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The Real Estate Roundtable

December 2, 2022

Submitted via www.regulations.gov

The Honorable Lily Batchelder
Assistant Secretary of Tax Policy
U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Mr. William M. Paul
Principal Deputy Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

**Re: Internal Revenue Service [Notice 2022-56](#)
*Comments on the Section 30C Alternative Fuel Vehicle
Refueling Property Tax Credit***

Dear Assistant Secretary Batchelder and Deputy Chief Counsel Paul:

The Real Estate Roundtable (www.rer.org) (“The Roundtable”) appreciates this opportunity to comment on the above-referenced Notice regarding the Section 30C tax credit for Alternative Fuel Vehicle Refueling Property (“Refueling Property”), as amended by the *Inflation Reduction Act (IRA)*.

The Roundtable brings together the leaders of the nation’s top publicly held and privately owned real estate ownership, development, lending, and management firms, together with the leaders of major real estate trade associations, to jointly address national policy issues relating to real estate and the overall economy. The addendum to this letter provides more information on The Roundtable.

The Roundtable addressed issues related to the Section 30C credit in comments submitted last month regarding the *IRA*’s provisions on building efficiency incentives,¹ clean energy technology credits,² taxpayer elections for direct pay and transferability,³ and prevailing wage and other matters that may increase incentive amounts.⁴ We incorporate those comments here. Responses to issues presented specifically in Notice 2022-56 are provided below.

¹ [Notice 2022-48](#), “Incentives for Improving Commercial and Residential Building Efficiency.” The Roundtable’s comments in this docket available [here](#).

² [Notice 2022-49](#), “Certain Energy Generation Incentives.” The Roundtable’s comments in this docket available [here](#).

³ [Notice 2022-50](#), “Elective Payment of Applicable Credits and Transfer of Certain Credits.” The Roundtable’s comments in this docket available [here](#).

⁴ [Notice 2022-51](#), “Prevailing Wage, Apprenticeship, [Etc.] Requirements Under the Act Commonly Known as the Inflation Reduction Act.” The Roundtable’s comments in this docket available [here](#).

Summary

IRS guidance should clarify that:

- Consistent with prior case law, “property of a character subject to an allowance for depreciation” under Section 30C includes property held for lease and does not require that it actually be leased, or that there is any remaining basis in the property when the credit is taken.
- A “single item” of EV recharging property should include: (1) a “charging post” unit; and (2) all attendant non-structural components, placed in service by the taxpayer needed to “construct” such property.
- *IRA* revisions to Section 30C set an upper limit on the credit amount per “single item” of refueling property. Pre-*IRA*, 30C’s cap was on a “per location” basis. The IRS should clarify this change.
- Eligibility for the 30C credit depends on whether the refueling property is located in a census tract that qualifies for the New Markets Tax Credit (NMTC), or in a “non-urban” area as defined by the Commerce Secretary.
 - Census tracts eligible for NMTCs can change based on updated poverty and low-income federal datasets. Taxpayers should get a “safe harbor” for 30C purposes if their project is in an NMTC-eligible tract on the date they sign a contract to purchase refueling property.
 - Section 30C guidance should set forth the Commerce Secretary’s particular “non-urban” criteria relevant for the credit. Those criteria should be tailored to optimize the goal to build-out a nationwide fleet of EV charging stations. Furthermore, “non-urban” census tracts should be clearly identified (similar to NMTC tract mapping tools) so taxpayers can locate them by address, zip code, and other geo-locators.
- Taxpayers are eligible for a Section 30C credit “bonus rate” if they meet prevailing wage and apprenticeship requirements on a “single project.”
 - “Initial guidance” published on November 30 requires further clarification for taxpayers and their contractors to identify Wage Determinations (WDs) for Section 30C construction, alteration, and repair jobs. Further guidance should also explicitly allow taxpayers to rely on a contractor’s certification of compliance with relevant wage and apprenticeship requirements.
 - Refueling properties located at different addresses or requiring separate permits are determinative factors that should require no further analysis to resolve that a 30C project is “single.”

