Treasury's Final Rules re: "Definition of Energy Property and Rules Applicable to the Energy Credit." In these final rules, Treasury denied most of the many requests for changes to the proposed rules, however, they did respond to the concerns that I, and a few others, had expressed concerning the potential impact of their proposed rules on competition in the industry. As you may remember, the issue was that the proposed rules required that for a geothermal heat pump "energy property" to qualify for tax credits, both the ground loops and heat pumps must have common ownership. Split ownership was forbidden. The concern was that this rule would essentially require any Thermal Energy Network to own not just ground loops and thermal energy distribution equipment, but also the heat pumps installed in customers' buildings or homes. Such a requirement that a regulated utility should own "behind the meter" customer equipment would have been a major change in traditional rules for utility regulations which have usually prohibited utility ownership of behind-the-meter customer equipment. Also, such a requirement would have made it very difficult for independent HVAC installers to continue to compete. Essentially, any building connected to a TEN would be removed from the competitive HVAC market. This would be like requiring that gas and electric companies must own the customer equipment that uses the utility provided electricity or gas.

In their final rules, the IRS says that they will only require that the provider of ground loops must own at least one heat pump, heating or cooling a structure, in order for the entire system to qualify for tax credits. As I read this, a TEN provider could satisfy the requirement by installing a single, tiny heat pump in a "structure" that houses pumping or other equipment required by the TEN. Thus, the new rules cannot be used as an excuse to allow utilities to own behind-the-meter customer equipment. This means that HVAC installers will still be able to service their customers, even if those customers have switched from gas to TEN.

Of course, it would be desirable if TEN customers would be able to get tax credits for their investment in heat pumps. It appears that this would be prohibited under the Final Rules since one must own at least one heat pump *and* the ground loops. However, the Final Rules contain two odd and unexplained sentences: *"While ownership of those heat pumps alone will not satisfy section 48, it is possible that the taxpayer may be eligible for a credit under section 25D."* Of course, the final rules for Section 48 don't explicitly apply to Section 25D, however, the IRS doesn't give any hint to explain why they would require single-ownership under Section 48, but not under 25D. It will be interesting to see how this works out over time.

While I remain very concerned that IRS continues to deny the claim that the terms "equipment" and "systems," as used in Sec 48, should be given different meanings, I believe that the "one-heat pump" exception is a major win for competition in the HVAC industry.

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