

Request for Comments on Section 45W Credit for Qualified Commercial Clean Vehicles and Section 30C Alternative Fuel Vehicle Refueling Property Credit

Notice 2022-56

SECTION 1. PURPOSE

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) plan to issue guidance under § 45W and § 30C of the Internal Revenue Code (Code), as amended by §§ 13403 and 13404, respectively, of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). This notice requests general comments on the qualified commercial clean vehicles credit under § 45W (§ 45W credit) and the amendments to the alternative fuel vehicle refueling property credit under § 30C (§ 30C credit), as well as specific comments described in section 3 of this notice. Comments received in response to this notice will help to inform the development of guidance implementing §§ 45W and 30C.

SECTION 2. BACKGROUND

.01 Section 45W, Qualified Commercial Clean Vehicles Credit

Section 13403(a) of the IRA added new § 45W to the Code, which is effective for vehicles acquired after December 31, 2022, and before January 1, 2033. A taxpayer can claim a § 45W credit for purchasing and placing in service a qualified commercial clean vehicle, as defined in § 45W(c), during the taxable year. The amount of the § 45W credit is the lesser of (1) 15 percent of the taxpayer's basis in the vehicle

(30 percent in the case of a vehicle not powered by a gasoline or diesel internal combustion engine), or (2) the incremental cost of the vehicle.¹ Under § 45W(b)(4), the credit is limited to \$7,500 in the case of a vehicle that has a gross vehicle weight rating of less than 14,000 pounds, and \$40,000 for all other vehicles.

Section 45W(c) defines “qualified commercial clean vehicle” for purposes of the § 45W credit.² Section 45W(d) establishes special rules for purposes of the § 45W credit, including the application of basis reduction, domestic usage, and recapture rules similar to those under § 30D(f) of the Code and a rule disallowing a double benefit under § 45W for a taxpayer claiming a new clean vehicle credit under § 30D. Section 45W(e) provides that no § 45W credit is allowed with respect to any vehicle unless the taxpayer includes the vehicle identification number (VIN) of such vehicle on the tax return for the taxable year. Section 45W(f) grants the Secretary of the Treasury or her delegate (Secretary) authority to issue regulations or other guidance to carry out the purposes of § 45W, including regulations or other guidance relating to determination of the incremental cost of any qualified commercial clean vehicle.

¹ Section 45W(b)(2) provides that the incremental cost of any qualified commercial clean vehicle is an amount equal to the excess of the purchase price for such vehicle over the purchase price of a comparable vehicle. Section 45W(b)(3) defines “comparable vehicle” to mean any vehicle that is powered solely by a gasoline or diesel internal combustion engine and is comparable in size and use to such vehicle.

² Under § 45W(c), a “qualified commercial clean vehicle” is defined as any vehicle of a character subject to the allowance for depreciation that: (1) meets the requirement under § 30D(d)(1)(C) of being made by a qualified manufacturer and is acquired for use or lease by the taxpayer and not for resale, (2) either-- (A) meets the requirement under § 30D(d)(1)(D) of being treated as a motor vehicle for purposes of title II of the Clean Air Act and is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails), or (B) is mobile machinery, as defined in § 4053(8) (including vehicles that are not designed to perform a function of transporting a load over the public highways), and (3) either-- (A) is propelled to a significant extent by an electric motor which draws electricity from a battery that has a capacity of not less than 15 kilowatt hours (or, in the case of a vehicle that has a gross vehicle weight rating of less than 14,000 pounds, 7 kilowatt hours) and is capable of being recharged from an external source of electricity, or (B) is a motor vehicle that satisfies the requirements under § 30B(b)(3)(A) and (B) for being a new qualified fuel cell motor vehicle.

.02 Section 30C, Alternative Fuel Vehicle Refueling Property Credit

Section 30C was originally enacted by § 1342(a) of the Energy Policy Act of 2005, Public Law 109-58, 119 Stat. 1049 (Aug. 8, 2005), to provide a credit for the cost of qualified alternative fuel vehicle refueling property. Section 30C has been amended several times since its enactment, most recently by § 13404 of the IRA effective with respect to qualified alternative fuel vehicle refueling property placed in service after December 31, 2022, and on or before December 31, 2032.