Detailed Comments

1. ***Property “subject to depreciation.”***

Consistent with case law, Treasury guidance should clarify that “property of a character subject to an allowance for depreciation” under Section 30C includes property held for lease and does not require that it actually be leased (provided that it is in a condition that can be used for its intended purpose), or that there is any remaining basis in the property when the credit is taken. *See Twentieth Century-Fox Film Corp. v. Commissioner*, 45 T.C. 137, 143 (1965); *see also 512 W. 56th St. Corp. v. Commissioner*, No. 14,335 (T.C.M. 1945), *aff’d.*, 151 F.2d 942 (2nd Cir. 1945). In *Twentieth Century-Fox*, the Tax Court confirmed that the mere offering of property for lease triggers the placed in service date and depreciation. The Tax Court stated that “[t]he law is well established that deductions (including depreciation) are allowable with regard to property held for the production of income or for use in a trade or business even though no income is currently being received or accrued therefrom and even though the asset is currently idle. *Kittredge v. Commissioner*, 88 F. 2d 632 (C.A. 2, 1937), affirming a Memorandum Opinion of this Court; *George S. Jephson*, 37 B.T.A. 1117 (1938); *Independent Brick Co.*, 11 B.T.A. 862, 869 (1928); *Connell v. Falls*, an unreported case (S.D. Fla. 1953, 45 A.F.T.R. 967, 54-1 U.S.T.C. par. 9119); *Yellow Cab Co. of Pittsburgh v. Driscoll*, 24 F. Supp. 993 (W.D. Pa. 1938); accord, *Higgins v. United States*, 75 F. Supp. 252 (Ct. Cl. 1948).”

2. ***A “single item” of EV recharging property should include: (a) a “charging post” unit; and (b) all non-structural components, placed in service by the taxpayer to “construct” such property.***

Section 30C allows a tax credit for a “single item” of “qualified alternative fuel vehicle refueling property” (hereafter, “refueling property”) that is “placed in service” by the taxpayer. Regarding one type of refueling property – namely, EV charging stations – “single item” should mean: (1) the “charging post” unit regardless of the number of “ports” or “connectors” on such a unit; and (2) all non-structural components needed to “construct” the item to serve its purpose to recharge a vehicle with electricity.

(a) *The “charging post” unit*

The U.S. Energy Department’s [Alternative Fuels Data Center website](#) explains that the charging infrastructure industry has “aligned with a common standard” to describe EV charging equipment. A “unit” frequently called a “charging post” may house multiple “ports” that will allow several vehicles to charge-up at that single “post.” Each “port” on the “post” can only charge one EV at a time, but a “port” may also have multiple lines that serve as “connectors.” The 30C tax credit amount should include the relevant percentage of the cost of a single “charging post” item purchased by the taxpayer.

- **Example:** If a “post” with four ports costs \$25,000, the taxpayer may claim a \$7,500 “bonus” credit under 30C (*i.e.*, 30% of \$25,000). If the taxpayer decides instead to purchase two “posts” at \$15,000 each, and each “post” has two “ports” that collectively may recharge a total of four EVs, then the taxpayer may claim a \$9,000 “bonus” credit (*i.e.*, 30% of \$30,000).

(b) All of the non-building components needed to “construct” the item

A “single item” should also include all wires, cables, outlets, plugs, electrical panels, bolts, anchors, floor mounts, hardware and other “equipment” – that are not part of a building⁵ – needed to “construct” the charging unit. Such non-building equipment required for the unit’s “construction” should be part of the “single item” because Section 30C’s “bonus” credit depends on the payment of prevailing wages to laborers and mechanics involved “*in the construction of*” refueling property.⁶

3. The cap on 30C credit amounts is determined per “single item” – not per “location.”

To avoid confusion with prior law,⁷ the IRS should clarify that the \$100,000 credit cap⁸ pertains to a “single item” of refueling property – and the cap no longer applies “per location.”

- **Example:** A taxpayer places in service 25 EV “charging posts” at a single parking lot location. The eligible 30C tax credit for each “post” is \$5,000, resulting in a \$125,000 total incentive. The taxpayer can claim the full \$125,000 credit.

