RE: Docket ID No. IRS-2023-0029-0001

The comments below are submitted jointly by a group of electric vehicle (EV) advocates, environmental and science non-profits, grasstops advocates, diversity, equity, and inclusion (DEI) advocates, a clean technology consortium, and environmental, climate, and social justice advocates. Collectively, we work with policymakers at the federal, state, and local levels in advancing supportive electric vehicle (EV) policies to electrify the transportation sector. We also work with and provide information to consumers, businesses, non-profits, and others who will be directly impacted by the proposed and final guidance regarding elective payment and transferability of tax incentives. We are grateful for your consideration of our feedback.

Simplicity and technical assistance are paramount.

The U.S. Treasury Department (Treasury) and The Internal Revenue Service (IRS) must ensure that eligible tax-exempt entities are familiar and comfortable with the applicable tax credit process. There are many potential entities that will likely utilize these credits who traditionally do not work with federal agencies, file or pay taxes, or for whom potential vehicle or infrastructure purchases have no previous alignment with federal programs. For example, a city purchasing zero emission work trucks and refuse trucks will not typically coordinate with a federal agency that oversees these sectors or provides technical assistance. To that end, all eligible applicants should have sufficient information to effectively register and file complete documents in a way that streamlines the process and their ability to take advantage of the tax credit. More specifically, there should be available guidance, support, and outreach for all eligible tax-exempt entities with little experience and knowledge of the tax credit process. In addition, the Treasury and IRS should ensure that there is a visible and accessible resource and outreach for any user of these tax credits, based on the subject of the tax credit - for example, the Joint Office of Energy and Transportation, ensuring the eligible entities don't resort to third-party entities.

In addition, the Treasury and the IRS should clearly illustrate the tax cycles required by eligible tax-exempt entities and prominently publish the deadlines to ensure applicants don't miss deadlines and thus the ability to benefit from a particular tax credit. Treasury and the IRS should ensure that there is clear guidance on both initial filing deadlines and extensions in order to maximize the number of entities that will be able to gather the requisite information to apply. Extensions for entities should be included so eligible applicants are not disqualified for these tax credits. This will also hopefully ensure that small entities or entities in disadvantaged communities that may have less technical expertise or ability to retain such expertise can still benefit, furthering equity.

Key definitions must be clarified.

- Low-income - to ensure the maximum benefits are going to those communities that are the most heavily impacted, the current language surrounding eligible entities based on poverty definitions needs to be clearly defined across all applicable tax credits. To

ensure that information is available and easily understandable, a map or searchable address database that clearly shows eligible census tracts would be useful for all tax credits for which this applies under the Inflation Reduction Act of 2022 (IRA).

- Eligible entities - under the § 45W tax credit guidelines, there is a lack of clarity surrounding the subset of eligible entities; as such, a more explicit definition is needed for applicants to understand eligibility. For example, there is no clear guidance around fleet eligibility with regards to the United States Postal Service and the drivers the USPS contracts with to serve rural communities. Given that those contractors might not be considered tax-exempt entities that would be eligible for direct pay, further guidance and clarification is necessary to ensure that a lack of understanding doesn't artificially limit otherwise eligible entities from being able to transition their fleets, or that rural communities won't be able to benefit from zero-emission mail delivery.

The potential for stacking should be clearly provided,

The Treasury and IRS must provide clear guidance for elective pay and transferable credits - much as the EPA's Clean School Bus Program does - to clearly allow stacking of multiple tax credits as well as federal and non-federal grant funds. That way, entities can maximize their ability to pay for clean energy or transportation solutions, and can have a better chance of still benefiting even if not approved for a specific tax credit. In addition, entities should be able to apply for multiple tax credits in order to streamline processing and processing timelines - and better ensure that eligible entities are receiving the greatest benefit possible.

Transparency is important to maximize tax credit impact.

