Inflation Reduction Act of 2022—Health Care and Tax Provisions

Cross References

- H.R. 5376

Signed into law on August 16, 2022, the Inflation Reduction Act of 2022 includes provisions that affect the cost of health care, provide additional funding for the IRS, and provide tax incentives for clean energy that address climate change. The new law also raises taxes on large corporations to help pay for the legislation. The following is our coverage of the new law.

Corporate Alternative Minimum Tax (AMT)

- IRC §55

Prior Law. For tax years prior to 2018, C corporations were not subject to AMT unless average gross receipts were $7.5 million or more for the prior three tax years. Under the Tax Cuts and Jobs Act (TCJA), the AMT for C corporations was repealed effective for 2018. TCJA also repealed the graduated tax rate schedules for C corporations and replaced them with a flat tax rate of 21% on net taxable income.

New Law. The regular tax rate on net taxable income of a C corporation remains at the flat rate of 21%. Effective for tax years beginning in 2023, the tentative minimum tax for applicable corporations equals 15% of the adjusted financial statement income for the tax year reduced by the corporate AMT foreign tax credit for the tax year.

An applicable corporation is any corporation (other than an S corporation, a regulated investment company, or a real estate investment trust) with average annual adjusted financial statement income that exceeds $1 billion per year.

Average annual adjusted financial statement income is based on the 3-year period ending with the current year. The $1 billion threshold is reduced to $100 million if the corporation is a member of a foreign-parented multinational group.

Author's Comment

Since the 21% rate on taxable income is higher than the 15% rate on adjusted financial statement income, the corporate AMT will generally not apply unless the corporation is eligible for certain credits and deductions that are not allowed in computing the AMT.

Special rules and exceptions apply for determining applicable corporation status. See IRC section 55 for details.

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Adjusted Financial Statement Income

• IRC §56A

The new law creates a new code section called "Adjusted Financial Statement Income" (IRC §56A) which determines how to calculate C corporation income for purposes of the AMT. The term "adjusted financial statement income" means the net income or loss set forth on the corporation's applicable financial statement for the tax year, adjusted for certain items listed under IRC section 56A. The term "applicable financial statement" means an applicable financial statement as defined under IRC section 451(b)(3) or as specified under regulations and guidance to be issued by the IRS. See new IRC section 56A for details.

Excise Tax on Repurchase of Corporate Stock

• IRC §4501

Effective for repurchases of stock after December 31, 2022, the new law creates a new code section called "Repurchase of Corporate Stock" (IRC §4501) which is a tax imposed on a covered corporation equal to 1% of the fair market value (FMV) of any stock of the corporation which is repurchased by the corporation during the tax year.

A covered corporation is any domestic corporation the stock of which is traded on an established securities market. See new IRC section 4501 for details and stock repurchases that are exempt from the tax.

Funding the Internal Revenue Service and Improving Taxpayer Compliance

• Section 10301 of H.R. 5376

The new law provides additional funding for the Internal Revenue Service for taxpayer services and enforcement, including for operations support, business systems modernization, and the development of a free direct e-file tax return system. The new law also provides additional funding for the Department of the Treasury Inspector General for Tax Administration, the Office of Tax Policy, the Tax Court, and Treasury departmental offices.

The additional funding is available through fiscal year 2031 (ending on September 30, 2031). Specifically, the new law provides:

- $3,181,500,000 in additional funding for taxpayer services, including pre-filing assistance and education, filing and account services, taxpayer advocacy services, and other services.
- $45,637,400,000 in additional funding for enforcement activities of the IRS to determine and collect owed taxes, to provide legal and litigation support, to conduct criminal investigations (including investigative technology), to provide digital asset monitoring and compliance activities, to enforce criminal statutes related to violations of the internal revenue laws and other financial crimes, to purchase and hire passenger motor vehicles, and to provide other services.

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- $25,326,400,000 in additional funding for necessary expenses of the IRS to support taxpayer services and enforcement programs, including rent payments, facilities services, printing, postage, physical security, headquarters and other IRS-wide administrative activities, research and statistics of income, telecommunications, information technology development, enhancement, operations, maintenance and security, the hire of passenger motor vehicles, the operations of the IRS Oversight Board, and other services.
- $4,750,700,000 in additional funding for necessary expenses of the IRS's business systems modernization program, including development of callback technology and other technology to provide a more personalized customer service but not including the operation and maintenance of legacy systems.

The new law provides $15 million in additional funding for a task force to design an IRS-run free "Direct E-file" tax return system. The task force is to report its findings to Congress within nine months on:

I) The cost (including options for differential coverage based on taxpayer adjusted gross income and return complexity) of developing and running a free direct e-file tax return system, including costs to build and administer each release, with a focus on multi-lingual and mobile-friendly features and safeguards for taxpayer data,

II) Taxpayer opinions, expectations, and level of trust, based on surveys, for such a free direct e-file system, and

III) The opinions of an independent third-party on the overall feasibility, approach, schedule, cost, organizational design, and IRS capacity to deliver such a direct e-file tax return system.

The new law also provides the following additional funding.

- $403 million for the Treasury Inspector General for Tax Administration,
- $104,533,803 for the Office of Tax Policy,
- $153 million for the United States Tax Court, and
- $50 million for the Treasury Departmental Offices.

Lowering Prices through Drug Price Negotiation

- Section 11001 of H.R. 5376

The new law requires the Centers for Medicare & Medicaid Services (CMS) to negotiate the prices of certain prescription drugs under Medicare beginning in 2026.

Specifically, the CMS must negotiate maximum prices for brand-name drugs that do not have other generic equivalents and that account for the greatest Medicare spending. The CMS must negotiate the prices of 10 drugs in 2026, 15 drugs in 2027 and 2028, and 20 drugs in 2029 and each year thereafter.

Manufacturers that fail to comply are subject to civil penalties and a new excise tax under IRC section 5000D.

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Excise Tax Imposed on Drug Manufacturers During Noncompliance Periods

- IRC §5000D

The new law creates a new code section under IRC section 5000D which imposes on the sale by the manufacturer, producer, or importer of any designated drug during the noncompliance period a tax in an amount such that the applicable percentage is equal to the ratio of:
1) Such tax, divided by
2) The sum of such tax and the price for which so sold.

Designated drugs are listed under section 1192(a) of the Social Security Act. The noncompliance period is generally the period prior to the manufacturer complying with an agreement described in section 1193(a) of the Social Security Act with respect to such drug.

The applicable percentage means:
1) In the case of sales of a designated drug during the first 90 days of the noncompliance period with respect to such drug, 65%,
2) In the case of sales of such drug during the 91st day through the 180th day of the noncompliance period with respect to such drug, 75%,
3) In the case of sales of such drug during the 181st day through the 270th day of the noncompliance period with respect to such drug, 85%, and
4) In the case of sales of such drug during any subsequent day, 95%.

See IRC section 5000D for exceptions and special rules.

Prescription Drug Inflation Rebates

- Section 11101 and 11102 of H.R. 5376

The new law requires drug manufacturers to issue rebates to the CMS for brand-name drugs without generic equivalents under Medicare that cost $100 or more per year per individual and for which prices increase faster than inflation. Manufacturers that fail to comply are subject to civil penalties.

Maximum Out-of-Pocket Cap for Medicare Beneficiaries

- Section 11201 and 11202 of H.R. 5376

The new law eliminates beneficiary cost-sharing above the annual out-of-pocket spending threshold under the Medicare prescription drug benefit beginning in 2024 and caps annual out-of-pocket spending at $2,000 in 2025 (with annual adjustments thereafter). It also establishes a program under which drug manufacturers provide discounts to beneficiaries who have incurred costs above the annual deductible beginning in 2025.

The new law establishes a process through which certain beneficiaries may have their monthly out-of-pocket costs capped and paid in monthly installments beginning in 2025.

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Coverage of Adult Vaccines and Insulin

• Section 11401 through 11408 of H.R. 5376

The new law eliminates cost-sharing under the Medicare prescription drug benefit for adult vaccines that are recommended by the Advisory Committee on Immunization Practices. It also requires coverage, without cost-sharing, of such vaccines under Medicaid and the Children's Health Insurance Program (CHIP).

In addition, the new law caps cost-sharing under the Medicare prescription drug benefit for a month's supply of covered insulin products at:
1) For 2023 through 2025, $35, and
2) Beginning in 2026, the lesser of:
   a) $35,
   b) 25% of the government's negotiated price, or
   c) 25% of the plan's negotiated price.

Premium Tax Credit (PTC)

• IRC §36B

Prior Law. The Premium Tax Credit (PTC) is a refundable credit designed to subsidize the cost of health insurance. The PTC amount is determined based on the percentage of household income the cost of premiums represents, ranging from 2% of household income for those below 133% of the federal poverty line to 9.5% of household income for those at 400% of the federal poverty line. Taxpayers with household income above 400% of the federal poverty line do not qualify for the PTC.

Taxpayers can receive an Advanced Premium Tax Credit (APTC) during the year, calculated by estimating income for the year. The advance is paid directly to the health insurance provider, thus reducing the taxpayer's monthly premiums. The APTC is then reconciled with income reported on the tax return for the year. If the APTC exceeds the PTC allowed, the difference increases the tax liability on the return.

The American Rescue Plan Act of 2021 provided temporary percentage ranges for tax years 2021 and 2022, ranging from zero percent for household incomes up to 150% of the federal poverty line to 8.5% for household income of 400% or higher of the federal poverty line. Taxpayers with income above 400% also qualify for the PTC under these temporary percentage ranges.

The provisions under the American Rescue Plan Act of 2021 were set to expire after the 2022 tax year with the applicable percentage ranges going back to the 2020 ranges, adjusted for inflation.