With respect to such qualified alternative fuel vehicle refueling property, the amount of the § 30C credit is equal to 30 percent (6 percent in the case of property of a character subject to depreciation) of the cost of such property. The § 30C credit with respect to any single item of qualified alternative fuel vehicle refueling property is limited to \$100,000 in the case of any such item of property of a character subject to an allowance for depreciation, and \$1,000 in any other case. For purposes of the § 30C credit, § 30C(c) defines the term “qualified alternative fuel vehicle refueling property” (1) by making certain modifications to the term “qualified clean-fuel vehicle refueling property” as defined in former § 179A of the Code (providing a deduction for clean-fuel vehicles and certain refueling property) as in effect prior to its repeal, (2) adding bidirectional charging equipment to that modified definition, and (3) requiring such property to be located in an eligible census tract, as defined in § 30C(c)(3), which is either a low-income community as described in § 45D(e) or not an urban area.³

³ Section 30(e)(6) provides that references in § 30C to § 179A are references to former § 179A as in effect immediately before its repeal by Public Law 113-295, div. A, title II, §221(a)(34)(A), 128 Stat. 4042 (December 19, 2014). Section 30C(c)(1) generally defines the term “qualified alternative fuel vehicle refueling property” to have the same meaning as the term “qualified clean-fuel vehicle refueling property” would have under former § 179A, if: (A) former § 179A(d)(1) (limiting deduction to property of a character

Section 30C(d) addresses the application of § 30C with other credits. Section 30C(e) provides special rules for purposes of § 30C. Section 30C(f) provides a special rule for electric charging stations for certain vehicles with two or three wheels for purposes of the § 30C credit. Section 30C(g)(1) provides that the amount of § 30C credit for any qualified alternative fuel vehicle refueling property of a character subject to an allowance for depreciation that is part of a qualified alternative fuel vehicle refueling project is multiplied by 5 if certain prevailing wage and apprenticeship requirements are met.⁴ Section 30C(g)(4) grants the Secretary authority to issue regulations or other guidance to administer the wage and apprenticeship requirements of § 30C(g), and § 30C(h) authorizes the Secretary to prescribe such regulations as necessary to carry out the provisions of § 30C.

SECTION 3. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments on questions arising under § 45W and the amendments to § 30C that should be addressed in guidance.

Commenters are encouraged to specify the issues on which guidance is needed most quickly as well as the most important issues on which guidance is needed. In addition

subject to the allowance for depreciation) did not apply to property installed on property which is used as the principal residence (within the meaning of § 121 of the Code) of the taxpayer, and (B) only the following were treated as clean-burning fuels for purposes of former § 179A(d): (i) Any fuel at least 85 percent of the volume of which consists of one or more of the following: ethanol, natural gas, compressed natural gas, liquified natural gas, liquefied petroleum gas, or hydrogen; (ii) Any mixture-- (I) which consists of two or more of the following: biodiesel (as defined in § 40A(d)(1) of the Code), diesel fuel (as defined in § 4083(a)(3) of the Code), or kerosene, and (II) at least 20 percent of the volume of which consists of biodiesel (as so defined) determined without regard to any kerosene in such mixture; (iii) Electricity; (iv) Any transportation fuel (as defined in § 45Z(d)(5) of the Code).

⁴ These requirements are satisfied if the construction of the facility begins prior to 60 days after the Treasury Department and IRS publish guidance with respect to these requirements, or the requirements are satisfied. Similar provisions were added by the IRA to several other Code provisions. See Notice 2022-51 requesting comments on prevailing wage and apprenticeship requirements. General comments pertaining to the prevailing wage and apprenticeship requirements should be submitted in response to Notice 2022-51.

to general comments, the Treasury Department and the IRS request comments that address the following specific questions:

.01 Credit for Qualified Commercial Clean Vehicles (§ 45W)

(1) What factors should be considered, and what data sources should be relied on, to determine whether a vehicle is “comparable in size and use” for purposes of the comparable vehicle definition in § 45W(b)(3) to determine incremental cost?

(2) What, if any, guidance is required to clarify the definition of mobile machinery for the purposes of § 45W(c)?

