U.S. Chamber of Commerce

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The Honorable Lily L. Batchelder
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Re: Notice of Proposed Rulemaking, Increased Credit or Deduction Amounts for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements (REG-100908-23)

Dear Assistant Secretary Batchelder and Mr. Paul:

The U.S. Chamber of Commerce (the "Chamber") welcomes the opportunity to comment on the new proposed regulations under sections 45 and 45Q of the Internal Revenue Code,[1] which were published in the *Federal Register* on August 30, 2023.[2] The proposed regulations would implement increased credit and deduction amounts available for taxpayers satisfying prevailing wage and registered apprenticeship ("PWA") requirements established by the Inflation Reduction Act of 2022 ("IRA").[3]

The Chamber commends the Department of the Treasury ("Treasury") and the Internal Revenue Service ("IRS") for their laudable efforts to provide taxpayers with a reasonably comprehensive initial package of proposed regulations on the IRA's PWA requirements. The proposed regulations are helpful in answering a range of substantive and practical questions regarding the application of these new rules. There are, however, certain aspects of the proposed regulations that warrant clarifying or other changes to ensure successful implementation of the statute consistent with its underlying policy aims. The following comments discuss several such aspects of the proposed regulations and provide pragmatic, consensus-based recommendations for addressing them.

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[1] Unless otherwise indicated, all textual references to "section" herein are to sections of the Internal Revenue Code of 1986, as amended ("Code").

[2] Increased Credit or Deduction Amounts for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements, 88 Fed. Reg. 60,018 (proposed Aug. 30, 2023) (as corrected by 88 Fed. Reg. 73,807 (Oct. 27, 2023)).

[3] An Act to provide for reconciliation pursuant to title II of S. Con. Res. 14, Pub. L. 117-169, 136 Stat. 1818 (2022).

Background

While PWA requirements have existed for over a century and long applied to projects supported by federal contracts, the IRA applied these requirements to clean energy tax incentives for the first time. The legislation, among other things, amended sections 30C, 45, 45L, 45Q, 48, 48C, and 179D to provide increased (bonus) credit or deduction amounts for taxpayers who satisfy certain PWA requirements or qualify for an exception. If satisfied, the value of the applicable incentive is generally increased *fivefold*. Thus, while technically not mandatory, satisfying the PWA requirements has become universally important—if not a commercial necessity—to taxpayers pursuing IRA tax incentives.

The principal PWA requirements are set forth in section 45(b)(7) and (8), with the former providing the prevailing wage requirements and the latter providing the apprenticeship requirements. Generally speaking, to satisfy the prevailing wage requirements with respect to a qualified facility, any laborer or mechanic employed by the taxpayer or any contractor or subcontractor in the construction, alteration, or repair of the facility must be paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which the facility is located, as determined by the Department of Labor. And to satisfy the apprenticeship requirements, certain requirements with respect to labor hours, apprentice-to-journeyworker ratios, and participation by apprentices must be satisfied. As discussed below, however, the IRA includes correction and penalty provisions available in certain situations where taxpayers have failed to satisfy the PWA requirements and are not otherwise eligible for the increased credit or deduction because they do not qualify for an exception.

Correction and Penalty Related to Failure to Satisfy Wage Requirements

A taxpayer that initially fails to satisfy the prevailing wage requirements with respect to a qualified facility can cure its failure and remain eligible for an increased credit amount by making the correction and penalty payments specified in section 45(b)(7)(B)(i). That provision generally requires the taxpayer to pay any affected workers the difference between the actual compensation paid and the wages required to be paid to those workers under the prevailing wage requirements, plus any applicable interest.[4] In addition, the taxpayer must pay a penalty to the IRS equal to $5,000 per affected worker.[5] A taxpayer that makes these correction and penalty

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[4] I.R.C. § 45(b)(7)(B)(i)(I).

[5] I.R.C. § 45(b)(7)(B)(i)(II).

payments with respect to a qualified facility will be deemed to have satisfied the IRA's PWA requirements with respect to such facility.

