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Internal Revenue Service  
CC:PA:LPD:PR (Notice 2022-51), Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Subject: Internal Revenue Service Notice 2022-51

To Whom It May Concern:

The Coalition for Energy Efficient Jobs & Investment (“Coalition”) is pleased to submit comments in response to the Internal Revenue Service’s (“IRS”) request for comments on Notice 2022-51. The Coalition represents a broad spectrum of stakeholders that utilize the Section 179D energy efficient commercial buildings deduction, including real estate, manufacturing, architecture, contracting, engineering, building services, financing, labor, education, environmental and energy efficiency advocates.

### **Challenges in Applying the Inflation Reduction Act’s Prevailing Wage and Apprenticeship Requirements to the Section 179D Deduction**

Section 179D stakeholders regularly work with union labor and share in the common goal to advance well-paying, family-supporting jobs. There are some challenges, however, in applying the prevailing wage and apprenticeship (“labor”) requirements from the Inflation Reduction Act to the Section 179D deduction. Although projects can qualify for the modest base deduction without meeting the labor requirements needed to satisfy the enhanced deduction requirements, the increased costs and potential challenges in finding the requisite type of labor in certain areas of the country may deter stakeholders from utilizing the Section 179D deduction entirely, leaving critical energy efficient upgrades on the table counter to the intent of the policy.

It is important to note that, Section 179D, in the spirit of accelerated depreciation, is a *deduction* and not a *credit*. We estimate that with the addition of labor requirements on Section 179D projects in order to receive the enhanced deduction, the deduction would need to be more than three times what it is currently, which would push the deduction beyond the cost basis of the project, which is prohibited under Section 179D.

Notably, Section 179D is often deployed in the public sector to enhance equity and strengthen communities’ civic infrastructure. Section 179D has an allocation feature that supports state and local governments, and now a broader spectrum of tax-exempt entities, with pursuing energy efficiency projects. In fact, many Section 179D projects are carried out within governmental

buildings. However, this structure creates unique challenges when adding the Inflation Reduction Act's labor requirements to qualify for the enhanced deduction.

Specifically, the governmental building owner is not the recipient of the tax benefit. In this regard, Section 179D is a *design* incentive, and not a *construction* incentive. Designers, such as architects and engineers, are typically not contemplated under current labor requirements and often do not have say over the type of labor used to install a project. Labor is typically under the purview of the governmental owner or construction firm, which oftentimes are already required to use minority-owned, local, or small business contractors under state or local laws and regulations. Some larger scale projects have several hundred subcontractors, largely local small businesses, reflective of the requirements and labor availability in the jurisdiction.

Given these concerns, we believe that the lower value of the base deduction and challenges in meeting the enhanced deduction may reduce the uptake in Section 179D projects, particularly in governmental or tax-exempt settings, which in turn will have a negative impact on ongoing efforts to reduce energy usage and, in turn, carbon emissions. As the IRS and Treasury work to implement the Inflation Reduction Act's labor requirements, we ask you to please keep in mind these perspectives and any unique impacts or challenges created within the context of the Section 179D deduction.

### **Prevailing Wage Requirement**

The Coalition encourages the IRS and Treasury to keep in mind the unique circumstances of the Section 179D deduction with respect to implementing the prevailing wage requirements under the Inflation Reduction Act. For example, with respect to Section 179D, the legislation is clear that the prevailing wage requirement would only apply to installation of energy efficient property (P.L. 117-169, Sec. 13303 (b)(4)(A)). As noted above, though, the taxpayer taking the deduction may not have control over the types of laborers used and wages paid by the contractors/ subcontractors installing the property, particularly in circumstances where the deduction has been allocated to the project designer. We encourage the IRS and Treasury to work through potential solutions to address such concerns when working to implement the prevailing wage requirement.

### **Apprenticeship Requirement**

**Section 45(b)(8)(D)(ii) provides for a good faith effort exception to the apprenticeship requirement.**

**Question 2a: What, if any, clarification is needed regarding the good faith effort exception?**

The Coalition would appreciate clear guidance with respect to what constitutes a good faith effort, in particular specific guidance on how to substantiate that the taxpayer worked in good faith to meet the apprenticeship requirement (e.g., whether documentation is required). For example, we encourage the IRS to allow a taxpayer to rely on an attestation from a contractor or subcontractor installing the property with respect to confirming the installer made a good faith effort to comply with the apprenticeship requirement.

Given the potential increased interest in utilizing apprentices, we encourage the IRS, Treasury, the Department of Labor, and State Apprenticeship Agencies to work together to improve existing centralized resources with regards to locating and hiring apprentices, and potentially

issue certificates if those resources determine that an apprentice is not available for a particular project.

In the event that a taxpayer makes a good faith effort to locate an apprentice and is unable to do so, the Coalition would appreciate clarity from the IRS and Treasury that the taxpayer would not need to hire an apprentice in the middle of a project should one become available. We are concerned this may be disruptive to the project and create potential challenges with respect to project contracts.

**Conclusion**

The Coalition is happy to serve as a resource to the IRS and Treasury as you work to implement the Inflation Reduction Act's labor requirements. Please contact Karishma Page, Partner, K&L Gates, if you have any questions or would like to discuss these comments ([Karishma.Page@klgates.com](mailto:Karishma.Page@klgates.com)).

Thank you for your consideration.

Sincerely,  
The Coalition for Energy Efficient Jobs & Investment