

HENNEPIN COUNTY

MINNESOTA

November 17, 2022

The Honorable Janet Yellen
Secretary
United States Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

RE: Hennepin County Comments in Response to IRS Notice 2022 50 on Elective Payment of Applicable Credits and Transfer of Certain Credits

Dear Secretary Yellen,

Thank you for the opportunity to submit comments in response to the U.S. Department of Treasury notices, requesting comments on the guidelines to implement key provisions of the Inflation Reduction Act of 2022. Hennepin County is the most populous county in the State of Minnesota, and the City of Minneapolis is the county seat.

Organics recycling is a focus of the county's Solid Waste Management Master Plan to make progress toward zero waste and a foundational strategy in the county's Climate Action Plan to achieve net zero emissions by 2050. An anaerobic digestion (AD) facility would provide the additional organics processing infrastructure needed to support the expansion of organics recycling programs throughout Hennepin County.

Organics recycling is our biggest opportunity to reduce our trash. Minnesota law requires metro counties achieve a 75% recycling rate by 2030. Waste sort studies continue to show that organic materials are the largest proportion of our trash – about 25% to 30%. The AD facility would process organics to produce energy and beneficial soil and agricultural products. The biogas can be used to produce various forms of clean, renewable energy including renewable natural gas. The digestate can replace fossil-fuel-based fertilizers.

The county issued a Request for Proposals (RFP) for the Anaerobic Digestion of Organic Materials in June 2021 and has recently selected a preferred proposer to develop an anaerobic digestion facility in the county. We are now entering into the next phase of design and plan to begin construction of the facility sometime in 2024.

We applaud the inclusion of biogas incentives in the Inflation Reduction Act, some of which we plan to utilize to complete the development of the facility. At their core, biogas systems protect our air, water, and soil, and are a crucial part of the solution to the challenges these credits seek to address.

We appreciate the opportunity to provide input on the guidelines for these tax incentives. Thank you for considering the following comments.



The definition of “political subdivision” needs to be refined for effective utilization of tax credits in the public sector

Notice 2022-50 outlines Section 6417(d)(4)(A) that would allow any applicable entity, including a government or political subdivision described in Section 6417(d)(1), to claim direct pay tax credits for a variety of types of eligible facilities. Section 3.01, Question #5, asks what guidance is needed to clarify which entities are applicable entities for purposes of Section 6417(d)(4)(A). It is imperative that the regulations contain a definition of “political subdivision” that is broad enough to encompass all intended governments to actually use the credits. We believe this is consistent with legislative intent and how the Joint Committee on Taxation **scored the section**.

Furthermore, Hennepin County requests that Treasury reconcile this guidance with existing Treas. Reg. 1.103-1(b), regarding tax-exempt bonds and draft the guidance under Section 6417 similarly. This would allow the term “political subdivision” in this section to have the same meaning, and thus application, among all of the approximately 50,000 governmental entities in the United States. It would also allow for the definition to reflect a key characteristic of governments – they are exempt from tax.

Hennepin County is confident that Treasury has the authority to accomplish this under Section 6417(h) which permits Treasury to issue regulations and other guidance “as may be necessary to carry out the purposes” of this Section in the law. This simple, but extremely important, acknowledgement and corresponding language, rooted in established language and principles articulated in Treas. Reg. 1.103-1(b), is essential for effective utilization of the tax credits by government entities as permitted under the law.

Simplicity should be the focus when making credit elections, making payments to political subdivisions, and in the development of all related forms

Question #8 in Section 3.01 of Notice 2022-50 asks how refund claims should be made by political subdivisions and other tax-exempt entities. Hennepin County requests that the mechanisms and any forms to be used to claim refunds are simple, rather than complex, and comparable to what taxable entities currently use to claim credits. We would encourage Treasury and the IRS to permit the filing of such forms electronically, rather than the bulky submission of paper forms that are still required for Form 8038-CP, for example. We are confident that national organizations that represent political subdivisions, such as the Government Finance Officers Association, the National Association of Counties, and the National League of Cities would be valuable allies to Treasury in reviewing and testing processes and procedures.

The definition of “placed in service” needs to be clarified

Certain tax credit rules, including the timing of the elections, turn on when the facility is placed in service. The definition of placed in service typically used by governmental entities (at least in the bond context) is not the same as the definition of placed in service used for depreciation purposes. Clarification of which definition of placed in service applies in this context would be helpful.

Allow ample time to claim credit

Question #8 also seeks input on the timing of the claim for credit or refund – specifically, how guidance should be crafted for the timing and manner of payment. Hennepin County suggests that the Treasury and IRS allow for the time to elect a credit to be as late as possible. This would be most helpful, given that there continue to be

disruptions with respect to supply chains and labor availability which are delaying projects and making it difficult to accurately identify actual project costs.

Hennepin County encourages Treasury and the IRS to consider using the existing deadlines for allocating proceeds to expenditures and/or treating multiple sources of funding as part of the same plan of financing. Financing with tax-exempt bonds may affect the amount of the credit, so the deadline for making the claim should be until after the allocation of sources is finalized.

Allowing political subdivisions to determine the applicability of different credits later in the project development process would enable us to make an informed decision about what approach will be best for Hennepin County taxpayers.

Thank you for your consideration,

A handwritten signature in blue ink, appearing to read "Kareem Murphy". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kareem Murphy
Director of Intergovernmental Relations