New Law. The new law extends the temporary percentage ranges that applied for 2021 and 2022 so that they now apply through the 2025 tax year. The new law also extends the rule to allow the PTC for taxpayers whose household income exceeds 400% of the federal poverty line through the 2025 tax year. Unless extended again, the percentage ranges will revert back to the 2020 amounts (adjusted for inflation) starting with the 2026 tax year.

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The following table illustrates the percentage ranges under the new law compared with the inflation adjusted amounts that applied for tax year 2020.

Tax Year Beginning in:	**2021 through 2025**		**2020**	
Household income percentage of federal poverty line:	Initial %	Final %	Initial %	Final %
Up to 133%	0.00%	0.00%	2.06%	2.06%
133% up to 150%	0.00%	0.00%	3.09%	4.12%
150% up to 200%	0.00%	2.00%	4.12%	6.49%
200% up to 250%	2.00%	4.00%	6.49%	8.29%
250% up to 300%	4.00%	6.00%	8.29%	9.78%
300% up to 400%	6.00%	8.50%	9.78%	9.78%
400% and higher	8.50%	8.50%	No credit	No credit

Zero percent means the taxpayer pays 0% of his or her household income for premiums after receiving the PTC (the PTC covers the entire cost of health insurance). Under the new law, if household income is at 400% or above of the federal poverty line, the taxpayer pays no more than 8.5% of his or her household income for the cost of health insurance after receiving the PTC.

Note: The PTC is only allowed for taxpayers who are eligible to purchase health insurance through a health insurance exchange. Taxpayers eligible to receive affordable employer health insurance coverage are not eligible for the PTC.

Credit for Electricity Produced From Certain Renewable Resources

• IRC §45

Prior Law. A general business credit under IRC section 45 is allowed for placing into service facilities that produce renewable electricity form qualified energy resources, such as wind, biomass, geothermal, solar, landfill gas, trash, hydropower, and marine and hydrokinetic energy.

The renewable electricity production credit for the year is an amount equal to the product of:

1) 1.5 cents, multiplied by
2) The kilowatt hours of electricity
   A) Produced by the taxpayer
      i) From qualified energy resources, and
      ii) At a qualified facility during the 10-year period beginning on the date the facility was originally placed in service, and
   B) Sold by the taxpayer to an unrelated person during the tax year.

The credit was set to expire for facilities in which construction begins after December 31, 2021.

New Law. The new law extends the credit for renewable energy facilities in which construction begins before January 1, 2025.

The new law reduces the base credit amount from 1.5 cents per kilowatt hour to 0.3 cents per kilowatt hour for facilities placed in service after December 31, 2021. However, under a new "prevailing wage and apprenticeship requirements" provision, the credit is increased by a multiple of 5 when workers involved with the construction of the facility are paid a certain minimum wage (essentially restoring the 1.5 cents per kilowatt hour credit that previously applied).

Under the prevailing wage requirements, a qualified facility must ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction of the facility, or the alteration or repair of such facility must be paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which the facility is located, as most recently determined by the Secretary of Labor.

Under the apprenticeship requirements, the taxpayer must ensure that, with respect to the construction of any qualified facility, not less than the applicable percentage of the total labor hours of the construction, alteration, or repair work (including such work performed by any contractor or subcontractor) with respect to such facility be performed by qualified apprentices.

In the case of a qualified facility the construction of which begins before January 1, 2023, the applicable percentage for apprenticeship labor is 10%. In the case of a qualified facility the construction of which begins after December 31, 2022, and before January 1, 2024, the applicable percentage is 12.5%. In the case of a qualified facility the construction of which begins after December 31, 2023, the applicable percentage is 15%. Certain exceptions apply.

The new law adds a new "domestic content bonus credit amount" provision that increases the credit by 10% if any steel, iron, or manufactured product which is a component of the facility is produced in the United States.

The new law increases the credit by 10% if the qualified facility is located in an energy community.

See IRC section 45 for other details and exceptions.

Energy Credit

• IRC §48

Prior Law. The energy credit under IRC section 48 is a general business credit that is based on the cost of qualified energy property placed in service during the year. Energy property includes:

- Equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, except property used to generate energy for the purposes of heating a swimming pool,
- Equipment which uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight,

- Equipment used to produce, distribute, or use energy derived from a geothermal deposit,
- Qualified fuel cell property or qualified microturbine property,
- Combined heat and power system property,
- Qualified small wind energy property,
- Equipment which uses the ground or ground water as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure, or
- Waste energy recovery property.

To qualify as energy property, the property must:
- Meet the performance and quality standards, if any, in effect at the time the property is acquired,
- Be property for which depreciation (or amortization) is allowed, and
- Be property that is either constructed, reconstructed, or erected by the taxpayer, or if acquired by the taxpayer, the original use must begin with the taxpayer.

Energy property under IRC section 48 does not include property which is part of a facility that qualifies for the credit for electricity produced from certain renewable resources under IRC section 45 (no double benefit).

The credit amount is the basis of the property multiplied by a percentage factor that is different for each type of energy source.

There is also a credit phase-out provision for various types of energy property.

The energy credit under IRC section 48 was set to expire for solar energy property, fuel cell property, qualified microturbine property, combined heat and power system property, qualified small wind energy property, waste energy recovery property, and equipment which uses the ground or ground water to heat or cool, in which construction begins after 2023.

New Law. The new law extends the energy credit to apply for solar energy property, fuel cell property, qualified microturbine property, combined heat and power system property, qualified small wind energy property, and waste energy recovery property in which construction begins before January 1, 2025. The new law further extends the credit for equipment which uses the ground or ground water to heat or cool in which construction begins before January 1, 2035.

The new law modifies the percentage factors and the phase-out provisions for various types of energy property.

The new law adds the following types of energy property that qualifies for the credit.
- Energy storage technology,
- Qualified biogas property, and
- Microgrid controllers.

The new law has provisions that increase the credit amount when workers employed to construct the energy property are paid a certain minimum wage amount, when components used to construct the energy property are produced in the U.S., and when energy property is constructed in energy communities (See the new rules under IRC section 45 for the renewable electricity production credit covered under the previous heading).

The new law increases the energy credit for solar and wind facilities placed in service in connection with low-income communities.

See IRC section 48 for other details and exceptions.

Credit for Carbon Oxide Sequestration

• IRC §45Q

Prior Law. The carbon oxide sequestration credit is a business credit allowed for qualified carbon oxide that is captured and disposed of or captured, used, and disposed of by the taxpayer in a secure geological storage. The credit was set to expire for qualified facilities and carbon capture equipment the construction of which begins after 2025.

New Law. The new law extends the credit and modifies the definition of a qualified facility to mean any industrial facility or direct air capture facility the construction of which begins before January 1, 2033.

The new law adds a new definition for applicable electric generating unit and baseline carbon oxide production.

The new law lowers the applicable dollar amount used to compute the credit. However, the credit is increased when certain wage and apprenticeship requirements are met, similar to the requirements that increase the credits under the new provisions for IRC section 45 and 48 covered under the previous headings.

There is a special rule that increases the credit for direct air capture facilities placed in service after December 31, 2022.

See IRC section 45Q for other details and exceptions.

Nuclear Power Production Credit

• IRC §45U

The new law creates a new code section under IRC section 45U which is a general business credit equal to the amount by which:

1) The product of
   - A) 0.3 cents, multiplied by
   - B) The kilowatt hours of electricity
     - i) Produced by the taxpayer at a qualified nuclear power facility, and
     - ii) Sold by the taxpayer to an unrelated person during the tax year, exceeds
2) The reduction amount for such tax year.

A qualified nuclear power facility is a nuclear facility which uses nuclear energy to produce electricity, is not an advanced nuclear power facility that would otherwise qualify for the credit under IRC section 45J, and which is placed in service before August 16, 2022.

The new credit applies to electricity produced and sold after December 31, 2023 and expires for tax years beginning after December 31, 2032.

See IRC section 45U for other details and exceptions.

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Biodiesel, Renewable Diesel, and Alternative Fuels Credit

• IRC §40A, §6426, and §6427

Prior Law. The term biodiesel means the monoalkyl esters of long chain fatty acids derived from plant or animal matter which meet certain requirements set by the Environmental Protection Agency and the American Society of Testing and Materials.

When biodiesel and renewable diesel are used as fuel by the taxpayer in a trade or business, or sold by the taxpayer at retail to a person who uses it as fuel for their vehicle, a general business credit of $1 per gallon is allowed under IRC section 40A.

There is also a credit under IRC section 6426 against the excise taxes that are imposed under IRC section 4081 and 4041 on the sale of certain motor fuels if the fuel sold is alcohol fuel, biodiesel fuel, or alternative fuel mixtures.

There is also a credit under IRC section 6427 against the excise taxes that are imposed under IRC section 4041 when the purchaser uses such fuel other than for the use for which sold, or resells such fuel (fuels not used for taxable purposes).

These credits were set to expire for any sale or use after December 31, 2022 (or December 31, 2021 in the case of alternative fuel mixtures).

New Law. The new law extends all of these credits for sales or use through the end of 2024. There is a special rule for the alternative fuel credit under IRC section 6426(d) that had expired at the end of 2021 to allow taxpayers to claim a credit against excise taxes already paid during 2022 prior to the enactment of this new law. The IRS is directed to provide guidance on how to claim this credit.

Second Generation Biofuel Producer Credit

• IRC §40(b)(6)

Prior Law. A second generation biofuel is any liquid fuel which is derived by, or from qualified feedstock, meets the requirements for fuels and fuel additives established by the Environmental Protection Agency, and is not alcohol of less than 150 proof. A qualified second generation biofuel mixture combines second generation biofuel with gasoline or a special fuel.

Qualified feedstock means any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, and any cultivated algae, cyanobacteria, or lemma.

