

December 2, 2022

Janet Yellen
Secretary
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

Douglas O'Donnell
Acting Commissioner
Internal Revenue Service
999 North Capitol Street NE
Washington, D.C. 20002

Re: Request for Comments on Section 45W Credit for Qualified Commercial Clean Vehicles and Section 30C Alternative Fuel Vehicle Refueling Property Credit; Notice 2022-56

Dear Secretary Yellen and Acting Commissioner O'Donnell:

The American Financial Services Association (“AFSA”¹) appreciates the work that the Department of Treasury (“Treasury”) and the Internal Revenue Service (“IRS”) is doing to implement the *Inflation Reduction Act of 2022* (“IRA”). Historically, the ability of finance sources to pass along savings from the electric vehicle (“EV”) tax credits to consumers helped AFSA members incentivize and increase EV leasing to the public.² A clearer explanation of the Treasury’s interpretation of the revised Section 30D and the new Section 45W³ would help AFSA’s members as they work to assist consumers who seek to buy or lease eligible vehicles.

Background.

The IRA revamped and renamed the clean vehicle tax credit (Section 30D) that applies to battery electric vehicles, plug-in hybrid and hydrogen fuel cell vehicles. The revised Section 30D includes a variety of new requirements, including North American final assembly, income and MSRP limits, as well as critical mineral and battery component requirements.⁴

The IRA also created a new credit, the Qualified Commercial Clean Vehicles Credit (“QCCVC”) (Section 45W), for certain commercial clean vehicles.⁵ The new credit is limited to a certain percentage – the lesser of: (1) 15% (or 30% in the case of a commercial vehicle that does not run on gasoline or diesel fuel) of the basis of such vehicle, or (2) the incremental cost of the qualified commercial clean vehicle.⁶ Section 45W does not contain the same MSRP, income, critical mineral, battery component, or final assembly requirements applicable to the Section 30D program.⁷

¹ Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

² AFSA members have, for example, reduced the capitalized cost of the leased vehicle by the value of the EV tax credit in determining lease rates. This, in effect, passed along the benefit of the EV tax credit to the consumers.

³ Section references contained herein refer to the Internal Revenue Code of 1986, as amended.

⁴ Section 30D.

⁵ Section 45W.

⁶ Section 45W(b).

⁷ Section 45W.

The QCCVC is capped at \$7,500 for vehicles less than 14,000 pounds or \$40,000 for all other vehicles. Vehicles must have a battery with 15kWh capacity (heavy) or 7kWh capacity (light). A vehicle qualifying for the credit may be leased and must be “a character subject to the allowance for depreciation.” The credit starts January 1, 2023 and ends December 31, 2032.⁸

Many of our member companies are leaders in auto finance across the credit spectrum, and finance new and used vehicle sales and leases. Many of these companies are leaders in financing of electric vehicles and maintain significant books of business leasing electric vehicles to consumers and businesses.

Under the previous Section 30D program, which helped drive demand for EVs, these companies received a credit up to \$7,500 on qualifying electric vehicles that were then leased to consumers. The industry has been able to pass along financial benefits derived from such credits to the customer who might not be interested in, or otherwise be able to purchase such a vehicle.

Some companies intend to utilize the new QCCVC in Section 45W to receive the EV credit and extend the benefits of such credits to leasing customers from 2023 onwards. However, we believe guidance is necessary to ensure that “as many eligible taxpayers as possible get credits provided by law, while carefully protecting against fraud and abuse.”⁹

Request for Guidance.

Scope of 45W. The IRA indicates that the QCCVC would be available to a lessor of a qualifying electric passenger vehicle. We, therefore, request that the Treasury makes clear in any guidance that the plain language of the IRA will be followed and that a business that leases qualified clean vehicles to consumers is entitled to claim the credit.

Definition of Qualified Vehicle / Manufacturer. Because of the different scope of Sections 30D and 45W, we believe Treasury will need to have a separate process for qualifying a vehicle under Section 45W versus Section 30D. Accordingly, we request Treasury guidance provides for separate qualification lists at the vehicle level and make this information available in a publicly available format. We believe the current process for Section 30D, as outlined in Notice 2009-89, can be leveraged, with appropriate adjustments for the differences between Section 30D and Section 45W.

Incremental Cost. It is critically important that Treasury issue guidance regarding the comparable vehicle definition to provide clarity and confidence for both consumers and the lending institutions facilitating vehicle leasing transactions involving tax credit benefits. Specifically, in order to provide taxpayer certainty, we believe it’s necessary that clear implementable guidance be issued. We would be supportive of a determination be made by the qualified manufacturer as long as taxpayers were permitted to rely on such information without a risk of tax credit recapture, understanding that a taxpayer is prohibited from claiming both the 30D credit and the 45W credit based on the Vehicle Identification Number (VIN).

⁸ Section 45W(b)(4).

⁹ Statement of Deputy Treasury Secretary Wally Adeyemo (Bloomberg Law News, “IRS Issues Notices On Tax-and-Climate Law Energy Incentives,” October 10, 2022).

Determination by Qualified Manufacturer. One alternative would be for the Treasury to issue guidance that requires the qualified manufacturer to provide, on a vehicle-by-vehicle basis, the incremental cost of the particular class of clean vehicle. We believe the manufacturer is well placed to make this calculation and to provide this information to the Treasury for inclusion in a publicly available format. The IRS should retain its right to audit this information.

We believe that the guidance should also provide that a taxpayer is permitted to rely on this information as long as the taxpayer had no reason to know the manufacturer's calculation was objectively unreasonable. Because AFSA members typically pass along the benefit of the tax credit to lessees, the full potential of this tax credit will not be available if AFSA members bear the risk of an IRS challenge to the incremental cost for a particular clean vehicle. Thus, any change to the incremental cost calculation should be on a prospective basis only.

As Treasury guidance is released at the start of 2023, we recommend that the Treasury provide a notice that taxpayers will be permitted to rely on information on incremental cost provided by qualified manufacturer as long as that information is provided on a vehicle-by-vehicle basis and the taxpayer had no reason to know the manufacturer's calculation was objectively unreasonable.

In conclusion, AFSA appreciates the work that Treasury is doing to implement the IRA and in particular ensuring that a business (including AFSA members) is able to use 45W for a passenger vehicle, leased to a consumer or business, as long as the customer cannot also claim under Section 30D what was already claimed under Section 45W due to VIN reporting requirements. In fact, this interpretation is both the most clear and consistent with the statutory language and the one which provides the greatest benefit for EV use to both businesses and consumers.

We encourage the Treasury to affirm the plain language of the statute, the intent of the congressional drafters, and ensure Section 45W is both: (1) applicable to light duty, passenger vehicles leased by a business to a consumer; and (2) medium or heavy duty vehicles over 14,000 lbs.

AFSA is happy to meet with officials from the Treasury or the IRS to discuss this letter and the included requests for guidance. Should you need additional information or have any questions, please feel free to contact me atcwinslow@afsamail.org or (202) 776-7300.

Sincerely,



Celia Winslow
Senior Vice President
American Financial Services Association