March 17, 2025

The Hon. Melanie Krause
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

RE: Proposed Rule on Section 45W Credit for Qualified Commercial Clean Vehicles, Docket No. REG-123525-23

Dear Acting Commissioner Krause:

The American Financial Services Association (AFSA)[1] appreciates the opportunity to comment on the proposed rule to clarify certain aspects of tax credits provided under the Inflation Reduction Act of 2022. In light of continued uncertainty regarding government subsidies for "clean vehicles," AFSA urges the IRS to provide additional clarifications regarding how such subsidies will operate in order to reduce uncertainty for market participants.

1. Overview of how Finance Sources Claim and Deploy 45W Tax Credits in the Leasing Context

In a lease arrangement, the finance source (e.g., a bank or manufacturer captive) is the taxpayer that owns the vehicle that is leased to the consumer. Consequently, the finance source (lessor) is eligible to claim the 45W tax credit, not the consumer who is leasing the vehicle. To make leasing more attractive, finance sources offer consumers an upfront lease incentive that: (a) lowers lease payments for consumers (treated in the same fashion as a downpayment); and (b) corresponds with the amount that the finance sources believe they may claim as a tax credit at a later date.

2. Comments on the Proposed Rule

AFSA members have identified places in the proposed rule where further clarification would improve the functionality of a final rule. For each comment, AFSA has also provided redlines that would adjust the language of the proposed rule to combat the uncertainty of the market participants.

a. *Ambiguity concerning Written Report Recipient:* The proposed rule §1.45W-1(b)(9)(i) does not clearly specify the recipient of the written report. While AFSA

[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.

interprets the proposed rule within the context of section 45W(c) as requiring the manufacturer to provide the written report *to the Secretary*, to avoid ambiguity (e.g., an interpretation that the manufacturer must also provide the report to the taxpayer), AFSA requests that any published rule include clear language that the recipient is "the Secretary."

b. *Timing of Specific VINs in the Written Report:* The proposed rule §1.45W-1(b)(9)(i) states that a vehicle does not qualify if the manufacturer fails to provide the written report for the vehicle ***prior*** to the relevant taxpayer placing the vehicle into service.

   While AFSA agrees that ***manufacturers*** should submit written reports in a timely manner, the proposed rule places harsh consequences on ***finance sources*** that: (a) provide consumers with an upfront lease incentive (that corresponds to the anticipated 45W tax credit amount); and (b) are subsequently (months or a year later) unable to claim the corresponding tax credit because a manufacturer included the applicable VIN number of the vehicle in a written report a short time after the vehicle was leased (e.g., placed in service). Moreover, AFSA has not identified an important tax policy or other governmental interest furthered by the timing required by the rule. Specifically, the government is not harmed so long as the Secretary receives the VIN-level written report prior to a taxpayer filing its return.

c. *Updated Information in Written Reports:* The proposed rule §1.45W-1(b)(9)(ii) states that a vehicle does not qualify if the manufacturer provides incorrect information in the written report.

   While AFSA agrees that ***manufacturers*** should submit written reports that are correct, the proposed rule places harsh consequences on ***finance sources***: (a) that provide consumers with an upfront lease incentive (that corresponds to the anticipated 45W tax credit amount); and (b) are subsequently (months or a year later) unable to claim the corresponding tax credit because a manufacturer filed the written report with incorrect information ***and*** rules did not allow the manufacturer to correct the written report. As with the previous comment, AFSA has not identified an important tax policy or other governmental interest furthered by not permitting the correction of inadvertent errors.

d. *Applicability*. If the final rule does not contain language that addresses AFSA's comments and redlines to proposed rules §1.45W-1(b)(9)(i) – (ii) above, finance sources will need three to six months to implement contracts and controls to ensure that manufacturers provide written reports containing specific VINs to the Secretary before a finance source leases the electric vehicles corresponding to the VINs. In such a case, AFSA would request that the effective date of the rule would begin three to six months after the date of publication of the final rules in the Federal Register. AFSA has provided redlines to proposed rule §1.45W-1(b)(12) that, if included in a final rule, would provide necessary time for finance sources to implement appropriate contracts and controls.

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e. *Definition of Qualified Manufacturer.* The proposed rule §1.45W-1(b)(10) describes how a: (a) manufacturer becomes a qualified manufacturer; and (b) qualified manufacturer can lose its qualifying status.

While AFSA agrees that noncompliant ***manufacturers*** should lose their status as qualified manufacturers, published guidance places harsh consequences on ***finance sources***: (a) that provide consumers with an upfront lease incentive (that corresponds to the anticipated 45W tax credit amount); and (b) are subsequently (months or a year later) unable to claim the corresponding tax credit because a manufacturer lost its qualifying status ***and*** the finance source did not know about the change in status.

