

New IRS Guidance for Commercial Clean Vehicles

January 21, 2025

Introduction

In the days leading up to President Trump’s inauguration, the U.S. Department of Treasury and the Internal Revenue Service (“IRS”) issued guidance on the credit for Qualified Commercial Clean Vehicles under section 45W of the Internal Revenue Code (the “Code”) in the form of proposed regulations on January 10, 2025, and a notice on January 16, 2025. The fate of the new proposed rules, along with many of the Biden-era energy regulations, is uncertain under the new administration. This memo provides some background on section 45W and then discusses some of the more significant aspects of the proposed regulations and the notice.

Background

Section 45W of the Code is one of three clean vehicle credits introduced by the Inflation Reduction Act of 2022. Section 30D provides a credit for new personal-use clean vehicles and section 25E provides a credit for previously-owned clean vehicles. Section 45W provides customers a tax credit for commercial clean vehicles placed in service from 2023 to the end of 2032. Up to \$7,500 of credits are available for vehicles weighing less than 14,000 pounds and up to \$40,000 of credits are available for heavier vehicles. The credit is calculated based on the lesser of (x) 15% (30% for vehicles not powered by internal combustion engines) of the taxpayer’s basis in the vehicle or (y) the “incremental cost” of the vehicle. For this purpose, “incremental cost” means the excess of the purchase price of the commercial clean vehicle over the purchase price of a comparable vehicle powered solely by a gasoline or diesel engine.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors

SAN FRANCISCO

Maureen Linch
+1 415 796 4420
mlinch@cgsh.com

NEW YORK

Jason Factor
+1 212 225 2694
jfactor@cgsh.com

Rachel Pritzlaff
+1 212 225 2228
rpritzlaff@cgsh.com



Proposed Regulations

Amount of Section 45W Credit: Incremental Cost

Section 45W(b)(2) provides that the incremental cost of a qualified commercial clean vehicle is the excess of its purchase price over the purchase price of a comparable vehicle. Under the proposed regulations, the incremental cost of a commercial clean vehicle would be determined by multiplying the manufacturer's cost of the powertrain components by the retail price equivalent ("RPE") of that vehicle, and then subtracting from that product the cost of a comparable vehicle powertrain multiplied by the RPE of that comparable vehicle. The RPE would be the ratio of the manufacturer's suggested retail price to the manufacturer's cost to produce the vehicle. A vehicle would be considered comparable if it had substantially similar gross vehicle weight ratings, number of doors, towing capacity, passenger capacity, cargo capacity, mounted equipment, drivetrain type, width, height, ground clearance, trim level, and similar characteristics.

As an example, a passenger car with a 250-horsepower battery electric powertrain, a weight of 4,800 pounds, four doors, five passenger seats, and a mid-range trim level would be comparable to a passenger car with a 200-horsepower internal combustion engine powertrain, a weight of 4,500 pounds, four doors, five passenger seats, and a mid-range trim level. But it would not be comparable to a passenger car with a 250-horsepower internal combustion engine powertrain, a weight of 4,500 pounds, two doors, two passenger seats, and a high-end trim level because of the difference in number of doors, number of passenger seats, and trim level.

The preamble to the proposed regulations explains that the approach used to calculate incremental cost is designed to be consistent with the goal of section 45W to incentivize taxpayers to purchase vehicles with clean propulsion technologies instead of vehicles powered by gasoline. Narrowing the incremental cost to the difference in price of the powertrain to the exclusion of other vehicle features prevents

incentivizing the adoption of vehicle features unrelated to the purposes of section 45W.

The preamble also explains that the RPE factor is intended to account for the additional indirect costs and profits that are included in vehicle prices. Because calculating the RPE in this way could lead to the disclosure of proprietary information, the Treasury and IRS intend to provide RPE safe harbors for different segments of the vehicle market on an ongoing basis. The proposed regulations provide that the IRS would no more frequently than annually publish incremental cost safe harbors for different types and classes of commercial clean vehicles placed in service during specified periods.

Safe harbor guidance in Notice 2025-9, released January 16, 2025, allows taxpayers to use information in the Department of Energy's 2025 report modeling the costs of representative clean vehicles and comparable internal combustion engine vehicles for purposes of determining the incremental costs of vehicles placed in service on or after January 1, 2025.

Qualified Commercial Clean Vehicle

To be eligible under section 45W, a commercial clean vehicle must meet a number of requirements. Among them is that the vehicle must be either (i) intended primarily for use on public streets, roads, and highways, or (ii) mobile machinery. Mobile machinery generally means a vehicle consisting of a chassis with permanently mounted machinery specifically designed to perform a construction, manufacturing, processing, mining, farming, drilling, timbering, or similar operation. The proposed regulations clarify that if a vehicle satisfies both definitions and could be used on the highway or off-road, the taxpayer may choose which prong of section 45W under which the vehicle will qualify. The IRS is considering an approach to categorizing off-road vehicles that would deem vehicles not designed to carry a load over the public highways as off-road mobile machinery for the purposes of section 45W.

In addition, the taxpayer must acquire the vehicle for use or lease and not for resale. The proposed regulations clarify that taxpayers other than

tax-exempt entities can satisfy this requirement by acquiring a commercial clean vehicle for use or lease in a trade or business. For example, a taxpayer who is engaged in a business of leasing vehicles could take section 45W credits for vehicles acquired for the purpose of leasing to customers. Separately, for a taxpayer to take a section 45W credit with respect to a vehicle the taxpayer has leased, the lease must be respected as a lease for federal income tax purposes; otherwise the vehicle will be treated as acquired for resale, and thus ineligible for the credit.

Other section 45W requirements include that the vehicle must be of a character subject to the allowance for depreciation and may not be used predominately outside the United States. However, section 45W does not contain many of the stricter rules applicable to the section 30D clean vehicle credit available for consumers. For example, to be eligible for a section 30D credit, a consumer clean vehicle must:

- be manufactured in North America;
- have batteries with a certain percentage of components that are produced, and critical minerals that are processed, in the United States;
- not exceed a purchase price cap of \$80,000 for vans, trucks, and SUVs, or \$55,000 for other vehicles;
- be sold to individuals whose income does not exceed a certain threshold; and
- not include any battery components manufactured or critical minerals produced by a “foreign entity of concern,” which includes entities under the jurisdiction of, owned by, or subject to significant influence of the government of China, Russia, North Korea, or Iran.

Considering the more lenient requirements of section 45W, combined with the application of the credits to vehicles purchased in a leasing business, the scope of section 45W is potentially much broader than that of section 30D. For example, section 45W credits may be available to a car dealer who purchases vehicles for lease that have purchase prices in excess of \$80,000, were manufactured outside of the United States, and

include batteries produced by foreign entities of concern.

Reporting Requirements

Section 45W(c)(1) requires that a qualifying commercial clean vehicle must be produced by a qualified manufacturer. To qualify under this provision, a manufacturer must enter a written agreement with the IRS and deliver periodic written reports to the IRS providing vehicle identification numbers and other information related to each vehicle it manufactures. The proposed regulations would allow taxpayers to rely on the certifications and information provided by qualified vehicle manufacturers to the IRS to satisfy this requirement.

Public Comments and Hearing

The Treasury and IRS are accepting public comments, written or electronic, until March 17, 2025. A public hearing on the proposed regulations is scheduled for April 28, 2025, at 10 a.m. EST.

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