The second generation biofuel producer credit is a general business credit that applies when:

- A taxpayer uses the second generation biofuel in his or her trade or business to produce a qualified second generation biofuel mixture,
- A taxpayer sells the second generation biofuel to a buyer and the buyer uses the fuel in his or her trade or business to produce a qualified second generation biofuel mixture,
- The taxpayer or the buyer uses the second generation biofuel in a trade or business, or
- The taxpayer sells the second generation biofuel at retail to another person and puts the second generation biofuel in the retail buyer's tank.

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Qualified second generation biofuel production does not include purchasing alcohol and increasing its proof through additional distillation. Nor does it include second generation biofuel that is not both produced and used as a fuel in the U.S. or a U.S. possession.

The second generation biofuel producer credit applied to production after December 31, 2008 and before January 1, 2022.

New Law. The new law extends the credit under IRC section 40(b)(6) to apply to production through the end of the 2024 tax year.

Sustainable Aviation Fuel Credit

• IRC §40B

Effective for sustainable aviation fuel sold or used after December 31, 2022, the new law creates a new code section under IRC section 40B which is a general business credit for the sale or use of a qualified mixture which occurs during the tax year. The credit equals the product of:

1) The number of gallons of sustainable aviation fuel in such mixture, multiplied by
2) The sum of
   A) $1.25, plus
   B) The applicable supplementary amount with respect to such sustainable aviation fuel.

The term "applicable supplementary amount" means an amount equal to $0.01 for each percentage point by which the lifecycle greenhouse gas emissions reduction percentage with respect to such fuel exceeds 50%. In no event shall the applicable supplementary amount exceed $0.50.

The term "qualified mixture" means a mixture of sustainable aviation fuel and kerosene if:

1) Such mixture is produced by the taxpayer in the U.S.,
2) Such mixture is used by the taxpayer or sold by the taxpayer for use in an aircraft,
3) Such sale or use is in the ordinary course of a trade or business of the taxpayer, and
4) The transfer of such mixture to the fuel tank of such aircraft occurs in the U.S.

Sustainable aviation fuel must meet certain standards as described in IRC section 40B(d), meet lifecycle greenhouse gas emissions reduction requirements as described in IRC section 40B(e), and be registered with the Secretary of the Treasury under certification procedures described in IRC section 40B(f).

The credit is reduced by the amount of any excise tax credit the taxpayer receives under IRC section 6426 or 6427(e).

The sustainable aviation fuel credit under IRC section 40B expires for any sale or use after December 31, 2024.

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Credit for Production of Clean Hydrogen

- IRC §45V

Effective for qualified clean hydrogen produced after December 31, 2022, the new law creates a new code section under IRC section 45V which is a general business credit equal to the product of:

1) The kilograms of qualified clean hydrogen produced by the taxpayer during the tax year at a qualified clean hydrogen production facility during the 10-year period beginning on the date such facility was originally placed in service, multiplied by
2) The applicable amount with respect to such hydrogen.

The applicable amount is an amount equal to the applicable percentage of $0.60. If any amount is not a multiple of 0.1 cent, such amount is rounded to the nearest multiple of 0.1 cent.

The applicable percentage is determined as follows.

A) In the case of any qualified clean hydrogen which is produced through a process that results in a lifecycle greenhouse gas emissions rate of
   i) Not greater than 4 kilograms of CO2e per kilogram of hydrogen, and
   ii) Not less than 2.5 kilograms of CO2e per kilogram of hydrogen,

   The applicable percentage is 20%.

B) In the case of any qualified clean hydrogen which is produced through a process that results in a lifecycle greenhouse gas emissions rate of
   i) Less than 2.5 kilograms of CO2e per kilogram of hydrogen, and
   ii) Not less than 1.5 kilograms of CO2e per kilogram of hydrogen,

   The applicable percentage is 25%.

C) In the case of any qualified clean hydrogen which is produced through a process that results in a lifecycle greenhouse gas emissions rate of
   i) Less than 1.5 kilograms of CO2e per kilogram of hydrogen, and
   ii) Not less than 0.45 kilograms of CO2e per kilogram of hydrogen,

   The applicable percentage is 33.4%.

D) In the case of any qualified clean hydrogen which is produced through a process that results in a lifecycle greenhouse gas emissions rate of less than 0.45 kilograms of CO2e per kilogram of hydrogen, the applicable percentage is 100%.

   The $0.60 amount is adjusted annually for inflation.

Qualified clean hydrogen means hydrogen with is produced through a process that results in a lifecycle greenhouse gas emissions rate of not greater than 4 kilograms of CO2e per kilogram of hydrogen. Qualified clean hydrogen does not include any hydrogen unless:

i) Such hydrogen is produced
   I) In the United States or a possession of the United States,
   II) In the ordinary course of a trade or business of the taxpayer, and
   III) For sale or use, and
ii) The production and sale or use of such hydrogen is verified by an unrelated party.

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A qualified clean hydrogen production facility means a facility:
A) Owned by the taxpayer,
B) Which produces qualified clean hydrogen, and
C) The construction of which begins before January 1, 2033.

An existing facility can also qualified if it did not produce qualified clean hydrogen but is now modified to produce qualified clean hydrogen.

The credit is increased by a multiple of 5 if:
- Construction of the facility begins prior to the date that is 60 days after the IRS publishes guidance with respect to the requirements under IRC section 45V,
- Workers paid to construct such facility are paid wages at rates described under IRC section 45V(e)(3) and (4), and
- The taxpayer meets requirements found in the regulations and guidance to be issued by the IRS within one year after August 16, 2022.

There is an election to treat a clean hydrogen production facility as energy property under IRC section 48 (and claim that credit instead of the credit under this code section—no double benefit).

The law allows the taxpayer to claim the credit for electricity produced from renewable resources under IRC section 45 if the electricity is used to produce clean hydrogen.

The new law terminates the excise tax credit under IRC section 4624(d)(2) for liquefied hydrogen for fuel sold or used after December 31, 2022 and replaces that credit with this new general business credit under IRC section 45V.

Energy Efficient Home Improvement Credit (Previously Called Nonbusiness Energy Property Credit)

- IRC §25C

Prior Law. The nonbusiness energy property credit is for energy efficient improvements made to the principal residence of the taxpayer. The credit does not apply for new construction.

The credit equals:
- 10% of the cost of exterior windows, including skylights, up to a credit limit of $200,
- 10% of the cost of exterior doors, insulation and/or systems which reduce heat gain or loss,
- Up to $300 of the cost of heat pumps, central air conditioners, and water heaters,
- Up to $150 of the cost of natural gas, propane, or oil furnaces or hot water boilers, and
- Up to $50 of the cost for qualified advanced main air-circulating fans.

The above improvements must meet certain applicable energy-efficient requirements, as prescribed by regulations and guidance issued by the IRS. A total lifetime combined credit limit of $500 (including a $200 lifetime limit for windows) applies for all tax years after 2005.

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The nonbusiness energy credit is nonrefundable and unused amounts for the cost of improvements made during the year are not carried forward.

The nonbusiness energy property credit was set to expire for tax years after 2021.

New Law. The new law renames the Nonbusiness Energy Property Credit as the "Energy Efficient Home Improvement Credit," and extends the credit through the end of the 2032 tax year. However, the amendments made to IRC section 25C apply to property placed in service after December 31, 2022 (with the exception of certain identification number requirements that do not apply until after 2024).

Author's Comment

In other words, energy improvements made during 2022 follow the prior law limitations and rules, and improvements made after 2022 follow the new law limitations and rules, even though the prior law had expired for 2022.

The new law modifies the credit to equal 30% of the sum of:

1) The amount paid or incurred by the taxpayer for qualified energy efficiency improvements installed during the year,
2) The amount of the residential energy property expenditures paid or incurred by the taxpayer during the year, and
3) The amount paid or incurred by the taxpayer during the year for home energy audits.

The lifetime limitation under the old rules are replaced with the following annual limitations:

1) In general, the combined credit for all energy efficient home improvements is limited to $1,200 per year, except for (5) below.
2) The credit for residential energy property expenditures is limited to $600 per year.
3) The credit for windows is limited to $600 in the aggregate for all exterior windows and skylights.
4) The credit for doors is limited to $250 per year for any exterior door, and $500 in the aggregate for all exterior doors.
5) Notwithstanding paragraphs (1) and (2) above, the credit allowed for heat pumps and heat pump water heaters, biomass stoves and boilers is limited to $2,000 per year.
6) The credit for energy audits is limited to $150 per year.

Qualified energy efficiency improvements include energy efficient insulation, exterior windows, skylights, and exterior doors that meet various energy standard requirements. The new law removes roofs from the definition of building envelope components, but adds air sealing insulation to the definition of insulation material or system which reduces the heat loss or heat gain of a dwelling unit.

The new law changes the term "residential energy property expenditures" to include any dwelling unit used as a residence by the taxpayer, replacing the "principal residence" requirement that previously applied. The home must be located in the United States. Expenditures include the cost for labor for onsite preparation, assembly, and installation.

Residential energy property expenditures includes any of the following that meet or exceed certain high efficiency standards (various standards per item apply).
- An electric or natural gas heat pump water heater,
- An electric or natural gas heat pump,
- A central air conditioner,
- A natural gas, propane, or oil water heater,
- A natural gas, propane, or oil furnace or hot water boiler,
- A biomass stove or boiler which uses the burning of biomass fuel to heat a dwelling unit or to heat water for a dwelling unit,
- An oil furnace or hot water boiler, and
- Improvements to, or replacement of a panel-board, sub-panelboard, branch circuits, or feeders with a load capacity of not less than 200 amps which is installed in conjunction with an energy efficiency improvement or qualified energy property.

The term "home energy audits" means an inspection and written report with respect to a dwelling unit owned or used by the taxpayer as the taxpayer's principal residence that identifies the most significant and cost-effective energy efficiency improvements, including an estimate of the energy and cost savings with respect to each improvement. The home energy auditor must meet certain certification requirements as established by the IRS.

