



**ZERO EMISSION
TRANSPORTATION
ASSOCIATION**

November 4, 2022

United States Department of Treasury

1500 Pennsylvania Avenue, NW

Washington, D.C. 20220

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Docket No. IRS-2022-0046

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

RE: REQUEST FOR COMMENTS ON IRS NOTICE 2022-47

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.

The tax credits provided in the Inflation Reduction Act, specifically 26 U.S.C. § 48C and § 45X, are critical to many ZETA members and will help ensure the continued availability of products necessary for a fully-electrified transportation sector. ZETA thanks the Biden Administration in advance for considering the following comments on these two sections.

Advanced Manufacturing Production Credit—Section 45X

Definitions

ZETA requests clarification that eligible components may be sold to an unrelated taxpayer if that unrelated taxpayer purchases eligible components for incorporation into a final consumer product. For example, if a taxpayer produces a qualified battery component and incorporates that component into an EV that the taxpayer also manufactures and later sells to an unrelated person, the taxpayer should be entitled to claim a Section 45X credit. Such an interpretation is consistent with the structure of the credit, as it is similar to the credit availability when eligible components are integrated, incorporated, or assembled into other eligible components. Relatedly, “integrated,” “incorporated,” or “assembled” must be defined, and should be deemed to occur when a component is added to an eligible component and is necessary to that eligible component’s function.

In addition to these definitions, ZETA requests further guidance on the capacity-to-power ratio in 45X(b)(4). Battery cell and battery module capacity should be measured at the level of the component, rather than at its end-use capacity. Such questions are of critical importance to ZETA members, who need certainty so they can be in full compliance.

ZETA believes that any further guidance on what constitutes an eligible technology should be broad. Since the guidance also relates to critical minerals, the definition of purity should also be broad and should include additional guidance around purity percentages for “applicable critical materials” so that taxpayers can establish a baseline for comparing their technology’s emissions reduction.

As the U.S. wants to develop a strong production of critical minerals, ZETA believes that domestic miners of critical minerals should be allowed to claim the § 45X credit with respect to their costs of production to the extent the minerals are later processed or refined by another party to the requisite purity level. There should be an appropriate adjustment to ensure that the credit is not claimed more than once with respect to the same costs.

ZETA members have established frameworks for rigorous, routine analysis and evaluation of their critical minerals and the “Vendor Certificate of Analysis” should suffice as documentation taxpayers are required to maintain. No third-party verification is required by statute, nor should Treasury and the IRS impose one. To determine the credit amount for critical minerals, Treasury must define production costs, and the definition should include all costs incurred by the taxpayer such as extracting, refining, processing and recycling.

Eligible Technologies

Section 45X applies when the taxpayer has produced an eligible technology, but is silent on the issue of recycling. Treasury should clarify the Section to include production through recycling, and define production costs given its near-identical usefulness compared to virgin materials, lower environmental impact, and capacity to reduce reliance on foreign sources. Further, ZETA recommends that recycled battery inputs should receive equal treatment to virgin materials. This interpretation is consistent with other credits contained in the Inflation Reduction Act, such as the Clean Vehicle Tax Credit under Section 30D and the Advanced Energy Project Credit under Section 48C, discussed below.

When sales occur to related persons, Treasury should require that taxpayers track such information to ensure that there is no duplication and maintain records. ZETA members already have the capacity to track their compliance with the tax credit requirements and maintain existing frameworks to inform where and how they source components.

Qualifying Advanced Energy Project Credit—Section 48C

Like many, ZETA is anxious for Treasury and the IRS to release the Section 48C program and is excited about its potential to fund critically-important projects. We encourage the agencies to issue clear guidance and expectations on the application and certification process—not only by setting deadlines for taxpayers but also by setting deadlines by which agencies will make determinations. Certainty with respect to timing will allow taxpayers to plan and make informed investment decisions.

We ask that Treasury release supportive documentation that explains program requirements and specific data points it requests for 48C project applications, specifically a clear map featuring where “energy communities” are located across the country. We also request that Treasury ensures there is a process

available to stakeholders to seek clarification and ask for technical support when applying. Many companies are ascendant or are otherwise new U.S. market entrants that are new to U.S. federal agencies, processes and requirements; having resources available to stakeholders to ease these learning curves will help increase access to the program from a plethora of industries.

Similarly, to the extent Section 48C requires that organizations meet certain metrics to qualify, Treasury and IRS should work with the Environmental Protection Agency (EPA) and DOE to determine those metrics. For example, EPA and DOE already have several calculators that demonstrate greenhouse gas reductions from EVs. These include the [greenhouse gas equivalencies calculator](#), [fact sheet on greenhouse gas emissions from a typical passenger vehicle](#), and the [fuel economy calculator](#). Finally, we encourage Treasury and IRS to release proposed metrics as a draft for public comment to allow stakeholders to give technical feedback. The industries and technologies eligible to apply for this credit are extremely diverse; while some metrics may be appropriate for any number of applicants, there may be unintended consequences that lock others out of the program or put them at a competitive disadvantage. Allowing time for public comment on proposed metrics will help flag any potential issues and how they may impact some industries' ability to access this incentive.

Section 48C(c)(1)(A)(ii) allows funding of projects that re-supply an industrial or manufacturing facility with equipment designed to reduce greenhouse gas emissions by at least 20%. How this is measured is critical: in particular, Treasury should establish a “baseline” for comparing environmental waste reductions and should define “reduction in waste from industrial process.” Taxpayers should also be allowed to use projections during their application. Moreover, Treasury and the IRS should clarify that this provision includes any and all industrial and manufacturing facilities.

Treasury should consider including “second-life batteries” within the definition of new types of energy property under the 48C tax credit. Second-life applications are already being used for short-term energy storage by utilities and businesses to assist with grid modernization and climate resiliency efforts. Specifically, ZETA encourages IRS to recognize that second-life batteries that are re-used in energy storage systems are considered “new energy property” for the purpose of the manufacturing tax credit section.

Under Section 48C, taxpayers have limited time to place the facility in service or face revocation. ZETA requests additional clarity surrounding the timing for revocations and encourages flexibility in the revocation process. In many cases, factors outside of a taxpayer's control like supply chain disruptions, permitting delays, or unexpected events can prevent the taxpayer from placing the project into service. Providing this flexibility to previously-vetted projects will also ease the burden of having to conduct numerous allocation rounds. ZETA recommends that Treasury and IRS issue guidance on what exceptions, additional time, or assistance it can grant, if any, to taxpayers affected by delays outside of their control.

Finally, in addition to prioritizing energy communities, Treasury and IRS should consider other categories of projects for prioritization during the application process. For example, ZETA encourages Treasury and the IRS to consider the importance of setting aside dedicated funding for transportation projects. Reducing transportation-sector emissions is a straightforward pathway to making rapid progress toward

our overall emissions reductions goals. Transportation is the single largest source of greenhouse gas emissions throughout all economic sectors, and encouraging widespread adoption of available EV technology will speed our progress in this space and is consistent with several of President Biden's Executive Orders.

ZETA and its members thank you for your attention to these comments and are available should you have any additional questions.

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