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**Highland Electric Fleets, Inc.**
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Tel.: 978-288-1105; Email: Info@highlandfleets.com

November 4, 2022

Internal Revenue Service
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

**Re: Highland Electric Fleets, Inc. – Response to Notice 2022-50**

Highland Electric Fleets is the largest, most experienced provider of turnkey school bus electrification services in the United States. We partner with school districts and private operators to provide everything a school bus fleet needs to transition to electric vehicles, excluding drivers and mechanics. Highland has existing contracts to provide nearly 400 electric school buses and the associated charging infrastructure in several US states with more than 100 buses in active operation today. Our mission is to make electric fleets accessible and affordable for all.

We appreciate the opportunity to comment on Notice 2022-50. For context, our comments are generally oriented to application of elective payment and transferability just with respect to §45W (commercial EVs) and §30C (alternative refueling stations) though the comments may be relevant in your consideration of other credits as well.

**Elective Payment of Applicable Credits (6417)**

**(1) What, if any, guidance is needed to clarify the meaning of certain terms in § 6417, such as applicable credit and excessive payment? Is there any term not defined in § 6417 that should be defined in future guidance? If so, what is the term and how should it be defined?**

**(13) Please provide comments on any other topics that may require guidance.**

Treasury should clarify that local, state, and federal grants received by applicable entities for acquisition of property should not be included in eligible basis of such property. It is unclear what the value of an applicable credit is in the circumstance where an applicable entity receives local, state, and federal grants and incentives to purchase the property and seeks an elective payment under § 6417. There are many generous grant opportunities available for alternative fuel refueling property and electric commercial vehicles. These incentives are so generous that in some cases the full cost of the property can be paid through grants and incentives. However, there is an absence of guidance for determining how the basis in such property may be impacted by a tax-exempt entity's receipt of grants and incentives. In contrast, for taxpaying entities claiming a tax credit, so long as the grants and incentives are "taxable" to such taxpaying entity, then such credits may be included in the taxable basis of the property for which the credit is claimed. Under § 362(c), however, nontaxable grants and incentives are excluded from a taxpayer's basis, and therefore not part of eligible basis for credit purposes. Treasury should clarify whether an "applicable entity" under §6417 can include local, state, and federal grants and incentives in its basis for eligible property.

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Looking at §45W commercial vehicles as an example, there is a $5 billion EPA grant program where certain awardees will receive grants or incentives equal to the full purchase price of the electric vehicle. In the absence of making any tax payments on such grants and incentives, allowing a tax credit (direct pay) on top of this would create, for applicable entities, an aggregate benefit in excess of the value of the property. Without guidance, it is unclear whether inclusion of such amounts in a non-taxpaying entity's eligible basis would result in overstatement of the applicable credit (or double benefit), potentially triggering excessive payment notices and penalties. We believe that allowing net grants, incentives, and credits in excess of the basis of the eligible property both wastes taxpayer money, and distorts the market, driving up the price of the products these policies aim to support.[1] For these reasons, Treasury should clarify that local, state, and federal grants received by applicable entities for acquisition of property should not be included in eligible basis of such property for purposes of calculating the value of applicable credit for the elective payment under §6417.

> **(4) With respect to an election under § 6417(a) made by a partnership or S corporation pursuant to § 6417(c)(1) for any applicable credit determined with respect to any facility or property held directly by a partnership or S corporation:**
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> **…**
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> **(b) Is guidance needed to clarify the treatment of a payment made pursuant to § 6417(c)(1)(A) to the electing partnership or S corporation? If so, what clarification is needed?**

Treasury and IRS should clarify the application of other Code provisions to a partnership in which one or more partners, or an S corporation in which one or more shareholders, is an "applicable entity" under § 6417(d)(1). Section 1.46-3 treats each partner in a partnership as though that partner placed in service directly that partner's portion of the eligible basis in the property associated with the applicable credit. While the partnership would make any election, we believe that permitting an allocation of a portion of the credit (and therefore a portion of direct payments) to an applicable entity is consistent with underlying tax credit application to partnerships.

For example, Treasury should clarify that IRC §§ 168(h)(5)-(6), notwithstanding § 50(b), generally apply such that a partnership or corporation is only eligible to receive elective payment in a pro rata amount equal to the ownership interest of the applicable entity or entities, and that such share of an elective payment will only be treated as a payment against tax by the applicable entity or entities and not by any other partner or shareholder who is not an applicable entity. Similarly, Treasury should also confirm that such an election can be made by the partnership.

