

November 4, 2022

Ms. Holly Porter
Associate Chief Counsel (Passthroughs & Special Industries)
Internal Revenue Service

Electronically via the Federal eRulemaking Portal
www.regulations.gov

Re: Comments in Response to Notice 2022-50, Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits, and Notice 2022-51, Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements under the Inflation Reduction Act of 2022

Dear Ms. Porter:

This letter is submitted on behalf of Business Roundtable, an organization whose CEO members lead America's largest companies, employing over 20 million workers. Business Roundtable companies spend and invest over \$7 trillion a year, helping sustain and grow tens of thousands of communities and millions of medium- and small-sized businesses.

We appreciate the opportunity to comment on the Treasury Department and Internal Revenue Service Notice 2022-50 regarding questions arising from the elective payment and transferability provisions and Notice 2022-51 regarding prevailing wage, apprenticeship, domestic content, and energy community requirements of the IRA¹, and request expedited guidance to provide clarity on these issues.

The Notices encourage commentators to specify the issues on which guidance is needed most quickly as well as the most important issues on which guidance is needed. As Business Roundtable companies operate across a broad range of industries throughout the American economy, we focus on questions with wide applicability. While these matters are of cross-cutting concern to Business Roundtable companies, issues raised by individual companies and specific industries are also important for Treasury to address.

¹ On October 5, 2022, the Internal Revenue Service issued six notices seeking input on implementing the IRA's clean energy tax incentives (the "Notices"). Our comments focus on the issues raised in Notice 2022-50 and Notice 2022-51.

- **Elective payment and transfer elections.** For a company that makes an elective payment election for the carbon oxide sequestration credit or clean hydrogen credit for the first five years of the corresponding credit period, what is the availability of elective payment and transfer elections for subsequent years in the credit period? What is the availability of elective payment and transfer elections for a carbon oxide sequestration credit that, pursuant to an election under that credit, is allowable to the person that disposes of the qualified carbon oxide, utilizes the qualified carbon oxide, or uses the qualified carbon oxide as a tertiary injectant? Are eligible components produced and sold by partnerships under the advanced manufacturing production credit treated as property held by the partnership for purposes of a transfer election made by the partnership?
- **Prevailing wage.** How do job classifications and types of construction work in existing Davis-Bacon wage determinations correspond to those for the energy projects to which tax credits apply? To what extent will businesses be able to rely on existing definitions and documentation requirements?
- **Apprenticeship requirements.** What is the scope of activities to which the apprenticeship requirements apply? What reporting and documentation standards can taxpayers use to demonstrate compliance with the apprenticeship requirements or to qualify for the good faith exception to the requirements?²
- **Sixty-day rule for prevailing wage and apprenticeship requirements.** What opportunity for comment will Treasury and IRS provide taxpayers on any subsequent publication (such as a notice) before such publication constitutes the publication of guidance that effectuates the 60-day rule?
- **Domestic content.** To what extent will definitions of domestic production under the prior-law domestic production activities deduction be relevant for the determination of compliance with the domestic content requirements? What guidance will Treasury and the IRS develop with respect to the terms “manufactured product,” “end product,” “component of a qualified facility,” “total costs,” and “mined, produced, or manufactured” and with respect to relevant provisions of the Buy America requirements for the determination of compliance with the domestic content requirements? What reporting and documentation standards can taxpayers use to demonstrate compliance with the domestic content requirements? To what extent will businesses be able to rely on certifications by suppliers as to the domestic content of inputs through the supply chain?
- **Energy communities.** Will businesses be able to rely on a determination made at the time construction begins that a project will be in an energy community when claiming the credit upon completion of construction?

² For example, under existing IRS guidance, taxpayers may use statistical sampling to meet a number of documentation requirements.

- **Definitions.** Terms such as “begin construction,” “progress expenditures,” and “facility” among others are used in the context of the IRA amendments. To what extent will guidance rely on existing definitions of those terms where the application of these terms is sufficiently similar so as to incentivize continued investments and prevent unnecessary delays, including in the context of the sixty-day rule? In other cases, such as for a “single project,” what specific new detailed guidance will be provided to provide clarity and eliminate any uncertainty?

We appreciate the opportunity to comment on the Notices to highlight the issues on which guidance is needed most quickly and the most important issues on which guidance is needed. We have not attempted to provide comprehensive comments, but we have focused on a few areas of broad concern. We would be happy to discuss these comments or any other matters you may find helpful. Please contact Catherine Schultz, Vice President of Tax and Fiscal Policy at cschultz@brt.org or Matt Sonnesyn, Vice President of Infrastructure, Energy and Environment at msonnesyn@brt.org.