This document has been prepared as part of the implementation project of Legal Pathways to Deep Decarbonization (Michael B. Gerrard and John C. Dernbach, eds. Environmental Law Institute [2019]) (LPDD). For background information on the project, see https://lpdd.org

FEDERAL INCOME TAX CREDIT FOR PURCHASING USED AFVS

Effective: January 1, 2021

1. PURPOSE AND INTENT

a. To reduce greenhouse gas emissions in the United States by at least 80% from 1990 levels by 2050 will require that 80%-95% of the miles driven be in vehicles powered by lower carbon energy sources like electricity and hydrogen.

b. The purpose of this act is to accelerate the adoption of such alternative fuel vehicles by reducing the secondary purchase cost by providing a federal income tax credit for the purchase of qualifying vehicles by qualified purchasers.

2. DEFINITIONS

ALTERNATIVE FUEL VEHICLE ("AFV")[1]: means:

OPTION #1: ALTERNATIVE FUEL VEHICLE ("AFV"): any used vehicle that is powered solely by electricity or by hydrogen fuel cells.

OPTION #2: ALTERNATIVE FUEL VEHICLE ("AFV"): (1) any used vehicle that is powered solely by electricity or hydrogen fuel cells; or, (2) any used plug-in hybrid vehicle that is powered in part by electricity from a battery pack that must be recharged using an external electricity source.

OPTION #3: ALTERNATIVE FUEL VEHICLE ("AFV"): (1) any used vehicle that is powered solely by electricity or hydrogen fuel cells; (2) any used plug-in hybrid vehicle that is powered in part by electricity from a battery pack that must be recharged using an external electricity source; or, (3) any used make and model year vehicle that is powered in part by electricity generated by regenerative braking and that achieves the Minimum MPG Rating.

OPTION #4: ALTERNATIVE FUEL VEHICLE ("AFV"): (1) any used vehicle that is powered solely by electricity or hydrogen fuel cells; (2) any used plug-in hybrid vehicle that is powered in part by electricity from a battery pack that must be recharged using an external electricity source; or, (3) any used make and model year vehicle that is powered in part by electricity generated by regenerative braking and that, except as provided by regulation, meets the eligibility requirements

[1] Note to Draft: The definitions here are intentionally different than those currently provided in Section 30B and 30D of the IRC. The reason for this difference is to allow Congress the opportunity to assess, based on data at the time of enactment, which definition option will best meet the needs of the government and the promotion of AFVs. The current definitions in the IRC are tied to older fuel efficiency standards and do not provide for more fluid adjustments as technology continues to advance. In addition, the definitions in 30B and 30D cover new vehicles purchased for business and personal use, whereas the definitions in this statute would cover used vehicles purchased for personal use.

in the existing Internal Revenue Code Section 30D credit for new plug-in electric drive motor vehicles.

Each of which (i) is titled and registered in the state in which it is required to be licensed or subject to licensing for operation upon highways of the state, (ii) is a model year that is no less than two (2) and no more than six (6) years earlier than the date of sale, (iii) is sold with a sale price (excluding taxes, license and registration) that does not exceed $30,000.00 and (iv) has not previously been resold to an end consumer.

MINIMUM MPG RATING: means, for tax year 2021, an EPA rating of 50 miles per gallon combined city and highway driving.[2] The [*federal government's transportation or environmental agency, whichever is so tasked*] shall adjust the Minimum MPG Rating for each taxable year at a level that is keyed to the EPA mpg rating for combined city and highway driving achieved by the third highest performing hybrid electric vehicle on the market in the taxable year.

PURCHASER: means the buyer of an AFV for personal use, and whose adjusted gross income is equal to or less than $60,000 for an individual or $120,000 for married couples filing jointly for the tax year immediately prior to purchasing the AFV.

QUALIFIED SELLER: means a registered car dealership or business that is actively engaged in the resale of used automobiles and derives over 75% of its annual revenue from the sale of automobiles used predominantly for street and freeway driving.

3. **Tax Credit**[3]
    a. With respect to the tax years commencing on or after January 1, 2021, but prior to January 1, 2024, there is allowed to any Purchaser a credit against the income tax imposed against such Purchaser, not to exceed two thousand five hundred dollars ($2,500), for the purchase of an AFV from a Qualified Seller.

    b. With respect to the tax years commencing on or after January 1, 2024, but prior to January 1, 2027, there is allowed to any Purchaser a credit against the income tax imposed against such Purchaser, not to exceed one thousand seven hundred fifty dollars ($1,750), for the purchase of an AFV from a Qualified Seller.

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[2] Note to Draft: This should be subject to change based on the development of new technologies. The implementing governmental agency may desire to increase certain Minimum MPG Ratings during the term of the program. For example, initially the Minimum MPG Rating could be 55 MPG or better through 2024, 60 MPG or better from 2025 through 2027, and 65 MPG or better from 2028 through 2030.

[3] Note to Draft: The flat tax credit and amount are suggestions. Congress can be expected to also consider implementing (i) a tax credit based on a percentage of the purchase price of the vehicle, with a maximum credit amount; (ii) a credit structure based on current legislation in place; or (iii) some other approach. The flat tax credit seems preferable as it provides clarity for unsophisticated purchasers. The amount may need to be adjusted to balance the needs of the federal government and the desire to increase the proliferation of AFVs.

c. With respect to the tax years commencing on or after January 1, 2027, but prior to January 1, 2030, there is allowed to any Purchaser a credit against the income tax imposed against such Purchaser, not to exceed one thousand dollars ($1,000), for the purchase of an AFV from a Qualified Seller.

d. If a credit authorized in this section exceeds the income tax due on the income of the taxpayer for the taxable year, the excess credit may not be carried forward and shall be refunded to the taxpayer.

e. A Purchaser may not receive the credit authorized in this section more than once every five (5) years. However, a Purchaser who has received a credit authorized in this section within the past five (5) years will not preclude a spouse or dependent of such Purchaser from receiving a credit authorized in this section during such period, regardless of whether they file jointly or separately.

4. **Recapture**

The United States Secretary of the Treasury shall, by regulations, provide for recapturing the benefit of any credit allowable under Section 3 with respect to any property which ceases to be property eligible for such credit (including recapture in the case the AFV is resold by the Purchaser within the twelve months from when it was purchased by such Purchaser).