Penalty Waivers

The preamble to the proposed regulations explains that, in general, the IRS may exercise its discretion to waive or decline to assert penalties in the interest of sound tax administration.[6] The proposed regulations would generally exercise this discretion by providing limited penalty waivers for instances in which taxpayers' failures to pay prevailing wages to laborers and mechanics for the construction, alteration, or repair of a facility were small in amount or occurred in a limited number of pay periods.[7] The preamble characterizes this use of the waiver authority as one that assists taxpayers seeking to be eligible for the increased credit while remaining consistent with the statutory requirement to ensure that laborers and mechanics are paid at prevailing wage rates.[8] The Chamber commends Treasury and the IRS for their affirmative use of the waiver authority in this manner. We take issue, however, with the proposed regulations' inappropriate use of the waiver authority to promote pre-hire project labor agreements, as discussed below.

In addition to the commonsense, limited penalty waivers described above, the proposed regulations would waive the penalty payment requirement with respect to a laborer or mechanic employed under a project labor agreement ("PLA") that meets certain requirements and any correction payment owed to the laborer or mechanic is paid on or before a return is filed claiming an increased credit amount. Specifically, the proposed regulations would provide:

> The penalty payment required by [Prop. Treas. Reg. § 1.45-7(c)(1)(ii)] to cure a failure to satisfy the Prevailing Wage Requirements in [Prop. Treas. Reg. § 1.45-7(a)] shall not apply with respect to a laborer or mechanic employed in the construction, alteration, or repair work of a qualified facility if the work is done pursuant to a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project (Qualifying Project Labor Agreement) and any correction payment owed to any laborer or mechanic is paid on or before the date on which the increased credit is claimed under section 45(b)(6).[9]

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[6] 88 Fed. Reg. at 60,028–29.

[7] *See* Prop. Treas. Reg. § 1.45-7(c)(6)(i).

[8] 88 Fed. Reg. at 60,029.

[9] Prop. Treas. Reg. § 1.45-7(c)(6)(ii).

The proposed regulations would also provide an inexhaustive list of requirements for an agreement to be considered a Qualifying Project Labor Agreement.

The Chamber's Recommendation

The Chamber respectfully urges Treasury and the IRS to remove this PLA-based penalty waiver from the final PWA regulations. Language in both the preamble and text of the proposed regulations strongly encourages the use of a pre-hire PLA to ensure compliance with the IRA's PWA requirements. The inclusion of the PLA penalty payment waiver strongly implies that the government prefers union labor to be used, which was not the intent of the IRA. Including a PLA-based penalty payment waiver in the final regulations would inappropriately tilt the contracting process in favor of union contractors and effectively coerce non-union contractors to operate as union contractors. PLAs can have the effect of freezing out non-union contractors who are reluctant to accept the terms of a PLA. To do so means that they would have to function as union contractors under the terms and restrictions of the relevant collective bargaining agreement—in which they would have no say or opportunity to influence. In many cases, these contractors may qualify as small businesses. Furthermore, employees of non-union contractors that agree to a pre-hire PLA will essentially be contributing to a union benefit fund that will provide no benefit to them.

The cornerstone of U.S. labor law is the right of employees to make their own decisions about unions.[10] The tax law should not dictate, facially or in effect, the choice of unionization for employees; instead, it is up to each employee to make that decision for themselves. Furthermore, claims that the use of pre-hire PLAs may somehow improve compliance with various labor laws and improve safety on worksites are typically overstated and unproven. There are many examples of projects conducted under PLAs that continue to suffer from long delays, cost overruns, and faulty construction, notwithstanding the purported labor peace that the PLAs were supposed to provide, as well as projects where PLAs were not used that proceeded smoothly with minimal disruptions. Ultimately, the only beneficiaries of government supported pre-hire PLAs are the unions and their contractors who might otherwise not be able to compete for the work.

Two of the IRA's core purposes are to promote clean energy investments and help create high-quality, American jobs.[11] Although the proposed regulations would

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[10] *See, e.g.*, Chamber of Com. of the U.S., *The Biden Administration's "Whole of Government" Approach to Promoting Labor Unions* 5 (Oct. 24, 2023), https://www.uschamber.com/assets/documents/U.S.-Chamber-White-Paper-Whole-of-Government-Approach-to-Promoting-Labor-Unions.pdf.

