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The Inflation Reduction Act: EV & Infrastructure Funding, Credits & Incentives – *How Do Ground Transportation Industry Stakeholders Benefit?*

On August 16, 2022, President Joe Biden signed a historic budget reconciliation package that includes clean energy provisions and tax reform to fight inflation, invests in domestic energy production and manufacturing, and reduces carbon emissions by roughly 40% by 2030. The legislation, named the Inflation Reduction Act of 2022 ("IRA" or the "Act"), is a scaled-back version of the Democrat's Build Back Better ("BBB") plan. The Act will raise $739 billion in revenue and invest $369 billion in energy security and climate change and another $64 billion to extend the Affordable Care Act ("ACA") over the next ten years.

The IRA supports a mix of transportation sector decarbonization technologies and strategies that will apply to operators of taxis, for-hire vehicles, and buses. There are numerous financial incentives to encourage the purchase of electric and hydrogen fuel cell powered vehicles and the deployment of charging stations and related infrastructure. The Act also provides grants to expand clean energy vehicles and infrastructure. Whether these incentives will be enough to drive the U.S. forward to meet Biden's goal of 50% of electric vehicle ("EV") sale shares in the U.S. by 2030 remains to be seen. For now, the transportation industry should explore these new and expanded tax credits and incentives to see what is available for their businesses.

An explanation of some of the transportation-related provisions of the IRA is below. If anyone has questions about grants, funding, guidance, and how they might be able to apply for – or otherwise benefit from – the unprecedented spending on green transportation initiatives, please reach out to the **Windels Marx Transportation Practice Group** **https://www.windelsmarx.com/practices/transportation** for advice and counsel at **mdaus@windelsmarx.com** **or 212-237-1106.**

EV Tax Credits

Clean Vehicle Credit (Sec. 13401)

The IRA extends the $7,500 consumer income tax credit for the purchase of *new* electric vehicles, with a $3,750 tax credit if it meets a "critical materials" requirement and another $3,750 if it meets a "battery component" requirement. The credit will be available at the point of sale. The Act renews the credit starting in January 2023, and carries it through until the end of 2032. Under the new credit, the former 200,000-vehicle cap is removed and all manufacturers have access to unlimited credits as long as they fulfill the other requirements of the Act.

The IRA makes several significant changes to the existing tax credit for electric vehicles in section 30D of the Internal Revenue Code. These changes will phase in over time. Effective immediately after the Act's enactment (after August 16, 2022), the tax credit is only available for qualifying electric vehicles for which final assembly occurred in North America. Further changes to the eligibility rules will begin in 2023, including a requirement that at least 40% (increasing over time) of critical minerals in the battery must come from the U.S. or a country with a free-trade agreement with the U.S. There is also a requirement that vehicles have an MSRP of less than $55,000 for cars and $80,000 for SUVs and trucks. In addition, the IRA imposes a household income cap of $300,000 for joint returns, $225,000 for heads of household, and $150,000 for all others.

Preliminary guidance from the Internal Revenue Service ("IRS") addresses two important issues regarding the North American assembly requirement and vehicles purchased in 2022:[1] First, those who entered into a written binding contract to purchase a new qualifying electric vehicle before August 16, 2022, but did not take possession of the vehicle until on or after August 16, 2022, may claim the EV credit based on the rules that were in effect before August 16, 2022 (including those involving the manufacturing caps on vehicles sold). Second, for those who purchase and take possession of a qualifying electric vehicle after August 16, 2022, and before January 1, 2023, the final assembly of the vehicle had to be completed in North America, otherwise, the same rules in effect before the enactment of the IRA apply.

