CCH-EXP:NEW-LAW, ARRA09 ¶350, Plug-in Electric Vehicle Credit

Plug-in Electric Vehicle Credit

Summary:

A new credit against tax is available for the cost of acquiring 2-wheeled, 3-wheeled and low-speed plug-in electric vehicles.

Background:

Since 2005, Congress has enacted numerous tax incentives to encourage development of alternative fuels for motor vehicles. The Energy Tax Incentives Act of 2005 (P.L. 109-58) created the alternative motor vehicle credit and the alternative fuel vehicle refueling property credit (Code Secs. 30B and 30C), and the Emergency Economic Stabilization Act of 2008 (P.L. 110-343) added a credit against tax for qualified plug-in electric drive motor vehicles placed in service in 2009 through 2014 (Code Sec. 30D, as added by the Emergency Economic Act of 2008).

The credit for qualified plug-in electric drive motor vehicles is equal to the applicable amount for each new qualified plug-in electric drive motor vehicle placed in service during the eligible tax year (Code Sec. 30D(a)). A qualified plug-in electric drive motor vehicle is a 4-wheeled motor vehicle that draws propulsion using a traction battery with at least 4 kilowatt hours of capacity (Code Sec. 30D(c)). The applicable amount is the sum of the $2,500 base amount, plus an additional $417 for each kilowatt hour of traction battery capacity in excess of four kilowatt hours (Code Sec. 30D (a)(2)). The maximum amount of the credit is between $7,500 and $15,000 depending upon the weight of the motor vehicle (Code Sec. 30D(b)(1)).

NEW LAW EXPLAINED

Creation of new of plug-in electric drive motor vehicle credit for low speed vehicles, 2-wheeled vehicles and 3-wheeled vehicles. --

The American Recovery and Reinvestment Tax Act of 2009 (P.L. 111-5) adds a new credit against tax that is generally modeled on the plug-in electric drive motor vehicle credit in Code Sec. 30D, as amended by the 2009 Recovery Act. The new law provides a credit for 10% of the cost of acquiring certain electrically powered 2-wheeled vehicles, 3-wheeled vehicles and low-speed vehicles. To qualify for the credit, which is capped at $2,500, a vehicle must be a "qualified plug-in electric vehicle."The credit is available for the tax year in which the qualifying vehicle is put into service. Note, however, that a taxpayer may elect not to have the credit apply (Code Sec. 30(a), (b), and (e)(6), as amended by the 2009 Recovery Act).

"*Qualified plug-in electric vehicle*". In order to qualify as a "qualified plug-in electric vehicle", the vehicle must meet all of the following requirements:

- the vehicle must be a *specified vehicle*. A specified vehicle is either (1) any vehicle with 2 or 3 wheels, or (2) a "low speed vehicle" as defined in the Federal Motor Vehicle Safety Standards (section 571.3 of title 49 of the Code of Federal Regulations) in effect on February 17, 2009. Under the safety standards, a low speed vehicle must have:

-- four wheels,

-- a minimum speed attainable in 1 mile of more than 20 miles per hour and a maximum speed attainable in 1 mile of no more than 25 miles per hour, on a paved level surface, and

-- a gross weight of less than 3,000 pounds.

- the vehicle must be made by a "manufacturer" (defined below), acquired for use or lease, but not resale and the original use must begin with the taxpayer;
- the vehicle must be manufactured primarily for use on public streets, roads and highways;

- the vehicle must have a gross vehicle weight rating of less than 14,000 pounds; and
- the vehicle must be propelled to a "*significant extent*" by an electric motor drawing power from a battery that can be recharged from an external source with a "battery capacity" (defined below) of not less than

-- 4 kilowatt hours in the case of low speed vehicles; or

-- 2.5 kilowatt hours in the case of a 2 or 3 wheeled vehicle (Code Sec. 30(d)(1) and (2), as amended by the 2009 Recovery Act).

Definitions. The rules governing "qualified plug-in electric vehicles" utilize the following defined terms:

- "Manufacturer" has the same meaning given such term in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of administering title II of the Clean Air Act (Code Sec. 30(d)(3), as amended by the 2009 Recovery Act).
- "Battery capacity" means the quantity of electricity the battery can store expressed in kilowatt hours, as measured from a 100 percent state of charge to a 0 percent state of charge (Code Sec. 30(d)(4), as amended by the 2009 Recovery Act).