Beginning with credits claimed after 2024, the taxpayer must include on his or her tax return the qualified product identification number of the energy efficient property. A qualified product identification number is a number assigned by a qualified manufacturer to the energy efficient property in which the credit is claimed.

Residential Clean Energy Credit (Previously Called the Residential Energy Efficient Property Credit)

- IRC §25D

Prior Law. The residential energy efficient property credit equals the sum of the applicable percentages of:
1) The qualified solar electric property expenditures,
2) The qualified solar water heating property expenditures,
3) The qualified fuel cell property expenditures,
4) The qualified small wind energy property expenditures,
5) The qualified geothermal heat pump property expenditures, and
6) The qualified biomass fuel property expenditures,

That are made by the taxpayer during the year.

Applicable percentages mean:
1) In the case of property placed in service after December 31, 2016, and before January 1, 2020, 30%,
2) In the case of property placed in service after December 31, 2019, and before January 1, 2023, 26%, and
3) In the case of property placed in service after December 31, 2022, and before January 1, 2024, 22%.

In the case of any qualified fuel cell property expenditure, the credit allowed for any year is limited to $500 with respect to each half kilowatt of capacity of the qualified fuel cell property to which such expenditure relates.

Various certification requirements apply.

The credit is non-refundable, but if the credit exceeds the taxpayer's tax liability for the year, the credit is carried over to the next year and added to the credit allowable under IRC section 25D for that year.

Expenditures include the cost of labor for onsite preparation, assembly, and original installation of the property.

The credit was set to expire for property placed in service after December 31, 2023.

New Law. The new law renames the Residential Energy Efficient Property Credit as the "Clean Energy Credit," and extends the credit through the end of the 2034 tax year. The applicable percentages are modified as follows:
1) In the case of property placed in service after December 31, 2016, and before January 1, 2020, 30%,
2) In the case of property placed in service after December 31, 2019, and before January 1, 2022, 26%,
3) In the case of property placed in service after December 31, 2021, and before January 1, 2033, 30%,
4) In the case of property placed in service after December 31, 2032, and before January 1, 2034, 26%, and
5) In the case of property placed in service after December 31, 2033, and before January 1, 2035, 22%.

The new law replaces qualified biomass fuel property expenditures with qualified battery storage technology expenditures. The term "qualified battery storage technology expenditure" means an expenditure for battery storage technology which:
A) Is installed in connection with a dwelling unit located in the United States and used as a residence by the taxpayer, and
B) Has a capacity of not less than 3 kilowatt hours.

The amendments made by the new law apply to expenditures made after December 31, 2021, except that the amendments made for qualified battery storage technology expenditures and the disallowance of qualified biomass fuel property expenditures does not apply until after December 31, 2022.

Energy Efficient Commercial Building Deduction
• IRC §179D

Prior Law. Taxpayers are allowed a deduction under IRC section 179D for the cost of energy efficient commercial building property placed in service during the year. The deduction is limited to the product of $1.80 times the square footage of the building, over the aggregate amount of the energy efficient commercial building deductions with respect to the building for all prior tax years.

Energy efficient commercial building property means property:

A) With respect to which depreciation (or amortization in lieu of depreciation) is allowable,
B) Which is installed on or in any building which is located in the United States that meets certain energy efficient standards,
C) Which is installed as part of the interior lighting systems, the heating, cooling, ventilation, and hot water systems, or the building envelope, and
D) Which is certified as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to the interior lighting systems, heating, cooling, ventilation, and hot water systems of the building by 50% or more in comparison to a reference building which meets certain minimum standards.

The $1.80 amount is reduced to a partial allowance of $0.60 in cases where certain standards are not met. Both of these amounts are adjusted for inflation beginning in 2021.

The basis of the property is reduced for any deduction claimed under IRC section 179D.

Author's Comment

The deduction is similar to the Section 179 deduction which allows the taxpayer to write off the entire cost of certain property in one year rather than depreciate the cost over a number of years.

New Law. Effective for tax years beginning after December 31, 2022, the new law modifies the maximum amount of the deduction as follows.

1) The deduction under IRC section 179D(a) with respect to any building for any tax year shall not exceed the excess (if any) of:
   A) The product of the applicable dollar value and the square footage of the building, over
   B) The aggregate amount of the deductions with respect to the building for the 3 tax years immediately preceding such tax year.
2) The applicable dollar value shall be an amount equal to $0.50 increased (but not above $1.00) by $0.02 for each percentage point by which the total annual energy and power costs for the building are certified to be reduced by a percentage greater than 25%.
3) Increased deduction amount for certain property:
   A) In the case of any property which satisfies the requirements of (B) below, the applicable dollar value is $2.50 increased (but not above $5.00) by $0.10 for each percentage point by which the total annual energy and power costs for the building are certified to be reduced by a percentage greater than 25%,
   B) To qualify for the increased applicable dollar value in (A) above:
      i) Installation must begin prior to the date that is 60 days after the IRS publishes guidance with respect to the prevailing wage requirements and apprenticeship requirements, or
      ii) Installation of such property satisfies the prevailing wage requirements and apprenticeship requirements.

The prevailing wage requirements with respect to any property are that the taxpayer shall ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the installation of any property shall be paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such property is located as most recently determined by the Secretary of Labor. Rules similar to the rules under IRC section 45(b)(8) apply to the apprenticeship requirements (previously covered under the renewable electricity production credit rules). The IRS is directed to issue regulations or other guidance to carry out the purpose of these requirements.

The new law lowers the efficiency standard from 50% to 25% under the energy efficient commercial building property definition.

The new law eliminates the partial allowance in cases where certain standards are not met.

The new law provides for an alternative deduction for energy efficient building retrofit property. See IRC section 179D(f) for details.

For other details and exceptions, see IRC section 179D.

New Energy Efficient Home Credit

- IRC §45L

Prior Law. A general business credit is allowed under IRC section 45L for an eligible contractor that constructs a new energy efficient home that is acquired by a person from such eligible contractor for use as a residence during the tax year. The credit is equal to $2,000 if the home has a level of annual heating and cooling energy consumption at least 50% below that of comparable homes, and $1,000 if such consumption is at least 30% below that of comparable homes. Certain certification requirements apply in determining the level of the home's energy consumption savings.

This credit was set to expire for homes acquired after December 31, 2021.

New Law. The new law extends the credit to apply to energy efficient homes acquired through the end of 2032.

Effective for homes acquired after December 31, 2022, the new law modifies the credit amounts and energy efficiency requirements.

Author's Comment

> Since the credit is extended to include energy efficient homes acquired during 2022, the credit for those homes is determined under the old rules.

The new credit amounts are $500, $1,000, $2,500, and $5,000, depending on the level of energy savings and efficiency requirements the home meets.

The credit amount is based on whether or not the taxpayer meets the prevailing wage requirements. To meet the prevailing wage requirements, the taxpayer must pay employees

and other subcontractors who work on the construction project a wage at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such residence is located as most recently determined by the Secretary of Labor. The IRS is directed to issue regulations or guidance to carry out the purpose of this rule.

The new law amends the adjusted basis rules for purposes of determining the low-income housing credit under IRC section 42. The credit allowed under IRC section 45L does not apply for purposes of determining the adjusted basis of any building under IRC section 42.

Clean Vehicle Credit (Previously Called New Qualified Plug-In Electric Drive Motor Vehicles Credit)

• IRC §30D

Prior Law. A taxpayer is allowed a non-refundable tax credit for the purchase of a new qualified plug-in electric drive motor vehicle placed in service during the year. The base amount of the credit is $2,500. This amount is increased by $417 for each kilowatt hour of battery capacity that exceeds 5 kilowatt hours, not to exceed $5,000. Thus the maximum credit allowed is $7,500.

A new qualified plug-in electric drive motor vehicle means a motor vehicle:
A) The original use of which commences with the taxpayer,
B) Which is acquired for use or lease by the taxpayer and not for resale,
C) Which is made by a manufacturer,
D) Which is treated as a motor vehicle for purposes of title II of the Clean Air Act,
E) Which has a gross vehicle weight rating of less than 14,000 pounds, and
F) Which is propelled to a significant extent by an electric motor which draws electricity from a battery which has a capacity of not less than 4 kilowatt hours, and is capable of being recharged from an external source of electricity.

The credit begins to phase out for a manufacturer's vehicles when at least 200,000 qualifying vehicles manufactured by that manufacturer have been sold for use in the United States (determined on a cumulative basis for sales after December 31, 2009). Taxpayers may claim the full amount of the credit up to the end of the first quarter after the quarter in which the manufacturer records its sale of the 200,000th qualified vehicle. For the second and third calendar quarters, taxpayers may claim 50% of the credit. For the fourth and fifth calendar quarters, taxpayers may claim 25% of the credit. No credit is allowed after the fifth quarter.

For example, as of April 23, 2021, the IRS posted the following electric vehicles on their website and the credit amount that applied based upon the phase-out in effect as of that date.

