

March 1, 2023

The Honorable Wally Adeyemo
Deputy Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Deputy Secretary Adeyemo:

The Inflation Reduction Act (IRA), signed into law by President Biden, along with other recent transformative economic and climate legislation, promises to lay the foundation for a clean economy of the future by lowering energy costs for families, cleaning up legacy pollution, creating millions of jobs, and bringing within reach our country's goal of reducing planet warming emissions. The financial incentives contained in this law to supercharge the renewable energy transition could completely transform local economies, with particular impact in a place like Puerto Rico.

The people of Puerto Rico have endured years of gutting austerity measures due to a debt crisis, crippling natural disasters that have decimated livelihoods, environmental injustice that has taken a toll on public health, and a failing electrical grid that impairs all aspects of life on the island. The incentives contained in the IRA could represent a great opportunity for Puerto Rico as it takes on the challenge of building its economy of the future. Puerto Rico's tax status as an unincorporated territory with residents that do not pay federal income taxes, however, requires the U.S. Department of the Treasury to provide clear eligibility guidance for residents of Puerto Rico to fully benefit from IRA.

Specifically, IRA includes several tax credits that can be used by federally tax-exempt entities such as states, political subdivisions, Indian tribes, and nonprofit organizations, even if those organizations have no tax liability, similar to a refundable tax credit or grant. This newly created direct payment option under Internal Revenue Code §6417 (§13801(a) of the IRA) generally allows organizations exempt from income tax, States or political subdivisions thereof, tribes and several other entities¹ to receive a cash tax refund for applicable credits, including credits for clean electricity, electric vehicles, electric vehicle chargers, and clean energy manufacturing. To clarify Puerto Rico's eligibility for these tax credits, **we request that Treasury issue guidance specifying that territories like the Commonwealth of Puerto Rico, its subdivisions, and Puerto Rican non-profit entities, fall within the definition of an "organization exempt from [federal income] tax"**. Treasury has broad discretion to "issue such regulations or other guidance as may be necessary to carry out the purposes of" the direct pay provision. It is our

¹ <https://www.irs.gov/pub/irs-drop/n-22-50.pdf>

view that clarifying that the Commonwealth, its subdivisions, and its non-profits are organizations exempt from federal income tax is within Treasury’s authority and is consistent with the intent of the IRA.²

IRA tax credits also provide for a 10% additional “low-income bonus” under Internal Revenue Code §48e (§13103 of the IRA) available to projects under 5 MW located in a “low-income community” as defined for purposes of the New Markets Tax Credit³ or an additional 20% tax credit for being classified as a “qualified low-income residential building project” or “qualified low-income economic benefit project.” In addition, under Internal Revenue Code §48C(e) (§13101 of the IRA), projects sited in an “energy community” are eligible for a 10% increase in the value of the credit. **We seek Treasury guidance that confirms that these bonuses apply to territories like the Commonwealth of Puerto Rico.**

Finally, under the IRA, tax credits for the purchase of new and used electric vehicles may be transferred from the “taxpayer” to an “eligible entity”, which transforms the credit into a point-of-sale rebate. In 30D(g) of the Internal Revenue Code, as amended by §13401 of the IRA, and referenced by 25E(e), vehicle dealers “licensed by a State, the District of Columbia, the Commonwealth of Puerto Rico, any other territory...” are eligible entities⁴. Here as well, **we seek Treasury guidance clarifying how residents of the Commonwealth of Puerto Rico may elect to transfer their tax credit to a party or entity that does have federal tax liability.**

We urge you to expeditiously issue clear eligibility guidance that will allow Puerto Rico to benefit fully from the Inflation Reduction Act and its promise of savings, jobs, and a clean energy future.

Sincerely,

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² Territorial governments and their political subdivisions do not pay federal income tax under Internal Revenue Code §115(2), and thus are exempt from federal income tax.

³ <https://www.cdfifund.gov/sites/cdfi/files/documents/nmtc-target-areas-qa.pdf>

⁴ <https://www.irs.gov/pub/irs-drop/n-22-46.pdf>

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