

**DESCRIPTION OF H.J. RES. 148, A JOINT RESOLUTION PROVIDING
FOR CONGRESSIONAL DISAPPROVAL UNDER CHAPTER 8
OF TITLE 5, UNITED STATES CODE, OF THE RULE SUBMITTED
BY THE DEPARTMENT OF THE TREASURY RELATING TO “CLEAN
VEHICLE CREDITS UNDER SECTIONS 25E AND 30D; TRANSFER OF
CREDITS; CRITICAL MINERALS AND BATTERY COMPONENTS;
FOREIGN ENTITIES OF CONCERN”**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on July 9, 2024

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



July 5, 2024
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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup for July 9, 2024, of H.J. Res. 148, a joint resolution disapproving of the rule submitted by the Department of the Treasury relating to “Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern.”¹ This document,² prepared by the staff of the Joint Committee on Taxation, provides a description of this joint resolution.

¹ 89 Fed. Reg. 37706, May 6, 2024.

² This document may be cited as follows: Joint Committee on Taxation, *Description of H.J. Res. 148, A Joint Resolution Providing for Congressional Disapproval Under Chapter 8 of Title 5, United States Code, of the Rule Submitted by the Department of the Treasury Relating to “Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern,”* (JCX-30-24), July 5, 2024. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references in the document are to the Internal Revenue Code of 1986, as amended (the “Code”), unless otherwise stated.

A. Regulations Related to the Clean Vehicle Credits

Present Law

1. The clean vehicle credit (sec. 30D)

In general

Present law allows a credit for each new clean vehicle placed in service (the “CV credit”). A new clean vehicle is a motor vehicle the original use of which commences with the taxpayer, is acquired for use or lease by the taxpayer and not for resale, is made by a qualified manufacturer,³ has a gross vehicle weight rating of less than 14,000 pounds, is treated as a motor vehicle for purposes of title II of the Clean Air Act, and is propelled to a significant extent by an electric motor drawing electricity from a battery (1) with at least seven kilowatt-hours of capacity and (2) which is capable of being recharged from an external source of electricity.⁴ A new clean vehicle must have final assembly occur within North America.⁵ The person who sells the vehicle must provide a report to the taxpayer and Secretary of the Treasury (the “Secretary”) that includes the name and taxpayer identification number of the taxpayer, the vehicle identification number of the vehicle, the battery capacity of the vehicle, verification that original use of the vehicle commences with the taxpayer, and the maximum credit allowable to the taxpayer with respect to the vehicle.⁶

New qualified fuel cell motor vehicles which have final assembly within North America and for which sellers provide a report, as described above, are new clean vehicles for purposes of the credit.⁷ A new qualified fuel cell motor vehicle is a motor vehicle propelled by power derived from one or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel stored on board the vehicle and which has received certain emissions-standard certification.⁸

A vehicle with any applicable critical minerals in the battery that are extracted, processed, or recycled by a foreign entity of concern that are placed in service after December 31, 2024, or a vehicle with any components contained in the battery of the vehicle that are

³ A qualified manufacturer must be a manufacturer as defined in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. sec. 7521 *et seq.*) and must provide periodic written reports to the Secretary which include vehicle identification numbers. Sec. 30D(d)(3).

⁴ Sec. 30D(d)(1).

⁵ Sec. 30D(d)(1)(G).

⁶ Sec. 30D(d)(1)(H).

⁷ Sec. 30D(d)(6).

⁸ As defined in section 30B(b)(3).

manufactured or assembled by a foreign entity of concern that are placed in service after December 31, 2023 does not qualify for the credit.⁹

A foreign entity of concern¹⁰ is a foreign entity that is (1) designated as a foreign terrorist organization by the Secretary of State; (2) included on the list of specially designated nationals and blocked persons maintained by the Office of Foreign Assets Control of the Department of the Treasury (“SDN list”); (3) owned by, controlled by, or subject to the jurisdiction or direction of the government of a covered nation;¹¹ (4) alleged by the Attorney General to have been involved in activities for which a conviction was obtained under certain laws;¹² or (5) determined by the Secretary of Energy, in consultation with the Secretary of Defense and the Director of National Intelligence, to be engaged in unauthorized conduct that is detrimental to the national security or foreign policy of the United States.