4. Census tracts that qualify for New Market Tax Credits (NMTCs) on the date a taxpayer signs a binding contract to purchase refueling property should get a “safe harbor” if those tracts later lose eligibility based on updated economic data.

Eligibility for the Section 30C tax credit depends (in part) on whether the property is located in an NMTC-qualifying census tract.⁹

Qualifying NMTC tracts are periodically updated based on 5-year poverty and income data provided by the [American Community Survey \(ACS\)](#). Currently, NMTC tracts are determined under [2011-2015](#) ACS data. A more recent vintage of 5-year ACS data, covering 2016-2020, was [released](#)

⁵ The latest **draft** “Instructions for Form 8911” ([Rev. Dec. 2022](#)), reflecting the *IRA*’s changes to Section 30C, state that refueling property “is any property (*other than a building or its structural components*)” used to recharge an electric vehicle, or to store or dispense alternative fuels to propel a vehicle. (Emphasis supplied)

⁶ 26 U.S.C. § 30C(g)(2)(A).

⁷ Pre-*IRA*, the 30C credit cap was \$30,000 per location. See, *e.g.*, pre-*IRA* “Instructions for Form 8911” ([Rev. Jan. 2022](#)), “Specific Instruction” for Line 6 (“If you placed refueling property with business/investment use in service at more than one location, and property in at least one location would result in an amount of more than \$30,000 if property from that location was reported separately on line 5, add the separate amounts for each location, **but don’t include in the total more than \$30,000 for any single location.**”) (Emphasis supplied)

⁸ 26 U.S.C. § 30C(b)(1).

⁹ *Id.* § 30C(c)(3)(B)(i)(I).

[this past March](#). As The Roundtable can best ascertain, NMTC census tracts have not yet been updated to reflect the most recent 5-year ACS dataset from 2016-2020.

Taxpayers planning Section 30C projects now need assurance that, if their properties are currently located in NMTC tracts, their eligibility will not change because of ACS data updates. They should get a “safe harbor” that tract eligibility is protected as of the date they sign binding contracts to purchase refueling property. Or, the IRS should allow a transition period for currently qualifying NMTC tracts under 2011-2015 data to remain effective at least for several years after 2016-2020 data establishes new tract qualifications.

5. *Non-“urban areas” should be clearly defined and mapped.*

In addition to NMTC tracts, refueling properties are 30C eligible if they are located in a census tract that is “not an urban area” designated by the Commerce Secretary based on the most recent decennial census.¹⁰ The Census Bureau released final “Urban Area Criteria for the 2020 Census” this past March.¹¹ This criteria defines “Urban Area” as: “A statistical geographic entity consisting of a densely settled urban core created from census blocks and contiguous qualifying territory that together have at least 2,000 housing units or 5,000 persons.”¹²

The IRS should confirm that this is the relevant definition to identify “non-urban” for 30C purposes (and not some other related Census Bureau concept such as “Initial Urban Area Core”¹³ or “Metropolitan Statistical Area”¹⁴). Furthermore, to support the objective to build-out a nationwide fleet of recharging stations, for Section 30C eligibility the Census Bureau’s criteria should be tailored so that “Urban Area” does *not* encompass airports and other territory that is “noncontiguous” to the urban “Core.”¹⁵ Hotels, parking lots, and service stations at or near airports and “commuter destinations” are exactly the kinds of locations that should support EV charging stations to meet the IRA’s climate mitigation objectives.

Finally, the Commerce Department should map “non-urban” census tracts that qualify under Section 30C so taxpayers can identify them with ease by address, zip code, and other geo-locators.

¹⁰ *Id.* § 30C(g)(3)(B)(i)(II), (ii).

¹¹ [87 Fed. Reg. 16,706](#) (March 24, 2022)

¹² *Id.* at 16,715 (definition of “Urban Area”)

¹³ *Id.* at 16,714, col. 2 (“Initial Urban Core” defined as an “Eligible Block Aggregation [EBA] that contains at least 500 housing units defined at the first stage of delineation”).

