



## SUPERINTENDENT OF SCHOOLS

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Internal Revenue Service  
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Washington, D.C. 20044

**Re: COMMENTS submitted in response to NOTICE 2022-50**

The Winona, Minnesota, Area Public Schools (“WAPS”) submits its comments on direct payable tax credits for public entities undertaking energy projects. WAPS intends to replace the heating and air flow systems at two elementary school buildings. It will use a geothermal well system for heating and cooling, and will modify air flow throughout the buildings to be compatible with the geothermal system. In order to claim these credits, WAPS must have critical information regarding how to apply, what is covered by the credits and when credit payments will be made to a recipient. It needs the credits to give its taxpaying citizens a fair shake.

I am the Superintendent for the Winona Area Public Schools. The largest city in our district is Winona, Minnesota, which is a town of approximately 27,000 people. It is located on the Mississippi River 120 miles south of Minneapolis. Our school district serves a population of 40,000 and includes several smaller cities, as well as rural areas. We have 2,500 students in grades pre-K through 12, in six buildings including three elementary schools, and over 500 employees.

Two elementary school buildings were opened in the 1930s. We are looking at major renovation projects for these buildings, including redesign of the heating and air quality systems. After learning of the importance of air flow design in the aftermath of the COVID pandemic, we planned to begin the renovations by addressing the heating, cooling and air quality systems. The two buildings are located approximately three miles apart and will require separate facilities.

In the Fall of 2021, our Finance Committee studied several options for providing improved indoor air quality in our buildings. We looked at conventional heating systems using carbon-based fuels as well at geothermal systems. The committee recommended a geothermal system at each school building. It based its recommendation on initial cost, life cycle costing and overall improvements to the facilities. A geothermal system had higher initial costs for purchase and installation, but had lower life cycle costs over its useful life expectancy. The recommendation was that the school district should install new ventilation and dehumidification systems throughout the two buildings, and replace the existing natural gas fired boiler system with geothermal wells at each building that would serve new heating and cooling plants.

The project would require renovation of areas made necessary by the removal of outdated equipment related to indoor air quality and new construction to repair and support the

improvements. New ceilings, new light fixtures, and miscellaneous finishes would be needed in much of each building to conceal ductwork and other components of the ventilation systems and areas impacted by the renovation. The electrical distribution systems would need to be upgraded to support the new ventilation system and the geothermal plant. At the time of design, the total project cost was anticipated to be \$15.4 million, which was divided between the two buildings with \$8.4 million at the Jefferson building, and \$7.0 million at the Washington-Kosciusko building.

The school district was allowed to sell bonds to finance the project under Minn. Stat. §123B.595. This section authorizes schools to use bond funds for indoor air quality projects found within a 10-year long term facilities maintenance plan approved by the Minnesota Commissioner of Education. The Winona district has a long-term maintenance plan which has the indoor air quality project and has been approved by the Minnesota Commissioner. The geothermal wells and new central heating/cooling plants were included as part of the indoor air quality project.

When the project was let for bids in the summer of 2022, inflation had pushed the project's price to over \$22 million. The district's school board rejected the bids and has begun to look for other funding sources as well as how to economize on the cost of the project. Possible ways to economize included canceling the project, modifying only ventilation systems while keeping the natural gas fired heating source, or constructing a geothermal system at only one school building. The school board does not favor any of these alternatives and is continuing to look for ways to go forward with the entire project using geothermal wells at each school. It does not want to abandon using geothermal systems in this project.

The school district needs the direct pay tax credits from the Inflation Reduction Act to keep the geothermal wells in the project and on schedule. It recognized at the beginning of the project that a project with a geothermal component had greater initial costs but would save costs for the district over the life-cycle of the wells. It also based its decision to go with geothermal wells on the environmental benefits that these offered.

School districts must be allowed to claim these credits. In Minnesota, a public school district is a local unit of government created and authorized by the state legislature to perform governmental functions at the local level. Minn. Stat. § 123A.55 declares that a school district is a public corporation. Minnesota school districts are governed by a locally elected school board and are extensively supervised by the state Department of Education.(See generally Minn. Stat. ch. 123B) The Minnesota Constitution guarantees a public education for all students living within the state.(Minn. Const. Art. XIII, section 1) Minnesota school districts have general charge of school buildings and have the duty to furnish facilities suitable for children "of school age residing in any part of the district."(Minn. Stat. § 123B.02, subd. 2) WAPS is a Minnesota school district and local government unit such as considered to be an applicable entity by the Act and should be able to apply for directly payable energy credits under 26 U.S.C. § 6417.

The school district needs guidance from the Secretary as well as a much greater level of certainty regarding how the credits will be allowed for projects such as ours. We need to know when to apply, what to include in our application, and when a credit will be paid. Since a school district does not file an income tax return, we would also need to know what forms would be

used to apply for credits. We may not be as concerned with a particular date for making an election or filing an application for credit as we are concerned that the date is clearly made known and fits public works processes that are required for school districts and other local government units.

- Would a school district be able to receive approval for credits before it begins construction of a project?
- As a public works project which must go through extensive planning, reviews and approvals in the public domain, at what point would a school district be able to make the “election” called for in § 6417(a) for such a project?
- Would other approvals be necessary, such as an endorsement by the head of the state Department of Education?
- Would plans such as the long-term facilities maintenance plans used in Minnesota be accepted as state approval of a qualified energy project?

We believe that allowing a school district such as we are to make the election at the earliest possible time and thus secure credits for the project is consistent with public works administration and urge the Secretary to take this into account in answering questions concerning the election referred to in § 6417(a).

WAPS is reluctant to tell the Secretary how to answer these questions because its expertise is not in writing tax regulations. We want to point out the nature of questions that need answers for a small school district. We urge the Secretary to include all of a project such as ours in the credit, but understand that she may conclude that only the direct geothermal facilities and immediately connected plant or plant necessary to allow the geothermal system to operate may be eligible for a credit. Our project can proceed under either case. We desire clear guidance in regulations that will allow our project to receive credits.

Dated: November 4, 2022

Signed: Annette Freiheit

Annette Freiheit  
Superintendent  
Winona Area Public Schools

