

United States Senate

WASHINGTON, DC 20510-0609

December 12, 2023

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

Dear Secretary Yellen:

We write to urge you to issue guidance to ensure consumers and businesses can take full advantage of the *Inflation Reduction Act's* (IRA's) tax incentives to deploy geothermal heat pumps (GHP). GHP deployment holds enormous potential to lower energy bills for American families and cut greenhouse gas emissions from heating and cooling for homes, schools, and businesses. GHPs are among the most energy-efficient heating and cooling systems available for buildings, saving up to 50 percent on annual energy bills compared to fossil fuel-based systems.¹ Currently, GHPs are approximately three percent of the residential HVAC market,² and increasing their use can play a central role in meeting climate goals while providing reliable, affordable energy.

Specifically, we request you issue guidance clarifying that GHP systems are exempt from the “limited use property” doctrine. The largest barrier to GHP adoption is the up-front cost required to install ground heat exchangers (or “ground loops”) that, once in place, serve as heating and cooling infrastructure. Third-party ownership models – such as those used for residential solar energy systems – can help make the technology more affordable and accessible. Under this arrangement, a homeowner would pay little or no money up front, and instead make monthly payments to the third-party under a lease or energy services agreement – allowing the homeowner to avoid incurring a loan or making a capital investment. Low- and moderate-income households stand to benefit most from third-party ownership models since they can least afford the higher up-front cost of GHPs and would benefit the most from their efficiency.

Section 13102 of the *IRA* increases the investment tax credit rate for GHPs to the full 30 percent through 2032 with a gradual step down thereafter, which creates a landmark opportunity for GHP deployment. However, there is uncertainty over how the Internal Revenue Service (IRS) will apply the “limited use property” doctrine under Revenue Procedure 2001-28 to GHP systems. In order for a lessor to retain ownership of certain property for tax purposes, the doctrine requires that a lessor not transfer the property to the consumer for substantially all of the property's useful life. Solar rooftop panels avoid the limited use property characterization since a third-party owner can remove them from one home and redeploy on another, even though this generally does not occur in practice. In a GHP system, it is not economical to move or remove a ground loop. Therefore, in a case where a GHP system only serves one household, the IRS could

¹ See <https://rmi.org/clean-energy-101-geothermal-heat-pumps/>

² See https://www.energystar.gov/sites/default/files/asset/document/2021%20Unit%20Shipment%20Data%20Summary%20Report_0.pdf

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potentially deem the system limited use property and deny the lessor the ability to claim the Section 48 energy tax credit.

We encourage the Treasury Department (Treasury) to issue guidance clarifying that GHP systems are exempt from the limited use property doctrine. Treasury has historically adjusted how broader tax rules are applied in cases where there is clear public benefit and congressional intent – e.g. in the case of wind facilities,³ historic buildings,⁴ energy services agreements for federal agencies,⁵ and carbon capture projects.⁶ In this case, Congress designed tax incentives in the *IRA* to accelerate clean energy deployment, and increased the rate for GHP's to 30 percent primarily to enable third-party ownership models.

The Geothermal Exchange Organization estimates that if Treasury provides a timely clarification, GHP systems can:

- Provide an additional 360,000 households, including low-income households, and over 230,000 commercial facilities and small businesses with low-cost geothermal heating and cooling by 2030;
- Create more than 90,000 good-paying jobs; and
- Avoid more than 64 million metric tons of greenhouse gas emissions.

We urge Treasury to swiftly take this step to ensure we maximize deployment of GHP systems and the *IRA*'s climate, energy reliability, and cost-savings benefits.

We look forward to hearing from you on this important matter.

Sincerely,



Michael F. Bennet
United States Senator



Tammy Duckworth
United States Senator

³ Rev. Proc. 2007-65.

⁴ Rev. Proc. 2014-12.

⁵ Rev. Proc. 2017-19.

⁶ Rev. Proc. 2020-12.

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United States Senator



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United States Senator



Peter Welch
United States Senator



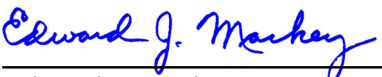
Tina Smith
United States Senator



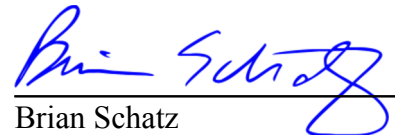
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United States Senator



Richard Blumenthal
United States Senator



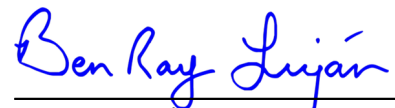
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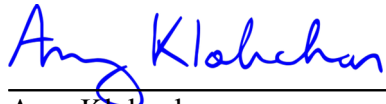
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