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Submitted at regulations.gov
Internal Revenue Service
CC:PA:LPD:PR (REG–120080–22)
Room 5203
P.O. Box 7604, Ben Franklin Station
Washington, D.C., 20044.

Re: IRS Notice of proposed rulemaking REG–120080–22, 30D New Clean Vehicle Credit

The National Consumer Law Center (on behalf of its low-income clients) appreciates the opportunity to respond to the proposed regulations regarding the Federal income tax credit under the Inflation Reduction Act of 2022 for the purchase of qualifying clean vehicles. In these comments, we focus on the perspective of low-income consumers and consumer protection.

The National Consumer Law Center, Inc. (NCLC) is a non-profit Massachusetts corporation, founded in 1969, specializing in low-income consumer issues, including car finance and ownership and energy affordability. NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of practice treatises on consumer credit laws and unfair and deceptive practices. NCLC attorneys have written and advocated extensively on all aspects of consumer law and energy justice matters affecting low-income people, conducted training for tens of thousands of legal services and private attorneys, and provided extensive oral and written testimony to numerous Congressional committees on various topics. In addition, NCLC attorneys regularly provide comprehensive comments to federal agencies on the regulations under consumer laws that affect low-income consumers. These comments were written by NCLC attorney John W. Van Alst and incorporate valuable thoughts and input from other advocates. They are submitted on behalf of our low-income clients.

Introduction

We appreciate the opportunity to comment on the proposed regulations regarding the Federal income tax credit under the Inflation Reduction Act of 2022 for the purchase of qualifying clean vehicles. We believe adoption of the proposals in our comments would speed the transition to clean vehicles by encouraging the production of efficient and affordable vehicles and enable and promote the use of clean vehicles by middle and lower income Americans, furthering the goals of the program in line with the intent of the statute.

Our recommendations in response to this Notice of Proposed Rulemaking address two issues. We urge the Treasury Department and the IRS to amend the rules addressing the Manufacturer's Suggested Retail Price to ensure that it actually reflects the sale price of the vehicle when purchased by consumers. We also urge that the vehicle classification standards employed by the Environmental Protection Agency (EPA) under 40 CFR 600.002 to define vehicles as Vans, Sport Utility Vehicles (SUVs), light trucks or passenger cars be used to determine vehicle classifications under the rule, as these classifications are clear and well defined and based upon the physical characteristics of the vehicle.

Manufacturer's Suggested Retail Price

The limitations regarding Manufacturer's Suggested Retail Price under Sections 30D(f)(11)(A) and 30D(f)(11)(B) are intended to ensure that the tax credit provides an incentive for manufacturers to build more affordable vehicles and that tax credits are not used for the purchase of extremely expensive vehicles.

We commend the Treasury Department and the IRS for drafting proposed § 1.30D–2(c) to include in the manufacturer's suggested retail price both the retail price of the automobile suggested by the manufacturer as described in 15 U.S.C. 1232(f)(1) and the retail price suggested by the manufacturer for each accessory or item of optional equipment, physically attached to such automobile at the time of its delivery to the dealer. Such accessories and options are an important part of the cost experienced by the consumer.

However, vehicles and accessories are often sold above the prices suggested by manufacturers.[1] EVs in particular have been the subject of large markups over MSRP and some have speculated that incentives, such as tax incentives for EVs, contribute to those markups.[2] The current proposal, which relies entirely upon the suggestion by the manufacturer of a retail price and is in no way connected to the price actually paid by consumers when purchasing the vehicle, does not put limitations on price which would accomplish the goals of the price cap. Dealers and manufacturers will be encouraged to game the system by having a stated MSRP that makes the vehicle eligible for the credit but then charging consumers a higher actual sale price.

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[1] See Mike Colias & Nora Eckert, A New Brand of Sticker Shock Hits the Market, The Wall St. J., Feb. 26, 2022, available at https://www.wsj.com/articles/a-new-brand-of-sticker-shock-hits-the-car-market-11645851648 (noting that, in January 2022, buyers paid an average of $728 above the MSRP).

[2] See John Goreham, California Owners Report Highest Dealer Markups On EVs - Are EV Incentives the Cause?, Torque News, Jan 24 2022, available at: https://www.torquenews.com/1083/california-owners-report-highest-dealer-markups-evs-are-ev-incentives-cause (speculating that the higher incentives for EVs in California may contribute to higher markups).

The setting of suggested prices by manufacturers is not well regulated. Regulation should restrict manufacturers from setting the MSRP artificially low in order to be eligible for the credit. The MSRP should at a minimum be equivalent to the actual "out-the-door" price paid by the consumer for the clean vehicle. For the purposes of 30D credit, MSRP should be limited so that the average cash price paid by consumers does not exceed the MSRP set by manufacturers.

Vehicle Classifications for the purposes of the manufacturer's suggested retail price limitation in § 30D(f)(11)

Passenger vehicles should be accurately classified as cars, and not misclassified as light trucks, sports utility vehicles or pickup trucks. Manufacturers are highly incentivized to get their vehicles misclassified as SUVs rather than cars in order to take advantage of higher MSRP limit under 30(D)(f)(11). Ensuring that vehicles are correctly classified will encourage manufacturers to build cars priced to qualify for the credit and to build affordable EVs that will be more accessible to low and moderate income households.

