

## Comments of the Business Council for Sustainable Energy

RE: Department of Treasury and Internal Revenue Service Notice 2022-48, Incentive Provisions for Improving the Energy Efficiency of Residential and Commercial Buildings in the Inflation Reduction Act (P.L.117-169)

December 7, 2022

The Business Council for Sustainable Energy (BCSE) appreciates the opportunity to respond to the notice from the Internal Revenue Service and Treasury Department, which requests comments on Notice 2022-48 in advance of upcoming guidance regarding the implementation of the energy efficiency of residential and commercial buildings under the Inflation Reduction Act (117-169).

In this notice, the Treasury Department seeks general as well as specific comments on issues arising from the amendments to the tax code related to the provisions of the Section 25C energy efficiency home improvement credit, the Section 25D residential clean energy credit, the Section 45L new energy efficient home credit, and the Section 179D energy efficient commercial buildings deduction of the Internal Revenue Code.

The Section 25 C residential energy efficiency credit was extended 10 years, starting 1/1/2023 and ending 12/31/2032. The credit covers 30% of the cost of eligible purchases with no lifetime limit and a maximum annual credit of \$1,200, with the exception of \$2,000 for heat pumps, biomass stoves and boilers. Section 25C also includes a maximum credit of \$600 for some products such as traditional air conditioners, furnaces, and boilers. The Section 45L energy efficient new homes credit was extended for 10 years, starting 1/1/2023, through 12/31/2032; multifamily projects must meet prevailing wage requirements or receive lower credit. The Section 179D commercial building credit was expanded with a new sliding scale framework.

### About the BCSE

The BCSE, founded in 1992, is a broad-based clean energy trade association. Its members span many industry sectors, including energy efficiency, energy storage, natural gas, renewable energy, sustainable transportation and emerging decarbonization technologies. BCSE also has an independent small- and medium-size businesses initiative under its banner, the Clean Energy Business Network (CEBN). Together, the BCSE and CEBN represent a broad range of the clean energy economy, from Fortune 100 companies to small businesses working in all 50 states supporting over 3 million U.S. jobs.

### BCSE General Comments

BCSE believes the clean energy incentives under the Inflation Reduction Act represent a historic milestone, which was decades in the making and will put the U.S. on a path to meet its greenhouse gas emission reduction goals with strong and long-term federal policy support. By deploying a broad portfolio of clean, homegrown energy technologies, we can increase and strengthen U.S. energy security, create millions of U.S. jobs, and cut greenhouse gas emissions. Congress recognized this by extending existing and establishing new, expanded, and

modernized tax credits for a broad range of technologies, including renewable energy, energy efficiency, energy storage, sustainable transportation, hydrogen production and carbon capture and storage, among other areas.

The long-term and predictable credits will have great impact and will provide the public policy certainty business urgently needs, leading to steady economic growth and new job creation.

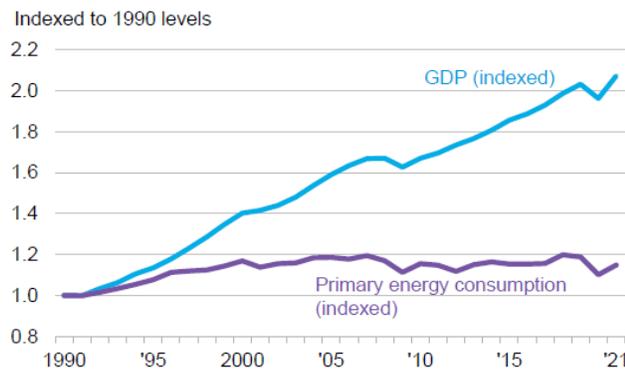
BCSE appreciates the Treasury Department's effort to work expeditiously to provide clarity and certainty to taxpayers and other stakeholders so the climate and economic benefits of this historic legislation can be felt as quickly as possible while following the statutorily required administrative steps and being responsive to public input.

