Comment from World Resources Institute

Please find attached comments from World Resources Institute addressing the Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits. Thank you for your consideration.

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INSTITUTE

10 G Street, NE Suite 800 Washington, DC 20002 USA (PH) +1 (202) 729-7600 (FAX) +1 (202) 729-7610 www.WRI.org

Internal Revenue Service
Notice 2022-50
Room 5203, P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

November 4, 2022

Re: Docket No. IRS-2022-50; World Resources Institute's Comments on Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits

To whom it may concern:

World Resources Institute (WRI) appreciates the opportunity to provide comments to the Internal Revenue Service (IRS) on the **implementation of elective payment provisions** under § 6417 and the **elective credit transfer provision** under § 6418 of the Inflation Reduction Act (IRA; P.L. 117-169).

WRI is a nonprofit, nonpartisan global think tank dedicated to improving the environment, economic development, and human wellbeing. Our comments for this docket draw upon our expertise working with local government entities, including city and county governments and school districts, on implementing their clean energy, transportation electrification, and equity goals. Our United States energy team has experience working with local government stakeholders on numerous advanced decarbonization topics, including renewable energy procurement options, building low-income customer access to community solar, and supporting aggregated city purchasing and 24/7 carbon-free energy products. WRI's Electric School Bus Initiative aims to build unstoppable momentum toward an equitable transition of the entire U.S. school bus fleet to electric by 2030, consistent with the goals reflected in President Biden's American Jobs Plan. As part of this initiative, our staff engages directly with a range of student transportation stakeholders and provides technical assistance to school districts. Based on these experiences working directly with local government entities, our overarching recommendations are as follows:

- **Ensure tax-exempt entities, including but not limited to cities, counties, school districts, special purpose districts, and joint powers authorities, are aware of their ability to take advantage of the credits via elective payment;**
- **Engage in a stakeholder process to inform the design and development of a simple and clear application process for elective payment for tax-exempt entities;**
- **Provide tax-exempt entities, which may lack familiarity with IRS filings, robust technical assistance; and**
- **Provide tax-exempt entities with the opportunity to initiate a filing process for elective payment immediately after making the qualifying purchase and provide updates regarding expected direct payment to account for varying budgetary processes of tax-exempt entities.**

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Our comments are broken into two sections. We first discuss overarching considerations for all local government entities. We then highlight considerations for school districts specific to the electrification of school bus fleets.

SECTION 1: Recommendations on guidance for local government entities

Allowing select tax-exempt entities to claim elective payment for clean energy tax credits is a critical step to expanding the accessibility of these credits. In the past, these entities have not been able to access these tax credits due to their lack of a federal tax liability. Despite these challenges, local governments have moved forward with procuring and developing clean energy in order to meet their clean energy, climate, and equity goals. Local government entities have procured more than 18 GW of renewable energy since 2015, primarily through off-site power purchase agreements. Allowing local government entities to take advantage of the credits via elective payment should increase the ownership and procurement options for local governments and decrease the costs of renewable energy for local governments.

Renewable energy procurements by local governments are critical to advancing equity in the energy transition. Residential tax credits for rooftop solar are inaccessible to many households, including low-income households without sufficient tax liability, renters, and those living in multifamily housing. One solution is local government procurement of renewable energy on behalf of their constituents, including through community solar and community choice aggregation. With this background in mind, our comments focus on ensuring that local governments can access these tax credits in a timely and predictable fashion.

Recommendation 1: Conduct Stakeholder Process to Establish a Simple and Clear Application and Provide Technical Assistance

Many tax-exempt entities, particularly local government entities, do not have experience filing with the IRS. Different local governments will have different capacities to follow a complex credit election process. While some large municipalities may have dedicated energy managers and other staff with the available time and expertise to navigate the filing process, representatives from smaller or under-resourced communities will face additional staff capacity and filing barriers. We urge Treasury to offer resources and technical assistance, and to create streamlined, transparent, and simplified processes for tax-exempt entities to make the filing and credit election process as simple and easy to understand as possible.

- We recommend that Treasury consult with municipal leaders and finance experts to establish a clear and simplified filing process across a range of local government entity types.
- Treasury is urged to the extent possible to simplify the tax credit filing and documentation needed for tax-exempt entities, which may not have sufficient in-house

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counsel or tax expertise. This includes creating clear documentation guidelines that match, to the extent possible, documents and verification requirements that local government entities already have on-hand.

