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Proposed regulations: Guidance on section 45W credit for qualified commercial clean vehicles

The U.S. Treasury Department and IRS today released proposed regulations (REG-123525-23) providing guidance on the qualified commercial clean vehicle credit under section 45W, created by Pub. L. No. 117-169 (commonly called the "Inflation Reduction Act of 2022" (IRA)).

Background

The amount of the section 45W credit for each qualified commercial clean vehicle placed in service by a taxpayer during the tax year is the lesser of (1) 30% of the taxpayer's basis in the vehicle in the case of a vehicle not powered by a gasoline or diesel internal combustion engine (15% in any other case), or (2) the incremental cost of the vehicle. The maximum credit allowed is $7,500 in the case of a qualified commercial clean vehicle that has a gross vehicle weight rating of less than 14,000 pounds, and $40,000 for all other vehicles.

Section 45W(b)(2) provides that the incremental cost of a qualified commercial clean vehicle is the excess of the purchase price of such vehicle over the price of a comparable vehicle. A comparable vehicle with respect to any qualified commercial clean vehicle is any vehicle that is powered solely by a gasoline or diesel internal combustion engine and is comparable in size and use to such qualified commercial clean vehicle.

A qualified commercial clean vehicle under section 45W(c) includes (1) a vehicle that is 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 (street vehicle) and (2) mobile machinery as defined in section 4053(8).

Proposed regulations

As explained in a related Treasury release, the proposed regulations propose various pathways for taxpayers to determine the incremental cost of a qualifying commercial clean vehicle for purposes of calculating the amount of 45W credit. For example, under the proposed regulations taxpayers may continue to use the incremental cost safe harbors such as those set out in Notice 2023-9 and Notice 2024-5, may rely on a manufacturer's written cost determination to determine the incremental cost of a qualifying commercial clean vehicle, or may calculate the incremental cost of a qualifying clean vehicle versus an internal combustion engine (ICE) vehicle based on the differing costs of the vehicle powertrains.

The proposed regulations also address the types of vehicles that qualify for the credit and propose rules aligning with certain definitional concepts with those applicable to the section 30D and 25E credits. Under the proposed regulations, vehicles would only be eligible if they are used 100% for trade or business, excepting de minimis personal use, and the section 45W credit would be disallowed for qualified commercial clean vehicles that were previously allowed a clean vehicle credit under section 30D or 45W.

The proposed regulations are proposed to apply to tax years ending after the date the proposed regulations are finalized.

Comments on the proposed regulations, as well as requests to speak and outlines for topics to be discussed at the public hearing (scheduled for April 28, 2025, at 10:00 AM ET), are due by the date that is 60 days after the proposed regulations are published in the Federal Register (which is scheduled to be January 14, 2025). If no outlines are received by that date, the public hearing will be cancelled.

The proposed regulations specifically request comments on issues related to off-road mobile machinery, including approaches that might be adopted in applying the definition of mobile machinery to off-road vehicles and whether to create a product identification number system for such machinery in order to comply with statutory requirements.

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