

# Legal Update

## Electric Vehicle and Charging Station Tax Credits: Assessing Proposed Changes

Section 30D of the US Internal Revenue Code (“IRC”) provides business and individual taxpayers that purchase new qualified plug-in electric drive motor vehicles (“EVs”), including passenger vehicles and light trucks, with a nonrefundable tax credit. The credit amount varies depending on the battery size and the number of EVs sold by the manufacturer<sup>1</sup> and is capped at \$7,500 per vehicle. The credit phases out when the manufacturer has sold at least 200,000 qualifying vehicles (determined on a cumulative basis beginning December 31, 2009). To qualify, an EV must (1) weigh less than 14,000 pounds, (2) be propelled by an electric motor that uses a rechargeable battery, (3) be subject to and in compliance with applicable Clean Air Act Standards, (4) be acquired for use or lease and not for resale and (5) be used predominantly in the United States.

Section 30C of the IRC provides a nonrefundable investment tax credit equal to 30 percent of the cost of alternative fuel vehicle refueling property, which includes EV charging stations and hydrogen refueling stations. The tax credit is capped at \$1,000 for refueling property installed at a taxpayer’s residence and at \$30,000 for refueling property installed for commercial use. The credit is allowed on a per-location basis, not on a per-device basis. The credit is currently set to expire on December 31, 2021.

There are currently three primary proposals under discussion in Washington that could materially change these federal income tax credits.<sup>2</sup> The table below compares key aspects of these proposals. The three proposals are the Biden Administration FY 2022 Budget, the GREEN Act and the Clean Energy for America Act.

	Biden Administration FY 2022 Budget	GREEN Act	Clean Energy for America Act
<b>Credit Amount and Other Key Features</b>	In addition to the current credit under 30D of the IRC as described above, provides a new business tax credit for medium- and heavy-duty zero-emission vehicles,	Replaces the current phase-out sales cap of 200,000 qualifying vehicles with (1) a transition period for vehicle sales between 200,000 and 600,000, during which the credit is reduced by \$500	Repeals the per-manufacturer cap and makes the credit for individuals, but not businesses, refundable. Credit will be made available until the Treasury

	Biden Administration FY 2022 Budget	GREEN Act	Clean Energy for America Act
	<p>including battery EVs and fuel cell vehicles, purchased after January 1, 2022.</p> <p>The credit amount varies depending on the class of vehicle and the date it was purchased and is capped at \$120,000 per vehicle.<sup>3</sup></p> <p>Taxpayers would have the option to elect a cash payment in lieu of a general business credit.</p> <p>Credit would be paired with strong labor standards with the goal of benefiting employers that provide good-paying, good-quality jobs.</p>	<p>and (2) a one-quarter phase-out, beginning during the second calendar quarter after the 600,000-vehicle threshold is reached, during which the credit is reduced by 50% for one quarter. The credit terminates thereafter.</p> <p>For manufacturers that pass the 200,000-vehicle threshold before the enactment of the GREEN Act, vehicles sold in excess of the 200,000 cap prior to and including the date of enactment would be excluded from the calculation of the 600,000-vehicle threshold.</p> <p>The provision extends the 2-wheeled plug-in EV credit through 2026 and the 3-wheeled plug-in EV credit through 2026.</p> <p>Introduces a new refundable credit for buyers of used plug-in electric cars from the date of enactment through 2026. Buyers can claim a base credit of \$1,250 for the purchase of qualifying used EVs, with additional incentives for battery capacity. The credit is capped at the lesser of \$2,500 credit, or 30% of the sale price. The amount of the credit is reduced by \$250 for each \$1,000 (or fraction thereof) by which the taxpayer's adjusted gross income exceeds \$30,000 (\$60,000 for a joint return).</p>	<p>Department and Department of Transportation determine that EVs represent more than 50% of annual vehicle sales, at which point the credits will phase out.</p>

	Biden Administration FY 2022 Budget	GREEN Act	Clean Energy for America Act
		Buyers cannot claim the credit more than once every three years, and the credit only applies to the first resale of a used EV and includes restrictions on sales between related parties.	
<b>Tax Credit for Manufacturers</b>	N/A	Creates a manufacturer credit for the sale of zero-emission heavy vehicles, but not any other category of vehicle, starting after the date of enactment through the end of 2026. Eligible manufacturers may claim a credit of 10% of the sale price of an eligible vehicle, capped at a credit of \$100,000 per sale. As drafted, while the credit is available to the manufacturer, the credit continues to require a sale of the vehicle, rather than a lease.	N/A
<b>Tax Credit for Commercial Vehicles</b>	N/A	N/A	Provides a non-refundable credit equal to the lesser of (A) 30% of the purchase of a “qualified commercial electric vehicle” and (B) the incremental cost of the EV (specifically, the difference between the manufacturer’s suggested retail price for “qualified commercial electric vehicle” and such price for a comparable vehicle that is <i>not</i> “qualified commercial electric vehicle”). For this purpose, a “qualified commercial electric vehicle” must be of