The U.S. Department of Energy has a list of Model Year 2022 and early Model Year 2023 electric vehicles that may meet the final assembly requirement, available here: https://afdc.energy.gov/laws/inflation-reduction-act. There are dozens of vehicles on this list, including the Ford Mustang MACH E, Nissan Leaf, and Tesla Model 3, all of which the New York City Taxi and Limousine Commission ("TLC") has approved for use as a taxi. The TLC approved Tesla Model 3 as a taxicab vehicle model already, and the other vehicles are part of the current pilot program to support the use of battery–electric vehicles until the TLC proposes and enacts vehicle specifications for EVs. Also on the list is the Chevrolet Bolt EV, which is a vehicle model used for rideshare. However, because some models are built in multiple locations, there may be vehicles on the list that do not meet the final assembly requirement in all circumstances. The eligibility for a specific vehicle should be confirmed by entering its vehicle identification number, or VIN, into the National Highway Traffic Safety Administration's VIN Decoder tool, available here: https://vpic.nhtsa.dot.gov/decoder/

Consumers that purchase a qualifying EV can continue to claim the electric vehicle tax credit on their annual tax filing. Starting in 2024, the IRA establishes a mechanism that will allow car buyers to transfer the credit to dealers at the point of sale so that it can directly reduce the purchase price.

Credit for Previously-Owned Clean Vehicles (Sec. 13402)

The IRA includes a new tax credit for individuals worth the lesser of $4,000 or 30% of the sale price of pre-owned electric vehicles. Like the credit for new vehicles, there is an income limit: the credit would be available for household income of $150,000 for joint returns, $112,500 for a head of household, and $75,000 for all others. To qualify as a previously owned clean vehicle, the model year of the vehicle must be at least two years earlier than the calendar year in question. Unlike the tax credit for new vehicles, the tax credit for previously owned clean vehicles is not contingent on regional assembly or sourcing requirements. This credit applies to vehicles acquired after December 31, 2022.

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[1] https://www.irs.gov/credits-deductions/individuals/plug-in-electric-drive-vehicle-credit-section-30d

Qualified Commercial Clean Vehicles (Sec. 13403)

The IRA provides a new business tax credit of up to 15% of the cost of certain commercial clean vehicles, increased to 30% for vehicles not powered by a gasoline or a diesel internal combustion engine *or* the incremental cost of the vehicle (the amount the purchase price of the commercial clean vehicle exceeds that of a vehicle comparable in size and use powered solely by a gasoline or diesel internal combustion engine). The qualified commercial clean vehicle credit is capped at $7,500 for vehicles with a gross vehicle weight rating of fewer than 14,000 pounds, and $40,000 for all other vehicles. The Treasury Department and IRS will release more information and guidance on the commercial clean tax credit – including, hopefully, what constitutes a "commercial vehicle" for the purposes of this tax credit.

To qualify, the vehicle must be treated as a motor vehicle and manufactured primarily for use on public streets, roads, and highways, or qualify as "mobile machinery" (e.g., vehicles that are designed to perform the function of transporting a load over public highways). In addition, the vehicle must either (1) be propelled to a significant extent by an electric motor that draws electricity from a battery with a minimum capacity of 15 kWh (reduced to 7 kWh if the vehicle's gross vehicle weighting is less than 14,000 pounds) and capable of being recharged from an external source of electricity, or (2) satisfy certain requirements for "qualified fuel cell motor vehicles" under existing section 30B of the Internal Revenue Code. There are no income limits on the eligibility of the taxpayer purchasing the vehicle for the qualified commercial clean vehicle credit. Also, there is no North American Assembly requirement. This credit applies to vehicles acquired after December 31, 2022.

Clean Heavy-Duty Vehicles (Sec. 60101)

The IRA amends the Clean Air Act of 1963 (P. L. 88 – 206) and allocates $1 billion in grants and rebates to businesses, states, tribes, and municipalities to fund the replacement of Class 6 and Class 7 heavy-duty vehicles with zero-emission vehicles. This includes school and transit buses and garbage trucks. This money can be used to replace trucks and equipment with models that emit zero exhaust emissions, defined as any air pollutant or greenhouse gas. The program must begin no later than December 14, 2022, and money will remain available through September 30, 2031.

EV Manufacturing Incentives

Advanced Technology Vehicle Manufacturing (Sec. 50142)

The IRA appropriates $3 billion for the Secretary of Energy to make direct loans for the cost of establishing or expanding U.S. manufacturing facilities that produce advanced technology vehicles or components with low or zero GHG emissions. The money is allocated for fiscal year 2022 and will remain available through September 30, 2028.

