Subject Line: Response to Treasury RFI Notice 2022-56

The comments below are submitted jointly by a group of electric vehicle (EV) advocates, environmental and science non-profits, low-income consumer advocates, grasstops advocates, E-mobility diversity, equity and inclusion (DEI) advocates, a clean technology consortium, consumer e-mobility advocates, and environmental, climate, and social justice advocates. Collectively, we work with policymakers at the federal, state, and local levels in advancing supportive EV policies to electrify the transportation sector. We also work with and provide information to consumers, businesses, non-profits, and all others who will be directly impacted by the proposed and final guidance on the incentives under **§§** 30C and 45W. We are grateful for your consideration of our feedback.

In line with the public interest and the agency's "Guiding Principles for Implementation," the guidance provided by the Internal Revenue Service (IRS) should allow for the climate and economic benefits of this historic legislation to be felt as quickly as possible.

The modification and extension of the credit implies the credit was intended to work for more consumers over a longer period. While the Inflation Reduction Act (IRA) language includes other requirements for the **§**30C credit, it should be interpreted to enable the widespread adoption and utilization of electric vehicle supply equipment (EVSE), particularly with definitions such as "single item property," and "eligible census tract." Not only will such an interpretation enable more entities to take advantage of the credit but will also enable the ability to meet the climate and justice goals established by the Biden Administration.

Alternative Fuel Vehicle Refueling Property Credit (§ 30C)

> (2). Section 30C(b) provides that the credit is allowed with respect to any single item of qualified alternative fuel vehicle refueling property. *How should "single item" be defined for this purpose?*

Treasury and the Internal Revenue Service (IRS) should consider defining the term "single item" in a way that includes the full range of costs associated with installing EVSE. Those costs include labor, hardware, and software necessary for the installation of one charger/unit of EVSE dispenser plus all necessary make-ready infrastructure (including any customer payments for utility-side infrastructure upgrades), landscaping, onsite energy storage, ADA-compliant upgrades, permitting, design, and construction costs and other directly applicable eligible costs for the project, assigned on a pro-rata basis for projects installing more than one EVSE. Allowing for the full range of costs associated with installing EVSE to be eligible as part of the tax credit will better advance the deployment of the electric vehicle infrastructure that the credit supports. We urge this guidance be issued in clear terms to provide taxpayers of all levels of tax policy expertise with the information to easily access the full value of this credit.

Additionally, Treasury and the IRS should define "single item" for the purpose of the **§**30C tax credit as each dispenser unit. We urge Treasury to be clear in this definition so as not to

disadvantage current or future technology designs by ensuring that a station with multiple dispensers capable of delivering energy simultaneously is not counted as a single item. For instance, if a taxpayer installs a large power cabinet that feeds multiple power cabinet dispensers, the number of “single items” of qualified alternative fuel vehicle (QAFV) refueling property would match the number of dispensers. Each dispenser (charging handle or port) that can operate simultaneously would count as a “single item”. If a cabinet has two types of dispensers (CHAdeMO and CCS) but only one is able to provide electricity at a time, the unit would count as a single item.

> (3). Section 30C(c)(2) provides that property does not fail to be qualified alternative fuel vehicle refueling property solely because such property is capable of charging the battery of a motor vehicle propelled by electricity, and allows discharging electricity from such battery to an electric load external to such motor vehicle. *What factors and definitions should be considered in developing guidance for qualified alternative fuel vehicle refueling properties that are also bidirectional charging equipment?*

When developing guidance for bidirectional charging equipment, Treasury and the IRS should take an inclusive view of how exported power can be used either to offset the energy consumed on the customer side of the meter or to feed the energy directly back into the grid. There are examples of programs that demonstrate how customer-side (i.e., behind-the-meter/non grid interconnected) and grid-side (i.e., front-of-the-meter/ grid interconnected) approaches offer different value streams. Both strategies support both the grid and the site operator. Bidirectional charging projects to date--including EV school buses, EV battery repurposing, battery swapping stations and other bidirectional grid services applications--have used both grid and customer side strategies.

In addition, Treasury and the IRS should consider other bidirectional-related costs when determining credit eligibility. This should include costs associated with the installation of the equipment and upfront costs, such as software and hardware. On-site storage that directly supports the charging of electric vehicles and can also be utilized in bidirectional charging should be explicitly covered.

> (4). Section 30C(e)(3) requires qualified alternative fuel vehicle refueling property to be placed in service in an eligible census tract. *What guidance, if any, is needed to clarify the definition of eligible census tract?*

How Treasury and the IRS define “eligible census tract” will have an enormous impact on how many individuals can access the tax credit for residential or commercial EV chargers reauthorized by the Inflation Reduction Act (IRA) Section 30C.

The law makes census tracts designated as “urban” by the Census Bureau ineligible for the tax credit. However, the Census Bureau does not actually designate tracts one way or the other. It defines census *blocks* as “urban” or “rural” and there are on average approximately 100 blocks in a tract.

Accordingly, Treasury and the IRS must designate which tracts will be eligible based on the Census Bureau's designation of blocks. The range of legally permissible outcomes is vast. For example, it may seem logical to define a tract as urban if more than half of its blocks are urban, but an analysis by the Natural Resources Defense Council (NRDC), provided by NRDC for the purpose of RFI Notice 2022-56, shows that this would unduly deny eligibility to tens of millions of people who live in rural census blocks that happen to be located in a census tract with many urban blocks. Additionally, to ensure all Americans living in rural areas are eligible, Treasury could define "urban" as a tract as one comprised entirely of urban blocks. This would ensure that no rural communities are left out, but could be seen as not sufficiently targeting the most underserved rural areas.

