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Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-56)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Via Federal eRulemaking Portal: http://www.regulations.gov

Subject: bp America Inc. Technical Comments on Notice 2022-56

Office of Associate Chief Counsel:

Pursuant to the request for comments on § 30C of the Internal Revenue Code ("Code") as enacted in the Inflation Reduction Act of 2022 ("IRA"), we are seeking confirmation and/or clarification, pursuant to Section 3.02 of IRS Notice 2022-56.

bp is a global integrated energy company with a significant footprint in the US. In the US, bp employs more than 12,000 people and supports about 245,000 jobs. Between 2005 and 2021, bp invested more than $130 billion in the US; and in 2021 alone, our operations contributed about $60 billion to the US economy. We have a larger economic footprint in the US than anywhere else in the world.

bp seeks to provide the world with secure, affordable, and lower carbon energy. Our ambition is to be a net zero company by 2050 or sooner, and to help the world get to net zero. We believe electric vehicles have a critical role in helping to achieve net zero. Electric vehicle sales continue to outpace their gas-powered predecessors, and as the number of electric vehicles on the road increases, annual demand for electricity to charge them will grow. US infrastructure related to electric vehicle charging stations must be developed to encourage continued growth. Thus, the IRS needs to provide clear and predictable rules to support Congress' intended expansion of electric vehicle charging infrastructure.

Section 3.02

<u>(2)</u> Section 30C(b) provides that the credit is allowed with respect to any single item of qualified alternative fuel vehicle refueling property. How should "single item" be defined for this purpose?

We recommend that the IRS and Treasury issue guidance that each charging port connected to an electric vehicle supply equipment ("EVSE") power cabinet be considered a separate "single item" for purposes of § 30C, irrespective of whether the port shares a power cabinet with other ports. Additionally, all costs associated with the alternative fuel vehicle refueling property, including transportation, appraisal, regulatory approval and utility connection charges, should be considered depreciable basis in the single item.

EVSE comes in a variety of configurations. Some EVSE can only service one vehicle at a time, even if it contains multiple charging ports. Increasingly, however, EVSE contains multiple ports that can simultaneously fuel two (and potentially more) vehicles. For instance, a 350-kW cabinet may contain several ports, each with the capacity to deliver the entire 350-kW electric charge, or to deliver somewhat less of a charge depending on the number of electric vehicles located at the cabinet and the relative needs of each electric vehicle. This configuration of EVSE maximizes the flexibility of the infrastructure to serve customer needs at a lower cost than installing multiple 175-kW power cabinets. Failure by the IRS and Treasury to treat each port as a single item would favor one EVSE configuration over other options, irrespective of technological advancement. Therefore, to promote technological advancement, a port should be defined as the single item.

In addition, since the tax credit is claimed on the cost not only of the charging port, but also the cabinet, related transportation, appraisal, regulatory approval and utility connection charges, the caps in § 30C(b) on the tax credit that can be claimed on each single item should be applied by allocating the capitalized costs of the full cabinet with charging ports based on the number of charging ports. For example, if the entire qualified alternative fuel vehicle refueling property costs $400,000 and has four charging ports, then the tax basis in each single item should be allocated on a prorated basis and be $100,000.

Section 3.02

<u>(4)</u> – Section 30C(c)(3) requires alternative fuel refueling property to be placed in service in an eligible census tract. What guidance, if any, is needed to clarify the definition of eligible census tract?

Section 30C defines "eligible census tracts" as any census tract that is described in § 45D(e) or is not an urban area. Section 45D(e) references an established definition of low-income communities, and § 30C defines an "urban area" as "a census tract (as defined by the Bureau of the Census) which, according to the most recent decennial census, has been designated as an urban area by the Secretary of Commerce."

The Census Bureau does not, however, designate census tracts as urban or rural. Rather, it classifies census *blocks* as urban or rural. Each census tract is typically composed of 100 or more census blocks. Accordingly, the IRS and Treasury should adopt a clear methodology for determining which census tracts should be classified as "urban," and that determination should be based on census block data. In this manner, the IRS can determine what census tracts are "not urban" and eligible for the § 30C credit.