[11] *See, e.g.*, 168 Cong. Rec. S4165 (daily ed. Aug. 6, 2022).

not technically mandate the use of a pre-hire PLA, and thus would not blatantly require union labor, they clearly imply that using a pre-hire PLA—which essentially means using union labor—is the preferred approach for taxpayers to satisfy the IRA's PWA requirements in the first instance. The fact that potential workers would not be hired because of their non-union status would cut directly against the core purposes of the IRA. The Chamber, therefore, respectfully urges Treasury and the IRS remove the PLA-based penalty waiver from the final PWA regulations.

Application to the Credit for Carbon Oxide Sequestration in Section 45Q

The Chamber has long supported the potential for carbon capture technologies to create innovative, scalable solutions to reduce emissions and preserve the affordability and diversity of our energy system.[12] To that end, we have identified a potentially critical ambiguity in the language of section 45Q and, more importantly, the proposed regulations thereunder concerning the treatment of a qualified facility and carbon capture equipment for purposes of the IRA's PWA requirements. As set forth below, the Chamber recommends that Treasury and the IRS resolve this ambiguity by issuing final PWA regulations under section 45Q clarifying:

(i) when the PWA requirements must be satisfied with respect to a "qualified facility" and "carbon capture equipment"; and

(ii) that the term "qualified facility" means only the portion of the labor that is involved in constructing the facility with respect to the carbon emitting stream and the carbon capture equipment.

Overview of the Section 45Q Credit

The federal tax credit for carbon sequestration in section 45Q, which Congress added to the Code in 2008,[13] is intended to incentivize investment in carbon capture and sequestration—technologies that reduce carbon dioxide (CO_2) emissions from fossil fuel-fired power plants and other large industrial sources.[14] After undergoing an expansion and extension in 2018, section 45Q was modified and further extended by the IRA in 2022. In addition to modifying the base credit rates, the IRA amended

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[12] *See, e.g.*, Chamber of Com. of the U.S., *Comment Letter on REG-112339-19: Proposed Regulations Regarding the Credit for Carbon Oxide Sequestration Under Section 45Q of the Internal Revenue Code* (Aug. 3, 2020), https://www.uschamber.com/assets/documents/uscc_comments_reg-112339-19_credit_for_carbon_oxide_sequestration_under_section_45q_final.pdf.

[13] Energy Improvement and Extension Act of 2008, § 115, Public Law 110–343, 122 Stat. 3765, 3829.

[14] Cong. Rsch. Serv., IF11455, *The Section 45Q Tax Credit for Carbon Sequestration* 1 (updated Aug. 25, 2023).

section 45Q to provide increased (5x) credit amounts for taxpayers who satisfy the PWA requirements with respect to any qualified facility or carbon capture equipment.[15]

For purposes of section 45Q, the statute defines a "qualified facility" to mean any industrial facility or direct air capture facility the construction of which begins before January 1, 2033, and either construction of carbon capture equipment begins before that date or the original planning and design for the facility includes installation of carbon capture equipment, and which meets the minimum capture requirement for the facility.[16] An "industrial facility" is a facility, including an electricity generating facility, that produces a carbon oxide stream from a manufacturing process that, absent capture and disposal, injection, or utilization, would otherwise be released into the atmosphere as industrial emission of greenhouse gas or lead to such release.[17] And "carbon capture equipment" generally includes all components of property that are used to capture or process carbon oxide until the carbon oxide is transported for disposal, injection, or utilization.[18] All components that make up an independently functioning process train capable of capturing, processing, and preparing carbon oxide for transport are treated as a single unit of carbon capture equipment (a "single process train").[19]

The statute provides a broad grant of authority to Treasury and the IRS to issue such regulations or other guidance as necessary to carry out the purposes of the increased credit amount for qualified facilities and carbon capture equipment in section 45Q(h).[20]

Application of the PWA Requirements in Section 45Q(h) – Timing

For purposes of claiming the increased credit amount for qualified facilities and carbon capture equipment in section 45Q(h), the statute provides that the PWA requirements apply "with respect to any qualified facility the construction of which begins on or after [January 29, 2023], as well as any carbon capture equipment placed

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[15] *See* I.R.C. § 45Q(h). The prevailing wage requirements in section 45Q(h) are substantially similar to the requirements provided in section 45(b)(7), while section 45Q(h)(4) cross-references the apprenticeship requirements in section 45(b)(8).