The BCSE-BNEF 2022 [Sustainable Energy in America Factbook](#) highlights just how significant the clean energy economy has become in the U.S, with a record \$105 billion invested into clean energy sectors in 2021. The expanded clean energy credits in the Inflation Reduction Act will lead to further deployment and investment in energy efficiency. The increase in energy efficiency in 2021 resulted in a 1.3% improvement in energy productivity. The ratio of GDP growth vs. energy consumption grew in 2021, suggesting that the long-term trend of the U.S. using energy more efficiently continued – despite two incredibly anomalous years during the covid-19 pandemic.

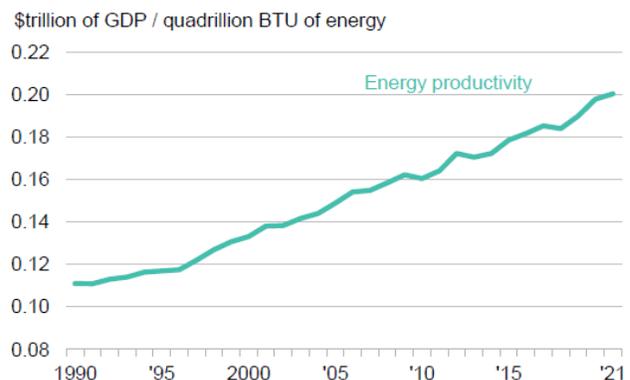
Figure 1: From the 2022 Sustainable Energy in America Factbook, published March 3, 2022

## U.S. energy overview: Productivity

### U.S. GDP and primary energy consumption



### U.S. energy productivity



In this submission, BCSE offers the following perspectives. Of note, as a diverse coalition, not all members take a position or endorse the recommendations included in this submission. BCSE encourages thoughtful consideration of the issues and recommendations included in the submissions of individual BCSE members. Information about BCSE and its members can be found [here](#).

### Collection and Reporting of Data Regarding Tax Credits Needed

BCSE urges the Department of Treasury to establish an appropriate streamlined mechanism for annually collecting and reporting aggregate data on the use of the energy efficiency tax credits, so the public has a

transparent accounting of how taxpayers are using the incentives, as well as to inform the Treasury Department and Congress.

### **Treasury Guidance on Energy Efficiency Credits Should be Issued Quickly**

BCSE urges the Treasury Department to quickly issue guidance on the energy efficiency credits. The affected community of consumers, building owners, manufacturers, designers, and efficiency service providers and contractors will need guidance to make decisions and to implement the provisions of the Inflation Reduction Act as intended by Congress. BCSE recommends that the Treasury Department release guidance in a series of documents, to provide clarifications and details in a timely manner for items that have been decided, rather than wait for all details in all areas before issuing guidance.

### **Clarification Needed Regarding the Stacking of Energy Efficiency Incentives**

The Inflation Reduction Act appears to allow taxpayers to access multiple credits, for example, in the case of multifamily projects, to access both the Sec. 45L credit and the Sec. 179D deduction for commercial buildings. The Treasury Department guidance should clarify that such projects can, in fact, access both incentives, and should clarify any impacts on the basis for each.

BCSE also encourages the Treasury Department to clarify that the 25C residential efficiency credit may be used with other energy efficiency incentive programs, including but not limited to other energy efficiency tax incentives, rebate programs, grants, or publicly supported financing. Congress intended that the purchase and installment of energy efficiency products and technologies be incentivized to provide greater impact on emission reductions and energy savings.

While the statute includes prohibitions related to combining the rebate programs with Federal grants or rebates for the same single upgrade, there is no prohibition related to tax credits. This was purposeful. Therefore, the guidance should affirm that tax credits may be stacked alongside all new and existing fuel neutral federal grants and rebates.

