



**ZERO EMISSION
TRANSPORTATION
ASSOCIATION**

November 4, 2022

United States Department of Treasury

1500 Pennsylvania Avenue, NW

Washington, D.C. 20220

SUBMITTED VIA [https:// www.regulations.gov](https://www.regulations.gov)

Docket No. IRS-2022-0046

ELECTRONIC MAIL TO: [regulations.gov](https://www.regulations.gov)

RE: REQUEST FOR COMMENTS ON IRS NOTICE 2022-46

The Zero Emission Transportation Association (ZETA) is an industry-backed coalition of member companies spanning the entire electric vehicle (EV) supply chain. Together with its members, ZETA advocates for 100% EV sales by 2030. ZETA is committed to enacting policies that drive EV adoption, create hundreds of thousands of jobs, drastically improve public health, and significantly reduce carbon pollution.

Federal incentives in emerging energy and transportation markets are key tools for driving economic growth while lowering carbon emissions—and the United States has a history of supporting, encouraging, and fostering vehicle technologies. As the U.S. market moves out of the EV early adopter phase and enters the mainstream consumer market, the impact of these incentives on consumer behavior becomes even more important.

The Clean Vehicle Tax Credit, found at 26 U.S.C. § 30D, as modified by the Inflation Reduction Act, is one such incentive that impacts consumer behavior. This tax credit is key to meeting the goal of 100% EV sales by 2030; as such, ZETA welcomes the opportunity to provide the U.S. Department of Treasury (Treasury) and the Internal Revenue Service (IRS) the following comments to ensure taxpayers are able to use the credit to the fullest extent possible. ZETA also encourages Treasury and the IRS to carefully review the comments of its member companies and all stakeholders for issues not addressed herein.

Definitions

The Treasury and IRS should interpret the terms “acquired,” “use,” and “lease” in the broadest manner possible to ensure the tax credit is available to the widest range of eligible taxpayers, particularly individual consumers. For example, guidance should make clear that taxpayers can acquire a new qualified plug-in electric drive motor vehicle directly from a manufacturer (“direct sales”). Direct sales are increasingly commonplace, and the tax credit should be available in such transactions.

Applicable Critical Mineral Values

The critical mineral and battery component requirements in Section 30D will help the U.S. secure our supply chain by prioritizing U.S. production or imports from allies where domestic content is insufficient.

In its guidance, it is essential that Treasury acknowledge the key role U.S. allies will play in easing the transition to a robust domestic EV supply chain and the challenges of sourcing critical minerals and components as EV manufacturing grows. Together, these actions will facilitate greater EV deployment and economic activity while reducing reliance on imports from countries that do not share our interests.

Treasury and the IRS must clarify the terms “extracted” and “processed.” ZETA suggests that the definitions of “extracted” and “processed” focus on removing a critical mineral from its natural location and changing the mineral from its natural state. In addition, it is not uncommon for critical minerals to undergo multiple processing steps to meet grade requirements for use in batteries. Any processing that occurs in the U.S. or a country with whom the U.S. has a free trade agreement (“eligible countries”) should be factored into value calculation.

In addition, ZETA requests confirmation that a critical mineral may be either extracted *or* processed in “eligible countries” to qualify. For example, if an EV manufacturer purchases a critical mineral that was extracted in an eligible country but processed in a non-eligible country and includes the mineral in a battery, ZETA believes the value of that critical mineral should be included in the calculation of the eligible percentage necessary to qualify the vehicle for the credit. Similarly, ZETA seeks clarification of the term “recycled” in North America and confirmation that it would include, for example, a recycling facility in the United States, Mexico, or Canada.

ZETA requests additional clarity surrounding the calculation of the value of critical minerals for the purpose of meeting the applicable percentages. ZETA supports valuing the critical mineral at a processed level rather than the raw form—in other words, the cost for which the manufacturer purchased the material. However, given the volatility of the critical minerals market, providing safe harbor prices for the value of critical minerals such as lithium, cobalt, manganese, graphite, and nickel in a cyclical manner would ensure more certainty for companies throughout the supply chain. In consultation with third parties and the industry, Treasury and IRS could provide a safe harbor critical mineral price annually based on a one-year look back (at minimum). A more predictable and stable safe harbor should be available at election and as an alternative to the purchase price.

For determining the countries with whom the United States has a free trade agreement, ZETA recommends using the widely available list maintained by the United States Customs and Border Protection (CBP). In addition, under its authority, CBP has implemented a process to determine which countries’ goods are eligible for duty-free treatment and outlined procedures and mechanisms for verifying this information, including the use of Certificates of Origin. To prevent duplicity or confusion, ZETA recommends that Treasury and IRS use a model similar to CBP’s Certificate of Origin process to track imports.

Battery Components

Under the battery component requirements, Treasury should place the duty of eligibility on the manufacturers to ensure simplicity for the consumer. Similarly, in determining percentages of battery value for 30D, ZETA believes determinations should be made at the component level to maintain consistent and accurate battery information for tracking purposes. While 45X references subcomponents,

30D does not and we believe that given the complexity of the EV battery supply chain compliance should be focused at the component level, for example measuring the value of the cell as a percentage of the module. ZETA recommends that Treasury refer further to our individual member companies' responses on this topic.

