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Section 30C Credit: Treasury and IRS Release Proposed Regulations but an Uncertain Future Awaits

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On September 18, 2024, the U.S. Department of the Treasury (“Treasury”) and the Internal Revenue Service (“IRS”) issued [proposed regulations](#) (the “Proposed Regulations”) and [Notice 2024-64](#) (the “New Notice”) with respect to the alternative fuel vehicle property refueling credit under Section 30C (the “30C Credit”).¹

The Proposed Regulations provide great clarity on several questions facing owners of alternative fuel and electric vehicle charging infrastructure. For this reason the Proposed Regulations have been well-received by taxpayers and stakeholders in these industries. The 30C Credit faces an uncertain future, however, given that final regulations under Section 30C will be subject to review and oversight of the next administration and Congress.

The Basics of the EV Charging Credit

- Section 30C was enacted in 2005 and has been amended several times, most recently by the Inflation Reduction Act of 2022 (the “IRA”).
- Under current law, owners are permitted to claim the 30C Credit in an amount up to 30 percent² of the cost of any qualified alternative fuel vehicle refueling property (“Qualified 30C Property”) that the owner places in service between January 1, 2023 and December 31, 2032.
- The 30C Credit is available as a general business credit under Section 38 (a “General Business Credit”) if the Qualified 30C Property is depreciable property (generally, used in the trade or business of the owner). Alternatively, the 30C Credit is available as a personal credit (“Personal Credit”) if an individual owner installs Qualified 30C Property at his or her personal residence.
- Qualified 30C Property generally includes depreciable property (other than buildings and their structural components) that falls into one of the following categories:

¹ Unless otherwise indicated, “Section” references are intended to refer to a section of the Internal Revenue Code of 1986, as amended.

² The 30 percent rate is available if (a) Qualified 30C Property (or several properties constituting a single project) satisfies the prevailing wage and apprenticeship requirements under the IRA or (b) the property or project is exempt from these requirements because construction of the property or project began (under federal income tax principles) before January 29, 2023.

- Property that is used for the storage or dispensing of a clean-burning fuel³ into the fuel tank of a motor vehicle propelled by such fuel, provided that the storage or dispensing of the fuel is at the point where the fuel is delivered into the fuel tank of the motor vehicle (“Clean Fuel Property”); or
- Property used for the recharging of motor vehicles propelled by electricity, provided that the property is located at the point where the motor vehicles are recharged (“EV Charging Property”).
- For purposes of Section 30C, the term “motor vehicle” means any vehicle that is manufactured primarily for use on public streets, roads, and highways and has at least four wheels (not including rail based vehicles and, in the case of two or three wheeled vehicles, only if the vehicle is propelled by electricity).
- The IRA added a requirement to Section 30C that Qualified 30C Property must be located in certain census tracts (each, an “Eligible Census Tract”) in order to be eligible for the 30C Credit. An Eligible Census Tract means a census tract that is:
 - A low-income community as defined under Section 45D(e), meaning:
 - A census tract with a poverty rate of at least 20 percent,
 - A census tract outside of a metropolitan area with median family income equal to or less than 80 percent of statewide median family income, or
 - A census tract within a metropolitan area with equal to or less than 80 percent of the greater of statewide median family income or the metropolitan area median family income.
 - A census tract that has not been designated as an “urban area” by the Secretary of Commerce in the most recent census.
- The 30C Credit with respect to any single item of Qualified 30C Property is limited to \$100,000 in the case of depreciable property and \$1,000 in the case of nondepreciable property.⁴
- Taxpayers who claim the 30C Credit are required to reduce the basis of any Qualified 30C Property by the amount of the 30C Credit claimed.
- In the case of Qualified 30C Property that is used by a tax-exempt organization or government entity (other than pursuant to a lease), the seller of the property is treated as the taxpayer that placed the property in service if the seller clearly discloses to the user the amount of the allowable 30C Credit.

³ For this purpose, “clean-burning fuel” includes (a) any fuel at least 85 percent of the volume of which consists of one or more of the following: ethanol, natural gas, compressed natural gas, liquified natural gas, liquefied petroleum gas, or hydrogen, (b) any mixture (i) that consists of two or more of the following: biodiesel as defined in Section 40A(d)(1), diesel fuel as defined in Section 4083(a)(3), or kerosene and (ii) at least 20 percent of the volume of which consists of biodiesel determined without regard to any kerosene in such mixture, (3) electricity, and (4) any transportation fuel as defined in Section 45Z(d)(5) that is produced after December 31, 2024.

⁴ In other words, the 30C Credit is limited to \$100,000 per item for purposes of the General Business Credit and \$1,000 per item in the case of the Personal Credit.

Highlights of the Proposed Regulations and the New Notice

■ Scope of Credit-Eligible Property.

