

Congress of the United States

Washington, DC 20515

November 15, 2024

The Honorable Janet Yellen
Secretary of the Treasury
Washington, DC 20220

Dear Secretary Yellen:

We are writing to express our concerns regarding the unwarranted and overly restrictive interpretation of 26 U.S. Code § 45W, the Credit for Qualified Commercial Clean Vehicles, which was signed into law as part of the Inflation Reduction Act of 2022 (IRA). Congress created 45W with the express purpose of providing a robust and enduring incentive to spur the development and deployment of qualifying clean on-road AND off-road commercial vehicles. Unfortunately, the Internal Revenue Service's (IRS) Clean Vehicle Team (CVT) appears to be challenging manufacturers' applications to qualify their equipment for the tax credit based on outdated, pre-IRA interpretations, guidance, and caselaw that does not properly consider and give meaning to the IRA's statutory language and intent.

The U.S. off-road mobile machinery industry supports approximately 2.3 million jobs that pay 33% above the national average. A number of market leaders are endeavoring to offer products that utilize alternative power technologies such as battery or mainline electric for a wide variety of clean mobile off-road vehicles used in construction (e.g. bulldozers, excavators, wheel loaders, backhoes, and dump trucks), forestry (e.g. feller bunchers, skidders, and log loaders), agriculture (e.g. sprayers and combine harvesters), and other outdoor applications (e.g. motor graders, asphalt pavers, forklifts, and mowers). While these alternative power technologies provide multiple benefits including better performance, reduced local air pollution, and lower carbon emissions, their widespread rapid adoption is contingent on access to the 45W incentive until mass scale allows these products to become financially competitive with conventional off-road vehicles.

It is our understanding that the IRS's CVT has challenged the eligibility of these promising alternative power technologies for 45W based on a misapplied definition of "mobile machinery". The preexisting statutory definition of "mobile machinery" exists as a nested exception to the 26 U.S. Code § 4051 tax on heavy trucks and trailers. The CVT has asserted that to qualify as "mobile machinery" under the IRA's new 45W credit, the vehicle must first be one of the types listed in the tax imposed by the preexisting section 4051 tax, as though the vehicle was applying for an exemption from the tax in section 4051. As lead authors of the 45W credit, we can clarify for the record that was not the intent of Congress or an accurate legal interpretation. Those interpretations would be appropriate in the context of applying section 4051, however, 45W does not reference section 4051, nor any other portion of section 4053 that would require incorporating the requirements of section 4051 into the definition of "mobile machinery" when used in the context of 45W eligibility.

Congress was clear in the IRA that the 45W tax credit for qualified commercial clean vehicles explicitly includes off-road vehicles. The IRA references a single paragraph of existing code, section 4053(8), for its definition of "mobile machinery" to be used in the context of the 45W tax credit, and importantly, supplements the referenced definition with additional statutory meaning in the parenthetical at the end of 45W(c)(2)(B):

(B) is mobile machinery, as defined in section 4053(8) (including vehicles that are not designed to perform a function of transporting a load over the public highways),

We therefore urge Treasury to provide guidance that gives full meaning and effect to the statutory language contained in the parenthetical at 45W(c)(2)(B) to include off-road vehicles and use the definition for “mobile machinery” as defined in section 4053(8), without adding unwarranted restrictions connected to section 4051. We do not believe there is another appropriate conclusion to reach given the congressional history and a plain reading of the statute.

We appreciate the immense amount of vital work that falls to the Treasury Department to implement the IRA, which has already catalyzed hundreds of billions in new domestic clean energy investments, creating more than 300,000 jobs. We hope you are able to focus additional attention on this relatively minor matter so that we can capitalize on the great potential of electrifying off-road commercial vehicles in order to strengthen our economy, create jobs, and combat the climate crisis.

Thank you for your consideration and we look forward to your timely reply.

Sincerely,


Maria Cantwell
United States Senator


Robert P. Casey, Jr.
United States Senator


Michael F. Bennet
United States Senator


Earl Blumenauer
Member of Congress


Jimmy Panetta
Member of Congress


Chris Van Hollen
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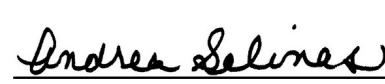
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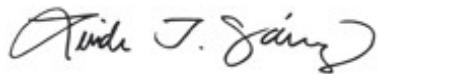
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