Given that a qualifying manufacturer can lose its status, AFSA requests that any final rule includes two changes. First, the final rule should clarify that the loss of status applies only after the date of such termination. Second, the final rule should include language stating that a taxpayer may treat a manufacturer as a "qualified manufacturer" if, absent actual knowledge, it has received a signed attestation from the manufacturer that it is a qualified manufacturer.

f. *Difficulty in Determining Component Cost for Pure EV Manufacturers*

In circumstances in which a qualified manufacturer of a qualified commercial clean vehicle does not manufacture a solely gasoline- or diesel-powered ICE version of such qualified commercial clean vehicle that is of the same model and model year, and with features substantially similar to those of the qualified commercial clean vehicle, the componentry and associated costs of the comparable vehicle for purposes of the incremental cost determination may be unavailable.

Due to the inability to verify the difference in costs between vehicles, in this instance, AFSA believes that the incremental cost of such a qualified commercial clean vehicle should reflect an amount equal to the excess of the purchase price for such vehicle over the purchase price of a comparable vehicle if such manufacturer cannot identify information it believes to be accurate or reliable.

AFSA has provided an additional subsection in redline form to proposed rule §1.45W-2(c) to address this circumstance.

g. *Taxpayer Reliance on Qualified Manufacturer's Incremental Cost Determination*

Proposed rule §1.45W-2(c)(10) states that the taxpayer may rely on a qualified manufacturer's incremental cost determination contained in manufacturer-provided written documentation.

Manufacturers may be unwilling to provide cost component details to taxpayers (generally or under certain circumstances) because: (a) the information may

constitute proprietary information; and (b) certain taxpayers may not purchase enough vehicles for a manufacturer to justify sharing the information.

Consequently, any final rule should allow taxpayers to rely on a manufacturer's certified statement (under penalty of perjury) that provides the final incremental cost amount for any applicable model, trim, and model year.

h. *Recapture and Applicability (Proposed Rules §1.45W-4(c) and (f))*

i. Proposed rule §1.45W-4(c) states that if a taxpayer ceases to use a qualified commercial clean vehicle for business use during the 18-month period beginning on the date the vehicle is placed in service then:

1. the taxpayer may not claim the section 45W credit with respect to the vehicle; and
2. if the taxpayer has already claimed the section 45W credit, the credit is recaptured as a tax.

If proposed rule §1.45W-4(c) is finalized in current form, finance sources that provided lease incentives in anticipation of the tax credit, will be unfairly harmed.

> For example: (a) a finance source provides consumers with an upfront lease incentive (based on the anticipated 45W tax credit); (b) the leased vehicle is destroyed in an accident six months into the lease; (c) the finance source is denied the benefit of the 45W tax credit; and (d) the lease contract does not currently allow the finance source to recapture the incentive amount.

Finance sources would likely modify lease agreements to make consumers (or their insurers) responsible for the upfront lease incentive amounts that, in the event of a total loss, cannot be claimed or are subject to recapture.

Similarly, taxpayers that have purchased electric vehicles for use in their own trade of based on the availability of a tax credit will be unduly harmed if some of those vehicles suffer a total loss. The taxpayer has already suffered an economic loss due to the accident; it seems unnecessary for the Treasury to inflict an additional loss by taking away an anticipated tax credit.

ii. Proposed rule §1.45W-4(f) states that the section applies to taxable years ending after the date of publication of the final rules in the Federal Register. If published in 2025, finance sources that provided lease incentives in anticipation of the tax credit will be unfairly harmed if they do not have recapture provisions applicable to EV incentives within the lease contract. AFSA notes that it is typical industry practice, in furtherance of consumer choice and convenience, that a lessee may exercise a purchase option at any time whether or not they have leased the vehicle for 18 months.

If the proposed rule is published in 2025, finance sources would be unable to correct any existing lease contract. Thus, finance sources would bear unexpected losses with respect to leases where the lessee exercised the purchase option within the 18-month period.

Any final rule should provide finance sources with time to ensure that lease contracts contain language that mitigates recapture risk. Specifically, with respect to vehicles subject to a lease, the final rule should state, at a minimum, that subsection (c) applies to vehicles acquired and leased by the taxpayer after six to nine months after the date of publication of the final rules in the Federal Register.

> For example: (a) a consumer accepts a finance source's offer to, with a $7,500 incentive, enter into a three-year lease; (b) the lease ends after one year because the consumer purchased the vehicle pursuant to the purchase option in the lease; (c) the upfront incentive reduces the consumer's purchase option price by $7,500; and (d) because of recapture, the finance source will incur a $7,500 loss.