- The Proposed Regulations clarify the scope of property eligible for the 30C Credit. Qualified 30C Property includes (1) any property, to the extent comprised of “functionally interdependent” components, that are Clean Fuel Property or EV Charging Property and (2) any additional property that is “integral” to Clean Fuel Property or EV Charging Property.
- Components generally are deemed to be “functionally interdependent” if the placing in service of each component is dependent upon the placing in service of each of the other components in order to refuel or recharge a motor vehicle, as the case may be.
- Property generally is deemed to be “integral” to Clean Fuel Property or EV Charging Property if the property satisfies each of the following four requirements:
 - The property is used directly in the intended function of the Clean Fuel Property or EV Charging Property;
 - The property is essential to the completeness of the intended function of the Clean Fuel Property or EV Charging Property;
 - The property is specifically designed to be integrated with the Clean Fuel Property or EV Charging Property; and
 - The property is owned by the same taxpayer that owns the Clean Fuel Property or EV Charging Property.

■ Storage Property.

- The Proposed Regulations confirm that certain storage property – qualified alternative fuel storage property and electrical energy storage property (together, “Storage Property”) can meet the requirements of Qualified 30C Property.
- Qualified alternative fuel storage property means property used for the storage of qualified alternative fuel (generally, clean-burning fuels other than electricity).
- Electrical energy storage property means property that receives, stores and delivers energy for conversion to electricity.
- To be eligible for the 30C Credit, Storage Property must be located at the point where the motor vehicle is refueled or recharged, as the case may be.

■ Single-item limitation.

- Prior to the IRA, the 30C Credit was limited to \$30,000 per location for purposes of the General Business Credit and \$1,000 per location for purposes of the Personal Credit. The IRA amended this limitation in two regards. First, the IRA revised the limitation to apply to each “item” of Qualified 30C Property, rather than each location, and, second, increased the dollar amount of the limitation to \$100,000 for purposes of the General Business Credit.
- Section 30C, as amended by the IRA, did not provide a definition of an “item” of Qualified 30C Property.

- The Proposed Regulations clarify that a single “item” of Qualified 30C Property means a single charging port (in the case of EV Charging Property), each single fuel dispenser (in the case of Clean Fuel Property) and each single Storage Property.
- For electric charging infrastructure, a charging port means the system within a single electric vehicle charger that charges one car at a time. If a single electric vehicle charger has multiple charging ports and therefore can charge multiple vehicles at once, the charger constitutes multiple “items” of Qualified 30C Property and therefore its total cost must be allocated among the charging ports for purposes of applying the \$100,000 limitation to each port.
- Apportioned-use property.
 - The Proposed Regulations clarify that, in the case of Qualified 30C Property installed at an individual owner’s residence, if more than 50 percent of the owner’s use of the property is in connection with a trade or business in the year the property is placed in service, the Qualified 30C Property would generate a General Business Credit.
 - However, if Qualified 30C Property is installed at an owner’s residence and 50 percent or less of its use is in connection with a trade or business in the year the property is placed in service (“Apportioned-use Property”) the 30C Credit for the property must be apportioned on a pro rata basis between the General Business Credit and the Personal Credit.
 - For example, if Qualified 30C Property has a business use percentage of 40 percent in its placed-in-service year and the property generated a 30C Credit of \$50,000, then \$20,000 of the 30C Credit would be a General Business Credit and the remaining \$30,000 would be a Personal Credit (subject to the \$100,000 limitation and \$1,000 limitation, respectively; see immediately following bullet).
 - Taxpayers also are required to allocate the per-item limitation with respect to Apportioned-use Property. In the example above, the owner’s General Business Credit would be limited to \$40,000 (i.e., 40 percent of the \$100,000 per item limitation for depreciable property) and the Personal Credit would be limited to \$600 (i.e., 60 percent of the \$1,000 per item limit for nondepreciable property).
- Recapture.
 - The 30C Credit, like other investment tax credits, is subject to recapture under certain circumstances. If a recapture event occurs with respect to Qualified 30C Property, then the owner must include the recapture amount in taxable income for the year in which the event occurs.
 - The Proposed Regulations provided that a recapture event will occur if, within three years of the placed-in-service date:
 - The owner modifies the relevant property so that it no longer qualifies as Qualified 30C Property;
 - The Qualified 30C Property is no longer predominantly used in a trade or business (that is, 50 percent or more of the use of the Qualified 30C Property in a taxable year ceases to be in connection with a trade or business);
 - The owner sells or otherwise disposes of the Qualified 30C Property, but only if the owner knows or has reason to know that the Qualified 30C Property will no longer qualify for the 30C Credit after the sale or disposition. Notably, other sales or dispositions of Qualified 30C Property (including as the result of a casualty event) would not give rise to a recapture event; or

