RENEWABLE
THERMAL
COLLABORATIVE

Nov 3, 2022

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Response to Notice 2022-50

About the Renewable Thermal Collaborative

The Renewable Thermal Collaborative (RTC) appreciates the opportunity to submit comments in response to the Department of Treasury Notice 2022-50. 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]

Clarification on transferability of certain credits

Section 6418 of the Inflation Reduction Act permits an election by an eligible taxpayer to transfer certain clean energy credits to an unrelated transferee. In general, eligible taxpayers are taxable entities. Upon such transfer, the transferee is considered to be the taxpayer for purposes of the credit. The Secretary is

[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

granted authority to determine the time and manner of an election. Transferability provides a way for eligible taxpayers to monetize credits that they currently may not be able to use; for example, if they have insufficient tax liability to use up the credit. Rather than carry over the unused credit, the eligible taxpayer can elect to transfer all or a portion of the credit. Transferability also provides an alternative to tax-equity arrangements.

Clarity and certainty regarding the procedures to transfer credits are necessary to facilitate use of the transferability option. Lack of established protocols could affect the willingness of transferors to sell credits, transferees to purchase credits, and the pricing of transfers. These include the format of the election process itself as well as the extent of requirements or restrictions that the Treasury Department and the IRS may impose to foster compliance and facilitate enforcement. We request that in any guidance the Treasury Department issues, it answers the following questions:

- Timing of transfers: Will there be an option to transfer credits for the entire production tax credit period, or will all elections and transfers be executed on an annual basis? Can the agreement to transfer a credit occur at any time during the year? Can an agreement be consummated prior to the facility being placed in service or the beginning of production?

- Potential for restrictions: Will the financial details of a transfer transaction be entirely driven by market forces, or will the Treasury Department and the IRS impose certain requirements or restrictions on the transfer of credits, e.g., will there be a cap on the amount that the value of a credit can be discounted?

- Allocation of tax risk and price drivers: Will the allocation of tax risk be entirely driven by arm's length market forces or will Treasury and the IRS impose certain parameters on a transaction? Similarly, will the price of a tax credit be entirely driven by arm's length market forces?

- Compliance and enforcement mechanisms: What compliance and enforcement mechanisms will the Treasury Department and the IRS institute to ensure that transactions are at arm's length, that parties have complied with all statutory and procedural terms, and that facilities and production continue to qualify for the credit? What information will each side of the transaction need to maintain to establish compliance?