[16] *See* I.R.C. § 45Q(d).

[17] Treas. Reg. § 1.45Q-2(d).

[18] Treas. Reg. § 1.45Q-2(c).

[19] Treas. Reg. § 1.45Q-2(c)(3).

[20] *See* I.R.C § 45Q(h)(5).

in service at such facility."[21] The Chamber is concerned that this language could be construed as requiring taxpayers to satisfy the PWA requirements when constructing a facility even if, at the time of construction, there was no plan to engage in carbon capture at the facility. For instance, if a taxpayer were to install carbon capture equipment at an industrial facility with respect to which the PWA requirements were not satisfied (e.g., because no carbon capture equipment was contemplated at the time of the facility's construction), the taxpayer would be precluded from obtaining the increased credit amount in section 45Q(h) despite satisfying the PWA requirements with respect to the construction of the carbon capture equipment. Such an interpretation would have a particularly negative impact on those facilities seeking to implement new and emerging technologies for carbon capture that were not envisioned—or potentially not even available—at the time of the facility's construction.

As discussed above, a qualified facility is generally any industrial facility the construction of which begins before January 1, 2033, and either construction of carbon capture equipment begins before that date or the original planning and design for the facility includes installation of carbon capture equipment.[22] Under this definition, an industrial facility with respect to which the taxpayer has no plans for carbon capture at the time of its construction will become a "qualified facility" if and when carbon capture equipment (for which construction also begins before January 1, 2033) is installed at the facility and it meets the minimum capture requirement for the facility. As a result, the taxpayer would potentially be required to satisfy the PWA requirements with respect to *both* the qualified facility *and* the carbon capture equipment. The following member-inspired example illustrates our concern:

Example 1

> On September 1, 2023, a taxpayer begins construction of a manufacturing facility.[23] The manufacturing facility's operations will emit a stream of carbon oxide into the atmosphere. However, the taxpayer does not currently have any technology that would permit it to isolate and capture the carbon oxide. No components of carbon capture equipment are included in the manufacturing facility. The taxpayer does not comply with the PWA requirements in the construction of the manufacturing facility because it has no plans for carbon capture or to

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[21] *See* I.R.C § 45Q(h)(2)(A).

[22] I.R.C. § 45Q(d).

[23] Although a manufacturing facility is used as the example here, this concern will apply to a broad range of industrial sectors that emit carbon oxide (e.g., electrical generation, chemical, refineries and distribution, and other sectors with carbon oxide-emitting facilities).

claim the section 45Q credit.[24] Several years later, in January 2027, the taxpayer develops or acquires technology that will allow it to isolate and capture the carbon oxide. The taxpayer then constructs and installs a completed single process train at the manufacturing facility. The single process train meets the minimum carbon capture thresholds. The taxpayer seeks to claim the section 45Q credit for its 2027 tax year and satisfies the PWA requirements with respect to the construction and installation of the single process train.

Under section 45Q(d), the manufacturing facility is a "qualified facility" because it is an industrial facility the construction of which began before January 1, 2033, construction of the carbon capture equipment installed at the facility (that is, the completed single process train) also began before January 1, 2033, and, once the single process train is planned or installed, the manufacturing facility will have the ability to capture the minimum capture thresholds. Thus, although the manufacturing facility was not a qualified facility as originally planned and designed, it became a qualified facility upon the installation of the completed carbon capture single process train. If section 45Q(h)(2)(A) were interpreted to mean that the taxpayer must have satisfied the PWA requirements with respect to the manufacturing facility's construction, notwithstanding the absence of any plans for carbon capture or carbon capture equipment at the time of its construction, the taxpayer would not satisfy the PWA requirements to obtain the increased credit amount under section 45Q(h).