- In the case of Apportioned-use Property, the 30C Credit would be subject to a recapture event if the owner ceases to use the Qualified 30C Property in a trade or business but continues to use it solely for personal purposes.
- Finally, the Proposed Regulations clarify that 30C Credits are not subject to recapture solely because the relevant Qualified 30C Property was placed in service in a location that ceases to be an Eligible Census Tract during the 3-year recapture period.
- Bidirectional charging equipment.
 - The Proposed Regulations confirm that an electric vehicle charger that otherwise meets the requirements of Qualified 30C Property would not fail to qualify merely because it also allows electricity to be drawn from an electric vehicle's battery to external storage.
 - However, the Proposed Regulations clarify that Qualified 30C Property does not include components that are considered part of the electric vehicle itself (such as the vehicle's battery).
- Non-urban areas.
 - As noted above, the IRA defined Eligible Census Tract to include a census tract that has not been designated as an "urban area" by the Secretary of Commerce in the most recent census. However, the Secretary of Commerce and the Census Bureau no longer classify census tracts as urban areas or non-urban areas. Instead, this determination currently is made at the census block level.⁵
 - In light of this, the Proposed Regulations classify a census tract as a non-urban area if at least 10 percent of the census blocks that make up such census tract are not urban areas (as determined by the Secretary of Commerce in the most recent census). As a result, most American cities and densely-populated suburbs are excluded from the scope of "non-urban areas."⁶
- The New Notice.
 - The New Notice provides a list of Eligible Census Tracts and provides guidance, along with a mapping tool, for identifying the 11-digit census tract identifier for the location where a particular Qualified 30C Property is placed in service.
 - The New Notice also provides that an owner who claims a 30C Credit by filing the relevant tax return on or before November 15, 2024, may use the mapping tool identified in the New Notice or the previously issued [Notice 2024-20](#). By contrast, an owner who claims a 30C Credit after November 15, 2024 may use the only mapping tool identified in the New Notice.

Key Takeaways

The Proposed Regulations provide clarity on several key questions that should give project owners the confidence to claim and transfer 30C Credits. For owners determining the scope of Qualified 30C Property, the Proposed Regulations confirm that the standards for "functional interdependent" and

⁵ A census block is the smallest geographic area for which the Census Bureau collects and tabulates decennial census data.

⁶ For example, in the case of Long Island, only the eastern third of the island, which is rural and/or sparsely populated, is predominantly composed of census tracts that are non-urban areas.

“integral” property generally mirror post-IRA guidance with respect to investment tax credits.⁷ For owners of electric vehicle infrastructure, the Proposed Regulations confirm that the \$100,000 per item limit applies on a per-port basis rather than on a per-charger or per-location basis. Although this guidance was anticipated, it confirms that the per item limitation is based on the number of cars that can be charged at a particular charger, thereby making it less likely that the \$100,000 limitation will curtail the amount of 30C Credit for any particular electric vehicle infrastructure project. Several taxpayers have submitted comment letters supporting this aspect of the Proposed Regulations. Finally, the Proposed Regulations confirm that recapture risk for the 30C Credit is more muted than for investment tax credits generally, particularly because a sale or disposition during the 3-year recapture period will not cause a recapture event, except in the narrow circumstance where the seller of Qualified 30C Property knows or should know that the property will cease to be Qualified 30C Property in the hands of the new owner.

However, the Proposed Regulations failed to address whether or not costs attributable to certain land improvements – particularly improvements related to electric vehicle charging infrastructure – should be eligible for the 30 Credit.⁸ Several comment letters have raised this issue, each focusing on costs attributable to demolition of existing parking stalls, repaving and similar site restoration costs, and Americans with Disabilities Act (ADA) improvements, in each case, at electric vehicle charging sites.

Looking Ahead

Despite the warm reception from taxpayers and stakeholders, the Proposed Regulations have an uncertain future. Specifically, regardless of whether or not IRS and Treasury finalize the Proposed Regulations in 2024, the future of the Proposed Regulations will be in the hands of the second Trump administration and the 119th Congress—which will feature a Republican majority in both chambers.

On the one hand, Treasury and the IRS appear poised to accelerate the pace of IRA guidance between now and the end of the year. Realistically, however, it is unlikely that Treasury and the IRS can finalize the Proposed Regulations on such a tight timeline. After all, the comment period for the Proposed Regulations did not end until November 18, 2024, thereby giving Treasury and the IRS roughly six weeks to release final regulations post-comment period — a tall order given the sheer number of IRA and non-IRA guidance projects in works. In this case, the question of whether, and in what form, to finalize the Proposed Regulations would fall to the next administration and Congress.

On the other hand, if the Proposed Regulations are finalized before year end, the final regulations would fall within the 60-session day period before the 119th Congress begins its session and therefore would be subject to the Congressional Review Act. The final regulations therefore could be invalidated by a joint resolution of disapproval from both the House and Senate (requiring a simple majority in each case).⁹ In this case, same as above, the next administration and Congress would control the fate of any eventual Section 30C regulations.

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⁷ For instance, the proposed regulations under Section 48 (pre-2025 investment tax credit), Section 45Y (post-2024 clean electricity production credit), and Section 48E (post-2024 clean electricity investment credit). Interestingly, the requirement that “integral” property be specifically designed to be integrated with the Clean Fuel Property or EV Charging Property does not have an analog in any of these proposed regulations.

⁸ This question generally turns on whether the particular improvements should be considered to be functionally interdependent and/or integral to the operation of the electric vehicle charging port.

⁹ In this case, Section 30C, as amended by the IRA, would remain unaffected. However, Section 30C, as amended by the IRA, will continue to be subject to alteration or curtailment by the 119th Congress.

If you have questions concerning the contents of this alert, or would like more information about Weil's Tax practice, please speak to your regular contact at Weil, or to:

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