Electric and Fuel Cell Vehicle Credits Under the Inflation Reduction Act – Not Just for Individuals

Alert
10.21.2022

By Susan Ebner, Caleb Hall, David Rifkind and Zachary Wright

Despite its name, a driving intent of the Inflation Reduction Act (IRA) is to reduce greenhouse gas emissions within the transportation sector by encouraging the adoption of electric and fuel cell vehicles (EV) by entities and individuals alike. Much of the news reporting following the IRA's passage has focused on how individuals can take advantage of tax incentives by buying and using EVs. However, companies of all types should also consider how they may benefit from the IRA's attempt to reshape national transportation practices. In particular the IRA establishes new EV tax credits, as well as updates and renames an existing EV tax credit, for which companies of all types may be eligible.

THE COMMERCIAL ELECTRIC VEHICLES CREDIT, INTERNAL REVENUE CODE (I.R.C.) § 45W

Institutions purchasing EVs for commercial purposes are eligible to claim tax credits for each EV purchased after January 1, 2023. The total credit amount is limited to the lesser of 30% of the commercial EV's value or the EV's incremental cost compared to a non-EV counterpart. Restated, purchases of commercial EVs up to and less than 14,000 pounds are eligible for tax credits up to $7,500 and, when the EV in question is heavier than 14,000 pounds, credit amounts up to $40,000 are possible.

In establishing an entity's qualification for this revised EV credit, the IRA specifies that the vehicle must:

- Be used for business purposes
- Be manufactured primarily for use on public roads or be mobile machinery
- Be powered by hydrogen, or be propelled to a significant extent by a motor which draws electricity from a battery that has a capacity of not less than 15 kilowatt hours (kWh) for vehicles weighing over 14,000

pounds and not less than 7 kWh for vehicles weighing less than 14,000 pounds

These limitations on the commercial EV credit may not help businesses with fleets of smaller motor vehicles, such as forklifts and haulers that one would not expect to see on a highway. However, this tax incentive may be available for entities that purchase EVs for use on public roads, such as logistics and transportation service providers and companies with their own motor vehicle transportation pools, including trash haulers, transportation network companies, delivery centers, rental outfits, manufacturing, construction and service providers of all types.

THE ALTERNATIVE FUEL REFUELING PROPERTY CREDIT, I.R.C. § 30C

The IRA at Section 136404 also alters and extends the Alternative Fuel Refueling Property Credit through 2032. This credit rewards businesses that install EV charging or "alternative fuel" refueling equipment. Qualifying "alternative fuel" for this credit includes fuel mixtures that are at least 85% ethanol, natural gas, liquefied petroleum gas, or hydrogen; biodiesel or biodiesel mixtures; and electricity used in EV charging stations.

Alternative fuel refueling property installed on business property is eligible for a credit amount equal to 6% of the cost of the qualifying alternative fuel vehicle refueling property, but that percentage will be increased five-fold to 30% if the taxpayer meets the prevailing wage and registered apprenticeship requirements of the IRA. However, the total amount of business property credit that a taxpayer can apply to a property is capped at $100,000. For residential property, the credit amount is equal to 30% of the cost of the qualifying alternative fuel vehicle refueling property but is limited to a credit of no more than $1,000.

This credit is likely to be useful to those that operate fleets of commercial or government motor vehicles, or otherwise place such refueling or charging stations on their property for commercial or public use, such as convenience stores and refueling stations. Note that the Alternative Fuel Refueling Property Credit is transferable, meaning that the initial value of the credit is compounded by its potential to be traded in transactions. Starting in 2023, charging or refueling property must be installed in qualifying low-income communities or nonurban areas for taxpayers to be eligible to receive the credit.

THE CLEAN VEHICLE CREDIT, I.R.C. § 30D

For individuals, the IRA renames the existing electric vehicle tax credit under I.R.C. § 30D as the "Clean Vehicle Credit," updates its requirements, and extends it through 2032. In exchange for meeting new requirements, the IRA provides that individual taxpayers may now seek a credit of up to $7,500.

