Divert, Inc.
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divert

November 4, 2022

VIA ELECTRONIC FILING

Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-51)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022- Notice 2022-49

Divert is an impact technology company with a mission to protect the value of food. We are founded on the purpose of creating innovative and efficient solutions toward eliminating food waste. We are passionate about proving that environmental sustainability can be as good for business and consumers as it is for the planet. To that end, Divert is focused on decarbonizing unconsumed food through source reduction, food rescue, and recycling.

We work toward our purpose every day, and have achieved successes such as:

- Using our technology platform to optimize the reduction of food waste generation for the retail food industry, which is the largest generator of food waste in the U.S.
- Cultivating partnerships with retailers and food banks to increase donations for unsold food that meets food donation guidelines but would otherwise be bound for the landfill.
- Establishing ourselves as one of the largest anaerobic digestion processors of food waste in the U.S., converting food waste to renewable energy via proprietary liquefaction and anaerobic digestion.

Divert is committed to helping the United States tackle the climate crisis and supports the massive investment to lower energy costs and promote green technologies. As the Department of Treasury works to issue guidance for those wishing to utilize these tax credits, Divert is:

- Partnering with Feeding America, local food banks, and a private retailer to service over 900 stores to identify and facilitate the rescue of unsold food to provide to local communities and families in need.
- Providing U.S. food retailers access to Artificial Intelligence (AI) and Internet of Things (IoT) technology to maximize source reduction and improve the proper handling and freshness of perishable goods.
- Expanding food waste processing and anaerobic digestion capabilities with new food waste-to-energy facilities across the country that makes carbon negative renewable natural gas (RNG).

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In response to the request for comments from the Department of Treasury and Internal Revenue Service regarding certain energy generation incentives, Divert would like to offer our support and guidance where needed. We respectfully submit the following comments and suggestions in response to Notice 2022-51 that was published on October 10, 2022.

***Request for Comment on IRA Energy Community Requirement***

*(1) Section 45(b)(11)(A) provides an increased credit amount for a qualified facility located in an energy community. What further clarifications are needed regarding the term "located in" for this purpose, including any relevant timing considerations for determining whether a qualified facility is located in an energy community? Should a rule similar to the rule in § 1397C(f) (Enterprise Zones rule regarding the treatment of businesses straddling census tract lines), the rules in 26 C.F.R. §§ 1.1400Z2(d)-1 and 1.1400Z2(d)-2, or other frameworks apply in making this determination?*

It is currently unclear which resources would be most beneficial for taxpayers to utilize when determining whether or not a property is located within an energy community. Under § 45(b)(11)(B) of the Inflation Reduction Act, a property must be located within one of three categories of an energy community to make the property eligible for this bonus credit. The property can be located within a "brownfield site", a "metropolitan statistical areas or non-metropolitan statistical area", or within a "census tract".

To ensure that it is as clear as possible to understand if a property is "located" within these areas, Divert is recommending that the Treasury Department and the IRS work with relevant US Agencies to publish a set of resources that would adequately allow taxpayers to identify if their property falls within one of these three categories. An interactive map that would allow a taxpayer to determine this qualification would be ideal.

Additionally, for scenarios where a property may straddle a boundary of an energy zone, we are recommending that the Department of Treasury and the IRS take a broad approach to the definition "located in" to allow for the maximum number of applicants to qualify for the bonus credit. This could be in the form of a rule similar to the § 1397C(f) (Enterprise Zones rule) referenced above, but should allow for the maximum number of qualifiers to fall under this definition.

*2) Does the determination of a brownfield site (as defined in subparagraphs (A), (B), and (D)(ii)(III) of § 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(39))) need further clarification? If so, what should be clarified?*

Divert does not see a current need to further clarify the determination of a brownfield site. However, it is recommended that the Department of Treasury and IRS allow taxpayers to utilize the existing state or federal resources that identify brownfield sites for development, as well as giving taxpayers the opportunity to identify brownfield sites if not already listed.

