, each of which should be subject separately to the credit cap. This definition also aligns with common practices in state-administered charging

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<sup>1</sup> 23 CFR Part 680 <https://www.ecfr.gov/current/title-23/chapter-I/subchapter-G/part-680>

programs, such as those in California,<sup>2</sup> North Carolina,<sup>3</sup> and Ohio.<sup>4</sup> This approach will help ensure the § 30C tax credits effectively promote the installation of flexible, cost-efficient EV charging infrastructure.

### *Capitalization*

Treasury should issue additional guidance that outlines which costs should be capitalized, including both direct and indirect costs. This new guidance should align with that of Notice 2007-43 from the prior iteration of § 30C, and it should build on prior guidance to provide further detail and be tailored to the specific requirements and uses of alternative fuel refueling property. The guidance should confirm that federal capitalization rules under § 263A apply, requiring taxpayers to capitalize all direct and most indirect costs related to the production of the refueling property.<sup>5</sup> Direct costs encompass materials integral to the property, such as hardware (e.g. display, energy storage, power outlets), software (e.g. networking, charge management), and installation costs. Indirect costs include labor, replacement hardware, construction (e.g. boring, trenching, electrical connections), transaction, and transportation costs. This way, the true cost of installing charging infrastructure can be considered when determining the appropriate credit amount.

### *Low-population Census Tracts*

In Notice 2024-20, Treasury specifically highlighted that it had not determined a clear interpretation as to how the New Market Tax Credit (NMTC) rules under § 45D could be applied to § 30C geographic eligibility. This section is important as it will influence which communities can take advantage of the § 30C credit. Section 45D defines a census tract as a “low-income” community through four metrics, one of which is § 45D (e)(4), “If a census tract has less than 2,000 individuals within it, it may be treated as low-income if: 1) it is in an ‘empowerment zones’ as defined in Section 1931 AND 2) it is contiguous to another tract identified as low-income.” The inclusion of low-population census tracts adjacent to low-income tracts in the § 30C program would open the program to industrial areas that are in urban areas and therefore would be otherwise excluded from § 30C eligibility. Many industrial zones have low or no population in terms of residents but are located adjacent to historically disadvantaged and low-income communities. Extending the § 30C tax credit to these areas will help electrify freight in areas with historically poor air quality often caused by diesel truck pollution. Performing a

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<sup>2</sup> Implementation Manual for Alameda County Incentive Project <https://calevip.org/sites/default/files/docs/alameda-county/implementation-manual.pdf>

<sup>3</sup> Request for Proposals Phase 2 Zero Emission Vehicle Infrastructure Program DC Fast Charging Stations Priority Corridors GMS Program ID: NCDEQDAQ0007 <https://www.deq.nc.gov/air-quality/mobile/volkswagen/phase-2/nc-phase-2-zev-dc-fast-priority-corridors-program-rfp/download?attachment>

<sup>4</sup> Diesel Mitigation Trust Fund (DMTF) DC Fast Charging Grant Program Request for Applications <https://dam.assets.ohio.gov/image/upload/epa.ohio.gov/Portals/42/documents/DMTF/DMTF-EVSE-DCFC-RFA.pdf>

<sup>5</sup> Producer’s 263A Computation, [https://www.irs.gov/pub/fatca/int\\_practice\\_units/producer\\_263a\\_computation.pdf](https://www.irs.gov/pub/fatca/int_practice_units/producer_263a_computation.pdf)

simple spatial analysis with publicly available data<sup>6</sup>, we have identified 10 census tracts<sup>7</sup> that: 1) do not currently qualify for the § 30C tax credit based on Treasury’s most recent maps; 2) have a population of less than 2,000 individuals; 3) are within an “empowerment zone;” and 4) share part of their border with one or more tracts that currently qualify for 30C via their status as an NMTC low-income tract. To illustrate, one of these tracts (Census Tract ID = 24510250600) is within the Port of Baltimore and contains many auto warehouses, logistics centers, a harbor, etc. It is not “rural” despite the fact it has no residents, but it is not a high-income urban tract, and the industrial activities it houses directly impact neighboring low-income communities. Ensuring that tracts under § 45D (e)(4) are considered low-income aligns with Treasury’s guiding principle for the implementation of the IRA of “ensuring that as many eligible taxpayers as possible benefit from the incentives provided by the law while protecting against fraud and abuse.”

Thank you for your leadership in implementing key provisions of the historic IRA. In line with the momentous nature of the law and spirit of the statute, we urge Treasury and IRS to issue guidance on these final, necessary pieces, consistent with the recommendation contained in this letter so taxpayers can access these tax credits to plan and make significant investments to install charging infrastructure with the full certainty of clear finalized guidance.

Sincerely,

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<sup>6</sup> Using RStudio and R packages (primarily the ‘sf’ package), we started by joining census data from the American Community Survey 2020 5-year (ACS5) to the existing 30C census tract data available to download from Argonne National Lab (ANL). We then identified census tracts that did not qualify by either non-urban or low-income criteria (as is noted in the ANL data) and that have a population of less than 2000 (determined using the joined ACS5 data). Once we had this subset of tracts that currently do not qualify for 30C *and* have a population less than 2000, we used joining functions to examine each of these tracts and find how many, if any, census tracts that qualify via their low-income status (NMTC) share at least one point of their boarder with the tract being examined. We then added a column to the dataset with the number of adjacent NMTC-qualifying census tracts. From there, we further joined this dataset with HUD Empowerment Zone data (publicly available on the HUD Open Data Site). By the end of this process, we had an CSV file that identified census tracts by ID number, state, and county, flagged via 0 for false, 1 for true each census tract’s 1) current 30C qualification status via non-urban, 2) current 30C qualification status via low-income, and 3) population under 2000, and listed the total number of low-income qualifying tracts sharing a boarder as well as HUD Empowerment Zone status. This file was filtered to identify the 10 tracts that we believe should qualify via low-population status as determined by § 45D (e)(4).

<sup>7</sup> 11-digit FIPS codes for the identified tracts: 05119002500, 17031381200, 17031381700, 17031390100, 24510250600, 36061029700, 36061031100, 36067000100, 39061001000, 40109101200

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