

U.S. Treasury Releases Final Electric Vehicle Tax Credit Regulations

May 10, 2024

On May 3, 2024, the U.S. Department of Treasury (Treasury) and Internal Revenue Service (IRS) released [final regulations](#) regarding the clean vehicle tax credits for electric vehicles (EV) under Section 30D (Section 30D Credit) of the Internal Revenue Code of 1986, as amended (the “Code” and “Final Regulations”) ¹. The Final Regulations largely adopt the proposed regulations previously issued, with some important changes, and remove the temporary regulations.

Background

Section 30D, as amended by the Inflation Reduction Act of 2022 (IRA), provides a tax credit to qualified individuals and businesses purchasing eligible new EVs. The credit is determined and allowable with respect to the taxable year in which the taxpayer places the new EV in service. The maximum amount of the Section 30D Credit is \$7,500, consisting of \$3,750 in the case of a vehicle that meets certain requirements relating to critical minerals and \$3,750 in the case of a vehicle that meets certain requirements relating to battery components.

The Section 30D credit may be transferred to certain “eligible entities” (including certain dealers), in consideration for cash payment or a partial repayment or down payment for the purchase of the EV. The Final Regulations provide certain rules and definitions regarding such transfers.

The Final Regulations

Among numerous issues addressed in the Final Regulations, they also clarify certain battery component and critical mineral sourcing requirements necessary to be met to be eligible for the credit.

Beginning in 2024, the IRA mandates that at least 50% of the value of certain critical minerals in an EV's battery are sourced and processed in the U.S. or a trade partner country, increasing by 10% per year through 2027. To measure the value of the covered critical minerals, the Final Regulations implement a new, more detailed process for automakers to trace the battery supply chain to qualify for the Section 30D Credit's domestic content requirements. The so-called “Traced Qualifying Value Add Test” requires manufacturers to determine the actual value-added percentage across the supply chain, including extraction, processing, and recycling.

This final version of the test is more stringent than the test Treasury proposed in December 2023 because the manufacturer may treat as qualifying only a percentage of value of an applicable critical

mineral, not the full value. The proposed regulations, however, would have measured the value added by either the extraction or processing of critical minerals. That is, under the proposed regulations, an applicable critical mineral was treated as extracted or processed in the United States if 50% or more of the value added to the applicable critical mineral by extraction or processing is derived from extraction or processing that occurred in the United States.

Treasury has clarified that manufacturers may use the proposed tracing test as outlined in the December 2023 proposed regulations through the end of 2026 as a transition rule.

Additionally, the Final Regulations provide that an EV is not eligible for the Section 30D Credit if any of its battery component or specified critical minerals are supplied by a foreign entity of concern (FEOC), regardless of its overall value percentage. Notably, the FEOC rule applies to products from the People's Republic of China, currently the biggest foreign player in the EV battery industry.

Despite receiving numerous comments and suggestions to revise the FEOC provision in the proposed regulations, the FEOC prohibition in the Final Regulations remains generally unchanged. In addition, the U.S. Department of Energy (DOE) concurrently released [final interpretive guidance](#) that tightens the FEOC definition for purposes of the Section 30D Credit. The result is if an FEOC holds 25% or more of the board seats, voting rights, or equity interests in an EV supply chain entity or if the EV supply chain entity is effectively controlled by an FEOC through a license or contract, the EV is ineligible for the Section 30D Credit.

The Final Regulations acknowledge, however, that certain battery materials such as graphite and certain electrode powders are “impracticable” for EV manufacturers to trace given current industry practices. As such, the Final Regulations allow EV manufacturers to exclude impracticable-to-trace materials from FEOC compliance obligations through the end of 2026, provided that the EV manufacturer submits a report to Treasury detailing how it will comply with the FEOC restriction once the transition period expires. The FEOC battery component exclusion took effect this year, while the critical-minerals exclusion takes effect in 2025.

For more insights into EV industry developments, click [here](#) to listen to Sidley's *Accelerating Energy* podcast episode on tackling EV infrastructure.

¹The Final Regulations also include regulations with respect to tax credits for previously owned clean vehicles under Section 25E of the Code, which are not addressed in this alert.

CONTACTS

If you have any questions regarding this Sidley Update, please contact the Sidley lawyer with whom you usually work, or

Kenneth W. Irvin, Partner

+1 202 736 8256, kirvin@sidley.com

Hagai Zaifman, Partner

+1 212 839 5754, hagai.zaifman@sidley.com

Nisha Jain, Managing Associate

+1 202 736 8152, nisha.jain@sidley.com

www.sidley.com/en/locations/offices.

Sidley provides this information as a service to clients and other friends for educational purposes only. It should not be construed or relied on as legal advice or to create a lawyer-client relationship. Readers should not act upon this information without seeking advice from professional advisers. Sidley and Sidley Austin refer to Sidley Austin LLP and affiliated partnerships as explained at www.sidley.com/disclaimer.

© Sidley Austin LLP