RENEWABLE THERMAL COLLABORATIVE

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Response to Notice 2022-51

About the Renewable Thermal Collaborative

The Renewable Thermal Collaborative (RTC) appreciates the opportunity to submit comments in response to the Department of Treasury Notice 2022-51. The RTC serves as the leading coalition for organizations that are committed to scaling up renewable heating and cooling at their facilities and dramatically cutting carbon emissions.[1] RTC members are industrial and commercial thermal energy buyers with ambitious emissions reductions targets who recognize the urgent need to meet the growing demand for renewable heating and cooling in a manner that delivers sustainable, cost-competitive options at scale.[2]

Thermal energy is a key component of energy use in the U.S. and around the world, particularly in the industrial sector. Thermal energy is largely produced through on-site combustion of fuels for steam, direct heat for an oven or kiln, hot water, and other applications to make goods. Manufacturers and other industrial producers account for 30 percent of U.S. energy-related emissions and 24 percent of the country's overall direct emissions, nearly on par with electricity and just behind transportation.[3] The commercial and residential building sectors, which account for 13 percent of U.S. emissions, are also large consumers of thermal energy mostly for heating, hot water, and cooking.[4]

Apprenticeship requirements

Notice 2022-51, Section 3.02(2)(a): What, if any, clarification is needed regarding the good faith effort exception? Section 3.02(2)(b): What factors should be considered in administering and promoting compliance with this good faith effort exception?

[1] The Renewable Thermal Collaborative was founded in 2017 and is facilitated by the Center for Climate and Energy Solutions, David Gardiner and Associates, and World Wildlife Fund.

[2] RTC members are U.S. and global manufacturers, municipalities, healthcare and university systems, and statewide offices.

[3] Direct emissions are those that are produced at an industrial facility and do not include indirect emissions associated with electricity use. Direct emissions are produced by burning fuel for power or heat, through chemical reactions, and from leaks from industrial processes or equipment. "Industrial Decarbonization Roadmap", U.S. Department of Energy, September 2022, https://www.energy.gov/sites/default/files/2022-09/Industrial%20Decarbonization%20Roadmap.pdf

[4] "Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2020", Environmental Protection Agency, April 2022, https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2020

Section 45(b)(6)(B)(iii) allows for an increased credit (5x) when certain prevailing wage and apprenticeship requirements have been met. Section 45(b)(8) establishes the apprenticeship requirements to include a certain percentage of the labor hours spent on construction, alteration or repair of the qualified facility must be performed by qualified apprentices, topping out at 15% for facilities the construction of which begins after December 31, 2023 (subject to apprentice-journeyman ratios set by the Department of Labor or applicable state apprenticeship agencies), and a 4-1 ratio of workers to apprentices. These apprenticeship standards are deemed to be satisfied if a good faith effort to comply with the requirements has been taken, but a request for apprentices from a registered apprenticeship program has been denied or no response is received within five business days. A qualified apprentice is defined as an individual participating in a registered apprenticeship program, as defined in Section 3131(e)(3)(B), i.e., an apprenticeship registered under the "National Apprenticeship Act."[5] Similar terms apply to other credits in the Act by cross-reference to the Section 45(b)(6) requirements, including 30C(g)(3), 45Q(h)(4), 45V(e)(4), 45Y(g)(10), and 45Z(f)(7).

Clarity regarding the terms of the apprenticeship standards is critical so taxpayers and investors have certainty regarding the amount of credit for which a facility is eligible, including the extent of the effort a taxpayer must undertake to hire qualified apprentices. We request guidance from Treasury on the following points:

- If a taxpayer is denied an apprentice after contacting a registered apprenticeship program, and if there are multiple registered apprenticeship programs in a locale, is a taxpayer required to request an apprentice from each program until an apprentice is located or requests to all programs have been exhausted?
- Is a written denial required to establish such denial?
- What documentation is required to establish a non-response?
- Is a taxpayer required to hire an apprentice that doesn't meet the particular job description that the taxpayer requires?
- Is a taxpayer required to hire an apprentice that later becomes available, or if the apprenticeship program responds after the five-business-day window, especially if the taxpayer has already hired another laborer for that position?
- If a hired apprentice does not perform up to standards or otherwise is unsuitable for the job, and another apprentice is not available, can the taxpayer fire the apprentice without losing the 5x credit?
- If the wages for the apprentice are above prevailing wage, is the taxpayer obligated to hire the apprentice?