Furthermore, the guidance should clarify that the annual tax credit limit is \$3,200, which includes a \$1,200 limit generally and an additional \$2,000 for fuel gas or electric heat pumps, and biomass stoves and boilers. BCSE understands that both Senate Finance and House Ways and Means staff have confirmed the legislative intent was for these credits to be stacked for up to \$3,200, and that the legislative text was crafted to reflect that. According to an October 21, 2021 press statement released with regard to the language that was ultimately included in the Inflation Reduction Act, Senator Ron Wyden, Chairman of the Senate Finance Committee stated the following:

“There is bicameral agreement on the linchpin of our efforts to combat the climate crisis, including the critical reforms proposed in the Clean Energy for America Act. This landmark legislation ties incentives directly to carbon emissions reduction—the bigger the reductions, the bigger the credits. It also ensures these vital incentives remain in place until we meet our climate goals—no more crafting energy policy a year or two at a time. The agreement also includes robust incentives for clean transportation and energy efficiency.”<sup>1</sup>

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<sup>1</sup> [Chairman's News | Newsroom | The United States Senate Committee on Finance](#)

### **Labor Costs Should be Included in Determining the Amount of the Credit**

BCSE recommends that the Treasury Department clarify that labor costs associated with the building envelope are eligible as expenses allowable under the Section 25C tax credit. Although Congress did not specifically include these costs as it did for residential energy property expenditures in Section 25C(d)(1), it would be difficult to conclude that costs associated with installation of insulation or other envelope components are not a part of the cost of installing qualified energy efficiency improvements in the home given that installation costs are a significant portion of the cost for many improvements. The building envelope is foundational to energy saving in general, and affects the operation, energy savings, and emission reductions achieved by installing energy efficient equipment and appliances.

### **Guidance Should Assist Taxpayers in Identifying State-Level and Rate-Payer Requirements**

Section 25C(e)(2) directs the Treasury Department to prescribe “certification or other requirements” for home energy auditors for credit eligibility. A number of states already have state- and ratepayer-funded energy efficiency programs which cover the cost of a home energy audit and, therefore, customers in these states are unlikely to claim credits for home energy audit costs. However, we recommend that Treasury recognize as qualifying those auditors approved as eligible within various state-level and rate-payer funded energy efficiency programs. By ensuring inclusion of these auditors that are at no cost to the ratepayer, consumers will not risk disqualification for participation in state programs when accessing the 25C tax credit, and when an audit is a condition precedent to participation in the non-federal programs.

While it would prove difficult for 25C to mandate use of a qualified auditor before making energy efficiency improvements, guidance should be given that some states or utility rate-payer programs may require use of a qualified auditor to access state-based energy efficiency incentives, and that taxpayers should review their state or utility rate-payer program requirements to ensure that they are able to fully access those incentives in addition to 25C. We would also request that Treasury provide relevant links in guidance to assist the taxpayer in identifying state-level and rate-payer requirements.

### **Properties Undergoing Major Retrofits Should Be Eligible for New Energy Efficient Home Tax Credit**

The Inflation Reduction Act states that the term “construction” for purposes of the New Energy Efficient Home Tax Credit in Section 45L, includes “substantial reconstruction and rehabilitation.” In its Notice the Treasury Department requests input on whether guidance defining the term “substantial reconstruction and rehabilitation” is needed. BCSE recommends that the term “substantial reconstruction and rehabilitation” be defined to include any existing building that is able to achieve Energy Star or Zero Energy Ready Homes certification.

### **Adjustments to the Applicable ASHRAE 90.1 Standard Should Occur at the Start of the Calendar Year**

In order to provide clarity with regard to the Section 179D commercial building credit, BCSE recommends that the guidance streamline and create certainty with respect to the cadence of updates to the ASHRAE 90.1 Standard. The Inflation Reduction Act requires that the new ASHRAE 90.1 Standard be affirmed by the Secretary of Treasury, after consultation with the Secretary of Energy. We understand this to mean that the IRS will publish the applicable standard for tax purposes as ASHRAE publishes updated standards. As the Treasury Department and IRS consider the cadence of the ASHRAE 90.1 Standard update, we suggest that any adjustments occur at the start of the calendar year, rather than in October of the year the Standard is certified.

The Treasury Department should also move expeditiously to affirm a more recent edition of ASHRAE 90.1 as the effective reference standard moving forward.

### **Conclusion**

Thank you for the opportunity to share the Council's views on this notice. Should you wish to discuss these comments further, please contact BCSE President Lisa Jacobson via email at [ljacobson@bcse.org](mailto:ljacobson@bcse.org).