November 4, 2022

The Honorable Janet L. Yellen
U.S. Secretary of the Treasury
Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-50)
Room 5203, PO Box 7604
Ben Franklin Station, Washington, DC 20044

RE: Notice 2022-50, Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits

Dear Secretary Yellen:

Lewis Public Transportation Benefit Area, d/b/a Twin Transit ("**Twin Transit**") submits these comments in response to the U.S. Department of the Treasury's ("**Treasury**") above referenced request for comments to issue guidance regarding the elective payment provisions under § 6417 and the elective credit transfer provisions § 6418 of the Code[1], as added by § 13801 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 ("**IRA**").

Twin Transit notes the critical importance of the incentives established in the IRA—particularly the U.S. federal income tax credits for hydrogen and the direct pay election—to the American effort to transition to a zero-emission sustainable economy. Twin Transit also recognizes the significant boost that the U.S. public transportation sector's adoption of hydrogen fuel has and will continue to have on this transition, both in large urban areas and smaller communities such as the Centralia and Chehalis, Washington area where Twin Transit operates. Twin Transit urges Treasury to issue guidance that allows for municipal organizations like Twin Transit to realize the potential of the new tax credits and direct pay election.

Twin Transit is a small, rural transit agency that is a political subdivision of the State of Washington for purposes of Code Section 115. Twin Transit is constructing the first hydrogen fueling station with onsite fueling capability for transit vehicles in the Pacific Northwest. The hydrogen will be produced using an electrolyzer that is powered by the overwhelmingly clean grid electricity in Western Washington, which will only improve after the retirement of the last unit of the TransAlta Centralia coal-burning electricity generation facility in 2025 and the installation of a large wind generation facility just to the east of that facility. While Twin Transit's immediate goal is to develop independent fueling capacity for its fleet of public transit vehicles, its longer term goal is to develop a replicable model to be used by public sector fleets across the nation to independently and cost effectively produce clean fuel for public transit vehicles.

[1] All references to the "Code" herein are to the Internal Revenue Code of 1986, as amended and restated.

The total cost of Twin Transit's hydrogen production and fueling facility is approximately $10 million. Although Twin Transit has been very successful in assembling a bit more than 50% of the funding for this unique and innovative public infrastructure project, if the funding gap cannot be closed, the hydrogen production facility will not be built. Given the strain on municipal budgets in the last several years, Congress could not have timed the new direct pay election better. The ability to utilize direct pay will make all the difference for Twin Transit's hydrogen facility and many other governmental organizations' ability to implement similar plans.

It is imperative that Treasury understand that small projects across the country rely on the speedy payment of and certainty of receiving and retaining these benefits for success, both for purposes of obtaining financing and for sustained operations. We highly encourage Treasury to draft guidance that will help the public sector to maximize this unprecedented opportunity to lead the hydrogen transformation effort. As with all great endeavors throughout the history of this country, the U.S. government has always been a leader in the development of new technologies. Whether it was bridges and dams, railroads and freeways, air travel, and space travel, the U.S. government paved the way for those that followed.

As mentioned above, the public sector should and can lead the conversion to hydrogen as a fuel source, particularly for public transit. If this is to be the case, then production will need to increase dramatically to meet the demand. There are currently 72,000 public vehicles in Washington state; if each one uses approximately 10 kilograms on average per day, at least 720,000 kilograms of hydrogen is required per day. Washington State is on track to produce less than 200,000 kilograms a day between now and 2030. If we are going to increase adoption of hydrogen as a clean, renewable fuel, we must meet production levels that will sustain the effort to convert at least public fleets, if not also private vehicles. There are 2,900,000 total vehicles in Washington state alone – how much hydrogen will be needed for a 50% conversion?

A key role of government has always been to encourage and foster the development of new technologies. Nowhere is that more important right now than in the hydrogen industry, particularly for long duration transportation vehicles. And state, local, and tribal governments can lead the way in developing fleet transition models, industry adoption and use models, and replicable public facing models of various enterprises.

In examining the three primary hydrogen use sectors (fleet transition, industrial applications, and public facing businesses), it is virtually impossible to design one model that will fill the needs of each of these sectors. Fleet operators will need both delivered and on-site generation options which call for smaller quantities. Industrial applications will use larger quantities and most likely develop large on-site electrolyzers for that purpose. Finally, public facing businesses, which will consume most of the hydrogen production, will most likely use a traditional model of hub and spoke distribution that is capable of large quantities. This is why it is so essential that Treasury ensure that guidance implementing the hydrogen tax credits in Code Sections 45V and 48(a)(15) and, crucially, the direct pay election is practical, administrable, and takes into account the realities of current and near-term production models. Only this approach will encourage maximum adoption of hydrogen, accomplish the American energy transition, and mitigate climate change.