¹⁴ *Id.* at 16,714, col. 3 (“Metropolitan Statistical Area” defined as a “core based statistical area associated with at least one urban area that has a population of at least 50,000”).

¹⁵ *Id.* at 16,712, col. 2 (describing how “nonresidential urban territory that is noncontiguous, yet near the Core EBA” – such as airports and “commuter destinations” – may be aggregated for “inclusion” in an “Urban Area”).

6. *Section 30C Prevailing Wage Issues*

- (a) *“Initial guidance” just published by the IRS leaves unanswered questions as to how taxpayers and their contractors should identify prevailing wages for purposes of Section 30C (and other IRA incentives).*

Treasury’s November 30, 2022 “Notice of Initial Guidance”¹⁶ on the *IRA*’s prevailing wage provisions raises key questions that warrant clarification. Uncertainties remain as to identification of appropriate wage rates for 30C projects (or for that matter, any *IRA* facility eligible for “bonus rate” credit amounts). In the Notice’s section entitled “How to Satisfy the Prevailing Wage Rate Requirements,”¹⁷ the Initial Guidance directs taxpayers and their contractors to:

- (a) Search the www.sam.gov website to determine if the Labor Secretary has published a Wage Determination (“WD”) based on the facility’s geographic area, types of construction, and “all” relevant labor classifications for “construction, repair, or alteration work.”¹⁸
- (b) In the “limited circumstance when no labor classification on the applicable prevailing wage determination applies to the planned work,” the taxpayer can send an email to IRAPrevailingwage@dol.gov and request the Labor Department’s Wage and Hour Division to provide a WD.¹⁹

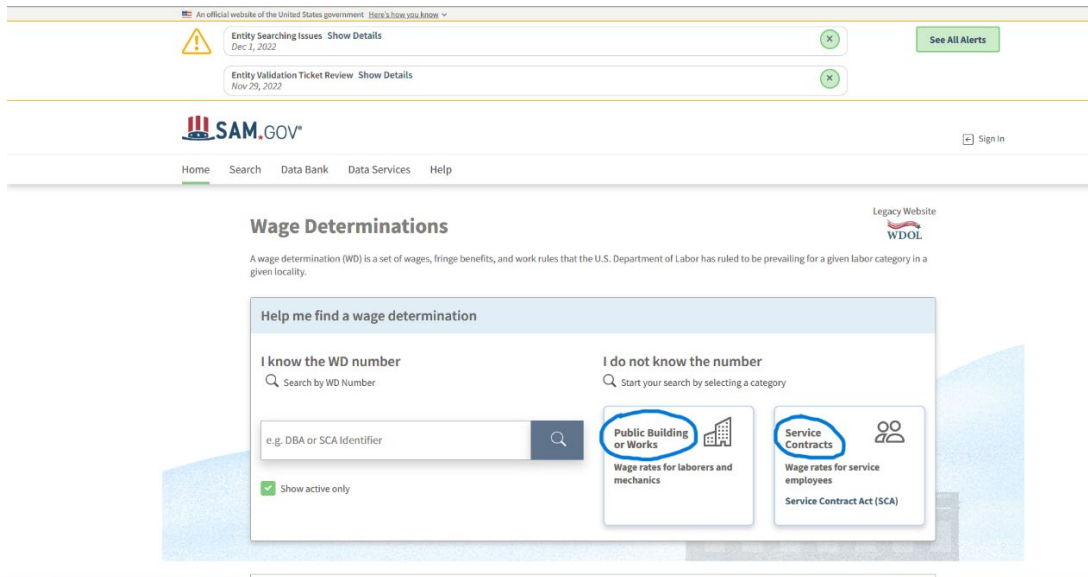
Clicking the WD link on www.sam.gov, as per step (a) brings the user to a landing page prompting a search by “WD number” – and if the “WD Number” is unknown, the user can search by category of either “Public Building or Works” or “Service Contract”:

¹⁶ Department of the Treasury, Internal Revenue Service, “Prevailing Wage and Apprenticeship Initial Guidance Under Section 45(b)(6)(B)(ii) and Other Substantially Similar Provisions,” Notice of Initial Guidance, [87 Fed. Reg. 73,580](https://www.federalregister.gov/documents/2022/11/30/2022-24481-01) (Nov. 30, 2022).