As illustrated above, applying the PWA requirements to the construction of a qualified facility before it has a completed single process train or any components of carbon capture equipment would result in taxpayers not receiving the increased credit amount under section 45Q(h) simply because the taxpayer did not foresee the facility's future carbon capture activity. An inability to obtain the increased credit amount under section 45Q in these situations could essentially put an end to investment in carbon capture projects. Thus, the result contemplated by the preceding example cannot be the intended result of the section 45Q(h)(2)(A) because it would make the credit multiplier with respect to the section 45Q credit available only to those taxpayers who had the foresight—and capital—to make the uneconomic decision to comply with the PWA requirements with respect to the construction of a facility for which the taxpayer does not expect to claim the section 45Q credit. It would place taxpayers in the untenable position of being ineligible for the increased

[24] The taxpayer also has no plans to claim any other credit or deduction that requires satisfaction of the PWA requirements.

credit amount under section 45Q(h) even though they may have fully complied with the PWA requirements ever since making the decision to construct and install a completed carbon capture single process train. The Chamber recommends, therefore, that Treasury and the IRS clarify that the PWA requirements are not intended to apply retroactively to an industrial facility, or any equipment located therein, until there are plans or designs to install a completed carbon capture single process train.

Application of the PWA Requirements in Section 45Q(h) – Scope

A separate concern arises from the definition of "qualified facility," which could be construed as requiring taxpayers to satisfy the PWA requirements with respect to the entire "facility" even in cases where only a small portion of the project is responsible for the carbon oxide emission stream. Requiring the entire facility to meet the PWA requirements would discourage taxpayers from developing and installing carbon capture equipment, which would contravene the purposes of the section 45Q credit. The following example illustrates this concern:

Example 2

> A taxpayer begins construction on a $10 billion manufacturing plant on February 1, 2023 (after the effective date for the PWA requirements). The plant includes a $10 million piece of equipment that emits carbon oxide during a minor phase of the manufacturing process. The taxpayer decides against installing carbon capture equipment at the facility because doing so, under a broad interpretation of the definition of qualified facility, could require the taxpayer to meet the PWA requirements on the entire $10 billion manufacturing plant, even though only a tenth of a percent (0.01%) of the project cost is responsible for the carbon oxide emission stream.
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> Subsequently, in 2026, when the plant is operating, a carbon capture company offers to process, transport, and permanently sequester the carbon oxide emissions, reducing the greenhouse gas emissions at the manufacturing plant. This would require the taxpayer to install carbon capture equipment to claim the credit multiplier for the section 45Q credit. Because the manufacturing plant did not satisfy the PWA requirements during the initial construction of the manufacturing plant, however, the taxpayer may not be able to avail itself of the credit multiplier. As discussed above, section 45Q(h)(2)(A) could be construed to require the taxpayer to satisfy the PWA requirements for the entire manufacturing plant from day one, thus precluding the taxpayer from ever being able to take the section 45Q credit multiplier.

Example 2 illustrates how a broad construction of the term "qualified facility" would discourage taxpayers from installing carbon capture equipment. The purpose of the section 45Q credit is to encourage the use of carbon capture equipment to reduce the impacts of climate change and encourage technologies that can help industries limit greenhouse gas emissions. If, instead, the taxpayer is required to satisfy the PWA requirements only for the portion of the manufacturing plant responsible for the carbon oxide emission stream, the taxpayer in the foregoing example would have been encouraged to install the carbon capture equipment and satisfy the PWA requirements.

The inclusion of the section 45Q credit multiplier is intended to encourage taxpayers to install carbon capture equipment to reduce the amount of carbon oxide released into the atmosphere. Accordingly, it should follow that the PWA requirements apply only to the labor portion of the qualified facility with respect to which the credit applies. It would be counterintuitive to require taxpayers to meet the PWA requirements with respect to the entire $10 billion manufacturing plant when less than a tenth of one percent of that plant emits a carbon oxide emission stream, thus, making the credit multiplier less desirable or not beneficial to the taxpayer at all. Requiring the PWA requirements to apply to the entire facility ensures that the taxpayer will need to undergo a cost benefit analysis to determine whether the installation of this important climate changing technology is worth the time and effort to obtain the credit multiplier.

In summary, the Chamber is concerned that a broad construction of the term "qualified facility" for purposes of the PWA requirements in section 45Q(h) would defeat its underlying public policy aim of encouraging taxpayers to capture carbon emissions from their industrial facilities. Situations will arise where carbon oxide emission streams that are considered low hanging fruit for carbon capture and sequestration will continue to be released into the atmosphere because of the potentially onerous and expansive application of PWA requirements to qualified facilities.

