



November 4, 2022

The Honorable Lily Batchelder
Assistant Secretary (Tax Policy)
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

William Paul
Principal Deputy Chief Counsel
Internal Revenue Service Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Submitted Electronically via the Federal eRulemaking Portal

Re: Response to Request for Comments Notice 2022-50 on Elective Payment of Applicable Credits and Transfer of Certain Credits

Dear Ms Batchelder and Mr. Paul,

On behalf of our nation's venture capital (VC) investors and the entrepreneurs they support, I write to provide the perspective of the American startup ecosystem regarding your request for comments on elective payments of applicable energy credits and the ability to transfer those credits (Notice 2022-50). The National Venture Capital Association ([NVCA](#)) convenes venture investors and entrepreneurs to shape public policy priorities, develop new industry initiatives, provide premier research, and organize professional development opportunities.

NVCA appreciates the opportunity to respond to this Request for Information from the Department of the Treasury and the Internal Revenue Service (IRS). We were thrilled that Congress included direct pay and transferability mechanisms in the *Inflation Reduction Act (IRA)*. *These* mechanisms will allow startups, most of which are years away from profitability, to realize the value of the tax credits they generate and access liquidity critical to supporting climate technology innovation.

America's startup ecosystem is advancing breakthrough innovations across climate technology verticals. In 2021, 827 U.S.-based climate tech startups raised \$27.27 billion in VC

funding, more than double 2020's record of \$12.7 billion invested.¹ Given the importance of speed in moving the economy to carbon-neutral, this wave of young companies will play a critical role in the country's effort to address the climate crisis. Further, these companies hold the potential to lead the world in advanced energy innovation. Their success can significantly accelerate the global energy transition.²

Background on Venture Capital

The venture capital (VC) model is uniquely suited to financing advanced energy technology commercialization due to its longer time horizons and equity-based financing model. Venture capitalists create partnerships with institutional investors to combine the capital held by pension funds, endowments, foundations and others with their talent and expertise to make high-risk, long-term equity investments into innovative young companies. Venture capital has the longest asset holding periods of any investment class. The standard VC partnership agreement lasts for ten years with extensions that in practice mean the partnerships generally run even longer.

The nature of frontier technology commercialization typically requires substantial amounts of capital to finance high-risk research projects for long time horizons with little to no revenues or collateral. These factors make equity investment far more prominent in financing breakthrough innovation than debt instruments. VC-backed companies are also able to attract some of the best technological talent in the world through widespread use of equity compensation. By sharing ownership of the company with their workforces, these companies draw motivated workers willing to bet on themselves.

VC-backed companies are generally nascent entities that use equity investment provided by VC funds to conduct research, expand workforces, build out new facilities, and focus on growth activities that create long-term value. A recent survey of VC-backed companies by NVCA showed that “four out of five respondents spend at least 70 percent of their budgets on two activities, wages and compensation and research and development (R&D).”³ The survey also found that nearly one in five VC-backed companies spend at least 85 percent of their budget on R&D activities.

In addition to patient working capital, VCs work alongside their portfolio companies to mentor the executive teams, offer strategic advice (often from seats on the company's board), and serve as critical resources bridging the divide between the lab and market. A VC's participation often serves as a conduit to further growth capital opportunities and resources needed to scale, a key factor for expanding innovation opportunity to new regions and building local ecosystems.

¹ PitchBook Data, PitchBook Platform

² [President Biden Should Highlight American Leadership in Climate Technology Innovation at COP26 - National Venture Capital Association - NVCA](#)

³ *Venture Capital at Work*, NVCA, available at [Venture Capital Investment at Work - National Venture Capital Association - NVCA](#)

In some instances, VCs will even work directly with universities to license technologies, re-run experiments, pull complementary technologies together, recruit the founding team, and essentially build the company from scratch. An illustration of this model is the founding of vaccine maker Moderna. Journalist Dan Primack of Axios observed of the company's founding: "Moderna wasn't just a VC-backed startup. It was a VC-created startup, inside an incubator program run by Cambridge, Mass.-based Flagship Pioneering. It didn't even have a name for the initial nine months of its life, just a project number."⁴ This is exemplary of the power of venture capital and the central importance of the equity investment model to frontier technology.

Economic Impact of Venture Capital Activity

Venture-backed companies constitute approximately 50 percent of companies that go public each year, including 40 percent of climate technology companies,⁵ and are responsible for developing around half of new FDA-approved drugs.⁶ Public companies originally built with venture capital financing account for an astounding 92 percent of R&D spending undertaken by all public companies founded within the last fifty years.⁷ Recent research suggests that the U.S. VC industry is "causally responsible for the rise of one-fifth of the current largest 300 US public companies and that three-quarters of the largest US VC-backed companies would not have existed or achieved their current scale without an active VC industry."⁸

In addition to innovation and economic growth, venture capital has a massive impact on the U.S. workforce. New research found that employment at VC-backed companies between 1990 and 2020 grew 960 percent, whereas total private sector employment during that same period grew only 40 percent. These jobs are distributed broadly across the entire U.S. with 62.5 percent of jobs at VC-backed companies located outside the states of California, Massachusetts, and New York.⁹