¹⁷ *Id.* at 73,582 col. 3.

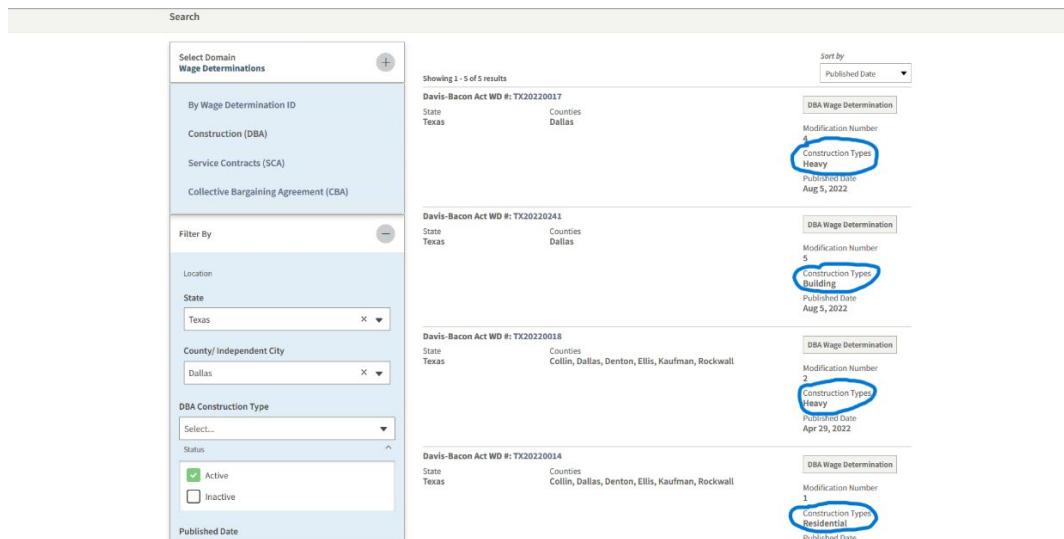
¹⁸ *Id.*

¹⁹ *Id.* at 73,583, col. 1.



➤ Requested clarification: Is there any WD number for EV charging station construction? Assuming there is no such number, should a taxpayer constructing a *private sector* 30C project click on “Public Buildings or Works” or “Service Contract” to ascertain a relevant WD? Because prevailing wages are relevant to “construction, alteration, or repair” jobs, is “construction” covered by the “Public Buildings or Works” category, and “alteration or repair” covered by the “Service Contracts” category?

- Assuming a taxpayer should click on “Public Buildings or Works,” WDs appear for “Construction Types” denoted as “Building,” Heavy,” “Highway,” and “Residential.” For example, a WD search for Dallas, TX shows:



- *Requested clarification:* What “Construction Type” WD is relevant for installing a 30C EV charging station in a parking lot or garage serving a building, located off a highway interchange, that is mixed-use and serves both business and residential purposes? Is “Building” or “Residential” the relevant “Construction Type” (assuming it is neither “Heavy” nor “Highway”)?
- A particular WD for Cook County, IL²⁰ provides “Rates” and “Fringes” for Carpenters; Electricians; Electrical Technicians; four “groups” of Power Equipment Operators; twelve “groups” of Laborers” for “Building and Residential”; and Painters, among others.
- *Requested clarification:* Should a taxpayer and/or its contractors consult all of these different labor classifications for construction of an EV charging station for purposes of Section 30C? Should “Service Contract” WDs be searched for post-construction alteration or repair jobs? Should taxpayers instead email the Wage and Hour Division for WDs regarding EV charging station “construction” and “alteration and repair”? (These same questions would apply for purposes of “construction” of solar, microturbines, and other facilities for Section 48 purposes, and “installation” of energy efficient building property for Section 179D purposes).

