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TaxNewsFlash

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Proposed regulations: Guidance on new clean vehicle credit

The U.S. Treasury Department and IRS today released for publication in the Federal Register proposed regulations (REG-120080-22) regarding the new income tax credit under Pub. L. No. 117-169 (commonly called the "Inflation Reduction Act of 2022" (IRA)) for the purchase of qualifying new clean vehicles, including new plug-in electric vehicles powered by an electric battery meeting certain requirements and new qualified fuel cell vehicles.

The **proposed regulations** [PDF 301 KB] (17 pages as published in the Federal Register on April 17, 2023) include the following four sections:

- Prop. Reg. § 1.30D-1 Credit for new clean vehicles
- Prop. Reg. § 1.30D-2 Definitions for purposes of section 30D
- Prop. Reg. § 1.30D-3 Critical mineral and battery component requirements
- Prop. Reg. § 1.30D-4 Special rules

Proposed applicability dates

Prop. Reg. § 1.30D-1 and Prop. Reg. § 1.30D-4 are proposed to apply to new clean vehicles placed in service after the date of publication of the final regulations.

Prop. Reg. § 1.30D-2 is proposed to apply to new clean vehicles placed in service on or after January 1, 2023, for tax years ending after April 17, 2023.

Prop. Reg. § 1.30D-3 is proposed to apply to new clean vehicles placed in service after April 17, 2023, for tax years ending after that date.

Taxpayers may rely on the proposed regulations for vehicles placed in service prior to the date of publication of the final regulations, provided the taxpayer follows the proposed regulations in their entirety, and in a consistent manner.

Comments and requests for a public hearing are due by June 16, 2023.

Critical mineral and battery component requirements

As described in a related **Treasury release**, the proposed regulations build on the anticipated approach detailed in a white paper released in December 2022 regarding how manufacturers may satisfy the critical mineral and battery component requirements under the IRA. Read ***TaxNewsFlash***

Critical mineral requirement

To meet the critical mineral requirement and be eligible for a $3,750 credit, the applicable percentage of the value of the critical minerals contained in the battery must be extracted or processed in the United States or a country with which the United States has a free trade agreement, or be recycled in North America—as mandated by the IRA.

- For 2023, the applicable percentage is 40%
- For 2024, the applicable percentage is 50%
- For 2025, the applicable percentage is 60%
- For 2026, the applicable percentage is 70%
- Beginning in 2027, the applicable percentage is 80%

The proposed regulations set out a three-step process for determining the percentage of the value of the critical minerals in a battery that contribute toward meeting critical minerals requirement: (1) determine procurement chains, (2) identify qualifying critical minerals, and (3) calculate qualifying critical mineral content.

The proposed regulations also set out a proposed set of principles for identifying the set of countries with which the United States has a free trade agreement in effect, since this term is not defined in statute. This term could include newly negotiated critical minerals agreements.

Agreements would be considered based on whether they reduce or eliminate trade barriers on a preferential basis, commit the parties to refrain from imposing new trade barriers, establish high-standard disciplines in key areas affecting trade, and reduce or eliminate restrictions on exports or commit the parties to refrain from imposing such restrictions on exports, including for trade in the critical minerals contained in electric vehicle batteries.

Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Japan, Jordan, Korea, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, and Singapore are included in the proposed regulations.

Battery component requirement

To meet the battery component requirement and be eligible for a $3,750 credit, the applicable percentage of the value of the battery components must be manufactured or assembled in North America—as mandated by the IRA.

- For 2023, the applicable percentage is 50%
- For 2024 and 2025, the applicable percentage is 60%
- For 2026, the applicable percentage is 70%
- For 2027, the applicable percentage is 80%
- For 2028, the applicable percentage is 90%
- Beginning in 2029, the applicable percentage is 100%

The proposed regulations set out a four-step process for determining the value: 1) identify battery components that are manufactured or assembled in North America, 2) determine the incremental value of each battery component, including North American battery components, 3) determine the total incremental value of battery components, and 4) calculate the qualifying battery component content by dividing the total incremental value of North American battery components by the total incremental value of all battery components.

Beginning in 2024, an eligible clean vehicle may not contain any battery components that are manufactured by a foreign entity of concern and beginning in 2025 an eligible clean vehicle may not contain any critical minerals that were extracted, processed, or recycled by a foreign entity of concern. The proposed regulations state that Treasury and IRS will issue subsequent guidance on this provision. The day following the publication of the proposed regulations in the Federal Register, FuelEconomy.gov will contain a list of eligible clean vehicles that qualified manufacturers have indicated to the IRS meet the requirements to claim the new clean vehicle credit, including the amount of the credit. This list will continue to be updated promptly, as manufacturers provide information on which of their vehicles qualify for the tax credit based on the proposed regulations.

Updated FAQs

As a result of the issuance of the proposed regulations, the IRS updated the related **"frequently asked questions" (FAQs)** [PDF 384 KB] for the clean vehicle credits.

The FAQs revisions are as follows:

- Topic A: Eligibility rules for the new clean vehicle credit: questions 2, 3, 4, 5, 6, and 7, added question 11
- Topic B: Income and price limitations for the new clean vehicle credit: added question 2, renumbering questions 2 through 10 to 3 through 11, respectively, updated questions 1, 3, 7, 8, and 9
- Topic C: When the new requirements apply to the new clean vehicle credit: questions 2, 4, 5, and 6, added question 8, renumbered prior question 8 to question 9
- Topic F: Claiming the previously owned clean vehicles credit: question 2
- Topic G: Qualified commercial clean vehicles credit: added question 10

As explained in the related IRS release—**IR-2023-64** (March 31, 2023)—new clean vehicles placed in service on or after April 18, 2023, are subject to the critical mineral and battery component requirements even if the vehicle was ordered or purchased before April 18, 2023. A vehicle's eligibility for the new clean vehicle credit is generally based on the rules that apply as of the date a vehicle is placed in service, meaning the date the taxpayer takes delivery of the vehicle. This means that the vehicle may or may not be eligible depending on whether it meets the critical mineral and battery component requirements.

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