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May 21, 2024

The Honorable Ron Wyden
Chairman
The Honorable Mike Crapo
Ranking Member
Committee on Finance
United States Senate

The Honorable Jason Smith
Chairman
The Honorable Richard Neal
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of the Treasury, Internal Revenue Service: Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Treasury, Internal Revenue Service (IRS) entitled “Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern” (RINs: 1545-BQ52, 1545-BQ86, 1545-BQ99). We received the rule on May 3, 2024. It was published in the *Federal Register* as final regulations on May 6, 2024. 89 Fed. Reg. 37706. The effective date of the rule is July 5, 2024.

According to IRS, this final rule concerns federal income tax credits under the Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 1818 (Aug. 16, 2022), for the purchase of qualifying new and previously-owned clean vehicles, including new and previously-owned plug-in electric vehicles powered by an electric battery meeting certain requirements and new qualified fuel cell motor vehicles. Additionally, IRS explained that these regulations provide guidance for taxpayers who purchase qualifying vehicles and intend to transfer the amount of any previously-owned clean vehicle credit or new clean vehicle credit to dealers that are entities eligible to receive advance payments of either credit. IRS noted that these regulations also provide guidance for dealers to become eligible entities to receive advance payments of previously-owned clean vehicle credits or new clean vehicle credits, and rules regarding recapture of the credits. IRS finally stated that the regulations also provide guidance on the meaning of three new definitions added to the exclusive list of mathematical or clerical errors relating to certain assessments of tax without a notice of deficiency.

Enclosed is our assessment of IRS’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to

the subject matter of the rule, please contact Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive style with a large initial 'S' and a distinct 'A'.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Oluwafunmilayo A. Taylor
Chief, Publications & Regulations Section
Internal Revenue Service
Department of the Treasury

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE
ENTITLED
“CLEAN VEHICLE CREDITS UNDER SECTIONS 25E AND 30D;
TRANSFER OF CREDITS; CRITICAL MINERALS AND BATTERY COMPONENTS;
FOREIGN ENTITIES OF CONCERN”
(RINS: 1545-BQ52, 1545-BQ86, 1545-BQ99)

(i) Cost-benefit analysis

In this final rule, the Department of the Treasury, Internal Revenue Service (IRS) included a statement discussing the impact of the rule.¹ IRS explained that the recordkeeping and reporting requirements would increase for taxpayers who elect to transfer the section 25E or 30D credit to an eligible entity and for dealers who seek to qualify as eligible entities and participate in the advance payment program. IRS also stated that there would likely be an increased cost of compliance due to the burden of complying with the recordkeeping and reporting requirements although the Treasury Department and IRS do not have sufficient data to precisely determine the likely extent of the increased cost.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

On April 17, 2023, IRS published a proposed rule under section 30D. 88 Fed. Reg. 23370 (April Proposed Regulations). On October 10, 2023, IRS published a proposed rule for elections to transfer clean vehicle credits under sections 25E(f) and 30D. 88 Fed. Reg. 70310 (October Proposed Regulations). On December 4, 2023, IRS published a proposed rule regarding the excluded entities limitations of section 30D(d)(7). 88 Fed. Reg. 84098 (December Proposed Regulations). In connection with the April and December Proposed Regulations, the Secretary of the Treasury certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

IRS prepared a Final Regulatory Flexibility Analysis in connection with the October Proposed Regulations. The analysis included (1) a statement of the need for and objectives of the rule, (2) a description of significant issues raised by public comments, (3) a description of the small entities subject to the rule, (4) a description of the impact of the rule, (5) a discussion of alternatives considered, and (6) a statement that the rule does not duplicate, overlap, or conflict with any relevant federal rules.

¹ This rule amends the Income Tax Regulations (26 C.F.R. part 1) under section 25E of the Internal Revenue Code, as enacted by section 13402 of Public Law 117-169, 136 Stat. 1818, 1962 (Aug. 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA); and section 30D of the Code, as enacted by section 205(a) of division B of Public Law 110-343, 122 Stat. 3765, 3835 (Oct. 3, 2008), commonly known as the Energy Improvement and Extension Act of 2008, as amended by section 13401 of the IRA, 136 Stat., 1818, 1954. The rule also amends the Procedure and Administration Regulations (26 C.F.R. part 301) under section 6213 of the Code, as enacted by sections 13401 of the IRA, 136 Stat. 1818, 1954.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

IRS determined that this final rule does not include any federal mandate that may result in expenditures by state, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more, adjusted annually for inflation, in any one year.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

IRS did not discuss the Act in this final rule or in its submission to us.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On April 17, 2023, IRS published the April Proposed Regulations under section 30D. 88 Fed. Reg. 23370. On October 10, 2023, IRS published the October Proposed Regulations regarding elections to transfer clean vehicle credits under sections 25E(f) and 30D. 88 Fed. Reg. 70310. Finally, on December 4, 2023, IRS published the December Proposed Regulations regarding the excluded entities limitations of section 30D(d)(7). 88 Fed. Reg. 84098. IRS received over 180 written and electronic comments in response to the April Proposed Regulations, the October Proposed Regulations, and the December Proposed Regulations (collectively, the proposed regulations). A public hearing on the proposed regulations was held on January 31, 2024. IRS responded to comments in this final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

IRS determined that this final rule contains no new information collection requirements under the Act. IRS stated any collection burden associated with rules described in these final regulations is previously accounted for in OMB Control Number 1545-2137. IRS stated these final regulations do not alter previously accounted for information collection requirements and do not create new collection requirements.

Statutory authorization for the rule

IRS promulgated this final rule pursuant to sections 25E, 30D, and 6213 of title 26, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

According to IRS, tax regulatory actions issued by IRS are not subject to the Order.

Executive Order No. 13132 (Federalism)

IRS determined that this final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Order.