(3) Section 45W(d)(1) provides that rules similar to the rules under § 30D(f) without regard to the income limitations in § 30D(f)(10) or the manufacturer’s suggested retail price limitations in § 30D(f)(11), apply for purposes of section 45W. The applicable rules in § 30D(f) are basis reduction, no double benefit, property used outside the United States not qualified, recapture, election not to take the credit, interaction with air quality and motor vehicle safety standards, and one credit per vehicle. What aspects of § 30D(f) should apply to the § 45W credit without modification and what aspects should be modified?

(4) Section 45W(d)(3) provides that no § 45W credit is allowed with respect to any vehicle for which a credit was allowed under § 30D. What, if any, guidance is required to ensure that the allowance of credit under § 30D precludes the allowance of a credit under § 45W for the same vehicle?

(5) The definition of qualified commercial clean vehicle in § 45W(c)(1) contains several requirements including that the vehicle be made by a qualified manufacturer as required by § 30D(d)(1)(C), as amended by the IRA. What, if any, guidance is

necessary for qualified manufacturers to comply with the requirements of § 45W(c)(1)?

(6) Section 45W(c)(3)(A) requires that a qualified commercial clean vehicle must either (i) satisfy the requirements under § 30B(b)(3)(A) and (B) for being a new qualified fuel cell motor vehicle, or (ii) be propelled to a significant extent by an electric motor which draws electricity from a battery that has a capacity of not less than 15 kilowatt hours (or, in the case of a vehicle which has a gross vehicle weight rating of less than 14,000 pounds, 7 kilowatt hours) and is capable of being recharged from an external source of electricity. How should “significant extent” be defined for this purpose?

(7) Is guidance necessary to clarify the meaning of the term “property of a character subject to an allowance for depreciation” for purposes of § 45W(c)(4)?

(8) Please provide comments on any other terms in § 45W that may require definition or additional guidance.

.02 Alternative Fuel Vehicle Refueling Property Credit (§ 30C)

(1) Is guidance necessary to clarify the meaning of the term “property of a character subject to an allowance for depreciation” for purposes of § 30C?

(2) Section 30C(b) provides that the credit is allowed with respect to any single item of qualified alternative fuel vehicle refueling property. How should “single item” be defined for this purpose?

(3) Section 30C(c)(2) provides that property does not fail to be qualified alternative fuel vehicle refueling property solely because such property is capable of charging the battery of a motor vehicle propelled by electricity, and allows discharging electricity from such battery to an electric load external to such motor vehicle. What factors and definitions should be considered in developing guidance for qualified

alternative fuel vehicle refueling property that is also bidirectional charging equipment?

(4) Section 30C(e)(3) requires qualified alternative fuel vehicle refueling property to be placed in service in an eligible census tract. What guidance, if any, is needed to clarify the definition of eligible census tract?

(5) Section 30C(e)(5) provides that recapture rules similar to the rules of former § 179A(e)(4) apply for purposes of § 30C. What aspects of §§ 30C and former 179A should apply without modification for this purpose and what aspects should be modified?

(6) Please provide comments on any other terms in, or topics related to, § 30C that may require definition or guidance.

SECTION 4. SUBMISSION OF COMMENTS

.01 Written comments should be submitted by December 3, 2022. Consideration will be given, however, to any written comment submitted after December 3, 2022, if such consideration will not delay the issuance of guidance. The subject line for the comments should include a reference to Notice 2022-56. Comments may be submitted in one of two ways:

(1) Electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2022-56 in the search field on the regulations.gov homepage to find this notice and submit comments).

(2) Alternatively, by mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2022-56, Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C., 20044.

.02 All commenters are strongly encouraged to submit comments electronically. The Treasury Department and the IRS will publish for public availability any comment submitted electronically and on paper to its public docket on www.regulations.gov.

SECTION 5. 60-DAY RULE NOT EFFECTUATED FOR THE PREVAILING WAGE AND APPRENTICESHIP REQUIREMENT

For purposes of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D of the Code, the publication of this notice requesting comments is not the publication of guidance with respect to the prevailing wage and apprenticeship requirements, and it is not relevant in determining whether the prevailing wage and apprenticeship requirements are satisfied under such sections. The Treasury Department and the IRS will explicitly identify when guidance with respect to the prevailing wage and apprenticeship requirements that is relevant for determining whether such requirements have been satisfied for purposes of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D is published.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is the Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, call the energy security guidance contact number at (202) 317-5254 (not a toll-free call).