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Internal Revenue Service
CC:PA:LPD:PR (Notices 2022-51 and 2022-50)
Room 5203
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

Via Federal eRulemaking Portal at www.regulations.gov

Re: Comments on Notices 2022-50 and 2022-51

To the Internal Revenue Service:

Evergrow is a financial technology company based in Silicon Valley. We exist to unlock funding for renewable energy and decarbonization projects. We believe that information technology has an important role to play in furthering the policy goals of the Inflation Reduction Act (the “Act”). To that end, we are developing a suite of products to enhance the tax credit markets by increasing access to capital, lowering transaction costs, and improving transparency and risk management.

As requested, we offer the following brief comments on Notices 2022-50 and 2022-51, “*Implementing the Inflation Reduction Act’s Clean Energy Tax Incentives*”:

Transferability of credits

We note that the Act limits the transferability of tax credits to one-time only. However, it is unclear what exactly constitutes a “transfer” for these purposes. Therefore, we encourage the Service to provide guidance to clarify whether certain administrative transactions or other conveyances of tax credits will be considered “transfers” within the meaning of the Act. Such arrangements are common in other markets and asset classes because they improve liquidity, enable parties to manage risk, and combat fraud.

For example:

1. Company A has wholly-owned subsidiaries B and C. If B buys a credit and assigns it to C for convenience (e.g., as part of an internal reorganization), will that assignment be deemed to be a second transfer of the credit and thus run afoul of the Act?
2. Seller enters a sale/purchase contract with Buyer for a tax credit pursuant to which Seller delivers the credit in advance of receiving payment from Buyer. May Seller secure their contractual right to payment by taking a security interest in the transferred credit? If so, will Seller’s repossession of a credit in an event of default be deemed to be a transfer? If it is not deemed a transfer, may Seller later sell the repossessed credit to a new buyer for

value?

3. Seller enters a sale/purchase contract with Buyer A for a tax credit, pursuant to which Seller will deliver to Buyer A a certain number of tax credits on a specified settlement date in the future. May Buyer A assign said contract for value to Buyer B in advance of the settlement date, such that on the settlement date, Seller transfers the tax credits to Buyer B instead of Buyer A?
4. Seller is a renewable energy project developer. Seller sells tax credits to Buyer and indemnifies Buyer against certain risks associated with the transferred credits, including the risk that the Service challenges the validity thereof. While Seller has knowledge and control over the project that gives rise to the tax credits, it is Buyer whose return is subject to challenge by the Service. To address this, Buyer and Seller agree that in the event of such a challenge, Buyer has the option to sell back the credits to Seller, as a means of ensuring that Seller continues to be a stakeholder in the credit's value, thereby disincentivizing fraud and moral hazard. Would such a resale back to its original producer be considered a second transfer and contravene the Act?

We believe that there is significant market interest in and need for such arrangements to achieve the Act's policy goal of providing a viable alternative to the traditionally costly and illiquid methods of realizing value from tax credits. Therefore, we believe that issuing guidance to expressly allow such transactions would be both beneficial to the policy goals of the Act and not inconsistent with its text, and we encourage the Service to provide guidance to this effect.

Prevailing wage requirements

We note that the Act conditions 80% of the value of many tax credits on projects satisfying certain prevailing wage and apprenticeship requirements. Both Congressional intent and the policy goals thereof seem clear here, namely that to obtain the full value of tax credits, projects must pay workers the prevailing wage, ensuring that taxpayer dollars are used to create good-paying jobs and train the workforce of the future.

However, the Act also seems to contemplate that any breaches of the prevailing wage requirements may be cured by paying backpay and fines. While this seems appropriate for administrative errors made during good faith attempts to comply with the prevailing wage requirements, we fear that, absent contrary guidance from the Service, certain market participants may view such fines as the ceiling on their cost of compliance, willfully fail to comply, and gamble on going undiscovered. Such bad actors would distort the entire market, as they would have a lower cost basis than their (honest, compliant) competitors. We do not believe this was Congress's intent when it included cure provisions in the Act.

While robust audit and enforcement actions by the Service may help combat this after the fact, we believe that strict, up-front guidance on prevailing wage requirements would be the most effective method of ensuring a level playing field for all.

Very truly yours,

James Richards
Chief Executive Officer
Evergrow Inc.