Manufacturer	Model	Model Year	Credit Amount
American Honda Motor Co., Inc.	Clarity Plug-In Hybrid	2020, 2021	$7,500
Audi of America, LLC	Audi e-tron Sportback	2020, 2021	$7,500
	Audi e-tron SUV	2021	$7,500
	Audi A7 55 TFSI e Quattro	2021	$6,712
	Audi A8L PHEV	2020	$6,712
	Audi A8L 60 TFSI e Quattro	2021	$6,712
	Audi Q5 PHEV	2020	$6,712
	Audi Q5 55 TFSI e Quattro	2021	$6,712
BMW of North America	BMW i3 Sedan	2020, 2021	$7,500
	BMW i3 Sedan with Range Extender	2020, 2021	$7,500
	BMW i3s Sedan	2020, 2021	$7,500
	BMW i3s Sedan with Range Extender	2020, 2021	$7,500
	BMW i8 Coupe	2020	$5,669
	BMW i8 Roadster	2020	$5,669
	BMW X3 xDrive30e	2020, 2021	$5,836
	BMW X5 xDrive45e	2021	$7,500
	BMW 330e	2021	$5,836
	BMW 330e xDrive	2021	$5,836
	BMW 530e	2020, 2021	$5,836
	BMW 530e xDrive	2020, 2021	$5,836
	BMW 745e xDrive	2020, 2021, 2022	$5,836
Bentley Motors, Inc.	Bentayga Hybrid SUV	2020	$7,500
Ferrari North America, Inc.	SF90 Stradale	2020, 2021	$3,501
FCA (Fiat Chrysler Automobiles) North America Holidings, LLC	Chrysler Pacifica PHEV	2020, 2021	$7,500
	Jeep Wrangler PHEV	2021	$7,500
Ford Motor Company	Fusion Energi	2020	$4,609
	Lincoln Aviator Grand Touring	2020, 2021	$6,534
	Lincoln Corsair Reserve Grand Touring (PHEV)	2021	$6,843
	Escape Plug-In Hybrid	2020, 2021	$6,843
	Mustang Mach-E First Edition Premium AWD	2021	$7,500
	Mustang Mach-E California Route 1	2021	$7,500
	Mustang Mach-E Premium AWD	2021	$7,500
	Mustang Mach-E Premium RWD	2021	$7,500
	Mustang Mach-E Select AWD	2021	$7,500
	Mustang Mach-E Select RWD	2021	$7,500

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Manufacturer	Model	Model Year	Credit Amount
General Motors, LLC – GM sold its 200,000th qualified vehicle in the fourth quarter of 2018. Thus, the credit for all GM models for all years was completely phased-out for vehicles acquired after March 31, 2020.			
Hyundai Motor America	Ioniq Electric Battery Vehicle	2020	$7,500
	Ioniq Plug-In Hybrid Electric Vehicle	2020	$4,543
	Kona Electric Vehicle	2020, 2021	$7,500
Jaguar Land Rover North America, LLC	Jaguar IPace (HSE, SE, S models)	2020, 2021	$7,500
	Range Rover PHEV	2020, 2021	$6,295
	Range Rover Sport PHEV	2020, 2021	$6,295
Kandi (Zhejiang Kandi Vehicles Co., Ltd.)	Kandi EX3	2020, 2021	$7,500
	Kandi K22	2020	$7,500
	Kandi K23	2020, 2021	$7,500
	Kandi K27	2020, 2021	$7,500
Karma Automotive LLC	Revero	2020	$7,500
Kia Motors America, Inc.	Soul Electric	2020	$7,500
	Optima Plug-In Hybrid	2020	$4,919
	Niro Plug-In Hybrid	2020, 2021	$4,543
	NIRO EV	2020, 2021	$7,500
Mercedes-Benz USA, LLC	GLC350e 4M EQ	2020	$6,462
	S560e EQ PHEV	2020	$6,462
Mini USA	Mini Cooper S E Countryman ALL4	2020, 2021, 2022	$5,002
	Mini Cooper S E Hardtop 2 Door	2020	$7,500
	Mini Cooper S E Hardtop	2021, 2022	$7,500
Mitsubishi Motors North America, Inc.	Outlander PHEV	2020	$5,836
	Outlander PHEV	2021	$6,587
Nissan North America	Nissan LEAF	2020	$7,500
Polestar Automotive USA Inc.	Polestar 1	2020	$7,500
	Polestar 2	2021	$7,500
Porsche Cars North America, Inc.	Cayenne E-Hybrid	2020	$6,712
	Cayenne E-Hybrid Coupe	2020	$6,712
	Panamera 4 PHEV: • 4 E-Hybrid • 4 E-Hybrid Sport Turismo • 4 E-Hybrid Executive • Turbo S E-Hybrid • Turbo S E-Hybrid Executive • Turbo S E-Hybrid Sport Turismo	2020	$6,712
	Taycan 4S EV	2020, 2021	$7,500
	Taycan Turbo EV	2020, 2021	$7,500
	Taycan Turbo S EV	2020, 2021	$7,500
	Taycan EV	2021	$7,500

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Manufacturer	Model	Model Year	Credit Amount
Subaru Corporation	Crosstrek Hybrid	2020, 2021	$4,502
Tesla, Inc.–Tesla sold its 200,000th qualified vehicle in the third quarter of 2018. Thus, the credit for all Tesla models for all years was completely phased-out for vehicles acquired after December 31, 2019.			
Toyota Motor Sales, U.S.A., Inc.	Prius Prime Plug-in Hybrid	2020, 2021	$4,502
	RAV4 Prime Plug-in Hybrid	2021	$7,500
Volkswagen Group of America	Volkswagen ID.4 (First Edition, Pro, Pro S models)	2021	$7,500
Volvo Car North America, LLC	S60	2020, 2021	$5,419
	S90	2020, 2021	$5,419
	V60	2020, 2021	$5,419
	XC40 Recharge Pure Electric P8 AWD	2021	$7,500
	XC60	2020, 2021	$5,419
	XC90	2020, 2021	$5,419

The credit did not have a termination date, other than the phase-out provisions described above on a manufacturer by manufacturer basis as each manufacturer reached its 200,000th sale.

New Law. The new law changes the name of the credit from "New Qualified Plug-In Electric Drive Motor Vehicle Credit" to "Clean Vehicle Credit."

Author's Comment

Critics of electric cars like to point out the fact that not all electricity is produced from "clean" energy. Perhaps a better title for them would be "Less Dirty than a Gas Guzzler Vehicle Credit."

Effective for vehicles placed in service after December 31, 2022, the new law in general modifies the credit amounts and qualifying requirements, with the exception of the new final assembly requirements that apply to vehicles sold after August 16, 2022, the new per vehicle dollar limitation that applies to vehicles placed in service after the IRS issues guidance on the new rules, the new transfer of credit provisions that apply to vehicles placed in service after December 31, 2023, and the transition rules that allow certain taxpayers to elect to treat their vehicles purchased in 2022 as placed in service before August 16, 2022.

The new law eliminates the phase-out rules when a manufacturer reaches its 200,000th sale and replaces it with an expiration of the credit for all vehicles placed in service after December 31, 2032.

Author's Comment

Thus, for example, a qualified electric vehicle purchased from General Motors or Tesla and placed in service after December 31, 2022 qualifies once again for the credit under the new law.

Under the new law, the maximum $7,500 credit still applies, but is broken out into two components:
- A $3,750 credit when the vehicle satisfies the critical minerals requirement, plus
- A $3,750 credit when the vehicle satisfies the battery components requirement.

See new IRC section 30D(e) for details on the critical mineral and battery component requirements. The IRS is directed to issue new regulations or guidance on the application of these new requirements.

The new law requires the car dealership who sells the vehicle to the taxpayer to furnish a report to the taxpayer and the IRS that contains:
i) The name and taxpayer identification number of the taxpayer,
ii) The vehicle identification number of the vehicle,
iii) The battery capacity of the vehicle,
iv) Verification that original use of the vehicle commences with the taxpayer, and
v) The maximum credit allowable to the taxpayer with respect to the vehicle.

The new law requires the final assembly of the vehicle to occur within North America. Final assembly means the process by which a manufacturer produces a new clean vehicle at, or through the use of, a plant, factory, or other place from which the vehicle is delivered to a dealer or importer with all component parts necessary for the mechanical operation of the vehicle included with the vehicle, whether or not the component parts are permanently installed in or on the vehicle.

Author's Comment

Many of the foreign electric vehicles listed above are already being assembled in North America by American subsidiaries of their parent foreign corporations. For example, Volkswagen which is headquartered in Wolfsburg Germany, manufactures its Volkswagen ID4 in Chattanooga Tennessee.

The new clean vehicle credit under IRC section 30D applies to new qualified fuel cell motor vehicles as defined under IRC section 30B. No double tax benefit is allowed.

The new law places a one credit per vehicle limit, determined by the vehicle identification number of the vehicle. The taxpayer must include the vehicle identification number of the vehicle on the tax return to claim the credit.

There is a new modified adjusted gross income limitation that applies. No credit is allowed if the taxpayer's modified AGI for the tax year or the preceding tax year exceeds:
- $300,000 for MFJ or QW
- $225,000 for HOH
- $150,000 for Single or MFS

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Modified AGI equals AGI increased by any amount excluded from gross income under the foreign earned income rules (IRC §911), income excluded from sources within Guam, American Samoa, or the Northern Mariana Islands (IRC §931), and income excluded from sources within Puerto Rico (IRC §933).

There is a new manufacturer's suggested retail price limitation. No credit is allowed if the manufacturer's suggested retail price exceeds:
- $80,000 in the case of a van,
- $80,000 in the case of a sport utility vehicle,
- $80,000 in the case of a pickup truck, and
- $55,000 in the case of any other vehicle.

The new law eliminates the special rules for 2- and 3-wheeled plug-in electric vehicles under old IRC section 30D(g).

There are new rules that allow a taxpayer to elect to transfer the credit to an eligible entity under regulations or guidance the IRS is directed to issue. The eligible entity is the dealership that sells the vehicle to the taxpayer.

Author's Comment

The election would be beneficial in the case where the credit exceeds the tax liability of the taxpayer. Rather than receive little to no benefit for claiming the credit, the taxpayer elects to transfer the credit to the dealership selling the vehicle in exchange for a reduced sale price.

If this election is made, the dealership claims the credit (rather than the taxpayer) if it discloses to the taxpayer the credit he or she could have claimed, and the amount the dealership is providing to the taxpayer as a condition of transferring the credit. Thus, the taxpayer purchases the vehicle at a reduced rate, and the dealer then receives reimbursement from the government for the amount of the credit transferred. The law directs the IRS to issue guidance on how the dealership can apply for advanced payments of the cumulative credits it receives from taxpayers.

