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Public Transportation
Association**

December 2, 2022

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Paul P. Skoutelas

Internal Revenue Service
Notice 2022-56
Room 5203, P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: IRS-Notice 2022-56

Dear Docket Clerk:

The American Public Transportation Association (APTA) represents an \$80 billion industry that directly employs 450,000 people and supports millions of private-sector jobs. We are pleased to offer comments regarding the U.S. Department of the Treasury and the Internal Revenue Service's (IRS) Request for Comments on Section 45W Credit for Qualified Commercial Clean Vehicles and Section 30C Alternative Fuel Vehicle Property Credit.

At the outset, I would like to thank you for meeting with APTA staff to discuss implementation of Public Law 117-169, commonly known as the Inflation Reduction Act of 2022 (IRA), and specifically tax credits that benefit public transportation. These IRA tax credits that benefit public transportation will directly contribute to achieving President Joseph Biden's climate goals, create good-paying jobs, and strengthen our nation's energy security. We appreciate the time and attention to ensuring that these tax credits are implemented to the maximum benefit.

Today, a typical trip on public transit emits 55 percent fewer greenhouse gas emissions than driving alone. Across the country, public transit agencies are further reducing greenhouse gas emissions by integrating zero-emission vehicles into their fleets and setting goals for 100 percent zero-emission bus fleets in future years. According to the National Academies of Sciences, Engineering, and Medicine, an electric bus emits 62 percent fewer emissions than an average diesel bus. The IRA tax credits will directly benefit public transportation and help accelerate transit agencies' adoption of low-carbon and zero-emission fuels, equipment, and technologies, compounding transit's critical role in achieving our nation's climate goals.

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In implementing the IRA and the Section 45W and 30C credits, APTA urges the Department of the Treasury to:

1. Continue to provide direct payments to public transit agencies that file claims for alternative fuels, biodiesel, and renewable diesel excise tax credits (26 U.S.C. §§ 40A, 6426, 6427);
2. Ensure that public transit agencies, as tax-exempt entities, receive the new qualified commercial clean vehicle tax credit and provide direct elective payments to transit agencies that file claims for such credits (26 U.S.C. §§ 45W, 6417); and
3. Ensure that public transit agencies, as tax-exempt entities, receive the restructured alternative fuel vehicle refueling property credit; issue guidance on implementing this credit; and provide direct elective payments to transit agencies that file claims for such credits (26 U.S.C. §§ 30C, 6417).

Moreover, these important IRA tax credits should be available to be used in tandem with grants made available under the Infrastructure Investment and Jobs Act (P.L. 117-58).

A more detailed explanation of our comments is set forth below.

I. Alternative Fuels, Biodiesel, and Renewable Diesel Excise Tax Credits (26 U.S.C. §§ 40A, 6426, 6427)

The IRA extends the Alternative Fuels, Biodiesel, and Renewable Diesel Excise Tax Credits, which are of great import to the public transportation industry. Specifically, the IRA:

- **Extends the Alternative Fuels Excise Tax Credit.** Section 13201 of the IRA extends the \$0.50 per gasoline gallon equivalent excise tax credits for alternative fuels (26 U.S.C. §§ 6426, 6427) from 2021 through 2024. Public transit agencies that fuel their vehicles with compressed natural gas (CNG), liquefied natural gas (LNG), or liquified hydrogen benefit from this tax credit. Transit agencies may file a claim for payment equal to the amount of the alternative fuel credit. The credit is first applied to the applicable excise tax liability under 26 U.S.C. § 4041 or 26 U.S.C § 4081, and any excess credit may be taken as a payment. The provision creates a special rule to address claims regarding excise tax credits and claims for payment for alternative fuel used during the period beginning January 1, 2022, through the date of enactment.
- **Extends the Biodiesel and Renewable Diesel Excise Tax Credit.** Section 13201 also extends the \$1.00 per gallon excise tax credits for biodiesel and renewable diesel (26 U.S.C. §§ 40A, 6426, 6427) from 2022 through 2024. Transit agencies may file a claim for payment equal to the amount of the biodiesel or renewable diesel tax credit.

According to the Joint Committee on Taxation, these tax credits will provide an estimated \$5.6 billion of benefits through 2024.¹

APTA strongly urges the U.S. Department of the Treasury to continue to provide direct payments to public transit agencies that file claims for alternative fuels, biodiesel, and renewable diesel excise tax credits.