- Treasury should consider creating dedicated IRS staff support for tax-exempt entities. This could take the form of a help center with available contact info and resources including filing templates, eligible documentation examples, an online calculator, and explainers.
- Educational outreach and engagement materials should emphasize clear, concise, "plain-speak" language. This includes the clear definition of terms and sample timelines for filing processes, with step-by-step guidance.
- When appropriate, Treasury should consider creating translation guidance for community-based organizations that may partner with local government entities on clean energy and energy justice work.

Recommendation 2: Provide Ample Opportunities to Apply and Allow Flexibility for Local Government Entities in the Timing of Election

State and local governments do not operate on a standardized budget timeline or fiscal year. The lack of a standardized fiscal year complicates setting a single IRS filing date for purposes of claiming IRA tax credits, as the variation in fiscal years and cash flow cycles will impact when local government entities are best able to file for federal tax credits.

These timing consideration burdens will vary across different types of tax-exempt entities. Many non-profit entities (including, e.g., community-based organizations and service providers such as rural electric co-operatives) file 990s annually according to federal tax calendar years. Timing considerations may be less likely to pose a problem for these entities that already have experience filing with the IRS. State and local governments do not have this existing federal filing relationship and face unique and challenging hurdles to claiming federal tax credits.

State and local government entities have different fiscal years, cash flow needs, and budgetary timelines than federal fiscal years. Many state and local government entities operate on a July 1 – June 30 fiscal year calendar. However, this timeline is not standardized, with various state fiscal years beginning on April 1, July 1, September 1, and October 1. Cities also operate on different fiscal years (e.g., the fiscal year for Dallas, Texas begins on October 1), and in Washington state the fiscal year for municipalities runs from January 1 to December 31. Additionally, state and city governments may have an annual fiscal year but adopt a biennial budget for the following two years. Budgeting at the local government level is a multi-step process generally lasting multiple months with set stages, which are often subject to extra oversight due to government transparency requirements. Finally, many state and local government entities face balanced budget requirements. Thus, greater certainty on revenue amounts and payment timing is key for local government forecasting and budget processes.

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Given the diversity of local government fiscal years and budgeting practices, **we urge the Treasury to afford the greatest amount of timing flexibility possible to local government entities when filing**.

- Local government entities should have the opportunity to initiate a filing process for elective payment immediately after making the qualifying purchase on a rolling basis throughout the taxable year, and Treasury should provide updates regarding expected direct payment to account for varying budgetary processes.
- If the above is not possible, more than one filing period for local government entities within a federal fiscal year is recommended. This may also benefit Treasury cash flow cycles.
- We recommend that Treasury consult with municipal leaders and finance experts to determine optimal timing considerations for elective payments across a range of local government entity types.

Recommendation 3: Ensure Tax-Exempt Entities are Aware of Their Eligibility and Clarify Eligibility of Multi-State Entities as Necessary

WRI encourages Treasury to engage in clear and ongoing outreach to the range of tax-exempt entities eligible for elective payment. We recommend that Treasury reach out to relevant associations and conduct ongoing stakeholder consultations to ensure that entities are aware of their eligibility for elective payment.

In addition to outreach to associations of local governments (e.g., the National Association of Counties), we recommend Treasury consider specific outreach to tax-exempt entities under § 6417(d)(1)(A)(i) in industries for which not all industry members qualify as tax-exempt (e.g., charitable hospitals), and therefore might be less aware of their eligibility for elective payment from broader industry association groups.

Finally, we request that Treasury confirm that public entities that appear eligible under the criteria under § 6417(d)(1)(A)(ii) are also eligible in the cases in which they cross multiple states and/or political subdivisions.

SECTION 2: Recommendations on guidance for school districts

The following comments focus on the availability of elective payment (§ 6417) specifically related to the new Credit for Qualified Commercial Clean Vehicles (45W). WRI's comments in this section are focused on ensuring the availability for tax-exempt entities, such as school districts, to elect to treat 45W as a direct payment rather than a credit against federal income tax liabilities. In doing so, WRI urges the IRS to account for the following recommendations, which will support efforts to electrify the nation's school bus fleet.

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- **Ensure school districts are aware of their ability to take advantage of the credit (45W) via elective payment;**
- **Engage in a stakeholder process to inform the design and development of a simple and clear application process for elective payment for tax-exempt entities, including school districts;**
- **Provide tax-exempt entities, such as school districts which may lack familiarity with IRS filings, robust technical assistance; and**
- **Provide tax-exempt entities with the opportunity to initiate a filing process for elective payment immediately after making the qualifying purchase and provide updates regarding expected direct payment to account for varying budgetary processes of tax-exempt entities.**

Recommendation 1: Ensure School Districts Are Aware of Their Eligibility

In order to support the electrification of the nation's school bus fleet, the IRA builds on the historic investments provided in the Infrastructure Investment and Jobs Act (IIJA; P.L. 117-58). Congress fully intended to include tax-exempt entities, including school districts, as beneficiaries of the elective pay provisions under Section 13801 of the IRA. On November 2, 2022, 32 members of the U.S. House of Representatives and U.S. Senate wrote to Secretary Yellen to highlight the intent and importance of school districts having access to elective payment.