Proposed § 1.30D–2(g) would classify vehicles consistent with the EPA's fuel economy labeling regime as described in 40 CFR 600.315–08. This is a departure from the initial Treasury Department and IRS announcement in Notice 2023–1 of an intent to propose use of the vehicle classification standards in 40 CFR 600.002.

The initial intent to classify vehicles under 40 CFR 600.002 would have resulted in vehicle classifications that were clear and well defined and based upon the physical characteristics of the vehicle. The current proposal is less clear and well defined. Under the current proposal vehicle classification is based, in part, upon the marketing segment targeted by the manufacturer[3] rather than entirely upon clear physical standards of the vehicle itself.

For years, manufacturers have tried to claim that their vehicles are not passenger cars but rather Light Trucks or SUVs, in an effort to use a loophole to allow them to sell vehicles that fail to meet mileage requirements.[4] This not only allows them to sell more inefficient vehicles, but the vehicles are more profitable and more dangerous for pedestrians and other cars.[5] Absent strict enforcement of exclusions from the passenger car category, manufacturers will now attempt to continue to game the system by trying to classify their vehicles as SUVs, Vans,

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[3] The Environmental Protection Agency, Fuel Economy Labeling of Motor Vehicles: Revisions to Improve Calculation of Fuel Economy Estimates," 71 Fed. Reg. 77872, 77913 (Dec. 27, 2006)

[4] *See* The SUV Loophole: How a changing sales mix is affecting the efficacy of light-duty vehicle efficiency regulations, available at: https://www.nrdc.org/experts/roland-hwang/light-truck-loophole-bad-pickup-drivers-oil-dependency-and-pollution; https://downloads.regulations.gov/EPA-HQ-OAR-2015-0827-4016/attachment_2.pdf.

[5] Kea Wilson, Buttigieg's New Emissions Standards Fail to Close 'Light Truck Loophole', Streetsblog, April 4, 2022, available at: https://usa.streetsblog.org/2022/04/04/buttigiegs-new-emissions-standards-fail-to-close-the-infamous-light-truck-loophole/ ("A recent study found that SUV and pickup truck drivers are three to four times more likely to strike a walker when they're making a turn, compared to motorists with smaller vehicles — and when that happens, the pedestrian is two to three times more likely to die.")

or Trucks rather than cars so that they can charge more for them. Some manufacturers have already announced their intention to focus on selling big, expensive, more profitable EVs to individual consumers and focus their more affordable EVs on fleet sales.[6]

Treasury and IRS are charged with prescribing "such regulations or other guidance as the Secretary determines necessary for determining vehicle classifications using criteria similar to that employed by the Environmental Protection Agency and the Department of the Energy to determine size and class of vehicles." EPA defines vehicles as Vans and SUVs if they are light trucks and not passenger cars.[7] In order to decide whether something is either a passenger car or light truck, EPA looks to the DOT. DOT allows vehicles to be non-passenger automobiles based upon a number of criteria such as transporting more than 10 people or including living quarters or having an open bed for transport.[8] The method most often used to avoid being classified as a passenger vehicle is being classified an automobile capable of off-highway operation,[9] as indicated by the fact that it:

> (1)(i) Has 4-wheel drive; or
> (ii) Is rated at more than 6,000 pounds gross vehicle weight; and
> (2) Has at least four of the following characteristics calculated when the automobile is at curb weight, on a level surface, with the front wheels parallel to the automobile's longitudinal centerline, and the tires inflated to the manufacturer's recommended pressure -
> (i) Approach angle of not less than 28 degrees.
> (ii) Breakover angle of not less than 14 degrees.
> (iii) Departure angle of not less than 20 degrees.
> (iv) Running clearance of not less than 20 centimeters.
> (v) Front and rear axle clearances of not less than 18 centimeters each.

Treasury and IRS should not allow manufacturers to avoid classification of their vehicles as cars in order to be eligible for the tax credit despite charging more for the vehicle. Treasury and IRS should ensure that vehicles seeking to be exempted from classification as a car are truly capable of off highway operation, carry more than 10 people, or have an open bed for

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[6] David Welch, GM is considering a midsize Hummer, October 19, 2022, Bloomberg, available at: https://www.autonews.com/cars-concepts/gm-considering-midsize-hummer?utm_source=daily&utm_medium=email&utm_campaign=20221020&utm_content=article3-readmore ("Hummer is emerging as a key piece of GM's electric-vehicle strategy. The company has said it's spending $35 billion to build 30 EVs by 2025. It's breaking into the market by appealing to high-end customers with pricey EVs from Hummer and Cadillac and offering lower-priced models to fleet buyers…")

[7] See 40 CFR § 600.002. Sport utility vehicle (SUV) means a light truck with an extended roof line to increase cargo or passenger capacity, cargo compartment open to the passenger compartment, and one or more rear seats readily removed or folded to facilitate cargo carrying. Light truck means an automobile that is not a passenger automobile, as defined by the Secretary of Transportation at 49 CFR 523.5. This term is interchangeable with "non-passenger automobile."

[8] See 49 CFR § 523.2 and § 523.5.

[9] 49 CFR § 523.5(b).

transport. Because EVs are in general heavier than ICE vehicles, weight should not be included as an optional criterion. All non-car vehicles eligible for credits with higher prices should have either an open bed for transport, carry more than 10 people, or, have 4-wheel drive, and at least four of the five stated criteria such as running clearance and axle clearance.

We thank Treasury and IRS for the opportunity to submit these comments. Should you have any questions, please contact John W. Van Alst of the National Consumer Law Center, at jvanalst@nclc.org.