II. Qualified Commercial Clean Vehicle Tax Credit (26 U.S.C. §§ 45W, 6417)

The IRA establishes a Qualified Commercial Clean Vehicle Tax Credit. Section 13403 of the IRA creates a new tax credit for qualified commercial clean vehicles (e.g., zero-emission buses) (26 U.S.C. § 45W). The amount of the credit with respect to a qualified commercial electric vehicle is equal to the lesser of 30 percent of the cost of the zero-emission vehicle or the incremental cost of the vehicle. The credit is limited to \$7,500 for a vehicle that weighs less than 14,000 pounds and \$40,000 for all other vehicles. Commercial clean vehicles include battery electric and fuel cell vehicles. This 10-year tax credit takes effect in 2023 and expires December 31, 2032. The section requires the Secretary of the Treasury to issue regulations or guidance as necessary to implement the provision.

Section 13801 of the IRA provides the option for a direct elective payment for certain qualified tax-exempt entities, such as public transit agencies (26 U.S.C. § 6417). Moreover, in the U.S. Senate Committee on Finance’s legislative history describing section 13403, the Committee states: “Tax-exempt entities have the option of electing to receive direct payments.” *See enclosed section-by-section analysis of Subtitle D—Energy Security of the Inflation Reduction Act, prepared by the Committee on Finance, U.S. Senate.*

According to the Joint Committee on Taxation, this tax credit will provide an estimated \$3.6 billion of benefits through 2031.²

APTA urges the U.S. Department of the Treasury to:

- Ensure that public transit agencies, as tax-exempt entities, receive the tax credit; and
- Provide direct elective payments to public transit agencies that file claims for qualified commercial clean vehicle tax credits.

¹ Joint Committee on Taxation, Estimated Budget Effects of the Revenue Provisions of Title I – Committee on Finance, of an Amendment in the Nature of a Substitute to H.R. 5376, “An Act to provide for reconciliation pursuant to Title II of S. Con. Res. 14”, as passed by the Senate on August 7, 2022, and scheduled for consideration by the House of Representatives on August 12, 2022, [JCX-18-22](#), August 9, 2022.

² *Id.*

III. Alternative Fuel Vehicle Refueling Property Credit (26 U.S.C. § 30C, 6417)

The IRA extends and substantially restructures the Alternative Fuel Vehicle Refueling Property Credit. Section 13404 of the IRA extends the alternative fuel vehicle refueling property credit (26 U.S.C. § 30C) from 2021 through 2032, and substantially restructures the credit. Refueling property is property for the storage or dispensing of clean-burning fuel or electricity into the vehicle fuel tank or battery. Clean-burning fuels include CNG, LNG, electricity, and hydrogen. The IRA clarifies that bidirectional charging equipment is eligible property. Tax credits for refueling property used in a trade or business are part of the general business credit. Generally, in the case of refueling property sold to a tax-exempt entity, the taxpayer selling the property may claim the tax credit.

Section 13404 also substantially restructures the tax credit. Under current law and through 2022, taxpayers may claim a 30 percent credit for an alternative fuel property up to \$30,000 per location. The IRA provides a base credit of six percent up to \$100,000 per project. In addition, it provides a bonus credit totaling 30 percent for expenses up to \$100,000 for each project if the taxpayer satisfies Davis-Bacon prevailing wage requirements during construction of the project. In addition, under the law, the alternative fuel property is only eligible for the credit if the property is placed in service in a low-income community (under 26 U.S.C. § 45D(e)) or rural census tract.

Under the provision, the 2021 rules of the alternative fuel vehicle refueling property credit apply in 2022. In 2023 and subsequent years, the restructured tax credit will apply.

Section 13801 of the IRA provides the option for a direct elective payment for certain qualified tax-exempt entities, such as public transit agencies (26 U.S.C. § 6417).

According to the Joint Committee on Taxation, this tax credit will provide an estimated \$1.7 billion of benefits through 2031.³

APTA urges the U.S. Department of the Treasury to:

- Ensure that public transit agencies, as tax-exempt entities, receive the property credit;
- Issue guidance to public transit agencies and other taxpayers on the requirement that the property be placed in service in a low-income community or rural census tract; and
- Provide direct elective payments to public transit agencies that file claims for alternative fuel refueling property tax credits.

³ *Id.*

With regard to each of these tax credits, APTA strongly encourages the Department to:

- conduct specific outreach to tax-exempt entities, including public transportation agencies, to ensure that they are aware of the tax credit opportunities provided by the IRA;
- create a simple, clear application process for tax-exempt entities to receive elective payments;
- make available technical assistance for public transit agencies that may be less familiar with IRS processes; and
- ensure that tax credit filing requirements are flexible and adequately account for the varying budget cycles and processes of these entities, which is often established by state and local law.