We ask that clear guidelines be put in place to ensure the full value of the tax credit will be passed on to eligible tax-exempt recipients. While we realize the transferable tax credits can be sold to the party claiming the credit for less than the face value of the tax credit, we advocate for putting into place guardrails to ensure that the eligible tax-exempt entity be able to access the entire face value of the tax credit. Requiring that the filer provide an itemized bill of sale to the IRS and to the tax-exempt entity which includes the value of the tax credit as well as details of the transaction including interest rate and any additional fees will help provide transparency and help ensure that these federal funds are used in a way that maximizes the benefits to communities across the country.

Time delay in tax credit capture should be clearly defined and addressed.

Tax credits for tax-exempt entities are an important incentive for procuring zero emission buses and trucks and charging infrastructure. Leveraging these tax credits will allow charitable organizations, community benefit organizations, schools, and senior centers the ability to maximize emissions reductions and cost of ownership benefits in communities most impacted by transportation pollution. Given that the tax credit will be part of the value, we advocate for coordination with other sources of funding, including federal funding (with programs like Low No, and Clean School Bus Program), state funding, utility incentives, and other programs to ensure that each stream of funding counts and is stackable. In addition, the Treasury and IRS should offer guidance about the time delay in tax credit capture–the time the tax exempt entity using

direct pay will have to wait for the tax credit. This should be clearly specified and there should be options to manage this time delay. Many tax-exempt entities, especially in disadvantaged communities, will not have the cash in hand to pay the incentive cost upfront and may wait many months to be able to receive the credit back. This amount could be significant, depending on the financial capability of the eligible entity and/or the number of vehicles that the eligible entity seeks to purchase. The Treasury and IRS should offer options to manage this time delay and allow these entities to take advantage of the incentive. The options may include effective coordination with the other sources of funding, and alternative finance instruments from green banks or other CDFIs to be able to account for and mitigate negative consequences from the time delay.

Key protections to minimize hydrogen impact need to be put in place.
Qualified clean hydrogen is defined in § 45V to include hydrogen that is produced through a process that results in a lifecycle greenhouse gas emissions rate of not greater than 4 kilograms of carbon dioxide equivalent (CO2-e) per kilogram of hydrogen on a well-to-gate basis, with a 0.45 kg CO2-e/kg H2 eligibility threshold for the top credit tier. In order to adhere to statutory requirements, protections should be put in place to ensure that eligibility for direct pay and transferability is not extended to projects that increase fossil fuel use, exacerbate environmental injustices, and increase economy-wide emissions by hundreds of millions of tons. More specifically, the following should be required in order to qualify:

- All electrolytic hydrogen projects must comply with the three pillars of clean electricity supply: additionality, deliverability, and hourly matching.These protections are needed to ensure hydrogen production does not divert existing renewable capacity or increase future fossil fuel generation.
- Because the tax credit awards funds based on the carbon intensity of produced hydrogen, as opposed to qualifying hydrogen production processes, the tax credit has the potential to subsidize polluting fossil fuel-based projects. This makes the importance of rigorous criteria protecting against harmful outcomes all the more critical. The accuracy of upstream methane leakage estimates must be based on the best available data - and be paired with minimizing risk of fugitive or intended hydrogen emissions. As an indirect greenhouse gas with significant short-term warming potential, the risk to the climate from hydrogen production and transportation must be mitigated as much as possible - such as by excluding vented, purged, or flared hydrogen from tax credit eligibility and by requiring emissions management plans.
- Treasury must take steps to prevent flawed accounting practices for biomethane, including carbon-negative accounting of biomethane and the use of carbon-negative fuels to offset or net lifecycle emissions - practices that threaten to undermine the carbon intensity calculations for both steam methane reforming and electrolytic pathways.

The comments are submitted by:
Clean Energy Works
EarthJustice
East Metro Strong
Electrification Coalition

Environmental Defense Fund
GreenLatinos
IPMI
New Urban Mobility Alliance (NUMO)
Plug In America
Reno + Sparks Chamber of Commerce
Sierra Club
Southern Alliance for Clean Energy
Union of Concerned Scientists