Elective Payment of Applicable Credits and Transfer of Certain Credits

Effective direct pay and transferability mechanisms for the advanced energy tax credits are critical to avoid creating unintentional barriers that would prevent frontier technology startups from accessing the value of their credits. The long-term and capital-intensive nature of advancing breakthrough innovations in technologies such as carbon capture, utilization, and

⁴ *The Company Leading the Race to a Coronavirus Vaccine*, available at <https://www.axios.com/moderna-coronavirus-vaccine-trial-78e06a4e-e7ed-42e9-a769-7055030fe3a1.html>

⁵ *Initial Public Offerings: Updated Statistics*; Professor Jay Ritter, University of Florida, available at <https://site.warrington.ufl.edu/ritter/files/IPO-Statistics.pdf>.

⁶ *Trends in Healthcare Investments and Exits 2019*, Silicon Valley Bank, available at <https://www.svb.com/globalassets/library/managedassets/pdfs/healthcare-report-2019-midyear.pdf>

⁷ *The Economic Impact of Venture Capital: Evidence from Public Companies (July 2021)*, Professors Will Gornall and Ilya Strebulaev, available at [The Economic Impact of Venture Capital: Evidence from Public Companies by Will Gornall, Ilya A. Strebulaev :: SSRN](https://ssrn.com/abstract=3888888)

⁸ *Id.*

⁹ *An Analysis of Employment Dynamics at Venture-Backed Companies Between 1990 and 2020*, NVCA, Venture Forward, and the University of North Carolina Kenan Institute of Private Enterprise (February 2022), available at https://nvca.org/wp-content/uploads/2022/02/Employment-Dynamics-at-Venture-Backed-Companies_FINAL.pdf

sequestration; geothermal; hydrogen; and long-duration energy storage require significant capital to research, develop, and deploy at scale. Many advanced energy startups financed with venture capital operate for years with little to no revenues as they continue to use investment capital for research and product development. When startups begin generating tax credits, they are often still years away from profitability.

Though we are confident that the transferability mechanism included in IRA will be an improvement over the current friction-filled system of tax equity transactions, we believe it is likely that startups will face significant uncertainties accessing credit transfer markets, particularly early on. Small companies in general will be the least likely to gain access to credit transfer markets and those that do will likely see the largest discounts in pricing for their credits.

Implementation decisions made by Treasury and IRS that simplify the certification and transfer processes or encourage the widest permissible universe of credit buyers will improve the ability of advanced energy startups to maximize the value of their credits. A well-functioning credit transfer process that attracts a deep pool of buyers will result in narrow spreads and greater investor confidence in the advanced energy asset class. Specifically, we believe that the following issues will advance these goals:

- Deepen the pool of credit buyers: We encourage Treasury and IRS to issue guidance making clear that direct pay elections by all producers may include tax credits acquired through transfers. This would significantly deepen the pool of potential tax credit buyers.

Clarify safe harbor for credits generated towards end of year: We recommend Treasury and IRS clarify a provision under Section 6418(e)(1) providing that generated credits continue to be eligible for transfer until the time that the company files their tax return. This important safe harbor allowing will allow startups appropriate lead time to transfer credits generated towards the end of the calendar year. Without this safe harbor, credits generated by startups in November or December may lose significant value if they miss the narrow transfer window and a subsequent round of financing triggers Section 383 credit limitation rules.

- Avoid friction in credit transfers: Treasury and IRS should take steps wherever possible to encourage participation in credit transfer markets to ensure adequate liquidity, including by providing as much clarity as possible around credit recapture events. Perceived recapture or qualification risk by third-party buyers will impact credit market pricing and the cost of insurance products that may be required by certain buyers, the only question is to what extent. New guidance which provides greater clarity around recapture and qualification risk can improve credit pricing and reduce transaction costs, which will mean more money going into the development and production of advanced energy technologies.

For example, Treasury and IRS could provide guidance allowing transferee taxpayers to rely on guidance such as allowed under Internal Revenue Code (IRC) Section 6664(c) and related guidance for reasonable cause. This would provide taxpayers certainty that if they rely on the advice of counsel or other professionals the penalty on an excessive payment would not apply. This clarity will reduce transaction costs, including insurance product pricing.

In relation to direct pay IRA notes that IRS may request further information before providing any direct payments, an open-ended uncertainty which could delay the receipt of payments. Understanding that appropriate oversight is also necessary for effective implementation, NVCA encourages IRS to define a specific range of factors which could result in IRS requesting further information for a particular filing. Greater clarity would assist startups in providing the necessary information at the time of filing and reduce the likelihood of delayed receipt of payment.

Conclusion

NVCA thanks Treasury and IRS for taking into account our views. We hope that the opinions expressed in this filing help you consider the unique perspective of the startup ecosystem as the agencies work to implement Elective Payment of Applicable Credits and Transfer of Certain Credits programs. Please let us know if there's anything else we can do to be helpful to your efforts.