April 10, 2025

Re: Section 45Z Clean Fuel Production Credit; Request for Public Comments

Docket No.: IRS-2025-0002
Notice: 2025-10

Dear Secretary Scott Bessent,

Green Scissors is a coalition of environmental and taxpayer advocates. For 30 years, the coalition has worked to reduce and eliminate wasteful and environmentally harmful government spending. It is in this spirit of fiscal and environmental responsibility that we submit these comments regarding the 45Z Clean Fuels Production Credit.

General request for comments. The Treasury Department and the IRS request comments on the forthcoming proposed regulations described in section 3 of this notice, the topics identified in section 4.02 of this notice, and the draft text in the appendix of this notice.

We appreciate the Treasury and IRS soliciting a general request for comments on their notice of intended rulemaking. It is crucial that this Administration's implementation of the Clean Fuel Production Credit (CFPC) does not allow the credit to devolve into a wasteful subsidy for food-based biofuels such as corn ethanol. Over a decade ago, the Senate voted on a bipartisan basis in 2011 to eliminate the Volumetric Ethanol Excise Tax Credit (VEETC), known as the ethanol tax credit. Congress did not intend for the CFPC to to resurrect that ethanol giveaway from the grave. Likewise, Congress specified that sustainable aviation fuel eligible for this credit could not be derived from petroleum. This must definitively preclude aviation fuel created with plastics, including through pyrolysis or chemical recycling. If the CFPC is implemented in a way in which petroleum-based feedstocks or first-generation, food-based biofuels become eligible for federal tax credits, Treasury and IRS will have failed to meet their legislative mandate.

Furthermore, other long-term liabilities and consumer and taxpayer costs may increase due to reckless implementation of the CFPCt – including the loss of carbon-rich wetlands, forests, and grasslands, higher food and fuel costs, and more. Numerous studies question the GHG reduction potential of food-based biofuels such as soy biodiesel and corn ethanol, with independent analysts finding that they may actually increase climate costs. A National Academies of Sciences report concluded that tax provisions subsidizing “ethanol and other biofuels may have slightly increased greenhouse gas emissions.” Studies like these should inform implementation of the clean fuel tax credit.

Additionally, the full lifecycle GHG emissions of fuels produced in facilities utilizing biomass sources for heat and/or power should be properly accounted for, and such facilities – and related fuels – should not be considered to be carbon neutral. Experts have concluded that facilities burning wood for energy, for instance, cannot be assumed to be carbon neutral or zero-emission, and certain fuels and facilities can be associated with much higher GHG

emissions, as compared to petroleum-based fuels. [Studies] assessing the carbon impacts of forest-based woody biomass note the many factors impacting emissions totals, "including feedstocks, alternate fate, time horizon and age of the trees used for fuel, production methods, and forest management regimes." Allowing certain fuels associated with higher GHG emissions – including their production methods – to receive federal subsidies would fail to meet the primary goal of the clean fuel tax credit, including reductions in lifecycle GHG emissions.

The Secretary must ensure that indirect GHG emissions such as significant emissions from land use changes are included in emissions rate calculations. This notice cites an [EPA letter sent to Treasury] which cautions that, although GREET developers have added indirect land use changes to the model, it still fails to capture all significant direct and indirect emissions. This notice indicates that interagency and public-private work is being done to address this gap. We urge Treasury and IRS continue this effort. Treasury and IRS were tasked with rulemaking that ensured claimants could meet congressionally specified carbon intensities, including the consideration of emissions from direct and indirect land use, while not wasting taxpayer dollars on special interests and mature industries that already have received taxpayer support for more than four decades.

Treasury and IRS must also ensure that their implementation of this tax credit prevents waste, abuse, and fraud. In the notice's definition of a qualifying sale, *Clean fuel production credit; definitions (b)(25)(iv)*, a scenario is outlined where an ethanol producer A sells ethanol to an unrelated party B. This unrelated party B then uses the ethanol as a feedstock to produce SAF and can claim the 45Z tax credit if all other requirements are met. If ethanol producer A uses carbon capture equipment during its production and B cannot achieve the qualifying GHG emissions rate without such CCS equipment, then B facility should be considered to include CCS equipment, as defined by *definitions (b)(14).* And if ethanol producer A claims 45Q, B claiming 45Z would be against the anti-stacking provisions. Treasury and IRS should require that every 45Z claim that uses CCS equipment to result in a GHG emissions rate for which 45Z is determined, the claimant must certify and provide documentation that no entity has claimed benefits for the underlying CCS equipment under 45Q.

<u>Specific request for comments</u>. The Treasury Department and the IRS specifically request comments on:
(1)How the fuel pathways approved under the EPA's Renewable Fuel Standard (RFS) program could be adapted for purposes of the emissions rate table if the Treasury Department and the EPA were to determine that the RFS program is a methodology "similar" to CORSIA that also satisfies the criteria under § 211(o)(1)(H) of the CAA (as required by § 45Z(b)(1)(B)(iii)(II)).

We are concerned about the potential for blind application of RFS pathways to the CFPC. The RFS was intended to spur the development of biofuels that could lower transportation emissions. However, the past decades have shown that RFS has failed. Instead the RFS distorted the market to favor energy crops like ethanol, leading to increased emissions rather than decreased. Additionally, the analysis used for some pathways is questionable - back in

2014, the EPA decided that compressed methane gas captured from landfills and factory farms qualified as a cellulosic fuel under the RFS. However the ‘climate benefit’ analysis relied on an artificially narrow counterfactual where the only alternative was simply burning or “flaring” the methane onsite. The EPA then applied this conclusion haphazardly to methane digesters common at factory farms with no attempt to analyze the separate climate impact of industrial animal agriculture. Treasury and IRS should not import analysis from the broken RFS program.

Conclusion

When implementing various Inflation Reduction Act provisions, the US has an opportunity to end past mistakes – including wasting taxpayer dollars on counterproductive climate-related policies - and instead invest in real climate solutions. Our above comments provide an opportunity to right the ship and ensure US taxpayer dollars are spent more wisely. Thank you for the opportunity to submit comments and for your consideration. Please let us know if you have any questions.

Respectfully,

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