Business versus personal use. If the "qualified plug-in electric vehicle" eligible for the credit is used in a trade or business and, therefore, is subject to depreciation, then the amount of the credit is treated as a business credit under Code Sec. 38(b) and is not allowed under Code Sec. 30(a) (Code Sec. 30(c)(1), as amended by the 2009 Recovery Act). If the vehicle is considered personal property, the credit is treated as part of the non-refundable personal credits under subpart A of the Internal Revenue Code. The credit can offset regular tax and alternative minimum tax (AMT) liabilities in 2009 (Code Sec. 26(a)(2), as amended by the 2009 Recovery Act). In tax years when Code Sec. 26(a)(2) does not apply (after 2009), the credit is limited to the excess of the

- sum of the regular tax liability (as defined in Code Sec. 26(b)) plus the alternative minimum tax imposed under Code Sec. 55, over
- the sum of credits allowable under Code Secs. 21, 22, 24, 25, 25A, 25B, 25C, and 27 (Code Sec. 30(c)(2)(B), as amended by the 2009 Recovery Act) (see LEA¶240 for discussion of the use of nonrefundable personal credits against AMT).

Reduction of basis for amount of credit. The taxpayer's adjusted basis in the "qualified plug-in electric vehicle" is reduced for the amount of credit claimed under the new Code Sec. 30 (Code Sec. 30(e)(1), as amended by the 2009 Recovery Act).

Reduction of other benefits. The amount of credit claimed under Code Sec. 30 for a specific vehicle reduces the amount of *any* other credit or deduction the taxpayer may take on the same vehicle.

Comment:

The statute specifically states that the Code Sec. 30 credit reduces the amount of "any deduction or credit allowable under this chapter". Thus, any deduction or credit found in Code Secs. 1 through 1400T that can be claimed with regards to a "qualified plug-in electric vehicle" is reduced by the amount of any credit taken under Code Sec. 30 (Code Sec. 30(e)(2), as amended by the 2009 Recovery Act).

Recapture. The IRS is required by the statute to prescribe regulations that will recapture any benefit claimed under Code Sec. 30 if the vehicle in question no longer qualifies as a "qualified plug-in electric vehicle" (Code Sec. 30(e)(5), as amended by the 2009 Recovery Act).

Sale of qualifying vehicle to tax exempt entity, government entity or foreign persons/entities. The special rules of Code Sec. 50(b)(3) and (4) prevent certain taxpayers from fully using the credits found in Code Secs. 46 through 50. If a "qualified plug-in electric vehicle" is sold to a taxpayer subject to Code Sec. 50(b)(3) or (4), the *seller* of the vehicle may claim the Code Sec. 30 credit. However, the seller must disclose the credit amount to the buyer of the "qualified plug-in electric vehicle" (Code Sec. 30(e)(3), as amended by the 2009 Recovery Act).

Caution:

The title of Code Sec. 30(e)(3) only references tax exempt entities, but the language of the subparagraph refers to both Code Sec. 50(b)(3) and (4) which cover government entities and foreign taxpayers as well as tax-exempt entities.

Foreign property. The Code Sec. 30 credit is generally not allowed to a vehicle used predominantly outside of the United States (Code Sec. 30(e)(4), as amended by the 2009 Recovery Act).

Termination date and transition rules. Code Sec. 30 generally applies to vehicles purchased after February 17, 2009 (Act Sec. 1142(c) of the 2009 Recovery Act). However, the credit is subject to the following termination and transitional rules:

- the credit is not available for any vehicle acquired after December 31, 2011; and
- the credit is not available for a vehicle purchased before January 1, 2010 if the same vehicle qualifies for a credit under Code Sec. 30D (Code Sec. 30(f), as amended by the 2009 Recovery Act; Act Sec. 1142(d) of the 2009 Recovery Act).

➢**Effective date.** The amendments made by this section shall generally apply to vehicles acquired after February 17, 2009 (Act Sec. 1142(c) of the American Recovery and Reinvestment Tax Act of 2009 (P.L. 111-5)).

Law source: Law at ¶5040. Committee Report at ¶10,200.

-- Act Sec. 1142(a) of the American Recovery and Reinvestment Tax Act of 2009 (P.L. 111-5), amending Code Sec. 30;

-- Act Sec. 1142(b), amending Code Secs. 24(b)(3)(B), 25(e)(1)(C)(ii), 25B(g)(2), 26(a)(1), 30B(h), 30C(d)(2)(A), 53 (d)(1)(B), 55(c)(3), 904(i), 1016(a)(25), 1400C(d)(2), 6501(m);

-- Act Sec. 1142(c), providing the effective date;

-- Act Sec. 1142(d), providing the transitional rules; and

-- Act Sec. 1142(e), applying a sunset provision.