However, NRDC's analysis found that, "a census tract in which no more than 25 percent of census blocks are classified as rural by the Census Bureau" would significantly increase eligibility relative to a 50 percent threshold. Such a definition is within the intent and spirit of the law to help low-income and rural communities, as it would prevent 58 million people from being unduly denied eligibility under the non-urban designation (including 2 million rural residents, 4 million people in poverty, 4 million Black people, and 6 million Hispanic/Latino people).

We urge Treasury and the IRS to establish a defensible definition that maximizes eligibility, consistent with the Administration's guiding principle of "ensuring that as many eligible taxpayers as possible benefit from the incentives provided by the law while protecting against fraud and abuse."

> (5). Section 30C(e)(5) provides that recapture rules similar to the rules of former § 179A(e)(4) apply for purposes of § 30C. *What aspects of §§ 30C and former 179A should apply without modification for this purpose and what aspects should be modified?*

Treasury and the IRS should clarify that once a charger is determined to be located in an eligible census tract, it should be exempt from any later recapture due to updated Census data or new designations from future updates.

Credit for Qualified Commercial Clean Vehicles *(§ 45W)*

> (1) *What factors should be considered, and what data sources should be relied on, to determine whether a vehicle is "comparable in size and use" for purposes of the comparable vehicle definition in § 45W(b)(3) to determine the incremental cost?*

Any guidance issued by Treasury and the IRS on the implementation of this provision must consider that there are manufacturers that specialize in zero-emissions vehicles and therefore do not have comparable vehicles that are powered solely by gasoline or diesel internal combustion engines (ICE). Moreover, comparisons between EVs and non-electric vehicles based solely on "weight" or related sizing metrics will be inherently flawed without adjusting for the fact that EVs can be heavier than their ICE engine counterparts because of the weight of the battery. Lastly, it is important that any

definition adopted by the agency should not unduly disincentivize vehicle designs that have large internal volume to vehicle footprint ratios and should instead incentivize efficient utilization of resources and space, where applicable.

Rather than prescribe the metrics for comparison, we recommend adopting the approach used in successful state incentives programs[1]. In these programs, to prove eligibility, manufacturers must submit an application that identifies a comparable conventional vehicle and its price. In this way, manufacturers, who have a deep understanding of their products and how fleets use them, suggest the appropriate comparable vehicle to determine incremental cost while the program administrators verify.

Treasury and IRS should carefully consider the role new technologies and business models (e.g. innovations in bidirectional charging, vehicle-to-vehicle charging, battery leasing, battery swapping, etc.) may play in increasing the accessibility of electric vehicles. Treasury and IRS should strive to create rules that can accommodate a diversity of technologies and business models, and ensure that rules are adaptable to future innovations.

> *(2) What, if any, guidance is required to clarify the definition of mobile machinery for the purposes of § 45W(c)?*

This definition of "mobile machinery" should be clarified to make it clear that "cargo handling equipment"[2] is encompassed by this definition. Additionally, any guidance issued by the agency should provide an illustrative list of mobile machinery examples that should include heavy-duty nonroad, self-propelled vehicles or land-based cargo equipment, tools, and vehicles regulated under the U.S. Environmental Protection Agency's (EPA) nonroad engine rule.

> (3) Section 45W(d)(1) provides that rules similar to the rules under § 30D(f) without regard to the income limitations in § 30D(f)(10) or the manufacturer's suggested retail price limitations in § 30D(f)(11), apply for purposes of section 45W. The applicable rules in § 30D(f) are basis reduction, no double benefit, property used outside the United States not qualified, recapture, election not to take the credit, interaction with air quality and motor vehicle safety standards, and one credit per vehicle. *What aspects of § 30D(f) should apply to the § 45W credit without modification and what aspects should be modified?*

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[1]See the New York Truck Voucher Incentive Program (NYTVIP) and California's Hybrid and Zero-Emission Truck and Bus Voucher Incentive Program (HVIP) as examples of state incentive programs that have established systems for determining comparable vehicles.

[2] Environmental Protection Agency, *Cargo Handling Equipment (CHE) Best Practices to Improve Air Quality* (October 4, 2022) available at https://www.epa.gov/ports-initiative/cargo-handling-equipment-che-best-practices-improve-air-quality#:~:text=The%20CHE%20sector%20encompasses%20a,vessels%2C%20railcars%2C%20and%20trucks

In an effort to incentivize as many clean commercial vehicles as possible and expedite the air quality benefits of these vehicles, the applicable rules that should apply include the basis reduction, no double benefit, property used outside the United States not qualified, recapture, election not to take the credit, interaction with air quality and motor vehicle safety standards, and one credit per vehicle.

> (6) Section 45W(c)(3)(A) requires that a qualified commercial clean vehicle must either (i) satisfy the requirements under § 30B(b)(3)(A) and (B) for being a new qualified fuel cell motor vehicle, or (ii) be propelled to a significant extent by an electric motor which draws electricity from a battery that has a capacity of not less than 15-kilowatt hours (or, in the case of a vehicle which has a gross vehicle weight rating of fewer than 14,000 pounds, 7-kilowatt hours) and is capable of being recharged from an external source of electricity. *How should "significant extent" be defined for this purpose?*

For the purposes of this section, "significant extent" should be defined as electric motor technology that is capable of propelling the vehicle solely by the electric drivetrain and is also capable of being charged externally (ie. does not charge exclusively or primarily from a vehicle's onboard combustion engine).

The Comments are Submitted by:

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CALStart
EarthJustice
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National Consumer Law Center, on behalf of low-income clients
Natural Resources Defense Council (NRDC)
Plug In America
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