



December 5, 2022

U.S. Internal Revenue Service
Re: Notice 2022-58
1111 Constitution Ave. NW
Washington, DC 20224

Dear Commissioner Retting:

Thank you for the opportunity to submit comments on the Clean Fuel Production Credits enacted as part of the Inflation Reduction Act. Biofine Developments Northeast Inc. (BDNE) kindly requests that the IRS consider providing additional clarity on the definition of “Transportation Fuel”. The current language, “a fuel that is suitable for use as a fuel in a highway vehicle or aircraft” included 26 U.S. Code § 45Z does not appear to be reflective of Congressional intent thereby rendering it unclear, limiting, and inconsistent with prior proposed regulations.

It is clear that the original intent was to include clarifying language. The following statement can be found in the Senate Finance Committee’s summary of the legislation:

Fuels must be at least transportation grade – suitable for use in a highway vehicle or aircraft – but may be used for any business purpose, including as transportation fuel, industrial fuel, or for residential or commercial heat.¹

Additional evidence of intent to clarify can be seen during a conversation between Senator Maggie Hasson of New Hampshire and Senate Finance Committee Chair Ron Wyden of Oregon during floor consideration of the Inflation Reduction Act on August 6, 2022:

Senator Hassan, “Mr. President, I ask unanimous consent to engage in a colloquy with Senator WYDEN for clarification regarding a tax provision included in the bill currently before the Senate. Section 13704 of the bill, which concerns production credits for biofuels, defines “transportation fuel” that can qualify for the credit as a fuel that is suitable for use as a fuel in a highway vehicle or aircraft. The fuel must also be below a carbon emissions ceiling and meet a processing requirement.”

“Senator Wyden, as chair of the Finance Committee, is it his understanding that, although a fuel must be suitable for use as a fuel in a highway vehicle or aircraft to qualify for this biofuel production credit, it may still actually be used for any business purpose, including as transportation fuel, industrial fuel, or for residential or commercial heat?”

Senator Wyden, “I thank the Senator for her inquiry. That is correct. The credit is intended to incentivize production of biofuels of a certain quality, usable as fuel for highway vehicles or aircrafts, but not limited only to fuels which are actually used in highway vehicles or aircrafts.”ⁱⁱ

To address this issue, BDNE suggests expanding the definition of “Transportation Fuel” to include language similar to the “Use of Fuel” definition, which was adopted for clarity in REG 155087-05, 73 Fed. Reg. 43890 (July 29, 2008). Here the IRS defined “Use as a fuel” as follows:

- (1) A mixture is used as a fuel when it is consumed in the production of energy. Thus, for example, a mixture is used as fuel when it is consumed in an internal combustion engine to power a vehicle or in a furnace to produce heat. However, a mixture that is destroyed in a fire or other casualty loss is not used as a fuel.



- (2) A mixture is sold for use as a fuel if the producer sells the fuel and has reason to believe that the mixture will be used as a fuel by either the producer's buyer or any later buyer of the mixture.

By including the above, the IRS would eliminate the potential confusion as to what qualifies as a "Transportation Fuel".

Thank you for your consideration to clarify this critical language in the Inflation Reduction Act.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Cassata", is written over the typed name.

Michael Cassata
Chief Development Officer
Biofine Developments Northeast Inc.

ⁱ Senate Finance Committee Section-by-Section Summary of the Inflation Reduction Act, August 2022, p. 24.

ⁱⁱ Statements of Senators Maggie Hassan and Ron Wyden, *Congressional Record*, 168 (2022) p. S4166.