If the transfer of the credit election is made, the amount the dealership provides to the taxpayer in exchange for transferring the credit is not included in the gross income of the taxpayer, and not deductible by the dealer.

The law prevents taxpayers from side-stepping the AGI limitation rules by transferring the credit to the dealer. Under recapture rules, if the credit is transferred to the dealer, and the taxpayer's AGI exceeds the limitation amounts, the taxpayer must pay back the benefit he or she received from the dealer by increasing his or her tax liability accordingly.

Previously-Owned Clean Vehicles Credit

- IRC §25E

Effective for vehicles acquired after December 31, 2022, the new law creates a new code section under IRC section 25E called "Previously-Owned Clean Vehicles," which is a tax credit for qualified buyers who place in service a previously-owned clean vehicle.

The credit equals the lesser of:
1) $4,000, or
2) The amount equal to 30% of the sale price with respect to such vehicle.

No credit is allowed if the taxpayer's modified adjusted gross income for the tax year or the preceding tax year exceeds:
- $150,000 for MFJ or QW
- $112,500 for HOH
- $75,000 for Single or MFS

Modified AGI equals AGI increased by any amount excluded from gross income under the foreign earned income rules (IRC §911), income excluded from sources within Guam, American Samoa, or the Northern Mariana Islands (IRC §931), and income excluded from sources within Puerto Rico (IRC §933).

The term "previously-owned clean vehicle" means a motor vehicle:
A) The model year of which is at least 2 years earlier than the calendar year in which the taxpayer acquires such vehicle,
B) The original use of which commences with a person other than the taxpayer,
C) Which is acquired by the taxpayer in a qualified sale, and
D) Which
    i) Is made by a manufacturer, treated as a motor vehicle for purposes of title II of the Clean Air Act, has a gross vehicle weight rating of less than 14,000 pounds, meets the electric motor battery capacity rules that apply to clean vehicles under IRC section 30D, meets the rules that require the dealership to furnish the taxpayer and IRS a report that identifies the taxpayer ID number, vehicle identification number, battery capacity, and the maximum credit allowed [the rules listed under IRC section 30D(d)(1)], or
    ii) Satisfies the requirements as a qualified fuel cell clean vehicle under IRC section 30B(b)(3) and has a gross vehicle weight rating of less than 14,000 pounds.

The term qualified sale means a sale of a motor vehicle:
A) By a qualified dealer,
B) For a sale price which does not exceed $25,000, and
C) Which is the first transfer since August 16, 2022 to a qualified buyer other than the person with whom the original use of such vehicle commenced.

The term qualified buyer means a taxpayer:
A) Who is an individual,
B) Who purchases such vehicle for use and not for resale,
C) Who is not a dependent of another taxpayer under IRC section 151, and
D) Who has not been allowed a credit under IRC section 25E for any sale during the 3-year period ending on the date of the sale of such vehicle.

The taxpayer must include the vehicle identification number of the vehicle on his or her tax return.

Rules similar to the rules that allow a taxpayer to elect to transfer the credit to an eligible entity under IRC section 30D also apply to IRC section 25E.

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Author's Comment

Such as in the case where the credit exceeds the tax liability of the taxpayer. Rather than receive little to no benefit for claiming the credit, the taxpayer elects to transfer the credit to the dealership selling the vehicle in exchange for a reduced sale price.

The credit is set to expire for any vehicle acquired after December 31, 2032.

Credit for Qualified Commercial Clean Vehicles

• IRC §45W

Effective for vehicles acquired after December 31, 2022, the new law creates a new code section under IRC section 45W called "Credit for Qualified Commercial Clean Vehicles," which is a general business credit for each qualified commercial clean vehicle placed in service by the taxpayer during the tax year.

The per vehicle amount of the credit equals the lesser of:
A) 15% of the basis of the vehicle (30% in the case of a vehicle not powered by a gasoline or diesel internal combustion engine), or
B) The incremental cost of the vehicle.

The incremental cost is an amount equal to the excess of the purchase price for the vehicle over the price of a comparable vehicle. A comparable vehicle is any vehicle which is powered solely by a gasoline or diesel internal combustion engine and which is comparable in size and use to the commercial clean vehicle.

The per vehicle credit is limited to:
A) $7,500 in the case of a vehicle which has a gross vehicle weight rating of less than 14,000 pounds, and
B) $40,000 in the case of a vehicle which has a gross vehicle weight rating of 14,000 pounds or more.

A qualified commercial clean vehicle means any vehicle which:
1) Is made by a manufacturer and is acquired for use or lease by the taxpayer and not for resale,
2) Either
   A) Which 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), or
   B) Is mobile machinery, as defined in IRC section 4053(8) (including vehicles that are not designed to perform a function of transporting a load over the public highways),
3) Either
   A) Is propelled to a significant extent by an electric motor which draws electricity from a battery which 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, or

B) Is a motor vehicle that satisfies the requirements as a qualified fuel cell motor vehicle under IRC section 30B(3), and

4) Is an asset of the taxpayer that is subject to the allowance for depreciation.

No double benefit is allowed for which a credit is allowed under IRC section 30D.

The taxpayer must include the vehicle identification number of the vehicle on the tax return to claim the credit.

The IRS is directed to issue regulations or guidance to carry out the purpose of this new code section.

The credit is set to expire with respect to vehicles acquired after December 31, 2032.

Alternative Fuel Refueling Property Credit

- IRC §30C

Prior Law. A tax credit is allowed that equals 30% of the cost of any qualified alternative fuel vehicle refueling property placed in service by the taxpayer during the tax year. The credit allowed with respect to all qualified alternative fuel vehicle refueling property placed in service by the taxpayer during the year at a location shall not exceed:

1) $30,000 in the case of a property of a character subject to an allowance for depreciation, and
2) $1,000 in any other case (such as personal use property).

Qualifying property is property, other than buildings or structural components, used to store or dispense an alternative fuel (other than electricity) into the fuel tank of a motor vehicle propelled by the fuel, or used to recharge an electric vehicle.

Author's Comment

A typical example of personal use property that qualifies for the credit is an electric charging station installed in the taxpayer's garage to charge the batteries of a personal use electric car.

The credit was set to expire for property placed in service after December 31, 2021.

New Law. The new law extends the credit through the end of 2032.

The new law modifies the credit limitations. Effective for property placed in service after December 31, 2022, the credit equals 30% (6% in the case of property of a character subject to deprecation) of the cost of any qualified alternative fuel vehicle refueling property placed in service by the taxpayer during the tax year. The credit allowed with respect to any single item of qualified alternative fuel vehicle refueling property placed in service by the taxpayer during the year shall not exceed:

1) $100,000 in the case of any such item of property of a character subject to an allowance for depreciation, and
2) $1,000 in any other case.

The new law increases the 6% credit back to 30% for property subject to an allowance for depreciation if the taxpayer meets the wage and apprenticeship requirements of IRC

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section 30C(g). These rules are similar to the wage and apprenticeship requirements described previously under IRC section 45. The taxpayer can also qualify for the 30% rate if the construction project for constructing the qualified alternative fuel vehicle refueling property begins prior to the date that is 60 days after the IRS publishes guidance with respect to the wage and apprenticeship requirements.

The new law includes bidirectional charging equipment in the definition of qualified alternative fuel vehicle refueling property. Bidirectional charging equipment is equipment capable of charging the battery of a motor vehicle propelled by electricity that also allows discharging electricity from the battery to an electric load external to the motor vehicle.

Author's Comment

Bidirectional charging equipment generally is first used to charge the electric vehicle batteries. Then, once the batteries are fully charged, the DC electricity stored in the batteries can be converted back to AC electricity to power the house, such as in the case of a power outage. The electric vehicle batteries are thus alternatively used as a power backup system for the taxpayer's home. The equipment can also be used in conjunction with solar panels. During the day when the sun shines, the solar panels power the house and charge the electric car batteries. At night when the solar panels stop producing electricity, the energy stored in the car batteries could continue to power the house, assuming the car does not need a full charge for the next day. The new law is basically allowing the credit for the electric vehicle charging equipment, even if the equipment is capable of converting the energy stored in the car's batteries back to AC electricity for a use other than to power the car.

The new law allows the charging station equipment to qualify for the credit if it is used to charge 2- or 3-wheeled vehicles.

The new law requires the qualified alternative fuel vehicle refueling property to be located in an eligible census tract.

Advanced Energy Project Credit

- IRC §48C

Prior Law. The advanced energy project credit under IRC section 48C is a general business credit that is part of the investment credit under IRC section 46. The credit equals 30% of the qualified investment for the tax year with respect to any qualifying advanced energy project of the taxpayer.

A qualifying advanced energy project means a project:

i) Which re-equips, expands, or establishes a manufacturing facility for the production of:
   I) Property designed to be used to produce energy from the sun, wind, geothermal deposits, or other renewable resources,
   II) Fuel cells, microturbines, or an energy storage system for use with electric or hybrid-electric motor vehicles,

III) Electric grids to support the transmission of intermittent sources of renewable energy, including storage of such energy,
IV) Property designed to capture and sequester carbon dioxide emissions,
V) Property designed to refine or blend renewable fuels or to produce energy conservation technologies (including energy-conserving lighting technologies and smart grid technologies),
VI) New qualified plug-in electric drive motor vehicles or components which are designed specifically for use with such vehicles, including electric motors, generators, and power control units, or
VII) Other advanced energy property designed to reduce greenhouse gas emissions as may be determined under IRS regulations and guidance, and

ii) Any portion of the qualified investment of which is certified by the IRS as eligible for a credit.

An advanced energy project does not include any portion of a project for the production of any property which is used in the refining or blending of any transportation fuel (other than renewable fuels).