AFSA also notes that finance sources will need to update their systems in order to accommodate the new lease contracts. (For example, one potential change is to increase the cost of the purchase option by the amount of the expected 45W credit claim so that lessor is not, on net, out of pocket because of the lessee's choice to purchase the vehicle early.) AFSA requests that the Treasury consider a six-to nine-month period after the effective date of the final rules to enable finance sources to update their systems.

i. *Taxpayer reliance on manufacturer certifications and periodic written reports to the IRS.*

   i. Proposed rule §1.45W-5(c) states that a taxpayer may rely on a manufacturer's certifications and periodic written reports to the IRS. AFSA request that any final rule include a provision (as set forth in redline form below) that taxpayers may also rely on an attestation with specific information from such manufacturers. By setting a standard, the final rule will promote taxpayer certainty and efficiency in the market.

   ii. Some manufacturers may view the information in the periodic written report as proprietary and prefer to provide an attestation.

   iii. Moreover, it is unlikely that the purchaser of a small number of clean vehicles will be able to convince a manufacturer to provide it with a copy of the relevant written report. It is unclear to AFSA the benefit to the Government by requiring more than a straightforward attestation.

Conclusion

AFSA appreciates the opportunity to share these considerations with you and looks forward to providing feedback on future efforts undertaken by the IRS.

Sincerely,

Celia Winslow
President-Elect
American Financial Services Association

3. **Redlines to Proposed Rule §1.45W-1(b)(9)(i)-(iii)**

§1.45W-1 Credit for qualified commercial clean vehicles; definitions

(b)(9) *Qualified commercial clean vehicle. Qualified commercial clean vehicle* means a vehicle that meets the requirements of section 45W(c) and §1.45W-3(b) through (d). Vehicles that may qualify as qualified commercial clean vehicles include BEVs, FCEVs, PHEVs, and PHFCEVs. A vehicle does not meet the requirements of section 45W(c) if—

(i) The qualified manufacturer fails to provide to the Secretary a periodic written report for such vehicle prior to ~~the~~ 90 days after the end of the tax year that the taxpayer that placed such vehicle ~~being placed~~ in service and is ~~by the taxpayer~~ claiming the credit that reports the vehicle identification number of such vehicle and certifies compliance with the requirements of section 45W(c);

(ii) The qualified manufacturer provides incorrect information with respect to the periodic written report for such vehicle and such incorrect information is not corrected in the time period described in (b)(9)(i) of this section; or

(iii) The qualified manufacturer fails to update its periodic written report in the event of a material change with respect to such vehicle within 90 days of becoming aware of such material change.

4. **Redlines to Proposed Rule §1.45W-1(c) if the Final Rule does not accommodate AFSA's comments and redlines to Proposed Rule §1.45W-1(b)(9)**

(c) *Applicability date*. This section (other than (b)(9)) applies to taxable years ending after [date of publication of the final rules in the **Federal Register**]. Section (b)(9) of this section applies to vehicles acquired by the taxpayer after [six to nine months after the date of publication of the final rules in the **Federal Register**].

5. **Redlines to Proposed Rule §1.45W-1(b)(10)**

(10) *Qualified manufacturer. Qualified manufacturer* means a manufacturer that meets the requirements described in section 30D(d)(3) at the time the manufacturer submits a periodic written report to the Internal Revenue Service (IRS) under a written agreement described in section 30D(d)(3). The term *qualified manufacturer* does not include any manufacturer whose qualified manufacturer status has been terminated by the IRS starting from the date of such termination. The IRS may terminate qualified manufacturer status for fraud, intentional disregard, or gross negligence with respect to any requirements of section 45W, the section 45W rules, or any guidance under section 45W, including with respect to the periodic written reports described in section 30D(d)(3) and this paragraph (b)(10). The IRS may also terminate qualified manufacturer status for fraud, intentional disregard, or gross negligence with respect to any requirement of section 25E or 30D or any rules in this chapter or guidance thereunder. A taxpayer may treat as a manufacturer as a qualified manufacturer if it has received a signed attestation described in §1.45W-5(c) absent actual knowledge.

6. **Redlines of AFSA-Proposed Rule §1.45W-2(c)**

New Subsection. (-) Alternative *Incremental Cost Determination*. Notwithstanding anything in §1.45W-2(c)(1)-(8) to the contrary, a pure EV qualified manufacturer (as defined in this subsection) can calculate the incremental of a qualified commercial clean vehicle cost by comparing the manufacturer's retail suggested price of such qualified commercial clean vehicle to one or more comparable vehicles of other manufacturers that are solely gasoline- or diesel-powered ICE vehicles. Such a determination will be respected if it is in made in good faith and the pure EV qualified manufacturer believes that it cannot identify information it believes to be accurate or reliable in order to undertake the calculations in §1.45W-2(c)(1)-(8). For this purpose, a "pure EV qualified manufacturer" shall mean a qualified manufacturer of a qualified commercial clean vehicle that does not manufacture any solely gasoline- or diesel-powered ICE vehicles for the relevant model year, as reasonably and in good faith determined by such manufacturer.

