

Comment from View, Inc.

Thank you for consideration of the attached comments.

Samuel Meehan

View, Inc.



November 4, 2022

Submitted via-regulations.gov

Lily Batchelder
Assistant Secretary for Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

William Paul
Chief Counsel
Internal Revenue Service
1111 Constitution Ave, NW
Washington D.C., 20224

RE: Request for Comments on Certain Energy Generation Incentives – Notice 2022-49; and Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content and Energy Community Requirements – Notice 2022-51

Dear Assistant Secretary Batchelder and Chief Counsel Paul:

The Inflation Reduction Act of 2022 (P.L. 117-169; the “Act”) represents a once-in-a-lifetime opportunity to address climate change. Most of these opportunities come from the Act’s tax title which provides incentives for clean energy production and use, and energy efficiency. These provisions cover a multitude of technologies, several of which did not previously qualify for tax benefits. The implementation and full market acceptance of these new provisions will require greater clarity through published tax guidance. We appreciate Treasury and the IRS’s requests for comments on these important issues.

Pursuant to this request for information, View, Inc. respectfully submits comments regarding Section 13102 of the Act which allows an investment tax credit to be claimed for the installation of electrochromic windows, the construction of which must begin before 2025 and must be placed in service after 2022.¹

The following provides background on electrochromic windows as well as the energy and climate benefits of the technology:

Background and Benefits. Electrochromic windows (also known as smart windows, electrochromic glass, or dynamic glass) dynamically change the light transmittance properties of a window system using electrochromic technology to heat or cool a building. In the window’s tinted state, glare and solar heat are blocked from entering a building to cool the structure.

¹ See, section 48(a)(3)(A)(ii).

View.com

Headquarters
195 South Milpitas Blvd. Milpitas, California 95035
Tel 408.263.9200 Fax 408.263.9228

Manufacturing Facility
12380 Kirk Rd, Olive Branch, Mississippi 38654
Tel 662.892.3415 Fax 662.892.3430



Conversely, in the window's clear state, solar heat is allowed inside a building to heat the structure.

View Inc. is the market leader in electrochromic windows and is committed to transforming U.S. buildings into sustainable, healthier, and smarter infrastructure to better serve the user. View Smart Windows are American Made and the Company's manufacturing facility is in Olive Branch, Mississippi.

Buildings represent the largest sector for U.S. energy use (39% of total U.S. primary-use energy consumption when electrical system energy losses are included).² The Department of Energy found that electrochromic windows have median annual heating and cooling savings that can approach 20% when compared to conventional windows, with some buildings able to realize 40% savings³. Further, at widespread adoption of electrochromic windows, the Department of Energy estimates annual carbon emissions would be reduced by 73 million metric tons by 2030.

There are four issues where guidance is needed in order for electrochromic windows to reach their full potential as envisioned by the Act. Because the Act provides a relatively short life for the tax credit (construction must begin before 2025) and the planning for commercial building construction can be lengthy, it is important to issue this guidance promptly.

1. Eligible components

Section 3.02(a)(ii) of Notice 2022-49 asks which components of electrochromic windows should qualify for the tax credit.

We believe the eligible components for which an ITC can be claimed include the insulated glass units (IGU), the system electronics, the window frame, the software, and the other components integral to the functioning of the product. *See appendix A for a representative system diagram.*

House Ways and Means Committee Chairman, Richard Neal stated this was the intended scope in a floor statement shortly before the House vote on the Inflation Reduction Act:

It is the Committee's intent that the basis for such property should include the cost of the glass itself including the devices, the wiring and other components necessary for the glass to change its light transmittance properties, as well as the window frame and the capitalized costs for the installation of these and any other related components.⁴

This requested guidance regarding the components of electrochromic windows is consistent with historical Treasury guidance. Under Treasury regulations, qualified property is tangible personal property or other tangible property "if used as an integral part of" the process or

² U.S. Energy Information Administration. FAQ's, "How much energy is consumed in U.S. buildings?" Updated: May 12, 2022 ([link](#)).

³ U.S. Department of Energy, Pathway to Zero Energy Windows. April 2022 ([link](#)).

⁴ Congressional Record—House. H7664, August 12, 2022. ([link](#)).

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activity for which the credit is allowed.⁵ Each of the components described above is integral to the proper use of electrochromic windows and is specifically designed for the purpose of the smart window function and performance. Further, the components above are functionally interdependent and the placing in service of each component is dependent upon the placing in service of each of the other components in order for the smart window to function. Finally, View sells all of these components as a fully installed, electrochromic window system to customers.

This is consistent with precedents with respect to other energy property, particularly solar property. Energy property includes “equipment which uses solar energy to generate electricity.”⁶ The IRS has historically included in the case of solar systems, not only the solar panels, but also the brackets and racks required to hold the panels in place, wires, inverters to convert the electricity generated from direct current to alternating current, and the labor cost to install the components.

Similarly, the IRS ruled privately in 2010 that solar curtain walls qualify for the ITC. A solar curtain wall is a glass system installed in place of a window in a building with a thin solar panel embedded in the glass to generate electricity. The IRS viewed it basically as a solar panel that happens to have been installed on the side of a building rather than on the roof.⁷

2. Wage and apprentice requirements

The guidance should clarify the application, if any, of the wage and apprentice requirements to installations of electrochromic windows.

The wage and apprentice requirements do not apply to any “facility with a maximum net output of less than 1 megawatt (as measured in alternating current).”⁸

Electrochromic windows do not produce electricity; they conserve energy. Therefore, we do not believe the requirements apply. Treasury guidance should confirm this result.

3. Start of construction

Currently, the investment tax credit is not available to electrochromic window projects that start construction after 2024. The guidance should clarify that the same “start of construction” rules that apply to renewable and other energy projects generally will apply to electrochromic windows.

