



ZERO EMISSION
TRANSPORTATION
ASSOCIATION

October 30, 2023

United States Department of the Treasury
Internal Revenue Service
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

RE: Docket No. IRS-2023-0042
Increased Credit or Deduction Amounts for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements (REG-100908-23)
Submitted via Rulemaking Portal: <http://www.regulations.gov>.

The Zero Emission Transportation Association (ZETA) is an industry-backed coalition of over 60 member companies advocating for 100% electric vehicle (EV) sales. ZETA is committed to enacting policies that drive EV adoption, create hundreds of thousands of jobs, dramatically improve public health, and significantly reduce emissions. Our coalition spans the entire EV supply chain including vehicle manufacturers, charging infrastructure manufacturers and network operators, battery manufacturers and recyclers, electricity providers, and critical minerals producers, among others.

ZETA thanks the Department of the Treasury and the Internal Revenue Service (IRS) for the opportunity to comment on its notice of proposed rulemaking to establish regulations regarding prevailing wage and registered apprenticeship (PWA) requirements for certain tax credits under the Inflation Reduction Act of 2022 (IRA). We encourage IRS to implement these provisions in a way that ensures taxpayers are able to take advantage of them to the fullest extent possible. The credits created or modified by the IRA and implicated by the PWA provisions, specifically 26 U.S.C. § 30C, are critical to many ZETA members and will help ensure the continued availability of the products necessary to support a fully-electrified and decarbonized transportation sector.

The continued rapid build out of EV charging infrastructure is critical to achieving President Biden's goal¹ of installing 500,000 chargers by 2030 and the 30C Alternative Fuel Infrastructure Tax Credit, as modified by the IRA, will be a key tool to help the U.S. reach that target. We appreciate IRS's efforts to ensure these proposed PWA rules are applicable across tax credits and sectors, however alternative fuel vehicle refueling properties eligible to claim the 30C credit are

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<https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/27/fact-sheet-biden-harris-administration-driving-forward-on-convenient-reliable-made-in-america-national-network-of-electric-vehicle-chargers/>

fundamentally different in terms of scale, scope, quantity, and operational characteristics from projects under the other covered tax credits.²

The decentralized nature and vastly greater quantity of alternative fuel infrastructure installations (relative to, for example, a single, large advanced technology manufacturing facility) means streamlined implementation of the expanded 30C credit requirements could improve the ability for taxpayers to access the credit and thus, impact the financial feasibility of some EV charging projects going forward. As such, **ZETA encourages IRS to consider developing PWA requirements customized to 30C that recognize the nature of 30C-eligible projects and their fundamental differences compared to projects that may claim the other tax credits covered by this proposed guidance.**

Specifically, ZETA urges IRS to make the following changes when finalizing this guidance:

Clarify that EV charger construction is the only activity subject to PWA requirements, consistent with the Inflation Reduction Act

ZETA notes there is an inconsistency in regard to which activities are covered by the PWA requirements between the IRA statutory text and the preamble to the proposed guidance, and the proposed regulatory text implementing the guidance. 26 USC § 30C(g)(2)(A) applies prevailing wage requirements only to the *construction* of qualified alternative fuel vehicle refueling property:

“The requirements described in this subparagraph with respect to any qualified alternative fuel vehicle refueling project are that the taxpayer shall ensure that any laborers and mechanics employed...in the construction of any qualified alternative fuel vehicle refueling property which is part of such project shall be paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such project is located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code.”³

IRS reiterates this statutory text in the preamble to the proposed guidance,⁴ but the proposed regulatory text amending 26 CFR § 1.30C-3(b)(2) to implement these requirements is inconsistent with the IRA and preamble. The proposed text states:

² Tax credits affected by this proposed PWA guidance include 26 CFR §§ 30C, 45, 45L, 45U, 45V, 45Y, 45Z, 48C, 48E, and 179D.