CV credit amount

A new clean vehicle is eligible for a maximum credit of up to \$7,500 if certain requirements are met. One \$3,750 amount is allowed if a critical minerals requirement for the battery is met.¹³ Another \$3,750 amount is allowed if a battery components requirement is met.¹⁴

Critical minerals requirement

To satisfy the critical minerals requirement, a new clean vehicle’s battery (from which the electric motor draws electricity) must have a percentage of the value of applicable critical minerals¹⁵ that were (1) extracted or processed in the United States or a country that has a free trade agreement¹⁶ with the United States or (2) recycled in North America, which is equal to or greater than an applicable percentage.¹⁷

⁹ Sec. 30D(d)(7). Treasury and the U.S. Department of Energy have released final regulations on excluded entities for the clean vehicle credit and foreign entities of concern. See Notice of Final Rulemaking, 89 Fed. Reg. 33706, May 6, 2024, and Notice of Final Rulemaking, 89 Fed. Reg. 37079, May 6, 2024, respectively.

¹⁰ As defined in 42 U.S.C. sec. 18741(a)(5).

¹¹ 10 U.S.C. sec. 4872(d). Covered nation means the Democratic People’s Republic of North Korea, the People’s Republic of China, the Russian Federation, and the Islamic Republic of Iran.

¹² 42 U.S.C. sec. 18741(a)(5)(D).

¹³ Sec. 30D(b)(2).

¹⁴ Sec. 30D(b)(3).

¹⁵ Critical minerals as defined in sec. 45X(c)(6).

¹⁶ Treasury has released final regulations on the clean vehicle credit which include interpreting the term free trade agreement. See Notice of Final Rulemaking, 89 Fed. Reg. 37079, May 6, 2024.

¹⁷ Sec. 30D(e)(1)(A).

For this purpose, the applicable percentage is 40 percent for a vehicle placed in service before January 1, 2024. The applicable percentage is 50 percent for a vehicle placed in service during calendar year 2024, 60 percent for 2025, 70 percent for 2026, and 80 percent after 2026.¹⁸

Battery components requirement

To satisfy the battery components requirement, a new clean vehicle's battery (from which the electric motor draws electricity) must have a percentage of the value of components that were manufactured or assembled in North America equal to or greater than an applicable percentage.¹⁹

For this purpose the applicable percentage is 50 percent for a vehicle placed in service before January 1, 2024. The applicable percentage is 60 percent for a vehicle placed in service during calendar year 2024 or 2025, 70 percent for 2026, 80 percent for 2027, 90 percent for 2028, and 100 percent after 2028.²⁰

Vehicle price and AGI limitations

The manufacturer's suggested retail price ("MSRP") of a new clean vehicle purchased by the taxpayer may not exceed certain limitations. That is, the credit amount is \$0 if the MSRP for the vehicle exceeds the applicable limitation. This limitation is \$80,000 in the case of a van, sport utility vehicle, or pickup truck, and \$55,000 in the case of any other vehicle. The Secretary is directed to release regulations or guidance to characterize vehicles into the appropriate category by applying rules similar to those employed by the Environmental Protection Agency ("EPA") and the Department of Energy to determine vehicle class and size.²¹

Additionally, no credit is allowed if the taxpayer's income exceeds \$300,000 in the case of a joint return or surviving spouse, \$225,000 in the case of a head of household, or \$150,000 in the case of any other taxpayer.²² For purposes of this limitation, the taxpayer's income is the lesser of modified adjusted gross income ("AGI") of the current taxable year or modified AGI of the preceding taxable year.²³

¹⁸ Sec. 30D(e)(1)(B).

¹⁹ Sec. 30D(e)(2)(A).

²⁰ Sec. 30D(e)(2)(B).

²¹ Sec. 30D(f)(11). Treasury has released final regulations on the clean vehicle credit which include the determination of vehicle classifications. See Notice of Final Rulemaking, 89 Fed. Reg. 37079, May 6, 2024.

²² Sec. 30D(f)(10).

²³ "Modified AGI" is AGI increased by any amount excluded from gross income under section 911, 931, or 933. Sec. 30D(f)(10)(C).

Transfer of credit

A taxpayer who has purchased or leased a vehicle may elect to transfer the credit to an eligible entity, subject to regulations or guidance the Secretary deems necessary.²⁴ The eligible entity is then treated as the taxpayer with respect to the credit.²⁵ The Secretary is directed to establish a program to provide advance payments of these credit amounts to eligible entities.²⁶ An election to transfer the credit must be made on or before the date of vehicle purchase.²⁷

An eligible entity is a dealer²⁸ which meets the following requirements: First, the dealer must be registered with the Secretary. Second, prior to the election of transfer, the dealer must disclose information to the buyer on the MSRP price of the vehicle, value of the credit or other incentives available, and the amount provided by the dealer as a condition of an election to transfer. Third, the dealer must pay the taxpayer for the amount of the credit allowable.²⁹ Finally, the dealer must ensure that the availability or use of any other available manufacturer or dealer incentive does not limit the ability of the taxpayer to make an election and that the election will not limit the value or use of any such incentive.³⁰ The Secretary may revoke the registration of dealers that fail to comply with these requirements.³¹