The total amount of credits (the combined credits of all taxpayers) that may be allocated under the program shall not exceed $2.3 billion. A project must be certified by the IRS in order for the taxpayer to claim a credit. The credit is not allowed for property in which a credit is allowed under IRC section 48, 48A, or 48B (no double benefit).

New Law. Effective January 1, 2023, the new law allocates an additional $10 billion that may be claimed in credits under IRC section 48C, of which not greater than $6 billion may be allocated to qualified investments which are not located within a census tract. Each applicant must be certified by the IRS to claim the credit.

The new law reduces the 30% credit to 6%, unless the taxpayer meets the prevailing wage and apprenticeship requirements. See the Credit for Electricity Produced from Certain Renewable Resources under IRC section 45 covered earlier for a description of these requirements.

The new law modifies the definition of a qualifying advanced energy project to include an industrial facility for the production or recycling of any of the projects listed under IRC section 48C (in addition to manufacturing facilities).

The new law adds property designed to be used to produce energy from water to the list of qualifying advanced energy projects.

The new law adds property designed to produce energy conservation technologies (including residential, commercial, and industrial applications) to the list of qualifying advanced energy projects.

The new law adds light, medium, or heavy-duty electric or fuel cell vehicles, as well as technologies, components, or materials for such vehicles, and associated charging or refueling infrastructure to the list of qualifying advanced energy projects.

The new law adds hybrid vehicles with a gross vehicle weight rating of not less than 14,000 pounds, as well as technologies, components, or materials for such vehicles to the list of qualifying advanced energy projects.

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The new law clarifies that other projects must be designed to reduce greenhouse gas emissions by at least 20% to qualify as an advanced energy project.

Advanced Manufacturing Production Credit

• IRC §45X

The new law creates a new credit under new IRC section 45X called the "Advanced Manufacturing Production Credit." The credit is a general business credit under IRC section 38. Effective for components produced and sold after December 31, 2022, the new law allows for a credit equal the sum of the credit amounts determined with respect to each eligible component which is:

A) Produced by the taxpayer, and
B) During the tax year, sold by the taxpayer to an unrelated person.

The production and sale of each component must be in a trade or business of the taxpayer.

The credit amount determined for any eligible component is equal to:

A) In the case of a thin film photovoltaic cell or a crystalline photovoltaic cell, and amount equal to the product of
    i) 4 cents, multiplied by
    ii) The capacity of such cell, expressed on a per direct current watt basis,
B) In the case of a photovoltaic wafer, $12 per square meter,
C) In the case of solar grade polysilicon, $3 per kilogram,
D) In the case of a polymeric backsheet, 40 cents per square meter,
E) In the case of a solar module, and amount equal to the product of
    i) 7 cents, multiplied by
    ii) The capacity of such module, expressed on a per direct current watt basis,
F) In the case of a wind energy component
    i) If such component is a related offshore wind vessel, an amount equal to 10% of the sales price of such vessel, and
    ii) If such component is not a related offshore wind vessel, and amount equal to the product of
        I) The applicable amount with respect to such component (2 cents for a blade, 5 cents for a nacelle, 3 cents for a tower, 2 cents for a fixed platform, and 4 cents for a floating platform), multiplied by
        II) The total rated capacity, expressed on a per watt basis, of the completed wind turbine for which such component is designed,
G) In the case of a torque tube, 87 cents per kilogram,
H) In the case of a structural fastener, $2.28 per kilogram,
I) In the case of an inverter, an amount equal to the product of
    i) The applicable amount with respect to such inverter (0.25 cents for a central inverter, 1.5 cents for a utility inverter, 2 cents for a commercial inverter, 6.5 cents for a residential inverter, and 11 cents for a microinverter or a distributed wind inverter), multiplied by
    ii) The capacity of such inverter, expressed on a per alternating current watt basis,
J) In the case of electrode active materials, an amount equal to 10% of the costs incurred by the taxpayer with respect to production of such materials,

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K) In the case of a battery cell, an amount equal to the product of
   i) $35, multiplied by
   ii) The capacity of such battery module, expressed on a kilowatt-hour basis (subject to the limitation on capacity of battery cells and battery modules covered below),

L) In the case of a battery module, an amount equal to the product of
   i) $10 (or, in the case of a battery module which does not use battery cells, $45), multiplied by
   ii) The capacity of such battery module, expressed on a kilowatt-hour basis (subject to the limitation on capacity of battery cells and battery modules covered below), and

M) In the case of any applicable critical mineral, and amount equal to 10% of the costs incurred by the taxpayer with respect to production of such mineral.

Eligible components sold after December 31, 2029 are subject to a credit phase-out, except for any applicable critical mineral.

Battery cells and battery modules are subject to a limitation. A battery cell or battery module shall not exceed a capacity-to-power ratio of 100:1. Capacity-to-power ratio means the ratio of the capacity of the cell or module to the maximum discharge amount of the cell or module.

Author's Comment

According to the U.S. Energy Information Administration (eia.gov), a battery's duration is the ratio of its energy capacity to its power capacity. Batteries discharged at lower-than-maximum rates will yield longer duration times and possibly more energy capacity. Short-duration batteries are designed to provide power for a very short time, usually on the order of minutes to an hour (such as the batteries used in gasoline powered cars). Long-duration batteries in contrast can provide power over several hours. Thus, the limitations are designed to limit the credit to the types of batteries more suitable for use in electric cars.

The term "eligible component" means any solar energy component, any wind energy component, any qualifying inverter, any qualifying battery component, and any applicable critical mineral. A qualifying inverter is an end product which is suitable to convert direct current electricity (DC) from 1 or more solar modules or certified distributed wind energy systems into alternating current electricity (AC). There are various output levels associated with the different types of inverter applications (central inverters, commercial inverters, wind inverters, microinverters, residential inverters, etc.).

The credit only applies for production in the United States or a possession of the United States.

See IRC section 45X for eligible component definitions and more details.

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Hazardous Substance Superfund Financing Rate

• IRC §4611

The tax under IRC section 4611 is an excise tax on petroleum. The hazardous substance superfund applied for periods after December 31, 1986 and before January 1, 1996. Effective January 1, 2023, the new law reinstates this fund, increases the rate of tax, and adjusts the rate of tax for inflation.

Clean Electricity Production Credit

• IRC §45Y

The new law creates a new credit under new IRC section 45Y called the "Clean Electricity Production Credit," which is a general business credit. Effective for facilities placed in service after December 31, 2024, the clean electricity production credit for any tax year is an amount equal to the product of:

A) The kilowatt hours of electricity
   i) Produced by the taxpayer at a qualified facility, and
   ii) Sold by the taxpayer to an unrelated person during the tax year, or in the case of a qualified facility which is equipped with a metering device which is owned and operated by an unrelated person, sold, consumed, or stored by the taxpayer during the tax year, multiplied by

B) The applicable amount with respect to the qualified facility.

The applicable amount is equal to 0.3 cents, unless the taxpayer qualifies for the alternative amount.

The alternative amount increases the applicable amount to 1.5 cents. It applies if the qualified facility has a maximum net output of less than 1 megawatt and the construction of the facility begins prior to the date that is 60 days after the IRS publishes guidance with respect to the wage and apprenticeship requirements, or satisfies the wage and apprenticeship requirements. These are the same requirements that apply under IRC section 45(b) (see the credit for electricity produced from certain renewable resources covered earlier).

Author's Comment

The credit for electricity produced from certain renewable resources under IRC section 45 is set to expire at the end of 2024. That credit is basically being transferred over to this new credit under IRC section 45Y beginning in 2025, with a few modifications.

The applicable amounts are adjusted annually for inflation.

A qualified facility means a facility owned by the taxpayer which is used for the generation of electricity, which is placed in service after December 31, 2024, and for which the greenhouse gas emissions rate is zero.

The greenhouse gas emissions rate means the amount of greenhouse gases emitted into the atmosphere by a facility in the production of electricity. The IRS is directed to annually

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publish information that sets forth the greenhouse gas emissions rates for types or categories of facilities.

Author's Comment

The greenhouse gas emissions rates are determined by the amount of greenhouse gas the facility emits during the production of electricity (zero to qualify for the credit). It is not based on the greenhouse gases emitted during the construction of the facility. For example, diesel fuel burned by construction equipment during construction of the facility is irrelevant.

The facility is only treated as a qualified facility during the 10-year period beginning on the date the facility was originally placed in service.

The clean electricity production credit for all qualified facilities will begin to phase-out once the IRS determines that the annual greenhouse gas emissions from the production of electricity in the United States are equal to or less than 25% of the annual greenhouse gas emissions for 2022. If that does not occur before 2032, then the credit will begin to phase-out starting with the 2032 tax year.

The credit is only allowed for the consumption, sale, or storage of electricity produced in the United States or a possession of the United States.

Special rules apply to estates and trusts, and allocations to patrons of agricultural cooperatives.

The credit is increased by 10% if the qualified facility is located in an energy community as defined under IRC section 45(b)(11)(B).

The credit is increased by 10% if it meets the domestic content requirements, which basically require the steel, iron, or manufactured products used in the construction of the facility to be produced in the United States. Certain phase-outs and exceptions apply.

See new IRC section 45Y for more details.

Clean Electricity Investment Credit

- IRC §48E

The new law creates a new investment credit under new IRC section 48E called the "Clean Electricity Investment Credit," which is part of the investment credit under IRC section 46.

The new credit applies to property placed in service after December 31, 2024.

Author's Comment

This new credit generally replaces certain portions of the energy credit under IRC section 48 that are set to expire at the end of 2024.

The clean electricity investment credit for any tax year is an amount equal to the applicable percentage of the qualified investment for the year with respect to any qualified facility, and any energy storage technology.

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The applicable percentage is 6%, unless the alternative rate applies.