Specifically, construction will be considered to have begun when physical work of a significant nature is conducted by the taxpayer, or the taxpayer meets a safe harbor 5%-of-costs test.

⁵ Treas. reg. sec. 1.48-1(a). Note that qualified property generally does not include the structural component of a building. However, windows themselves are structural components of a building so this exclusion does not apply to components of electrochromic windows.

⁶ Section 48(a)(5)(D)(i)(II)

⁷ See Private Letter Ruling 201043023 (October 23, 2009).

⁸ Sec. 48(a)(9)(B)(i).



These tests should also apply when the windows are produced for the taxpayer pursuant to a binding written contract.

Similarly, a taxpayer should be allowed to treat all of the electrochromic windows installed as part of a job at a particular location as a “single project” for purposes of determining when construction began.

4. Placed in service

The guidance should confirm what determines placed in service with respect to electrochromic windows.

The building owner for whom the electrochromic windows are installed will claim the investment tax credit when the windows are placed in service. Electrochromic windows are in a condition or state of readiness for their intended use once they have been fully installed, commissioned, accepted by the building owner, and risk of loss and control have been transferred to the building owner.

At that point, when the window system is commissioned, the warranty begins to run and not only are the electrochromic windows in a condition or state of readiness for their intended use, but they are also in fact being used to regulate the temperature in and energy use of the building. The software is active, and the window system is dynamically controlling tint as is the intended use of the energy property.

It is important to note, the date of the commissioning of the window system which is also the first use or start date of the energy property may or may not coincide with the date of the certificate of occupancy for the building.

Thank you for the opportunity to provide these comments. We would be happy to meet to answer any questions and address any comments you may have. In the meantime, please do not hesitate to contact Samuel Meehan at samuel.meehan@view.com.

Sincerely,

Samuel Meehan

View, Inc.

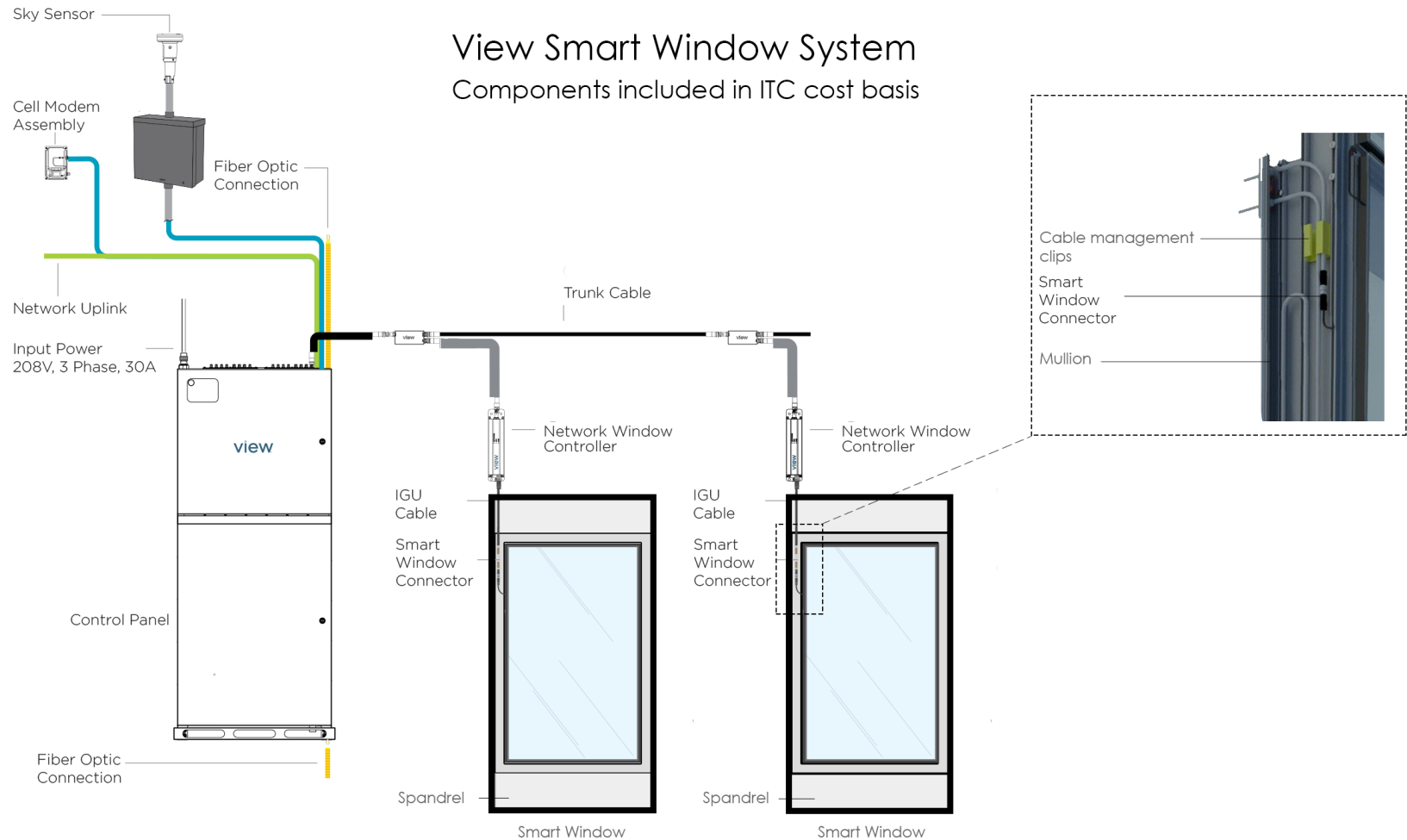
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Appendix A: Representative Smart Window System



View.com

Headquarters
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