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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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October 7, 2015

The Honorable Jacob J. Lew
Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, D.C. 20220

Dear Secretary Lew:

On September 18, the U. S. Environmental Protection Agency issued a “notice of violation” to automaker Volkswagen Group after discovering the company had equipped vehicles with “defeat device” software to cheat emissions tests and evade environmental standards. In a stark violation of the Clean Air Act, Volkswagen sold vehicles that emitted up to 40 times the legal limit of nitrogen oxide while in regular use, levels drastically higher and more dangerous than the company claimed. The “defeat device” software was incorporated into an estimated 11 million Volkswagen and Audi vehicles worldwide between 2009 and 2015, including 500,000 in the U.S.

During the period in which Volkswagen Group sold these vehicles, it benefitted from two clean energy tax programs: the Alternative Motor Vehicle Credit available to individuals and the Advanced Energy Manufacturing Credit available to businesses. It is extremely troubling that Volkswagen may have defrauded its way into economic gain at the taxpayer’s expense. To the extent Volkswagen Group misled the Treasury Department and the Internal Revenue Service about the performance of its vehicles, the value of these tax incentives should be recaptured. At the same time, a large portion of those tax benefits came in the form of credits for individual car buyers. The law makes clear that individuals should not be held liable for Volkswagen’s bad acts. I would like your assurance that there will be no effort to recover tax credits from consumers who were duped by Volkswagen and claimed the benefits in good faith.

The Alternative Motor Vehicle Credit was enacted as part of the Energy Policy Act of 2005 and provided tax credits for alternative vehicles including fuel cell cars, hybrid-electric cars, and lean burn “clean diesel” vehicles (Pub. L. No. 109-58; 26 U.S.C. § 30B). According to IRS guidance, Volkswagen Group of America obtained certification under this program for their 2009 Jetta TDI Sedan and 2009 Sportwagen TDI (<http://www.irs.gov/uac/Alternative-Motor-Vehicle-Credit-1>). These certifications, which granted taxpayers a \$1,300 tax credit for the purchase of Volkswagen vehicles, were obtained under the guarantee that Volkswagen had complied with all EPA testing, certifying that these vehicles achieved the necessary emissions and mileage parameters. According to a number of news reports, individuals claimed an estimated \$51 million in Alternative Motor Vehicle Credits in connection with purchases of “clean” Volkswagen vehicles. The Senate Finance Committee has now opened an inquiry into the degree to which these

certifications were obtained improperly due to Volkswagen's deception. (<http://www.finance.senate.gov/newsroom/chairman/release/?id=8845cadd-d2e7-4f0f-b089-1c2ac213dc56>)

In 2009, as part of the American Recovery and Reinvestment Act, Congress created the Advanced Energy Manufacturing tax credit (Pub. L. No. 111-5; 26 U.S.C. § 48C). The first allocation of credits was granted to 183 manufacturing facilities in 43 states (<https://www.whitehouse.gov/the-press-office/fact-sheet-23-billion-new-clean-energy-manufacturing-tax-credits>). Volkswagen Group of America applied for, and was allocated, \$150 million in credits for operations at a manufacturing and assembly plant located in Chattanooga, Tennessee. Given that taxpayer information is privileged, the purpose of the credit allocation to Volkswagen is unclear. However, to the extent that the Volkswagen Group misrepresented the emissions and mileage capabilities of their vehicles, the allocation of Advanced Energy Manufacturing Credits may have been inappropriate in light of the recent revelations.

I urge you to work with the EPA and Department of Justice as they weigh levying fines and enforcement actions against Volkswagen and take the full value of these tax benefits into account.

Thank you for your attention to this matter. If you have any questions or need additional information, please contact Ryan Abraham (ryan_abraham@finance.senate.gov) on my staff.

Sincerely,



Ron Wyden
Ranking Member