7. **Redlines to Proposed Rule §1.45W-2(c)(10)**

(10) *Taxpayer reliance on qualified manufacturer's incremental cost determination*. If a qualified manufacturer provides a taxpayer with written ~~documentation~~ certification signed under penalties of perjury of the incremental cost of a qualified commercial clean vehicle that identifies the comparable vehicle such manufacturer used for the incremental cost calculation and the taxpayer keeps such incremental cost ~~documentation~~ certification in the taxpayer's records for as long as the period of limitations for the taxable period in which the credit was claimed is open, the taxpayer may rely on such incremental cost for purposes of calculating the amount of the section 45W credit (defined in §1.45W-1(a)) with respect to such vehicle. *See* §1.45W-1(b)(9) for consequences of qualified manufacturer fraud, intentional disregard, or gross negligence with respect to any requirements of section 45W, the section 45W rules (defined in §1.45W-1(b)(12)), or any guidance issued by the Secretary under section 45W. The certification is valid if it is signed by an authorized signatory of the qualified manufacturer and includes: (i) a statement that the qualified manufacturer meets the requirements of section 30D(d)(3); (ii) a statement that it has calculated the incremental cost in accordance with the rules; and (iii) a statement that provides the final incremental cost amount for any applicable model, trim, and model year.

8. **Redlines to Proposed Rules §1.45W--4(c) and (f)**

(c) *Recapture*

(1) *In general*. This paragraph (c) provides rules regarding the recapture of the section 45W credit pursuant to sections 45W(d)(1) and 30D(f)(5).

(2) *Recapture in the case of less than 100 percent trade or business use—*

(i) *In general*. Except as provided in paragraph (c)(2)(ii) and (c)(3) of this section, if a taxpayer ceases to use a qualified commercial clean vehicle for 100 percent trade or business use (other than incidental personal use) during the 18-month period beginning on the date the vehicle is placed in service, including because the vehicle is sold or otherwise disposed of, then—

(A) The taxpayer may not claim the section 45W credit with

respect to the vehicle. If the taxpayer has already claimed the section 45W credit, the credit is recaptured as a tax under chapter 1.

(B) The vehicle may still be eligible for the section 45W credit; and

(C) A subsequent buyer must apply the residual value rules of §1.45W-2(f)(3) to determine the incremental cost of the vehicle.

(ii) *Applicability to vehicles placed in service by a tax-exempt entity*. For a qualified commercial clean vehicle placed in service by a tax-exempt entity, the 100 percent trade or business use rule in paragraph (c)(2)(i) of this section applies, except that, as provided in paragraph (b)(5) of this section, 100 percent trade or business use means the tax-exempt entity's use that is related to an exempt purpose or an unrelated trade or business purpose.

(3) *Exception for total loss*. A taxpayer will be treated as meeting the 18-month requirement in (c)(2)(i) of this section with respect to a vehicle if the vehicle was used in a trade or business and the cessation of the use of such vehicle in such trade or business is due to the vehicle's destruction, incapacity or total loss resulting from an accident, weather, manufacturing defect or an act of God.

-- Proposed Rules §1.45W--4(d) and (e) are omitted for Conciseness and Readability--

(f) *Applicability date*. This section (other than (c)(2) for vehicles subject to a lease) applies to taxable years ending after [date of publication of the final rules in the **Federal Register**]. With respect to vehicles subject to a lease, subsection (c)(2) applies to vehicles acquired and leased by the taxpayer after [six to nine months after the date of publication of the final rules in the **Federal Register**].

9. Redlines to Proposed Rule §1.45W-5(c)

(c) *Taxpayer reliance on manufacturer certifications and periodic written reports to the IRS*. A taxpayer that acquires a qualified commercial clean vehicle and places it in service may rely on the information and certifications contained in the qualified manufacturer's written reports to the IRS. The procedures for such periodic written reports are established in guidance published in the Internal Revenue Bulletin (*see* §601.601 of this chapter). Alternatively, a taxpayer may also rely on an attestation from the qualified manufacturer, as long as the attestation is signed by an authorized signatory of the qualified manufacturer and includes: (i) a statement that the qualified manufacturer meets the requirements of section 30D(d)(3); (ii) a statement that the each VIN included in the attestation is for a vehicle that is a "qualified commercial clean vehicle"; and (iii) a statement that the qualified manufacturer is filing periodic written reports with IRS (and has or will file such a report respect to the vehicle(s) that are part of the attestation). Notwithstanding §§1.45W-1(b)(9), (b)(10), ~~To~~ to the extent a taxpayer relies on certifications or attestations from the qualified manufacturer, the qualified commercial clean vehicle the taxpayer acquires will be deemed to meet the requirements of sections 30D(d)(1)(C) and 45W(c)(1) of the Code.