RESOURCES *for the* FUTURE

Considerations for Transferability of Tax Credits Under the Inflation Reduction Act

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US Department of the Treasury

1500 Pennsylvania Avenue, NW

Washington, D.C. 20220

To whom it may concern:

On behalf of Resources for the Future (RFF), I am pleased to share the accompanying comments to the Department of the Treasury in response to Notice 2022-50 on the transferability of tax credits under the Inflation Reduction Act.

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If you have any questions or would like additional information, please contact Billy Pizer at pizer@rff.org.

Sincerely,

Billy Pizer and Joseph Aldy

Considerations for Transferability of Tax Credits Under the Inflation Reduction Act

The Inflation Reduction Act includes a number of policy innovations in the design of clean energy tax credits, including the transferability of tax credits and the opportunity for some traditionally non-eligible entities to claim the value of tax credits through direct pay provisions. These changes in tax policy can reduce the transaction costs of monetizing tax credits through the tax equity market – which often ran to as much as 15 percent of the value of tax credits – thereby ensuring that a greater fraction of public expenditure for clean energy investment and production goes to the developers and operators of clean energy projects.

Given the Joint Committee on Taxation score of these provisions, the transferable credit market could be valued in excess of ten billion dollars annually. Treasury and IRS could collect and disseminate select information about projects eligible for transferable credits that could enable the emergence of a more efficient tradable credit market, reduce the likelihood of tax filing errors and fraud, and facilitate program evaluation. Treasury and IRS should also ensure that the timing of required filings allows sufficient time for transferees of tax credits to both know their full tax liability and contract with the transferer.

For example, IRS could require an information report for every clean energy project that would generate a transferable tax credit under the IRA. Effectively, at the point of origination of a tax credit, the project developer would report specific information to the IRS. This information could include:

- Type of project, to determine technology eligibility for the tax credit;
- Type of credit, production tax credit or investment tax credit;
- Qualifying investment costs if ITC;
- Annual megawatt-hours of production if PTC;
- Location;
- Prevailing wage and apprenticeship conditions satisfied;
- Domestic content conditions satisfied;
- Energy community conditions satisfied; and other potentially relevant information.

This information could then be made publicly available online on a high frequency basis, akin to the Section 1603 grant in lieu of tax credit Treasury spreadsheet of projects. Such public disclosure could be required. Or, alternatively, a project developer submitting such information may retain the right to opt out of such public reporting, but the default could be established that the information will be made public without an explicit decision to opt out.

Collecting and publishing such information could improve the efficiency of the transferable credit market. First, the reporting burdens of such an information would be quite low for many types of clean energy investments, especially in the power generation space, because of existing reporting requirements to the Energy Information Administration. The project developer could report its EIA

facility identification number in the information report, which could enable automatic population of much of these data if EIA provided real-time access to its collected data to the IRS under a data use agreement.

Second, making these data publicly available could address the asymmetric information in the new transferable credit market that otherwise could reduce efficiency. The buyer of transferable tax credits may have incomplete, if any, visibility into the labor or material sourcing associated with a project. This is critically important uncertainty around parameters that could change the value of a tax credit by a factor of five. Such uncertainty could have a chilling effect on the start-up of this market, and may spur some buyers to place conditions on suppliers, negotiate contingent contracts, or demand a greater discount on transferable credits to protect against claiming a larger tax credit than could be justified by the project characteristics. This asymmetric information could then reduce liquidity and increase the "haircuts" on tax credits, undermining the value of the subsidies for clean energy project developers. In making the information at point of origination publicly available, IRS could remedy much of the asymmetric information and enhance market efficiency. Even if reported by the seller directly to the buyer, public disclosure heightens the incentives and pressure for honest reporting.

Collecting such information at point of origination would provide the IRS with an accounting of transferable credit supply. This would enable assessments of tax credit claims to ensure that they are consistent with project-specific supply. Such assessments would naturally occur in the process of preparing tax forms – as preparers could double-check that claimed tax credits, and their associated bonuses, are consistent with what was supplied at point of origination – and by the IRS to ensure tax compliance. To facilitate such accounting of supply and claims of tax credits, the relevant tax forms for claiming tax credits would need to be amended to include worksheets for project-specific accounting, including much of the information that would be requested at the point of origination.

Finally, such information on projects would enable evaluation of the policy performance of the various clean energy tax provisions under the Inflation Reduction Act. Specifically, collecting information on the investment and output of clean energy projects, coupled with location information, would allow analysts to undertake evaluations of the impact of the tax credits on energy markets, labor markets, local air quality and public health, and more. Such information is necessary for any evaluation of the distributional impacts, including on disadvantaged communities. It can also identify what works and what doesn't, and inform potential policy reforms and future legislation to ensure more effective and fair decarbonization policies.

Distinct from appropriate information collection, the timing of required filings is also important. One reason for the noted haircut in past tax credits is uncertainty regarding tax liability at the time of contracting with a tax equity partner. If the tax equity partner is unsure of their liability, they will discount the value of the tax credits in the transaction. A key advantage of the transferability provision, beyond a general reduction in transaction costs, is to reduce this uncertainty by allowing those planning to claim the tax credit to be certain that they indeed can do so. This will be facilitated by allowing sufficient time with respect to their tax calendar for transferees to contract and claim tax credits after their liability is well understood.