When considering how to implement direct pay for state, local, and tribal governments, Twin Transit urges Treasury to embrace the opportunity to treat direct pay as tantamount to a federal grant. In the grant context, funding is often available earlier rather than later. There are typically known and understood documentation requirements and reporting or audit mechanisms. And, the terms for repayment in case of error are very clear. In other words, grant funding is for projects that are shovel-ready, have a high likelihood of completion, and are not merely an aspirational effort. The overall strategy in most federal grant processes is for the applicant to demonstrate readiness, capability, and dedication to the implementation of economically beneficial hydrogen projects. Therefore, applications include initial design schematics, identification of pre-application requirements, outline of required environmental assessments, and a complete detailed project budget, timeline, and schedule.

For example, in the context of grant applications for construction projects, engineering, procurement, and construction methodologies often receive a lot of attention. To distinguish high-quality projects, emphasis is often placed on the creation of design, development, procurement, and construction processes to provide the highest rates of success. As described above, in all capital construction projects there are certain elements that are necessary to guide successful implementation. Those elements are as follows:

1. Certified project managers using the Project Management Institute (PMI) protocols.
2. Established quality control and assurance processes aligned to project objectives and tasks.
3. Understanding and incorporating EPC best practices to maximize resources and minimize risk.
4. To quantify best practices and share them broadly as guidelines to facilitate a shared learning environment.
5. Designated reporting compliance and project close-out that provides a high level of confidence that resources were used appropriately and effectively and that the goals and objectives of the project were met.

Due to the nature of the application process, federal grants are often paid, at least in part, before or during the construction phase of a project with final funding contingent on completion. Capital is generally not clawed back by the agency that awards the grant, but additional future funding may be denied if audit or other reporting does not demonstrate progress toward the goals stated in the grant application.

While it may not be possible to make a direct payment of Code Section 48 of 45V credits prior to the time qualified property or a facility is placed in service, there is no reason why Treasury could not accept a direct pay election from an applicable entity prior to placement in service or, at the very least, immediately following the placement in service date. Merely permitting an accelerated timeline for electing direct payment would be an enormous help because it should also accelerate the payment date, thus potentially permitting state, local, and tribal governments to avoid costly borrowing to bridge the gap between the date when payments are due to construction counterparties and the availability of direct payments.

Another concern for Twin Transit is financial and labor strain of adapting to another federal government funding program. Federal grant programs are often complicated and intricate and the systems often are as well. Thankfully, however, the application, reimbursement, compliance, and reporting systems for federal grants are already in place. When receiving federal funds, almost all public agencies use the EAGL system through their SAM eligibility designation. These systems are generally knowable and are widely understood in the public sector. Moreover, the processes for federal grants are generally understood: provide relatively detailed information about qualification in an application, comply with periodic reporting requirements, receive funding as a lump sum or in the form of progress payments, and run little risk of claw back by the federal government when stated, clear requirements are complied with.

While grant-like processes are not the norm in the content of the federal income tax credits for the energy industry, there is precedent for similar processes under the Code. For example, a taxpayer claiming the new markets tax credit must complete a relatively detailed application that forth the grounds for qualification. Similarly, the new version of Code Section 48C features an application and certification process. Here, it is not concerning that neither Code Section 48 nor 45V expressly provide for a preapproval or application step. Code Section 6417 is drafted broadly and the Secretary of the Treasury is given expansive powers to determine when an election should be filed by an applicable entity. Since state, local, and tribal governments generally do not file U.S. federal income tax returns, Treasury has significant freedom to craft a solution that is administrable for both the applicable entity and Treasury, as well as flexible enough to permit the applicable entity to access the direct payment as quickly and certainly as possible.

Twin Transit urges Treasury to consider how other federal agencies administer grant programs vis-à-vis state, local, and tribal governments and, to the maximum extent possible, adopt similar procedures, processes, data collection tools, and payment mechanisms and timelines. Using this approach, direct pay will be an approachable and administrable option for government organizations to enable them to play a leading role in the energy transition in public transit and other applications. Facilitating state, local, and tribal governments' role in this manner will spur the creation of new offtake markets and ripple through the budding green hydrogen economy to maximize the opportunities inherent in it for the American workforce and economy.

Thank you for the opportunity to submit these comments for your consideration. Much of the necessary funding is in place. There are projects ready. The fiscal and compliance systems are set to go. All that is needed now are for direct payments in respect of hydrogen tax credits to be distributed in an expeditious fashion so that recipients can be confident they will receive the necessary support to complete a mosaic of critically important endeavors.

Sincerely,

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Joe Clark
Executive Director
Twin Transit