United States Senate
WASHINGTON, DC 20510

June 10, 2019

The Honorable Charles Rettig
Commissioner, Internal Revenue Service
1111 Constitution Ave. NW
Washington, DC 20224

Dear Commissioner Rettig:

We write to you concerning the refined coal tax credit, as established under 26 U.S. Code § 45(c)(7).

In order to claim this tax credit, currently worth $7 per ton of refined coal, refiners must demonstrate that their refined coal reduces emissions of nitrogen oxides (NOx) by 20 percent and emissions of either sulfur dioxide (SO2) or mercury by 40 percent per unit of thermal energy compared to unrefined coal. Current Internal Revenue Service (IRS) guidance allows refiners to demonstrate through laboratory analysis (rather than real world results) that combusting their refined coal generates the required emissions reductions from the power plants where it is used.[1] Reporting has revealed that almost all refiners choose to demonstrate via laboratory testing that their refined coal generates the required emissions reductions.[2]

In recent years, refiners have claimed roughly a billion dollars annually in refined coal tax credits.[3] Refined coal tax credits have also become a big business for large financial services firms including Goldman Sachs, JPMorgan Chase, Capital One Financial, Fidelity Investments, and Arthur J. Gallagher.[4] Some of these companies have generated hundreds of millions of dollars in refined coal tax credits and boast of a "staggering" return on investment of several hundred percent.[5]

A recent study by Resources for the Future[6] casts significant doubt on whether combusting refined coal under real world conditions at power plants generates anywhere close to the required emissions reductions or those predicted by laboratory results. This report examined data from 639 boilers and 287 coal-fired power plants across the United States; this dataset accounts for more than 90 percent of coal combusted in the U.S. power sector.[7] This study also controlled for other variables that might account for emissions increases or decreases.

According to this analysis, combusting refined coal only generates a 12.5 percent average reduction in NOx emissions, a 2.3 percent average reduction in SO2 emissions, and a 24.1 percent average

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[1] IRS Notice 2010-54 Section 6.03(2)(b), available at https://www.irs.gov/irb/2010-40_IRB

[2] Tim McLaughlin, "Little lab on the prairie is a gold mine for U.S. 'clean coal' investors," *Reuters* (Dec. 4, 2018), https://www.reuters.com/investigates/special-report/usa-coal-labs/

[3] Tim McLaughlin, "U.S. clean coal program fails to deliver on promised smog cuts," *Reuters* (Dec. 4, 2018), https://www.reuters.com/investigates/special-report/usa-coal-pollution/

[4] Tim McLaughlin, "U.S. investment firms rake in 'staggering' returns on clean coal tax credits," *Reuters* (Dec. 4, 2018), https://www.reuters.com/investigates/special-report/usa-coal-wallstreet/

[5] *Id.*

[6] Brian Prest and Alan Krupnick, "How Clean is 'Refined Coal'? An Empirical Assessment of a Billion-Dollar Tax Credit," *Resources for the Future* (June 10, 2019), https://www.rff.org/publications/reports/how-clean-is-refined-coal/

[7] Report, pg. 12

reduction in mercury emissions.[8] All of these emissions reductions are below the minimum emissions reductions required to claim the refined coal tax credit.

The results of this study suggest that the IRS needs to revise its guidance with respect to how refiners must demonstrate the required emissions reductions in order to qualify for the refined coal tax credit. Laboratory testing does not appear to accurately predict real world emissions reductions.

We therefore request that you provide us by June 28, 2019 with any data you may have demonstrating that:

(1) combusting refined coal under real-world conditions generates the emissions reductions required to qualify for the refined coal tax credit;

(2) laboratory results are a reliable indicator of real-world emissions; or

(3) the public health benefit of the tax credit as currently enforced outweighs the cost to taxpayers.

If no such data exists, we urge the IRS to issue new guidance requiring refiners to demonstrate that their refined coal generates the required emissions reductions on the basis of annual emissions data from power plants where their refined coal is combusted.

The use of refined coal is growing,[9] suggesting that this tax credit will cost taxpayers even more in the coming years. The estimated health benefits of the actual emissions reductions generated by the combustion of refined coal, calculated to be somewhere between $400 and $600 million annually, are significantly below the cost to taxpayers of the refined coal tax credit. This suggests the refined fuel tax credit has become a taxpayer subsidy to large corporations that provides relatively little in the way of a public health benefit. We look forward to receiving the data requested so we can work with you to ensure the program is achieving the results Congress originally intended.

Sincerely,

Sheldon Whitehouse
United States Senator

Sherrod Brown
United States Senator

Elizabeth Warren
United States Senator

[8] Report, pg. 18

[9] Report, pg. 5