The payment made by dealers to buyers in connection with a credit transfer election is not includable in the gross income of the taxpayer and is not deductible to the dealer.³²

If a taxpayer that does not meet the AGI requirements for the credit elects to transfer a credit and receives a payment in connection with such credit transfer, the tax liability of such taxpayer is increased by the amount of such payment.³³

²⁴ Treasury has released final regulations on the transfer of clean vehicle credits. See Notice of Final Rulemaking, 89 Fed. Reg. 37079, May 6, 2024.

²⁵ Sec. 30D(g)(1).

²⁶ Sec. 30D(g)(7).

²⁷ Sec. 30D(g)(3).

²⁸ A dealer is a person licensed by a State, territory of the United States, Indian tribal government, or Alaska Native Corporation to engage in the sale of vehicles. Sec. 30D(g)(8).

²⁹ The payment may be in cash or in the form of a partial downpayment for the purchase of the vehicle.

³⁰ Sec 30D(g)(2).

³¹ Sec. 30D(g)(4).

³² Sec. 30D(g)(5).

³³ Sec. 30D(g)(10).

Other rules

A vehicle that is predominantly used outside the United States does not qualify for the credit.³⁴ A vehicle must meet certain emissions and safety standards in order to qualify for the credit.³⁵

The basis of any qualified vehicle is reduced by the amount of the credit.³⁶ The portion of the credit attributable to vehicles of a character subject to an allowance for depreciation is treated as part of the general business credit; the nonbusiness portion of the credit is allowable to the extent of the excess of the regular tax and the alternative minimum tax (reduced by certain other credits) for the taxable year.³⁷

Only one credit is allowed for each vehicle and a taxpayer must include the vehicle identification number of the vehicle on a tax return to claim the credit.³⁸

Expiration

No credit is allowed for any vehicle placed in service after December 31, 2032.³⁹

2. Previously-owned clean vehicles (sec. 25E)

In general

Present law allows a credit for previously-owned clean vehicle placed in service by a qualified buyer (the “previously-owned CV credit”). A previously-owned clean vehicle is a motor vehicle with a model year at least two years earlier than the calendar year in which the taxpayer acquires the vehicle, the original use of which commences with a person other than the taxpayer, which has a gross vehicle weight rating of less than 14,000 pounds,⁴⁰ and which is acquired by the taxpayer in a qualified sale.

A qualified sale is a sale by a dealer⁴¹ that is the first transfer since the date of enactment of section 25E (August 16, 2022)⁴² to a qualified buyer other than the person with whom the

³⁴ Sec. 30D(f)(4).

³⁵ Sec. 30D(f)(7).

³⁶ Sec. 30D(f)(1).

³⁷ Sec. 30D(c).

³⁸ Sec. 30D(f)(8) and (9).

³⁹ Sec. 30D(h).

⁴⁰ Sec. 25E(c)(1).

⁴¹ A dealer is a person licensed by a State, territory of the United States, Indian tribal government, or Alaska Native Corporation to engage in the sale of vehicles. Sec. 30D(g)(8).

⁴² The date of enactment of Pub. L. No. 117-169.

original use of such vehicle commenced.⁴³ A qualified sale does not include a transfer to a qualified buyer made after the vehicle has been used and owned by a person other than the person with whom the original use of such vehicle commenced, even if such use and ownership was not by a qualified buyer.

Additionally, a previously-owned clean vehicle must be an electric vehicle or a fuel cell vehicle that satisfies certain criteria. Specifically, a previously-owned clean vehicle must also either (1) be propelled to a significant extent by an electric motor drawing electricity from a battery (a) with at least seven kilowatt-hours of capacity and (b) which is capable of being recharged from an external source of electricity, made by a qualified manufacturer, treated as a motor vehicle for purposes of title II of the Clean Air Act, and with respect to which the person who sells the vehicle provide a report to the taxpayer and Secretary that includes the name and taxpayer identification number of the taxpayer, the vehicle identification number of the vehicle, the battery capacity of the vehicle, and the maximum credit allowable to the taxpayer with respect to the vehicle;⁴⁴ or (2) be propelled by power derived from one or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel stored on board the vehicle and which has received certain emissions-standard certification.⁴⁵

A qualified buyer is an individual who purchases a vehicle for use and not resale, who cannot be claimed as a dependent, and during the three-year period prior to such purchase, has not made any purchases for which a previously-owned CV credit was claimed.