Electric and Fuel Cell Vehicle Credits Under the Inflation Reduction Act – Not Just for Individuals

For a taxpayer to qualify for the credit, the purchased vehicle must satisfy a number of requirements, some of which are static, while others scale over the duration of the credit. The static requirements include:

- The "new clean vehicle," the original use of which commences with the taxpayer, is acquired for use or lease, not resale, and is made by a "qualified manufacturer." A "qualified manufacturer" is defined as "any manufacturer (within the meaning of the 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. 7521 et seq.)) which enters into a written agreement with the Secretary [of the Treasury] under which such manufacturer agrees to make periodic written reports to the Secretary (at such times and in such manner as the Secretary may provide) providing vehicle identification numbers and such other information related to each vehicle manufactured by such manufacturer as the Secretary may require."
- Effective August 2022, the final assembly of the vehicle must occur in North America.
- Effective January 2023, vans, pickup trucks, and SUVs must not have a retail price of more than $80,000 and other vehicles must not have a retail price of more than $55,000.
- Effective January 2024, the vehicle must not have any battery components or critical minerals sourced from certain defined foreign entities of concern, which currently includes China.
- Likewise, effective January 2025, the vehicle must not have any critical minerals sourced from certain defined foreign entities of concern.

The scaling requirements include:

- **The critical minerals requirement.** An applicable percentage of minerals in the vehicle's battery must be sourced from within the United States or countries that have signed free-trade agreements with the United States. The applicable percentage of the battery's critical minerals that must be sourced from the United States or free-trade countries starts at 40% in 2023 and increases 10% each year until it reaches 80% by 2026.
- **The battery components requirement.** Similar to the critical minerals requirement, an applicable percentage of the EV's battery components may be manufactured or assembled outside of North America, but at least 50% of the battery components must be manufactured or assembled in North America in 2023. This North American percentage requirement increases 10% each year until 100% of the battery's components are required to be assembled or manufactured in North America by 2028.

The full credit amount is contingent on satisfying both the static and scaling requirements. Otherwise, satisfying all static requirements and only one scaling requirement qualifies an EV for a tax credit of $3,750. Based on the current level of content requirements and covered production facilities, approximately 30 EV models qualify for the full $7,500 credit. However, as the percentages of content increase over time, it seems likely that there will be fewer models that may qualify for the full credit. Further, supply chain problems and inflation continue to be an issue. Locating critical minerals and components of sufficient quality, quantity, and qualifying manufacture and assembly may also impact the price and availability of EVs to taxpayers.

In addition, a taxpayer must fall within the applicable income limits to qualify for any credit amount. The income limit is $150,000 if filing as single, $225,000 if filing as head of household, and $300,000 if filing jointly. Accordingly, only those individuals that meet or fall below these thresholds may obtain the contemplated tax credit.

Individuals can initially claim the Clean Vehicle Credit on their tax returns. However, beginning in 2024, any tax credit amount can be transferred to dealers at the point of sale to offset the immediate cost of a qualifying vehicle. The policy justification for the Clean Vehicle Credit's transfer provision is that it incentivizes dealerships to carry more EVs and creates the potential for vehicle dealers to promote EV sales over the non-EV counterparts. However, the risk in providing this type of credit (even if not transferable to the dealers) is that it could be used by dealers to increase their prices artificially to obtain greater profits and it will not provide any real benefit or incentive to taxpayers to buy an EV.

THE USED ELECTRIC VEHICLE CREDIT, I.R.C. § 25E

Finally, the IRA provides for a Used Electric Vehicle Credit, effective January 1, 2023 and through 2032. To qualify for the credit, a vehicle must:

- Be a model year at least two years earlier than the calendar year in which the taxpayer acquires the vehicle
- Weigh less than 14,000 pounds
- Be propelled to a significant extent by an electric motor that draws electricity from a battery, which has a capacity of at least 7kWh and is capable of being recharged from an external source of electricity
- Be sold to the taxpayer for no more than $25,000

The credit amount a taxpayer can receive is limited to the lesser of $4,000 or 30% of the sales price. Like the Clean Vehicle Credit, taxpayers may transfer the credit amount to a dealer at the point of sale to offset the immediate cost of a qualifying vehicle beginning in 2024. However, the credit can only be applied once per vehicle.

Taxpayer eligibility for the Used Electric Vehicle Credit is limited to individuals with incomes of no more than $75,000 if filing as a single individual, $112,500 if filing as a head of household, and $150,000 if filing jointly. Qualifying taxpayers must also have not used another Used Electric Vehicle Credit over the previous three years prior to a new qualifying sale.

Electric and Fuel Cell Vehicle Credits Under the Inflation Reduction Act – Not Just for Individuals

INTERNAL REVENUE SERVICE IS SEEKING COMMENTS

In early October 2022, the Internal Revenue Service (IRS) recently issued Notice 2022-46 seeking comments on guidance needed to implement the Clean Vehicle Credit. Comments are due by November 4, 2022.

CONTACTS

Susan Warshaw Ebner

Kevin Robinowitz

Zach Wright

RELATED CAPABILITIES

Transportation