*(3) Which source or sources of information should the Treasury Department and the IRS consider in determining a "metropolitan statistical area" (MSA) and "non-metropolitan statistical area" (non-MSA) under § 45(b)(11)(B)(ii)? Which source or sources of information should be used in determining whether an MSA or non-MSA meets the threshold of 0.17 percent or*

*greater direct employment related to the extraction, processing, transport, or storage of coal, oil, or natural gas, and an unemployment rate at or above the national average unemployment rate for the previous year? What industries or occupations should be considered under the definition of "direct employment" for purposes of this section?*

In determining how to identify "metropolitan statistical areas" and "non-metropolitan statistical areas", Divert would recommend that the Treasury Department and the IRS work together with relevant U.S. agencies to create a database of information allowing taxpayers to easily identify where properties qualifying for this additional credit will be located. At this time, it is unclear if there is a good source of reference for applicants to the tax credits provided in the Inflation Reduction Act.

*(4) Which source or sources of information should the Treasury Department and the IRS consider in determining census tracts that had a coal mine closed after December 31, 1999, or had a coal-fired electric generating unit retired after December 31, 2009, under § 45(b)(11)(B)(iii)? How should the closure of a coal mine or the retirement of a coal-fired electric generating unit be defined under § 45(b)(11)(B)(iii)?*

In determining how to identify census tracts that *had a coal mine closed after December 31, 1999, or had a coal-fired electric generating unit retired after December 31, 2009*, Divert would recommend that the Treasury Department and the IRS work together and with relevant U.S. Agencies to create a database of information allowing taxpayers to easily identify where properties qualifying for this additional credit will be located. At this time, it is unclear if there is a good source of reference for applicants to the tax credits provided in the Inflation Reduction Act.

Divert believes that bonus credit needs to be available to as many applicants as possible to assist communities in making the full transition from fossil fuels to clean energy technologies. With this in mind, Divert is recommending that the Department of Treasury and IRS consider locations to be eligible for consideration if they are in the beginning stages of closing a local coal mine or beginning the retirement of a coal-fired electric generating unit. By considering these locations for eligibility, the Department and IRS will be directly supporting the transition to clean energy by potentially mitigating interruption to local unemployment rates by allowing new energy facilities to enter the markets within these jurisdictions.

*(5) For each of the three categories of energy communities allowed under § 45(b)(11)(B), what past or possible future changes in the definition, scope, boundary, or status of a "brownfield site" under § 45(b)(11)(B)(i), a "metropolitan statistical area or non-metropolitan statistical area" under § 45(b)(11)(B)(ii), or a "census tract" under § 45(b)(11)(B)(iii) should be considered, and why?*

When considering future possible changes, we recommend expanding the definition of census tracts to include larger populations in the event that a tract may change from one census cycle to another. By expanding this definition to include a larger population and a larger area of land, it will better prevent a scenario in which a property that might otherwise qualify for the bonus credit or have adversely impacted neighboring residents is zoned out or into of such a designated area.

*(6) Under § 45(b)(11)(B)(ii)(I), what should the Treasury Department and the IRS consider in determining whether a metropolitan statistical area or non-metropolitan statistical area has or had 25 percent or greater local tax revenues related to the extraction, processing, transport, or storage of coal, oil, or natural gas? What sources of information should be used in making this*

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*determination? What tax revenues (for example, municipal, county, special district) should be considered under this section? What, if any, consideration should be given to the unavailability of consistent public data for some of these types of taxes?*

When determining a property location under the bonus energy communities credit, it would be very helpful to have a standard database or source a taxpayer can reference to ensure that the property is located within the standards of such an energy community. It is important that in considering how to regulate this section, the Treasury Department and the IRS work with relevant U.S. to develop a database of sources that taxpayers can use to determine if their property is eligible under this section.

By developing this database, it would be clear in indicating Congress's and the Treasury Department's true intention. It will also help taxpayers that are considering an investment in an energy community, confidently assess whether their property qualifies as an energy community before investing a significant amount of time, research, and funding.

**Conclusion**

By issuing clarification and guidance to the above points, the IRS has the opportunity to scale a new and diverse set of climate focused technologies that are sure to help mitigate the effects of Climate Change across the country. Divert is encouraged by the efforts of the IRS and hopes to be a reliable partner in the implementation of these regulations.

We would welcome an opportunity to discuss these suggestions further and additionally talk through our operations to provide further context to our suggestions. If you have any questions, please do not hesitate to contact me at cthomas@divertinc.com or at 202-421-1107. We are eager to collaborate further on this critical effort.

Sincerely,

Chris Thomas
Vice President of Public Affairs
Divert Inc.