As such, WRI urges the IRS to be consistent in clearly and directly stating school district eligibility in all forthcoming guidance, regulations, and supportive materials. This recommendation is grounded in our extensive and continuing interactions with school districts as part of our efforts to help guide them on transitioning their school bus fleets to electric. We are confident that if consistency is not maintained in all forthcoming materials from the IRS on this matter, it will sow doubt and confusion with school districts. The IRS should remain mindful of this recommendation as it considers all other IRA tax credits, such as the Alternative Fuel Vehicle Refueling Property Credit (30C), that allow for direct pay election to tax-exempt entities.

Recommendation 2: Conduct Stakeholder Process to Establish a Simple and Clear Application

WRI encourages the IRS to make the application process as simple, clear, and easy to navigate as possible. To effectively accomplish this, the IRS should engage with tax-exempt entities, specifically school districts and those in disadvantaged communities, through robust outreach and public meetings as it begins designing and developing its elective payment application. This early engagement should help the IRS account for unique school district needs and improve access to the credit for all tax-exempt entities, which may be less familiar with the IRS tax filing process.

The IRS should also minimize the amount of required paperwork and ensure any potential application and/or forms are clear and concise. Guidance should be easy to navigate and provide clear, manageable deadlines, and information regarding document requirements. WRI also asks that the IRS be mindful that certain types of documentation regarding the purchase of an electric school bus may not be immediately available to a school district.

For instance, a school district will not immediately have the vehicle identification number (VIN), or another identification marker assigned to the purchased school bus. Should school districts face delays in the delivery of vehicles following their purchase, the IRS should not prohibit the initiation of a filing while awaiting delivery. Providing a variety of eligible types of documentation should also be allowed so tax-exempt entities can begin to initiate their claim for the credit in a timely fashion.

Recommendation 3: Provide Technical Assistance and Government Wide Coordination

The tax filing process will be new for many school districts as they look to utilize incentives made available through the IRA. Thus, WRI urges the IRS to provide targeted technical assistance to school districts and other tax-exempt entities to improve access to the tax incentives through the elective payment under § 13801 of the IRA. Therefore, the IRS should ensure that school districts are provided with timely technical assistance that could include dedicated IRS staff, a help center/hotline and/or online calculator to quickly help tax-exempt entities as they apply for elective payment or elective transfer credits.

The IRS should also be mindful of the established relationship the EPA has built with many school districts given its existing work to implement Section 71101 of P.L. 117-58. We recommend the IRS work with the administration and across agencies to provide information about the availability of elective payment under 45W to school districts, including those who applied for the Clean School Bus Program 2022 Rebates as those tax-exempt entities are among those more likely to access these credits in the coming years. Given the established relationships the EPA has built with many school districts during their application process, coordinated outreach from the administration could help avoid confusion among school districts.

Recommendation 4: Provide Opportunities to Apply

Given the budgeting process school districts undertake when making major capital purchases, including electric school buses which can have high upfront costs, WRI once again urges thoughtful engagement with school districts, especially those located in disadvantaged communities, to ensure the IRS provides adequate filing opportunities in a taxable year. This could increase accessibility and feasibility for eligible entities to benefit from the credits. Specifically, WRI foresees a benefit in the IRS establishing a filing process that allows school districts to file and realize the benefits of the elective payment immediately or on a rolling basis throughout the taxable year and not confine elective payment filings to an annual process. The benefit of such an approach would be to reduce wait times between purchase and reimbursement for credit.

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Comment on 45W

We appreciate the IRS recently initiating its request for information on the Qualified Commercial Clean Vehicles (45W) tax credit. It is our hope this public comment process will help ensure that all school districts have the ability to access this important tax incentive.

World Resources Institute appreciates the opportunity to provide comment to the IRS to help support the issuance of guidance on the elective payment and the elective credit transfer provisions under § 13801 of the Inflation Reduction Act and stands ready to provide our assistance and staff expertise to help further strengthen and implement guidance on these provisions.

Thank you for your time and consideration.