

Congress of the United States

Washington, DC 20515

October 21, 2024

The Honorable Janet L. Yellen
Secretary
Department of the Treasury
1500 Pennsylvania Ave N.W.
Washington DC, 20220

Dear Secretary Yellen:

We write in response to the Treasury Department's ("Treasury") Notice of Proposed Rulemaking Reg-132569-17 ("NPRM") for the investment tax credit ("ITC") under Section 48 of the Internal Revenue Code, as amended ("Code") and underscore the impact the regulation would have on the expanded deployment of geothermal heat pump ("GHP") system technology. In particular, the NPRM prevents multiple taxpayers that own different components of a GHP that are functionally interdependent from claiming a tax credit under the ITC. We believe this proposed rule misapplies congressional intent and creates difficulties for taxpayers in their ability to benefit from the credit.

Correcting the proposed regulation in the final rule is critical for home-based and community scale GHP systems which, by design, typically involve multiple owners. GHP networks can serve a diverse array of customer buildings while those customers own and maintain their own GHP equipment within the building.

GHP systems are among the most efficient ways to heat and cool buildings and GHP deployment holds enormous potential to lower energy bills for American families and businesses and reduce emissions from heating and cooling homes, schools, and businesses. Due to their reliable performance during temperature extremes, GHP systems provide households with certainty in their energy bills and insulate consumers from peak energy price shocks due to extreme weather events.

A December 2023 report from the Department of Energy's Oak Ridge National Laboratory confirms that GHPs are a ready-made strategy for decarbonizing buildings, reducing the need for new electricity generation and transmission infrastructure, and bringing energy savings to Americans nationwide. According to DOE's report, broad adoption of GHPs would result in cumulative savings to the U.S. economy of more than \$1 trillion by 2050, eliminating the need for 24,500 miles of transmission lines, creating a 13 percent decrease in the amount of required electricity generation, and a reducing CO₂ emission by 7,351 million metric tons.

As drafted, the NPRM prevents multiple taxpayers who own different components of a GHP that are functionally interdependent from claiming a tax credit under the ITC. This is based on Treasury's interpretation that the ground loop and the GHP units are functionally interdependent yet distinct components of the same system (unless the two taxpayers share more than 50 percent overlapping ownership of the equipment). This interpretation contravenes the plain text of Section 48, which permits the owner of energy property to claim the ITC when the original use of that energy property began with such owner. With the enactment of the Inflation Reduction Act, Congress gave much overdue recognition to GHP systems by granting the technology the same credit as the other ITC-eligible technologies.

To ensure that Americans can appropriately benefit from the energy and cost savings provided by GHP systems, Treasury should modify the proposed rule to ensure that different taxpayers who own separate,

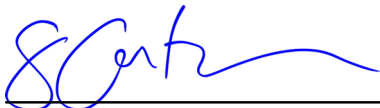
functionally independent components of a GHP system are eligible to claim the ITC for the equipment they own.

The proposed rule also creates a new trap for taxpayers who may believe they own an entire unit of energy property and are eligible for the ITC but are later deemed ineligible due to a finding by the IRS. This makes the ITC less flexible and would pose an increased risk for taxpayers, likely disincentivizing private sector investments in GHP and other ITC-eligible projects. Additionally, the final rule should allow individual items of energy property to qualify for the ITC even when they are placed into service after other related energy property. This level of flexibility will further incentivize the widespread investment in and adoption of GHP systems.

To ensure the maximum deployment of GHP systems, we urge Treasury to incorporate the above changes in any final rule on the Section 48 ITC tax credit issued by the agency.

Thank you for your attention to this important matter.

Sincerely,



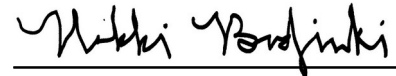
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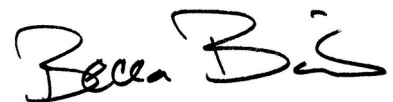
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