Moreover, in the vast majority of cases, the direct employer of the laborers, mechanics, and apprentices constructing or installing refueling property will not be the property owner taxpayer claiming the 30C credit. Other than a contractual relationship with the firm performing the work, the property owner will have no direct oversight or immediate control over the contractor’s employment practices, wages, overtime pay, or other workplace matters. The contracted firm will be in a better position to evaluate the specific roles and duties of its employees and determine the appropriate prevailing wage classification for purposes of the actual project.

Accordingly, further guidance should specifically allow property owners to rely on a certification by a contractor, under penalty of perjury, that laborers and mechanics employed by the contractor (or by the contractor’s subcontractors) are paid prevailing wages for the 30C project and that the contractor satisfies *IRA* apprenticeship requirements. An exception to the safe harbor could apply if the property owner knew or had reason to know that the contractor’s certification was false.

- (b) ***Refueling properties located at different addresses or requiring separate permits are determinative factors that should require no further analysis to resolve that a 30C project is “single” for purposes of increased credit amounts.***

Section 30C’s “bonus rate” is determined (in part) based on whether multiple refueling properties are part of a “single project.”²¹ Guidance should give taxpayers clarity on the term “single

²⁰ See Davis-Bacon Act [WD#IL20220009](#).

²¹ 26 U.S.C. § 30C(g)(1)(B).

project” so they know when aggregation of multiple refueling properties is necessary for prevailing wage and apprenticeship purposes.

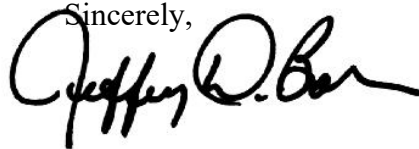
Existing [Notice 2018-59](#) concerning Section 48’s “Beginning of Construction Date” is analogous. It states that whether “multiple energy properties are operated as part of a single project will depend on the relevant facts and circumstances” – a test that balances eight criteria.²² The Roundtable believes, and respectfully requests, that the IRS can provide more clarity than Notice 2018-59 currently offers to ascertain “single project” status for Section 30C. A subjective “facts and circumstances” test may sometimes be appropriate for this inquiry. However, in lieu of always requiring multi-factor balancing, certain single criteria stand-out on Notice 2018-59’s list that should *alone* determine whether an alternative refueling project is “single” without further analysis.

We discern that such “lone determinant” factors should depend on regulatory matters beyond a taxpayer’s ability to control. If EV charging stations and other refueling properties are constructed at separate, non-contiguous addresses created by local government, then they should be “single projects.” Likewise, each EV charging station “post” (and the post’s attendant non-building equipment) that may require a different construction permit from a regulatory body should conclusively deem each project as “single.”

* * *

Thank you for the opportunity to submit comments. For more information, please contact: Duane J. Desiderio, Senior Vice President and Counsel (energy) (ddesiderio@rer.org), and Ryan P. McCormick, Senior Vice President and Counsel (tax) (rmccormick@rer.org).

Sincerely,



Jeffrey D. DeBoer
President and Chief Executive Officer

²² Section 7.01(2) of Notice 2018-59 (at pp. 21-22) These eight criteria “may” include whether the energy properties: (1) are owned by a single legal entity; (2) are constructed on contiguous pieces of land; (3) are described in a common power purchase agreement(s); (4) have a common intertie; (5) share a common substation; (6) are described in one or more common environmental or other regulatory permits; (7) constructed pursuant to a master construction contract; or (8) are financed pursuant to the same construction loan agreement.

ADDENDUM

About The Real Estate Roundtable

<https://www.rer.org/about-us/mission>

The Roundtable's membership represents over 3 million people working in real estate; some 12 billion square feet of office, retail, and industrial space; over 4 million apartments; and more than 5 million hotel rooms. It also includes the owners, managers, developers, and financiers of senior, student, and manufactured housing as well as medical offices, life science campuses, data centers, cell towers, and self-storage properties. The collective value of assets held by Roundtable members exceeds \$4 trillion.

Who We Are