Treasury could also clarify this issue with respect to other corporate forms that are not traditional partnership interests. When an applicable entity holds some other ownership of a project or property, can the applicable entity receive direct pay proportional to its ownership share, while non-applicable

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[1] Proprietary analysis conducted on behalf of Highland indicates that electric school bus prices should decline annually through 2030 even when accounting for increased manufacturing costs due to short-term supply chain disruptions. However, bus prices have increased in the past several months across the United States with the release of the EPA Clean School Bus program. A corresponding increase in price has not been seen in other markets outside of the United States (e.g., Canada) indicating that the increase in prices is due in large part to very high incentive values setting the market price for electric school buses. The same phenomenon has been seen in states with very high incentive levels for electric school buses.

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entities receive tax credits? At a minimum, Treasury should clarify that unincorporated joint ventures may also make elections under § 6417.

**02 Transfer of Certain Credits (§ 6418)**

> **(1) What, if any, guidance is needed to clarify the meaning of certain terms in § 6418, such as eligible credit, eligible taxpayer, and excessive credit transfer? Is there any term not defined in § 6418 that should be defined in guidance? If so, what is the term and how should it be defined?**

What is a "Portion"? Section 6418 states that all or a portion of the tax credit may be transferred. However, it does not define how to determine what a "portion" is.

There are at least three ways to determine what a "portion" means for purposes of § 6418.

- Option 1: It could mean a pro-rata percentage of the allocation. In that case, each member of a partnership's percentage interest in "general profits" under Treas. Reg. 1.46-3 stays unchanged, but the total pie is reduced by the percentage transferred.
- Option 2: It could mean that any particular allocation percentage can be transferred. In that case, each partner in a partnership would instruct the partnership as to whether a portion of "general profits" under Treas. Reg. 1.46-3 should be transferred.
- Option 3: It could mean horizontal slices of the allocation that allow risk of loss on any particular slice of a credit (which might relate to an adder) to be distributed to transferees based on respective risk tolerances or ability to effectively verify compliance with the adder.

By way of example, assume a §30C alternative refueling station project that is eligible for an aggregate 30% credit of $30 based on a $100 basis (under Treas. Reg. 1.46-3) that includes a prevailing wage adder.[2] The project is held by a partnership where each of partner A and partner B has 50% of "general profits." The partnership elects to transfer $10 of credits.

Option 1 would give partner A and partner B 50% each of the remaining $20.

Option 2 would give partner A and partner B the same answer but would permit each partner to instruct the partnership (under its operating agreement) whether that partner's share or a combination of their shares were sold. Partner A could elect to reduce its share of the partnership's credit below 50%, for example, or with partner B's consent, increase Partner A's share (and adjust its share of general profits). This approach would adjust which partner receives which percentage of tax credit remaining and permit appropriate allocation of income related to the transferred credits. It would also make sure general profits are adjusted to ensure the partnership's capital accounting is consistent with the commercial deal.

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[2] With respect to school bus electrification, this discussion is somewhat academic. We estimate that the eligible census tract restrictions under § 30C could prevent more than three-quarters of the nationwide 400,000+ school bus fleet from benefiting from the credit. Highland will separately address this and other comments concerning 30C and 45W directly in response to Notice 2022-56.

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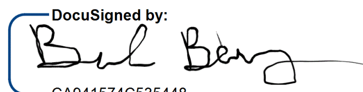
Option 3 would permit the partnership to slice up the tax credit horizontally and agree to transfer particular layers of the credit and corresponding “general profits.” For example, this would allow each partner to claim a separate portion of each credit amount determined by a particular adder (such as prevailing wage) or lack thereof. So, the partnership could transfer (allocate) just the prevailing wage adder to partner A, and the base 6% credit and any remaining prevailing wage adder to partner B. Alternatively, he partners could agree to transfer just that prevailing wage adder to a third party, while receiving their normal 50% share of general profits each.

This optionality would allow the appropriate risk sharing determination to be done between partners. We do not see a policy rationale to restrict allocation flexibility or to prevent divvying up risk levels between partners. For clarification, it would be very helpful to ease transaction friction if any guidance clarified that any choice of the options above could be made until the final tax return filing date (to give the longest period to find an appropriate transferee, which would help smooth the transfer process).

Thank you for your consideration of these comments. Please do not hesitate to reach out if it would be helpful to discuss any of these matters.

Sincerely,




Brendan Beasley
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Highland Electric Fleets, Inc.