The Chamber's Recommendations

The section 45Q credit is intended to incentivize investment in carbon capture and sequestration—technologies that reduce carbon dioxide (CO_2) emissions from fossil fuel-fired power plants and other large industrial sources. In both situations described above, however, the proposed regulations would potentially discourage instead of encouraging taxpayers to install carbon capture equipment. Congress delegated broad authority to Treasury in section 45Q(h)(5) and 45Q(i) to issue

regulations or other guidance necessary to carry out the purposes of the statute. The Chamber recommends that Treasury use this authority as set forth below.

No Plan for Carbon Capture at Time of Construction

Treasury and the IRS should issue final regulations clarifying that the PWA requirements in section 45Q(h) will apply only once a facility is considered to be a "qualified facility" and not before that date. A facility should not be considered a "qualified facility" until there are clear plans or designs to install a completed carbon capture single process train or construction has begun with respect to a single process train. This is in line with the plain language of section 45Q(h) and the definition of qualified facility in section 45Q(d). Treasury and the IRS should further clarify that the rules do not apply retroactively because taxpayers cannot be required to meet the PWA requirements until the requisite requirements have been satisfied (i.e., when a facility is a qualified facility and a plan or installation of a carbon capture single process train has been initiated).

Application of PWA Requirements to Entire Facility Would Devalue Section 45 Credit

Treasury and the IRS should also issue final regulations clarifying that the definition of "qualified facility" means only the portion of the facility comprising the carbon emitting equipment and the carbon capture single process train. As illustrated by the preceding example, the taxpayer would have been deterred from creating a plan and installing carbon capture equipment if it had been required to satisfy the PWA requirements with respect to the entire $10 billion facility—especially when only a miniscule amount of the facility produces a carbon emitting stream. By clarifying that the PWA requirements should apply only with respect to the carbon emitting stream and carbon capture equipment, the final PWA regulations would incent taxpayers to install the carbon capture equipment at the beginning of construction.

The Chamber recommends that this clarification of the term "qualified facility" incorporate the phrase "single process train" for purposes of the section 45Q credit multiplier. This recommendation is in line with our preceding recommendation because a facility should not be considered a "qualified facility" unless and until there is a completed plan that includes a "single process train." The phrase "single process train" is already defined and applies with respect to carbon capture equipment so it would make sense for it apply to the facility portion as well. There is precedent for Treasury and the IRS to adopt a narrow definition of "facility" for purposes of the PWA requirements in section 45Q(h)—doing so would be consistent with the definition of "facility" for purposes of other production tax credits. Under the section 45 production tax credit for wind energy, for example, each turbine, pad, and tower is treated as a separate power plant or "facility." In other words, a "facility" for purposes

of the wind energy production tax credit is not an entire wind farm but rather a single generating unit within a wind farm.[25] Here, for purposes of the section 45Q credit, it would be reasonable for Treasury and the IRS to narrowly define "facility" to include only the labor associated with the carbon oxide steam and the a single process train that transports the carbon oxide stream.

Adopting the forgoing recommendations would support at least two of the IRA's fundamental public policy goals: (1) taxpayers would be encouraged to install carbon capture equipment to reduce greenhouse gas emissions at their industrial facilities at the start of the project and if/when they later develop or obtain carbon capture technology; and (2) the PWA requirements apply to *both* the carbon capture equipment and the facilities that produce the carbon emissions. A narrow definition of "facility" would also prevent the unintended consequence of subjecting a large manufacturer to the PWA requirements with respect to its entire plant if only a very small portion of the plant produces carbon oxide emissions.

Opportunity to Increase Taxpayer Certainty and Clean Energy Production/Use

The IRA is a landmark piece of tax-and-climate legislation that has the potential to foster historic levels of investment to accelerate the production and use of clean energy in the United States. Treasury has reported that implementation of the IRA has already "unleashed investment and a manufacturing boom."[26] Treasury also recently publicized that companies have announced more than $115 billion in manufacturing investments to build a clean energy economy.[27] With so much at stake, it is critical that Treasury and the IRS expand opportunities for taxpayers to obtain more certainty in determining whether to move forward with such massive clean energy investments. Allowing taxpayers to obtain private, project- or transaction-specific rulings from the IRS would provide much needed certainty for investors and businesses alike. Accordingly, the Chamber recommends that the IRS expand its existing private letter ruling program to facilitate taxpayers' IRA-related investments and foster a higher level of tax certainty with respect thereto.