³ 26 USC 30C(g)(2) [Emphasis added]

⁴ See 88 FR 60032

“(b) *Qualified project requirements.* A qualified alternative fuel vehicle refueling project satisfies the requirements of this paragraph (b) if it is one of the following—

* * * * *

(2) A project that meets the prevailing wage requirements of section 45(b)(7) and § 1.45–7, the apprenticeship requirements of section 45(b)(8) and § 1.45–8, and the recordkeeping and reporting requirements of § 1.45–12.”⁵

If finalized, this language would tie the PWA requirements applicable to qualified alternative fuel vehicle refueling property to those contemplated by section 45(b)(7) and impose PWA requirements for non-construction related work performed at such properties including repair, alteration, service and warranty, and maintenance. This is clearly inconsistent with the plain reading of the IRA text and Congressional intent that 30C PWA requirements would be limited to construction only. Additionally, non-construction work at these types of properties requires varying skill sets consistent with both the hardware and software characteristics of the charger. In other words, non-construction work often does not require an electrician or an apprentice but rather a trained technician and in some cases can be done remotely. As such, ZETA urges IRS to issue final guidance restating that PWA requirements for taxpayers seeking to claim the 30C alternative fuel vehicle refueling property credit only apply to construction of qualifying properties, not repair, alteration, service and warranty, and maintenance performed either onsite or remotely.

In addition, the National Electric Vehicle Infrastructure (NEVI) program - implemented by the Department of Transportation/Federal Highway Administration - imposes uptime requirements that each charging port must have an average annual uptime greater than 97 percent in order to comply with the program.⁶ Industry is working hard to meet this requirement but application of PWA requirements in the context of the 30C credit could impose additional challenges for adherence to the NEVI uptime requirements. For example, taxpayers would be required to wait up to five business days from a request for apprentices for a response, which would significantly slow repair times and decrease uptime. Accordingly, we again urge IRS to clarify that the PWA requirements under 30C only apply to construction of new qualifying properties.

Eliminate the requirement for taxpayers to issue a second request for registered apprentices after 120 days for 30C projects

⁵ See 88 FR 60040

⁶ 23 CFR § 680.116(b)

ZETA appreciates IRS's efforts to ensure qualifying projects create ample opportunity for employment of registered apprentices. However, as discussed previously in this comment, ZETA notes there are fundamental differences between an alternative fuel vehicle refueling property and, for example, an advanced manufacturing facility. The proposed requirement⁷ for 30C-qualified taxpayers to issue a second request for registered apprentices 120 days after the first one is denied or not responded to could lead to lengthy delays and jeopardize the President's goal of installing 500,000 EV chargers by 2030. Accordingly, ZETA urges IRS to revise the proposed regulations amending 26 CFR § 1.45-8(e)(1)(A)(2) as they pertain to 30C to eliminate the requirement to issue a second request for registered apprentices 120 days after the first request is denied or not responded to.

Consider ways to tie the implementation timeline for PWA requirements for 30C-eligible projects to the timeline for guidance on 30C eligible census tracts

ZETA notes that the proposed regulatory text amending 26 CFR § 1.30C-3(b)(1) would be retroactively applicable to projects with a beginning of construction (BOC) date after January 29, 2023.⁸ The electric vehicle charging industry is currently operating in a state of substantial uncertainty as it relates to unpublished IRS guidance clarifying census tract eligibility under the 30C credit, among other things. This ongoing state of uncertainty is causing projects that would otherwise have been completed by now to be delayed, pending IRS clarification. Earlier in 2023, a National Renewable Energy Laboratory (NREL) report found that "long-term market certainty grounded in accelerating consumer demand" is critical to meeting the President's EV charging goals.⁹ While ZETA urges IRS to publish 30C clarifying guidance expeditiously, we also urge IRS to consider ways to tie the PWA BOC date to publication of any final eligibility guidance.

ZETA and its members thank you for your attention to these comments and are available should you have any additional questions.

Sincerely,



Albert Gore
Executive Director
Zero Emission Transportation Association

⁷ See 88 FR 60048

⁸ See 88 FR 60018

⁹ <https://driveelectric.gov/files/2030-charging-network.pdf>