Previously-owned CV credit amount

The amount of the credit is the lesser of (1) \$4,000 or (2) 30 percent of the sale price of the vehicle.⁴⁶

The sale price of a previously-owned clean vehicle purchased by the taxpayer may not exceed \$25,000.⁴⁷ That is, the credit amount is \$0 if the sale price for the vehicle exceeds this amount.

Additionally, no credit is allowed if the taxpayer's income exceeds \$150,000 in the case of a joint return or surviving spouse, \$112,500 in the case of a head of household, or \$75,000 in the case of any other taxpayer.⁴⁸ For purposes of this limitation, the taxpayer's income is the

⁴³ Sec. 25E(c)(2).

⁴⁴ Sec. 25E(c)(1)(D)(i).

⁴⁵ Sec. 25E(c)(1)(D)(ii). Fuel cell vehicles must satisfy the requirements of section 30B(b)(3)(A) and (B).

⁴⁶ Sec. 25E(a).

⁴⁷ Sec. 25E(c)(2)(B).

⁴⁸ Sec. 25E(b).

lesser of modified AGI of the current taxable year or modified AGI of the preceding taxable year.⁴⁹

Other rules

In general, the credit is available to the vehicle owner, including the lessor of a vehicle subject to lease. A vehicle must be used predominantly in the United States to qualify for the credit and the basis of any qualified vehicle is reduced by the amount of the credit.⁵⁰ A vehicle must meet certain emissions and safety standards in order to qualify for the credit.⁵¹

Only one credit is allowed for each vehicle and a taxpayer must include the vehicle identification number of the vehicle on a tax return to claim the credit.⁵²

Transfer of credit

A taxpayer may elect to transfer the credit to an eligible entity under rules similar to those for the transfer of the clean vehicle credit.⁵³ Those rules are explained in the description of the CV credit above.

Expiration

No credit is allowed for any vehicle placed in service after December 31, 2032.⁵⁴

3. Clean vehicle regulations

The Department of the Treasury has released final regulations related to the CV credit (sec. 30D) and the previously-owned CV credit (sec. 25E) (“clean vehicle regulations”).⁵⁵

The clean vehicle regulations clarify definitions with respect to the clean vehicle credits, including the meaning of the terms battery components, final assembly, and free trade agreement. The regulations also include rules the Secretary has deemed necessary for recordkeeping and information reporting in order to administer the critical mineral and battery component requirements of the clean vehicle credit, as required by statute.⁵⁶ Additionally, the

⁴⁹ Modified AGI is AGI increased by any amount excluded from gross income under section 911, 931, or 933. Sec. 25E(b)(3).

⁵⁰ Secs. 25E(e) and 30D(f)(1) and (4).

⁵¹ Secs. 25E(e) and 30D(f)(7).

⁵² Sec. 25E(d).

⁵³ Sec. 25E(f).

⁵⁴ Sec. 25E(g).

⁵⁵ 89 Fed. Reg. 37706, May 6, 2024

⁵⁶ Sec. 30D(e)(3).

regulations provide guidance for the transfer of credit amounts from taxpayers that acquire qualifying clean vehicles to dealers that are eligible entities. Finally, the regulations provide guidance for how dealers can become eligible entities and receive advance payments of clean vehicle credits and rules for recapture of the credits.

4. The Congressional Review Act

Under the Congressional Review Act (the “CRA”),⁵⁷ Congress may overturn certain Federal agency actions by passing a joint resolution of disapproval. Under a CRA joint resolution of disapproval, if a disapproved rule has not yet gone into effect, the rule will not take effect;⁵⁸ if a disapproved rule has already gone into effect, the rule shall be treated as though it had never taken effect.⁵⁹ Rules that do not take effect or do not continue due to a CRA joint resolution of disapproval may not be reissued in substantially the same form, and new rules that are substantially the same as disapproved rules may not be issued absent a change in law.⁶⁰

Description of Proposal

H.J. Res. 148 is a joint resolution disapproving of the rule submitted by the Department of the Treasury relating to “Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern.” Under the CRA, the clean vehicle regulations go out of effect immediately and are treated as though they had never taken effect.

Effective Date

The joint resolution is effective on date of enactment.

⁵⁷ 5 U.S.C. secs. 801-808.

⁵⁸ 5 U.S.C. sec. 801(b)(1).

⁵⁹ 5 U.S.C. sec. 801(f).

⁶⁰ 5 U.S.C. sec. 801(b)(2).

B. Estimated Revenue Effects of the Proposal

An estimate of the effect of the joint resolution on Federal fiscal year budget receipts is presently unavailable.