	Biden Administration FY 2022 Budget	GREEN Act	Clean Energy for America Act
			a character subject to the allowance for depreciation.
<b>Qualifying Electric Vehicles</b>	Adds new medium- and heavy-duty zero-emission vehicles (Classes 3 – 8), including battery EVs and fuel cell vehicles, for purposes of the new credits described above.	<p>With respect to the new credit for used EVs: used EVs must generally meet the eligibility requirements under current law, must not exceed a sale price of \$25,000 and must be a model year that is at least two years earlier than the date of sale.</p> <p>With respect to the new credit for manufacturers: eligible vehicles must be for domestic use, must weigh no less than 14,000 pounds, must not include an internal combustion engine, and must be propelled solely (i.e., plug-in hybrids are not eligible) by an electric motor which draws electricity from a battery or fuel cell.</p>	The qualifications are the same as the qualifications under current law; the credit has not been expanded to cover any of the new categories of eligible EVs discussed at left.
<b>Qualifying Uses of Electric Vehicles</b>	The qualifying uses are the same as the qualifying uses under current law.	Buyers must purchase used EVs from a dealership for personal use.	Adds vehicles used for commercial purposes that are of a character subject to the allowance for depreciation.
<b>Charging Station Tax Credits</b>	<p>Allows taxpayers to claim the tax credits on a per-device basis, rather than per-location.</p> <p>Increases the tax credit limit on individual devices to \$200,000 for devices installed for commercial use and extends the tax credit for</p>	<p>Extends the credit through 2026.</p> <p>Beginning in 2022, the GREEN Act expands the credit for zero-emissions charging infrastructure by allowing a 20% credit for expenses in excess of \$100,000. To qualify for this uncapped credit, the</p>	<p>Allows taxpayers to claim the tax credits on a per-device basis, rather than per-location.</p> <p>Increases the tax credit limit on individual devices to \$200,000 for devices installed for commercial use.</p>

	Biden Administration FY 2022 Budget	GREEN Act	Clean Energy for America Act
	<p>five years through December 31, 2026. The \$1,000 tax credit for charging property installed at a taxpayer's residence would not increase but would also be extended for five years.</p> <p>Taxpayers would have the option to elect a cash payment in lieu of the general business tax credits.</p>	<p>property must: 1) be intended for general public use and either accept credit cards as a form of payment or not charge a fee or 2) be intended for exclusive use by government or commercial vehicle fleets.</p>	<p>Introduces a phase-out period, upon the determination by the secretary that greenhouse gas emissions are equal to or less than 25% of greenhouse gas emissions in 2021, at which time the amount of the credit will begin to decrease starting from the second year after the year of determination and will phase out by the fourth year.</p> <p>Expands the definition of qualified alternative fuel vehicle refueling property (eligible for the Section 30C credit) to include property used to dispense, in addition to hydrogen, any transportation fuel for which the clean fuel production credit is allowed under Section 45V (replacing a list of specific fuel types with an objective standard based on the emissions produced by the fuel type).</p>

# ANNEX 1

## Credit Amounts under the Biden Administration FY 2022 Budget<sup>4</sup>

For each vehicle class, the tax credit would be a set amount per vehicle as follows:

- For a Class 3 vehicle, the credit is:
  - \$25,000 per vehicle purchased between January 1, 2022 and December 31, 2024.
  - \$20,000 per vehicle purchased between January 1, 2025 and December 31, 2025.
  - \$15,000 per vehicle purchased between January 1, 2026 and December 31, 2026.
  - \$10,000 per vehicle purchased between January 1, 2027 and December 31, 2027.
- For Class 4-6 vehicles, the credit is:
  - \$45,000 per vehicle purchased between January 1, 2022 and December 31, 2024.
  - \$40,000 per vehicle purchased between January 1, 2025 and December 31, 2025.
  - \$35,000 per vehicle purchased between January 1, 2026 and December 31, 2026.
  - \$30,000 per vehicle purchased between January 1, 2027 and December 31, 2027.
- For Class 7-8 short-haul vehicles, the credit is:
  - \$120,000 per vehicle purchased between January 1, 2022 and December 31, 2023.
  - \$100,000 per vehicle purchased between January 1, 2024 and December 31, 2024.
  - \$80,000 per vehicle purchased between January 1, 2025 and December 31, 2027.
- For Class 7-8 long-haul vehicles, the credit is:
  - \$120,000 per vehicle purchased between January 1, 2022 and December 31, 2024.
  - \$100,000 per vehicle purchased between January 1, 2025 and December 31, 2027.

Gross Vehicle Weight Rating (lbs)	Federal Highway Administration	
	Vehicle Class	GVWR Category
<6,000	Class 1: <6,000 lbs	Light Duty <10,000 lbs
10,000	Class 2: 6,001 – 10,000lbs	
14,000	Class 3: 10,001 – 14,000 lbs	Medium Duty 10,001 – 26,000 lbs
16,000	Class 4: 14,001 – 16,000 lbs	
19,500	Class 5: 16,001 – 19,500 lbs	
26,000	Class 6: 19,501 – 26,000 lbs	
33,000	Class 7: 26,001 – 33,000 lbs	Heavy Duty >26,001 lbs
>33,000	Class 8: >33,001 lbs	

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## Endnotes

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<sup>1</sup> See <https://www.irs.gov/businesses/irc-30d-new-qualified-plug-in-electric-drive-motor-vehicle-credit>

<sup>2</sup> See also H.R. 3796, 117th Cong. (2021) (proposing to completely eliminate the tax credit for electric vehicles).

<sup>3</sup> See Annex 1.

<sup>4</sup> See <https://home.treasury.gov/system/files/131/General-Explanations-FY2022.pdf> See also <https://afdc.energy.gov/data/10380>

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