We recommend that the IRS and Treasury issue guidance defining an "urban area" under § 30C as a census tract in which no more than 20 percent of census blocks by number are classified as rural by the Census Bureau, i.e., a geographic area that is at most 20 percent rural is not "urban."

Section 3.02

<u>(5)</u> – Section 30C(e)(5) provides that recapture rules similar to the rules of the former § 179A(e)(4) apply for purposes of § 30C. What aspects of §§ 30C and former 179A should apply without modification for this purpose and what aspects should be modified?

Generally, the recapture rules under Treas. Reg. § 1.179A-1 appear to work well in the context of § 30C. Simple modifications to the current regulatory language describing "qualified clean-fuel vehicle refueling property" can easily be modified to refer to "alternative fuel vehicle refueling property."

The IRS and Treasury should provide an exception to recapture where an "eligible census tract," as defined under § 30C(c)(3)(B) ceases to qualify as an "eligible census tract" within the recapture period and causes qualified alternative fuel vehicle refueling property to no longer meet the definition in § 30C(c)(3)(A). If, for example, an updated census performed by the Census Bureau redefines a tract in which "qualified alternative fuel vehicle refueling property" is located from a "non-urban" to an "urban area" within the meaning of § 30C(c)(3)(B)(ii), a recapture event could occur. Such a result would be inequitable and an exception to the recapture rules should apply in such an event.

Section 3.02

<u>(6)</u> – Please provide comments on any other terms in, or topics related to, § 30C that may require definition or guidance.

We recommend the IRS and Treasury issue guidance with respect to the term "cost" in the context of § 30C. The cost basis of property upon which the credit depends should not be reduced by the amount of grants a taxpayer receives under other federally funded state incentives programs, such as the National Electric Vehicle Infrastructure Program ("NEVI"), that are included in the Bipartisan Infrastructure Law ("BIL"). Because such grants should be included in the taxpayer's taxable income under § 118(b)(2), the taxpayer's cost basis for § 30C purposes should not be reduced by them.

Section 3.02

<u>(6)</u> – Please provide comments on any other terms in, or topics related to, § 30C that may require definition or guidance.

Section 30C(e)(2) provides the person who sells (rather than leases) qualified alternative fuel vehicle refueling property to an entity described in § 50(b)(3) or (4), e.g., a tax-exempt or government entity, may claim the credit with respect to such property if it clearly discloses to the customer the amount of the tax credit it will claim. In such a case, the tax-exempt or government entity may ask the seller for a discount on the purchase price on account of the tax credit the seller will receive.

Other situations will occur where sellers of qualified alternative fuel vehicle refueling property sell to taxpayer customers that do not forecast taxable income. In such cases, the customers may seek a discount with respect to the purchase of the qualified alternative fuel vehicle refueling property in exchange for transferring the tax credit to the seller under § 6418.

We recommend the IRS and Treasury issue guidance clarifying that in cases where the tax credit is retained by the seller on account of a sale to a tax-exempt or government entity, the credit amount , is calculated on the seller's tax basis in the qualified alternative vehicle refueling property before the sale to the customer, without regard to the discount the seller gives the customer in exchange for letting the seller keep the tax credit. We recommend the guidance make clear that in cases where the tax credit is sold by a taxpayer customer to the seller under § 6418, the customer's tax basis in the refueling property is used to calculate the tax credit.

We also recommend the IRS and Treasury issue guidance to address the cash consideration requirement in § 6418(b)(1) with respect to transfers of tax credits and the exclusion of such consideration from the customer's gross income. For example, can the customer simply be charged a lower price for the refueling property, rather than requiring payment from the customer to the seller for the refueling property followed by the immediate payment from the seller to the customer for the credit? If these transactions are reflected as a single netted transaction, then must the netting be shown clearly on the invoice? If the customer is a business purchaser, i.e., a taxpayer rather than a tax-exempt entity, what is its basis in the refueling property for depreciation?

Conclusion

We appreciate the opportunity to submit comments and the opportunity to meet with the IRS and Treasury to discuss these issues further as proposed and final rules are promulgated.

Respectfully submitted,

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