Reporter references: For further information, consult the following CCH reporters.

-- Standard Federal Tax Reporter, ¶4059P.01

-- Tax Research Consultant, INDIV: 58,000

-- Practical Tax Explanation, §12,915

CCH-EXP, PTP §12,915 Credit for Qualified Plug-in Electric Drive Motor Vehicles

Credit for Qualified Plug-in Electric Drive Motor Vehicles

For tax years beginning after December 31, 2008, taxpayers may claim a credit with respect to qualified plug-in electric drive motor vehicles they place in service during the tax year. The credit equal to the applicable amount with respect to each new qualified plug-in electric drive motor vehicle the taxpayer places in service during the tax year. Code Sec. 30D (a)(1). The applicable amount is the sum of:

(1) $2,500, plus

(2) $417 for each kilowatt hour of traction battery capacity in excess of four kilowatt hours. Code Sec. 30D(a)(2).

The credit allowed for any particular plug-in electric drive motor vehicle is subject to a dollar limit, based on the vehicle's gross vehicle weight rating (GVWR):

(1) $7,500, for a vehicle with a GVWR of 10,000 pounds or less;

(2) $10,000 for a vehicle with a GVWR of more 10,000 pounds but not more than 14,000 pounds;

(3) $12,500 for a vehicle with a GVWR of more than 14,000 pounds but not more than 26,000 pounds; and

(4) $15,000 for a vehicle with a GVWR of more than 26,000 pounds. Code Sec. 30D(b).

A new qualified plug-in electric drive motor vehicle is a motor vehicle that draws propulsion using a traction battery with at least four kilowatt hours of capacity and that uses an offboard source of energy to recharge the battery. Passenger vehicles or light trucks with a GVWR of 8,500 pounds or less must meet certain specified emissions standards in order to qualify. Further, the original use of the vehicle must commence with the taxpayer; the vehicle must be acquired for use or lease by the taxpayer, and not for resale; and the vehicle must be made by a manufacturer. Code Sec. 30D(c). No credit is allowed for any property that is used predominantly outside the United States, or for the portion of the cost of any property taken into account under Code Sec. 179, relating to the election to expense certain depreciable business assets. Code Sec. 30D(e)(7). Further, no credit is allowed for property placed in service after December 31, 2014. Code Sec. 30D (g). Taxpayers may also elect not to have the credit apply to any eligible property. Code Sec. 30D(e)(9).

The credit is subject to a phaseout rule that applies during a phaseout period. The phaseout period is the period that begins with the second calendar quarter following the quarter that includes the first date on which the total number of new qualified plug-in electric drive motor vehicles sold for use in the United States after 2008 is at least 250,000. Code Sec. 30D(b)(2)(B). Generally, for any vehicle sold during the phaseout period, only the applicable percentage of the otherwise allowable credit will be allowed. Code Sec. 30D(b)(2)(A). The applicable percentage is:

(1) 50 percent for the first two calendar quarters of the phaseout period;

(2) 25 percent for the third and fourth calendar quarters of the phaseout period; and

(3) 0 percent for each calendar quarter thereafter. Code Sec. 30D(b)(2)(C).

The basis of any property for which a personal credit is allowed is reduced by the amount of the credit allowed. Code Sec. 30D(e)(4). Under regulations to be provided by the IRS, a vehicle that ceases to be eligible for the credit will be subject to recapture. Code Sec. 30D(e)(8).

This credit generally is treated as a non-refundable personal credit. Code Sec. 30D(d)(2) Thus, it is allowed against the alternative minimum tax through 2008. Code Sec. 26(a)(2). In years after 2008, the claimed credit amount for the qualified plug-in electric drive motor vehicle credit cannot exceed the excess of the sum of the taxpayer's regular tax liability plus the taxpayer's minimum tax liability over the sum of the non-refundable personal credits less this credit, the child tax credit, the residential energy efficient property credit, and the foreign tax credit. Code Sec. 30D(d)(2)(B). However, the portion of the credit that would otherwise be allowed under this provision that is attributable to property that is subject to depreciation is treated as part of the general business credit under Code Sec. 38(b), not as a personal tax credit. Code Sec. 30D(d)(1).