If there are any questions regarding this letter, please contact Ward McCarragher, APTA's Vice President of Government Affairs and Advocacy, at wmccarragher@apta.com.

Sincerely yours,



Paul P. Skoutelas
President and CEO

Encl.

SUBTITLE D — ENERGY SECURITY

Overview of labor and content requirements.

This subtitle modifies several of the clean energy and energy efficiency tax incentives to provide two different credit values: a base rate and an alternative, or bonus rate. The bonus rate equals five times the base rate and applies to projects that meet wage and apprenticeship requirements, described below. A taxpayer must satisfy both requirements to receive the bonus credit rate. Otherwise, they may claim the relevant credit at the base rate.

The wage requirements require that the taxpayer ensure laborers and mechanics are paid prevailing wages during the construction of a qualifying project, and, in some cases, for the alteration and repair of the project for a defined period after the project is placed into service. The prevailing wage rates are the most recently published prevailing wages for the locality in which the project is located.

In the event the taxpayer fails to satisfy these requirements, the taxpayer may cure the discrepancy (and thus still claim credits at the bonus rate) by compensating each worker the difference between actual wages paid and the prevailing wage, plus interest, in addition to paying a \$5,000 penalty to the Treasury for each worker paid below the prevailing wage during the taxable year. If the Secretary determines that the discrepancy is the product of intentional disregard, the taxpayer must compensate each worker three times the difference in wages and the penalty to the Treasury is increased to \$10,000 per worker.

Once the Secretary determines that a discrepancy occurred, the taxpayer must make payments to the employees and the Treasury within 180 days of the determination in order to remain in compliance with the prevailing wage requirements.

The apprenticeship requirements require that the taxpayer ensure that qualified apprentices perform no less than the applicable percentage of total labor hours of the project. The applicable percentage for purposes of this requirement is 10 percent for projects for which construction begins in 2022. This rate is increased to 12.5 percent in 2023, and 15 percent thereafter. The taxpayer and any contractor or subcontractor that employs four or more individuals to perform construction on a qualifying project must employ at least one qualified apprentice to perform such work.

In the event a taxpayer fails to satisfy these requirements, the taxpayer may cure the discrepancy by paying a penalty to the Treasury equal to \$50 multiplied by the total labor hours for which the requirements are not satisfied. This penalty is increased to \$500 per hour in the event the Secretary determines that such discrepancy was the product of intentional disregard.

Taxpayers who have made a good faith effort to hire qualified apprentices with respect to the construction of a project are deemed to satisfy the requirement and are eligible for the bonus rate. A good faith effort is defined as requesting apprentices and receiving a denial or not receiving a response within five business days.

The credit may be transferred to the seller of the previously-owned vehicle to allow the purchaser to access the value of the credit at the time of sale. The rules governing transfers of the credit are the same as those established for section 30D.

Section 13403. Qualified commercial clean vehicles.

This provision creates a new credit for qualified commercial electric vehicles placed into service by the taxpayer.

The amount of credit allowed by this provision with respect to a qualified commercial electric vehicle is equal to 30 percent of the cost of the vehicle, up to \$7,500 in the case of a vehicle that weighs less than 14,000 pounds, and up to \$40,000 for all other vehicles.

Tax-exempt entities have the option of electing to receive direct payments.

For purposes of the credit a qualified commercial electric vehicle means any vehicle

- the original use of which commences with the taxpayer,
- which is acquired for use or lease by the taxpayer and not for resale,
- which is made by a qualified manufacturer,
- which is treated as a motor vehicle for purposes of title II of the Clean Air Act or mobile machinery for purposes of section 4053(8),
- which is propelled to a significant extent by an electric motor which draws electricity from a battery which has a capacity of not less than 15 kilowatt hours (7 kilowatt hours for vehicles that weigh less than 14,000 pounds) and is capable of being recharged from an external source of electricity, or is a fuel cell vehicle based upon the requirements of section 30B, and
- is of a character subject to the allowance for depreciation.

Vehicles powered by an internal combustion engine are eligible for a reduced credit of 15 percent.

A qualified manufacturer means any manufacturer that enters into written agreement with the Secretary to ensure each vehicle manufactured meets the requirements of this provision and is labeled with a unique vehicle identification number, and that such manufacturer will periodically provide such vehicle identification numbers to the Secretary in such a manner as the Secretary may prescribe. No credit shall be allowed with respect to any qualified vehicle unless the taxpayer includes the vehicle identification number of such vehicle on their return for that taxable year.

This provision shall take effect after December 31, 2022. No credit shall be allowed under this provision for a vehicle acquired after December 31, 2032.