Although not expressly stated in the Notice, we also suggest that Treasury provide clarification to the following question:

What constitutes an eligible apprenticeship?

The definition of an apprenticeship program in the National Apprenticeship Act establishes principles

[5] The National Apprenticeship Act; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.)

but is not specific.[6] Since meeting the apprenticeship requirements is necessary to qualify for the 5x credit, more specific guidance of what constitutes a registered apprenticeship program is needed. Guidance on what constitutes an eligible apprenticeship should encompass at least the following questions:

- How will a taxpayer know whether a program is a registered apprenticeship program?
- Will the Department of Labor or each state publish a list of registered apprenticeship programs?
- What will be the process to establish a registered apprenticeship program, e.g., in a locale where such a program does not exist?
- What are the consequences if a taxpayer acts in good faith thinking a program is a registered apprenticeship program but later learns it is not?

Domestic content requirements

Notice 2022-51, Section 3.03(1)(c): Should the definitions of "steel" and "iron" under 49 C.F.R. 661.3, 661.5(b) and (c) be used for purposes of defining those terms under Sections 45(b)(9)(B) and 45Y(g)(11)(B)? If not, what alternative definitions should be used?

In general, if a taxpayer meets certain domestic content requirements under Sections 45(b)(9), 48(a)(12), 45Y(g)(11) and 48E(a)(3)(B), a qualified facility will be eligible for an additional 10% bonus credit. To meet the domestic content requirements, the general rule is that 100% of the steel and iron used to construct a qualified facility must be produced in the United States, and at least 40% of the total costs of manufactured products (including components) of the facility are mined, produced, or manufactured in the United States. Certain exceptions apply if the inclusion of steel, iron, or manufactured components produced in the United States cause the costs of the facility to increase by more than 25%, or if the steel, iron or components are not produced in the United States in sufficient quantity or quality. To provide certainty for taxpayers, the following questions should be clarified in Treasury guidance.

- What does "primarily" made of steel and iron mean?
- How will alloys be treated under this standard?
- How can a taxpayer establish that the steel and iron are not produced in sufficient quantity or quality in the United States?
- How can a taxpayer establish that increased costs to comply with the steel and iron standard will exceed 25%?

Section 3.03(2)(a): Does the term "component" of a qualified facility" need further clarification? If so, what should be clarified and is any clarification needed for specific types of property, such as qualified

[6] Ibid. The Secretary of Labor is authorized and directed to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the Secretary of Education in accordance with section 17 of title 20. For the purposes of this chapter the term "State" shall include the District of Columbia.

interconnection property? Section 3.03(2)(e): Does the treatment of subcomponents with regard to manufactured products need further clarification? If so, what should be clarified?

Additionally, the following questions around the treatment of components under domestic content requirements should be clarified through Treasury guidance:

- Is a component limited to the real property of a facility?
- Can a component be personal property located in a facility?
- Is a component limited to an item integral to the primary function of the facility, i.e., producing electricity, or does it include property located in administrative offices and other non-integral property?
- If all property located within a facility does not fall within the scope of a component, how is dual-use or co-located property treated?
- How is cost determined, i.e., by individual parts, or sub-components, or the entire component? How are costs allocated when various components are acquired at the same time? How are indirect costs accounted for, i.e., UNICAP-type costs? If components are acquired through related parties, will transfer pricing principles apply to determine cost?