Sunnova Energy International, Inc.
20 Greenway Plaza, Suite 540
Houston, TX 77046
sunnova.com

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Via Regulations.gov
Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-50)
Room 5203, P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

RE: "Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits," Notice 2022-50 (Oct. 5, 2022)

.02 Transfer of Certain Credits (§ 6418)

Sunnova Energy International, Inc. is a national provider of solar energy as a service. Founded in 2012, Sunnova services more than 250,000 customers across 40 States and U.S. territories (including Guam, Saipan, and Puerto Rico). While Sunnova's primary business over the last decade has been residential rooftop solar and energy storage, the company has recently expanded into other markets, including commercial solar[1] and development of solar-plus-storage microgrids.[2]

Sunnova appreciates the opportunity to provide these comments on the Internal Revenue Service's ("IRS") "Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits," Notice 2022-50 (Oct. 5, 2022). Sunnova is a member of the Solar Energy Industries Association ("SEIA"), which has also submitted comments in response to Treasury's Notice 2022-50. Sunnova largely joins in those comments. However, Sunnova submits here its own, supplemental comments on Section .02.

Question (4): "What, if any, guidance is needed with respect to parameters or limitations on a transferee taxpayer's eligibility to claim the credit?"

Sunnova believes that whether a credit transferor or a transferee should bear responsibility for a recapture event is a matter that should be the subject of negotiation between the transferor and transferee at the time the credit is purchased. *However*, Treasury should impose a default rule in the absence of any specific agreement between the transferor and transferee.

Sunnova believes the best default rule is one that places liability for the recapture event at the feet of the transferor. There are several reasons for this.

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1 https://investors.sunnova.com/news-events-and-presentations/news-details/2022/Sunnova-Expands-Energy-as-a-Service-Offerings-to-Commercial-Businesses/default.aspx.

2 https://investors.sunnova.com/news-events-and-presentations/news-details/2022/Sunnova-Submits-Application-to-Develop-First-of-its-Kind-Solar-Micro-Utility-in-California/default.aspx.

First, this default rule would expand the market for credit transfers. Congress's goal in enacting section 6418 of the IRA was to incentivize as many companies as possible to place in service qualifying energy properties — even those that did not have the tax appetite for an investment tax credit. Section 6418 created a secondary market for those tax credits. The more robust that market, the more effective the program. If Treasury adopts a default rule that puts liability of recapture on the transferee, then only sophisticated transferees — which have the resources to perform due diligence on the underlying energy project or to wrap the credit in an insurance product — will be left in this market. An untold number of unsophisticated potential transferees will drop out of the market entirely. This cannot be what Congress intended.

Second, and relatedly, placing liability on a transferee will result in little to no market for small credit transfers. That's because for small credit transfers, the costs of performing due diligence or wrapping a credit will be prohibitively expensive. So there will only be a market for large credit transfers for sophisticated buyers. Again, Congress wanted this market to be as robust as possible, not limited to bulk transfers for the rich.

Third, it makes little sense to keep liability with the transferee when it has no control over the energy property for which the credit was taken. The transferee has no ability to avoid a recapture event, and even with sufficient due diligence, a transferee cannot stop a transferor from simply selling the energy property before the end of the recapture period. Certainly, the parties can and should negotiate the result of such contingencies in their purchase contract. But in the absence of a contractual provision on this point, the default rule should be that the transferor bears responsibility.

Fourth, imposing liability on the transferee requires the transferee to monitor the transferor and continue a relationship with it. But this is not an efficient way of doing business. The secondary credit transfer markets should be as fluid as possible to enhance the primary credit generation markets. Parties should be free to purchase a thing of value and move on from the transaction, without considering how a counterparty chooses to business in the future. And so it should be for credit transferees. They are buying a right to take a credit on their tax returns. Having paid cash for that right, they should be free to move on from the transaction.

Respectfully submitted,

David Skillman
Director of Energy Market Policy
Sunnova Energy International, Inc.