Domestic Manufacturing Conversion Grants (Sec. 50143)

The IRA appropriates $2 billion for grants for domestic production of hybrid, plug-in electric hybrid, plug-in electric drive, and hydrogen fuel cell electric vehicles. The money is allocated for fiscal year 2022 and will remain available through September 30, 2031. Recipients must contribute 50% of the cost of the project carried out using the grant.

EV Infrastructure Incentives – Credits & Funding

Alternative Fuel Refueling Property Credit (Sec. 13404)

The IRA extends through 2032 a currently expired tax credit for alternative fuel refueling property, such as electric charging stations or hydrogen fuel cell recharging stations. The maximum tax credit would be 30% of the property's cost, capped at $100,000 per item of property (increased from $30,000 under existing law). To qualify for the maximum 30% credit, a business that installs an EV charger will need to ensure that laborers and mechanics employed in the construction of the facilities meet new prevailing wage and apprenticeship requirements. The credit for projects that do not meet these requirements is reduced to 6%. For home EV charging station installations, the tax credit is 30% of the costs of hardware and installation for qualified property, like EV chargers. This credit applies to properties placed in service after December 31, 2022.

Grants to Reduce Air Pollution at Ports (Sec. 60102)

The IRA further amends the Clean Air Act and allocates $3 billion to the Environmental Protection Agency ("EPA") to reduce air pollution and emissions at ports via the installation of zero-emissions equipment and technology. The EPA must establish a competitive grant and rebate program. The money could go toward planning and permitting in connection with the purchase or installation of zero-emission port equipment or technology and the development of qualified climate action plans. Eligible applicants include port authorities, state, regional, local, and tribal governments, or private entities that either apply in partnership with the previously mentioned eligible applicants, or that own, operate, or use the facilities, cargo-handling equipment, transportation equipment, or related technology.

Neighborhood Access and Equity Grant Program (Sec. 60501)

Environmental justice is a significant focus of the IRA. There is $3 billion for states, tribes, municipalities, and community-based nonprofit organizations for environmental justice and climate justice block grants. This money is allocated to the Federal Highway Administration ("FHWA") for a competitive grant program to improve walkability, safety, and affordable transportation access via construction projects and to mitigate or remediate negative environmental impacts in disadvantaged or underserved communities. Of the $3 billion, $1.11 billion is for similar grants in communities that are economically disadvantaged, have entered or will enter into a community benefit agreement with community representatives, or have demonstrated a plan for employing local and impacted residents. Grant recipients must contribute 20% of the total project cost, with an exception that the federal cost of a project in an underserved community may be up to 100%. The money is allocated for fiscal year 2022 and will remain available until September 30, 2026.

What's Next?

The IRA contains significant appropriations for EVs and related infrastructure that will be available in fiscal year 2022, which begins October 1, 2022. The only change to the EV credit that already took effect when the President signed the law on August 16, 2022, is the North American assembly requirement. However, manufacturers will need to overcome hurdles for vehicles to qualify for the credit, and it may take years before many consumers will see the EV tax credit available to them because of manufacturing and supply chain constraints.

Others changes to the EV credit will go into effect over the coming months and years. Manufacturers like Chevrolet, GMC, and Tesla that have already reached the 200,000 EV credits cap will not qualify until January 1, 2023. At that time, tax credits for pre-owned clean vehicles (section 25E of the IRS Code) and for commercial clean vehicles (section 45W of the IRS Code) will be available, too. The U.S. Department of the Treasury and the IRS will release more information on all the clean vehicle credits in the coming months.

The Biden Administration set a target of 50% of electric vehicle sale shares in the U.S. by 2030. Currently, EV sales account for only 5.6% of the total market.[2] It remains to be seen whether these recent changes will be enough to meet that mark.

[2] https://www.coxautoinc.com/market-insights/ev-sales-hit-new-record-in-q2-2022/