As it relates to components contained in a battery, and similar to the regulations under the Buy America Act, a component should be considered of North American origin if manufactured or assembled in North America, regardless of the origin of any subcomponent. Tracking the origin of subcomponents is onerous and may skew the calculation of domestic content value, detracting from legislative intent and potentially creating unattainable metrics. Relatedly, Treasury and the IRS should clarify the definition of "manufactured" or "assembled" so as to avoid diluting the incentive to reshore or friend-shore our supply chains.

Entities of Concern

The exclusion contained in Section 30D related to foreign entities of concern requires further clarification. ZETA recommends that Treasury and IRS issue guidance that is verifiable and reflects competencies in the supply chain. Helpfully, the statutory definition is largely defined by static lists, e.g. "designated as a foreign terrorist organization by the Secretary of State." However, the definition of foreign entities of concern (FEOC) also includes those "foreign entities owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country" that is a covered nation. ZETA requests that this language should be limited to entities that are organized under laws of a covered nation, e.g. China, or are fundamentally owned or controlled by covered nations. As the EV industry continues to onshore the domestic supply chain, our members also seek further guidance on the level of ownership or control that would make a company ineligible based on their connection with other entities—for example, if a U.S. company enters into a joint venture that helps secure our supply chain, but may potentially trigger foreign entity rules.

ZETA also asks that Treasury apply a de-minimis standard under the FEOC requirements so that minerals sourced under a certain percentage are not considered when conducting the required tracking and sourcing calculations. With this understanding, we recommend that minerals that constitute less than a predetermined amount not be calculated in the final sourcing requirement percentage of the cell.

Recordkeeping and Reporting

Documentation and recordkeeping requirements should be promulgated to minimize implementation burdens. For example, the manufacturer should only be required to provide the IRS with the VIN number to be considered a qualified manufacturer. The National Highway Traffic Safety Administration (NHTSA's) regulations already require that each motor vehicle contain a VIN number, which is a 17-character number that encodes accurate, detailed, and public information about the vehicle, including the manufacturing plant location, the relevant model, and trim levels (any special features or level of the equipment).

The seller (whether a manufacturer or the dealer) should provide the VIN number and a copy of the "Monroney sticker" to the taxpayer, which would be sufficient information about the vehicle's eligibility. Relatedly, and as stated briefly above, any future guidance and rulemaking should acknowledge manufacturers sometimes operate under a direct sales model. In such a case, the consumer should be able to transfer the credit to the manufacturer since it is acting as a dealer. Such an interpretation is consistent with the definition of eligible entity as found in Section 30D(g)(2).

Final Assembly Requirement

ZETA appreciated the early guidance issued by Treasury and IRS regarding the final assembly requirement. The statutory language and guidance are sufficient. As acknowledged, the VIN number is a form of identification that attributes the final assembly location, model, and trim to the vehicle.

Vehicle Classifications and Manufactured Price

ZETA recommends utilizing existing federal regulatory regimes where possible, including criteria issued by the Environmental Protection Agency to determine vehicle classification. For example, 40 CFR 600 identifies vehicles in each segment (vans, sport utility vehicles, pickup trucks) for purposes of corporate average fuel economy (CAFE) standards. Such definitions are familiar and should be leveraged.

Similarly, ZETA recommends that Treasury clarify the manufacturer's suggested retail price (MSRP) to include the vehicle's minimum configurable version, often referred to as its "base" price. This price is easily found on the vehicle's Monroney sticker, which federal law already requires manufacturers to show to consumers and includes the vehicle's MSRP.

Other Important Considerations

ZETA's members include new EV manufacturers whose customers placed reservations for vehicles between 2018 and 2022 on the understanding that these vehicles would be eligible for the original 30D EV tax credit. A significant portion of these orders were placed by first-time EV buyers. Member companies offered their customers the opportunity to sign a "written binding contract" secured by a non-refundable deposit pursuant to the "transition rule" as outlined in the IRA. These contracts were developed and shared with customers prior to the date of the Treasury guidance and were based on the limited information available in the legislative text. ZETA urges Treasury to issue guidance that reaffirms that these contracts will be honored.

Also, as the industry continues to meet the requirements under the Clean Vehicle Credit to increase vehicle eligibility, we ask that Treasury provide a transition timeline. In doing so, Treasury may be able to avoid possible unintended consequences of being overly prescriptive without diluting the legislative intent of the Act.

Finally, information related to pricing, sourcing, and formulas is proprietary to our members. We ask that Treasury provide a confidential process for vehicle OEMs and battery manufacturers to individually share

battery composition, pricing, and sourcing information. Individually collecting information from companies will ensure that business confidential information remains protected from competitors.

ZETA appreciates the opportunity to provide this important feedback and stands ready and able to assist the Treasury and the IRS as they work through the Clean Vehicle Tax Credit guidance process.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Britton", with a stylized flourish at the end.

Joe Britton
Executive Director
Zero Emission Transportation Association