The alternative rate is 30%, and applies if the maximum net output of the facility is less than 1 megawatt as measured in alternating current, the construction of which begins prior to the date that is 60 days after the IRS publishes guidance with respect to the prevailing wage requirements and the apprenticeship requirements, or construction of the facility satisfies the wage and apprenticeship requirements. These are the same requirements that apply under IRC section 45(b) (see the credit for electricity produced from certain renewable resources covered earlier).

The credit is increased by 2% if the qualified facility is placed in service within an energy community, or 10% if placed in service within an energy community and the wage and apprenticeship requirements are met.

The credit is increased by 10% if the domestic content rules of IRC section 48(a)(12) apply (materials used to construction the facility are made in the United States).

Qualified investment with respect to a qualified facility is the sum of:

A) The basis of any qualified property placed in service by the taxpayer during the year which is part of a qualified facility, plus
B) The amount of any expenditures which are paid or incurred by the taxpayer for qualified interconnection property in connection with a qualified facility which has a maximum net output of not greater than 5 megawatts (as measured in alternating current), and placed in service during the year, and properly chargeable to a capital account.

Qualified property means property which is tangible personal property, or other tangible property (not including a building or its structural components), but only if such property is used as an integral part of the qualified facility. The property must be of a type in which depreciation (or amortization) is allowable. Original use of the property must commence with the taxpayer.

A qualified facility is a facility:

i) Which is used for the generation of electricity,
ii) Which is placed in service after December 31, 2024, and
iii) For which the anticipated greenhouse gas emissions rate is zero.

See the clean electricity production credit under IRC section 45Y (covered above) for greenhouse gas emission rates.

A qualified facility does not include any facility in which the credits under IRC sections 45, 45J, 45Q, 45U, 45Y, 48, or 48A are allowed.

The clean electricity investment credit for all qualified investments will begin to phase-out once the IRS determines that the annual greenhouse gas emissions from the production of electricity in the United States are equal to or less than 25% of the annual greenhouse gas emissions for 2022. If that does not occur before 2032, then the credit will begin to phase-out starting with the 2032 tax year.

There is a recapture provision if the IRS determines that the greenhouse gas emissions rate is greater than 10 grams of CO_2e per KWh.

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There are special rules for certain facilities placed in service in connection with low-income communities.

Cost Recovery for Qualified Facilities, Qualified Property, and Energy Storage Technology

- IRC §168(e)

Effective for property placed in service after December 31, 2024, any property that qualifies for the clean electricity production credit under IRC section 45Y or the clean electricity investment credit under IRC section 48E is considered 5-year property for depreciation purposes under IRC section 168(e).

Clean Fuel Production Credit

- IRC §45Z

The new law creates a new general business credit under new IRC section 45Z called the "Clean Fuel Production Credit."

Effective for transportation fuel produced after December 31, 2024, the clean fuel production credit is an amount equal to the product of:

A) The applicable amount per gallon (or gallon equivalent) with respect to any transportation fuel which is produced by the taxpayer at a qualified facility and sold by the taxpayer during the year, and
B) The emissions factor for such fuel.

Author's Comment

Again, this new credit is meant to replace similar tax credits that are set to expire at the end of 2024.

The applicable amount is 20 cents, unless the alternative amount applies.

The alternative amount is $1.00 if the prevailing wage and apprenticeship requirements are met. These are the same requirements that apply under IRC section 45(b) (see the credit for electricity produced from certain renewable resources covered earlier), with certain exceptions that apply to qualified facilities placed in service before January 1, 2025.

If the transportation fuel produced by the taxpayer is sustainable aviation fuel, then the 20 cent applicable amount mentioned above is 35 cents, and the $1.00 alternative amount mentioned above is $1.75.

The applicable amounts and alternative amounts are adjusted annually for inflation.

Transportation fuel is considered sold by the taxpayer for purposes of the credit if it is sold to an unrelated person for use in the production of a fuel mixture in that person's trade or business, or sold to an unrelated person who sells the fuel at retail to another person and places the fuel in the fuel tank of that other person.

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The emissions factor of a transportation fuel is an amount equal to the quotient of:
I) An amount equal to 50 kilograms of CO2e per mmBTU minus the emissions rate for such fuel, divided by
II) 50 kilograms of CO2e per mmBTU.

The IRS is directed to annually publish the emissions rate for similar types and categories of transportation fuels.

A qualified facility does not include a facility in which any of the following credits are allowed:
- The clean hydrogen credit under IRC section 45V,
- The energy credit with respect to clean hydrogen production for which the election under IRC section 48(a)(15) is made, or
- The carbon oxide sequestration credit under IRC section 45Q.

Transportation fuel means a fuel which:
i) Is suitable for use as a fuel in a highway vehicle or aircraft,
ii) Has an emissions rate which is not greater than 50 kilograms of CO2e per mmBTU, and
iii) Is not derived from co-processing an applicable material (or materials derived from an applicable material) with a feedstock which is not biomass.

The IRS is directed to issue guidance on these rules.

No clean fuel production credit is allowed with respect to any transportation fuel not produced in the United States or any possession of the United States. The clean fuel producer must be registered.

The credit is set to expire for transportation fuel sold after December 31, 2027.

Elective Payment of Applicable Credits

- IRC §6417

The new law allows tax exempt organizations, State or political subdivisions, the Tennessee Valley Authority, Indian tribal governments, Alaska Native Corporations, and cooperatives engaged in furnishing electric energy to persons in rural areas to elect to have certain applicable credits apply as a payment against the income tax imposed by subtitle A of the Internal Revenue Code (the income tax imposed on individuals and corporations).

Author's Comment

Presumably for example, this would allow a tax-exempt organization that is not subject to income tax to elect to treat a credit as a payment, and subsequently apply for a refund of such overpayment of their income tax liability.

The provision also allows partnerships and S corporations (that generally do not pay income tax at the entity level), to elect to treat an applicable credit as a payment against the income tax of the entity. The election is made at the entity level.

Taxpayers that qualify for the credit for the production of clean hydrogen, the credit for carbon oxide sequestration, or the advanced manufacturing production credit may also elect to have their applicable credit apply as a payment against the income tax.

The IRS is directed to issue guidance on the application of this new rule.

Transfer of Certain Credits

• IRC §6418

Effective for tax years beginning after December 31, 2022, the new law allows eligible taxpayers to elect to transfer their eligible credits to a transferee taxpayer which is not related to the eligible taxpayer. Under this election, the transferee taxpayer claims the credit rather than the eligible taxpayer that originally qualified for the credit.

For any amount paid by a transferee taxpayer to an eligible taxpayer as consideration for a transferred credit, such consideration must be paid in cash, is not includible in gross income of the eligible taxpayer, and not deductible by the transferee taxpayer.

If a partnership or S corporation makes this election with respect to the credit:
A) Any amount received as consideration for a transfer is treated as tax exempt income for purposes of IRC section 705 and 1366, and
B) A partner's distributive share of such tax exempt income is based on the partner's distributive share of the otherwise eligible credit for each tax year.

The election is made at the partnership or S corporation level.

An eligible taxpayer is any taxpayer other than a taxpayer described under IRC section 6417(d)(1)(A) (tax exempt organizations, State or political subdivisions, the Tennessee Valley Authority, Indian tribal governments, Alaska Native Corporations, and cooperatives engaged in furnishing electric energy to persons in rural areas).

The IRS is directed to issue regulations or guidance on the application of these rules.

Author's Comment

TheTaxBook will provide planning opportunities for using this election in future publications.

Black Lung Disability Trust Fund

• IRC §4121

The new law permanently extends the excise tax rate under IRC section 4121 that was set to expire at the end of 2021.

Increase in Research Credit against Payroll Tax for Small Businesses

• IRC §41(h) and §3111(f)

Prior Law. The research credit under IRC section 41 is allowed to offset the alternative minimum tax (AMT). It also allows qualified small businesses to elect to claim a certain amount of the credit as a payroll tax credit.

The research credit is an amount equal to the sum of:

1) 20% of the excess (if any) of the qualified research expenses for the tax year, over the base amount, as determined under IRC section 41(c),
2) 20% of the basic research payments determined under IRC section 41(e)(1)(A), and
3) 20% of the amounts paid or incurred by the taxpayer in carrying on any trade or business during the year to an energy research consortium for energy research.

Expenses allowed in calculating the credit are expenses paid for qualified research associated with a trade or business. The research must be undertaken for discovering information that is technological in nature, and its application must be intended for use in developing a new or improved business component of the taxpayer. Substantially all the activities of the research must be elements of a process of experimentation relating to a new or improved function, performance, reliability, or quality.

Any deduction or amortization for research expenses must be reduced by the expenses used to compute the credit.

Qualified small businesses may elect to apply up to $250,000 of the credit against the employer's portion of Social Security taxes. The credit against payroll taxes is an annual election made by a qualified small business. The credit is the smaller of:

- The current year research credit,
- An elected amount not to exceed $250,000, or
- The general business credit carryforward for the tax year (before application of the payroll tax credit election for the tax year).

A qualified small business is a small business with less than $5 million in gross receipts for the current tax year and did not have any gross receipts for any tax year preceding the 5-tax year period ending with the current year.

New Law. Effective for tax years beginning after December 31, 2022, the new law increases the amount of the research credit that small businesses can use against their payroll tax liability to $500,000.

Limitation on Excess Business Losses of Non-corporate Taxpayers

- IRC §461(l)

The Tax Cuts and Jobs Act (TCJA) imposed a limitation on businesses losses for tax years beginning before January 1, 2027. Business losses are limited to $250,000 per year, with any excess being treated as a net operating loss carryover under IRC section 172(b). The $250,000 limit is adjusted each year for inflation. The new law extends this limitation to apply to business losses for tax years beginning before January 1, 2029.

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