
November 4, 2022

RE: Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits

Submitted via regulations.gov under IRS-2022-50 notice

Air Company appreciates the opportunity to respond to the U.S. Treasury Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits, Notice 2022-50. Air Company Holdings (“Air Company”) is a CO₂ utilization company based in New York that has developed and deployed innovative technology that produces carbon-negative and carbon-neutral chemicals and fuels such as ethanol, methanol, and sustainable aviation fuel from carbon dioxide, water, and renewable electricity (“e-fuels”).

Validation of our technology has come from NASA, whose Carbon Dioxide Conversion Challenge we won, and the Carbon XPRIZE, in which we were a finalist. We have launched three anthropogenic CO₂-based consumer products to market. These products have received international accolades, including being named TIME Magazine’s Best Invention of 2020.

In September 2022, we announced the launch of our sustainable aviation fuel (SAF)¹ produced via a cutting-edge power-to-liquids (PtL) process, which achieves the greatest CO₂ emissions reduction of all registered and approved SAF manufacturing pathways.² The importance of this innovative climate technology is underscored by commitments from global aviation partners to purchase over one billion gallons of AIRMADE™ SAF, including JetBlue, Virgin Atlantic, and Boom Supersonic, among others.³ We are proud to have established a partnership with the United States Air Force, with whom we completed a first-of-its-kind unmanned flight using Air Company’s 100% unblended, drop-in CO₂-derived SAF.

As in any cutting-edge process, production costs of our renewables-powered industrial products are higher than legacy, fossil fuel-based incumbents. The variety of tax credits authorized by the Inflation Reduction Act will play a significant role in commercializing these products faster and thus displacing

¹ “Air Company Fuels First Ever Test Flight with Jet Fuel Made From CO₂, Beginning the Next-Generation of the World’s Fuel Industry,” press release, September 22, 2022 <https://www.prnewswire.com/news-releases/air-company-fuels-first-ever-test-flight-with-jet-fuel-made-from-co2-beginning-the-next-generation-of-the-worlds-fuel-industry-301630268.html>

² Power-to-liquids (PtL) is a synthetically produced liquid hydrocarbon. Renewable electricity is the key input, and water and carbon dioxide (CO₂) are the main resources used in PtL production. Air combines CO₂ with hydrogen produced with renewable electricity via electrolysis to make valuable products.

³ JetBlue has signed an agreement with the intent to purchase 25 million gallons of AIRMADE™ SAF over 5 years; Virgin Atlantic has partnered with AIR COMPANY by signing an agreement with the intent to purchase up to 100 million gallons of AIRMADE™ SAF over 10 years; Boom Supersonic, the company building the world's fastest airliner, optimized for speed, safety, and sustainability, has entered into an agreement with AIR COMPANY with the intent to purchase up to 5 million gallons of AIRMADE™ SAF on an annual basis through the Overture flight test program.

fossil fuel-based products sooner, driving the reduction of US GHG emissions. Reducing the cost of our clean products is critical to scaling our CO₂ reduction capacity. Therefore, in this letter we request several clarifications below for your consideration.

Clarifications on Timelines for Elective Payment Option Are Needed. Air Company commends the Administration and Congress for enacting Section 6417 of the Code to allow certain taxpayers to elect to treat certain credits as a direct payment (“direct pay”) rather than a credit against their federal income tax liabilities. We expect the direct pay option will be crucial for scale-up and commercialization of innovative technologies in the United States. The direct pay option is particularly impactful for smaller innovative companies with cutting-edge solutions such as Air Company. The 5-year direct pay provision, available for hydrogen production tax credit (45V) and carbon oxide utilization and sequestration credit (45Q), has potential to accelerate the deployment and commercialization of renewables-based hydrogen production, as well as CO₂ utilization technologies – both applicable to Air Company.

For early-stage, pre-commercial companies, the direct pay option is particularly attractive as it offers more flexibility to taxpayers to claim the credit directly, without entering into complex tax equity structures. We believe that the purpose of this provision is to support smaller entities and earlier stage companies investing in innovative technologies, and we believe that it can be impactful. We request that the IRS clarifies the timeline between a taxpayer’s tax filing making an election for direct pay and the actual payment from IRS to the taxpayer. The hydrogen production tax credit is a key economic driver for our demonstration project to be successful during the first few years of the project, and payment delays longer than three months/one quarter will require our business to outlay significant capital and seek more funding from the private sector, which might not be readily available, to keep running the project. Such delays, and the subsequent need for more private sector funding/financing could effectively devalue the 45V tax credit as projects will be pressed to secure other sources of funding with high interest, potentially jeopardizing the success of the project and delaying the commercial deployment of cutting-edge clean energy solutions.

We recognize the importance of IRS validating companies’ claims for the direct pay election. But we also believe that the direct pay option will only prove effective if it works in a timely manner. For small, early-stage companies, a cashflow delay of multiple months can be deeply disruptive. We suggest that the IRS considers quarterly payments to eligible projects in case this can alleviate the burden on the IRS staff, and recommend that IRS specifies that the direct payments shall be made to the qualifying taxpayers no later than six months from the tax filing.

Clarification is Needed on Transition After the 5-Year Direct Pay Opt-In. Clarification is needed on whether a non-tax-exempt taxpayer that makes the election for direct payment needs to follow any administrative steps to take advantage of credit transfer or claim credits in a more traditional way after the 5-year eligibility period ends.

Sincerely,
Natalia Sharova
Climate Policy Manager