One way to support businesses and investors in obtaining more assurance in the application of the PWA requirements—an existing process with which taxpayers

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[25] *See* Rev. Rul. 94-31, 1994-21 I.R.B. 4 (May 23, 1994) ("[T]he term 'facility' under section 45(c)(3) means the wind turbine, together with the tower on which the wind turbine is mounted and the pad on which the power is situated.").

[26] U.S. Dep't of the Treas., *FACT SHEET: How the Inflation Reduction Act's Tax Incentives Are Ensuring All Americans Benefit from the Growth of the Clean Energy Economy* (Oct. 20, 2023), https://home.treasury.gov/news/press-releases/jy1830.

[27] *Id.*

and the IRS are already familiar—would be to allow taxpayers to request a private letter ruling ("PLR"). A PLR is a written determination issued to a taxpayer by an IRS Associate Chief Counsel office in response to the taxpayer's written inquiry, filed prior to the filing its return, about its status for tax purposes or the tax effects of its acts or transactions.[28] A PLR interprets the tax laws and applies them to the taxpayer's specific set of facts, and is issued when appropriate in the interest of sound tax administration.[29]

The first revenue procedure issued by the IRS each year (e.g., Revenue Procedure 2023-1) establishes the procedures governing the PLR process. An accompanying revenue procedure (e.g., Revenue Procedure 2023-3) provides a list of areas under study in which a PLR will not be issued until the IRS resolves the issue through publication of a revenue ruling, revenue procedure, regulations, or otherwise.[30] The current no-rule issues list includes "any issue involving the application of a provision of the Code to the extent of any amendment made by [the IRA]."[31] The Chamber recommends that Treasury and IRS remove the PWA requirements from the no-rule issues list on publication of final PWA regulations.

Allowing taxpayers to seek a PLR concerning their PWA or other IRA-related questions would align with the current thinking at the IRS Office of Chief Counsel. Mark Schneider, IRS Associate Chief Counsel (Corporate), recently announced that his office plans to "significantly broaden" the scope of its PLR program.[32] In so doing, Mr. Schneider explained that a major factor in expanding the program is the ability to gather insight into what's happening in corporate transactions. The Chamber strongly supports this approach and encourages other IRS Associate Chief Counsel offices to adopt a similar posture—especially as it relates to taxpayer qualification for major IRA tax incentives. In particular, we believe it would be in the best interest of sound tax administration to allow taxpayers to request PLRs regarding their PWA questions.

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[28] Rev. Proc. 2023-1, 2023-1 I.R.B 8 (Jan. 3, 2023).

[29] *Id.*

[30] Rev. Proc. 2023-3, 2023-1 I.R.B 144 (Jan. 3, 2023).

[31] *Id.* at 160.

[32] *See* Chandra Wallace, *IRS to Expand Scope of Corporate Letter Rulings*, 181 Tax Notes Federal 752 (Oct. 23, 2023) (quoting Mark Schneider's remarks at the American Bar Association's Virtual Fall 2023 Tax Meeting).

The Chamber appreciates the opportunity to comment on the proposed PWA regulations, and we urge Treasury and the IRS to engage closely with the business community throughout the IRA implementation process. In the interim, we would welcome the opportunity to discuss our comments with you or your colleagues in further detail and provide whatever additional information you may require. Please contact Sarah Corrigan, the Chamber's Tax Counsel, at (202) 680-8008 or SCorrigan@USChamber.com. Thank you for your time and attention.

Sincerely,

Watson M. McLeish
Senior Vice President, Tax Policy
U.S. Chamber of Commerce

cc: The Honorable Ronald L. Wyden, Chairman, Committee on Finance, United States Senate
The Honorable Michael D. Crapo, Ranking Member, Committee on Finance, United States Senate
The Honorable Jason T. Smith, Chairman, Committee on Ways and Means, United States House of Representatives
The Honorable Richard E. Neal, Ranking Member, Committee on Ways and Means, United States House of Representatives
Thomas A. Barthold, Chief of Staff, Joint Committee on Taxation, United States Congress