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Treasury Issues Proposed Regulations on the Section 30C Alternative Fuel Vehicle Refueling Property Credit

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The Alternative Fuel Vehicle Refueling Property Credit available under Section 30C of the U.S. Internal Revenue Code of 1986, as amended (the "Code" and such credit, the "Section 30C Credit"), was originally enacted by the Energy Policy Act of 2005 to provide a credit against federal income tax for the cost of qualified alternative fuel vehicle refueling property. Section 30C has been amended multiple times since its original enactment. Most recently, the Inflation Reduction Act of 2022 (the "IRA") brought about the following modifications to the Section 30C Credit: (i) changing the Section 30C Credit from a per-location basis to a $100,000 applied on a per-single item basis for depreciable property and $1,000 for any other case; (ii) requiring the property to be located in an eligible census tract, with updated guidance provided by the Internal Revenue Service (the "IRS") regarding eligibility and mapping tools; and (iii) subjecting the credit to prevailing wage and apprenticeship requirements where compliance will increase the credit from 6% of the eligible costs by a multiple of five.

On January 19, 2024, the U.S. Department of the Treasury and the IRS released a notice outlining the requirements that the proposed regulations set to be issued in September 2024 will establish for qualifying as an eligible census tract, as well as how taxpayers can verify that a specific property meets the geographic requirements of the Section 30C Credit. On September 18, 2024, the U.S. Department of the Treasury and the IRS released the proposed regulations ("Proposed Regulations") that provide clarity regarding important issues with respect to claiming the Section 30C Credit which had not been addressed as part of the IRA's modification.

The Proposed Regulations clarified the following:

Single Item of Section 30C Property

The Proposed Regulations define a 'single item' of property and clarify the treatment of charging ports for purposes of the $100,000 cap. Each individual charging port, fuel dispenser, or energy storage unit is now considered a distinct item eligible for the credit. For shared equipment, costs are apportioned among the units the shared equipment serve. This approach allows the $100,000 credit limit (or $1,000 for non-depreciable property) to apply to each individual item rather than an entire refueling location. A charging port is specifically defined as a physical connector for recharging electric vehicles, with each port treated as a separate creditable item.

Functionally Interdependent Property

The Proposed Regulations address functionally interdependent property within the context of Section 30C, defining it as equipment integral to multiple charging ports or fuel dispensers. Examples include power conditioners and transformers serving multiple units. The Proposed Regulations mandate that costs for such shared equipment must be apportioned among the individual ports or dispensers it serves. The Proposed Regulations provide some helpful examples of what is considered "functionally interdependent" in the context of the Section 30C Credit.

Eligible Census Tract

The Proposed Regulations stipulate that eligible properties must be located in either low-income communities (Section 45D(e) of the Code), as determined by the Community Development Financial Institutions Fund ("CDFI Fund") using American Community Survey 5-year estimates, or non-urban areas, based on the most recent decennial census. From September 1, 2023 to August 31, 2024, taxpayers can use either 2011-2015 or 2016-2020 New Markets Tax Credit ("NMTC") tracts, but must use 2016-2020 NMTC tracts thereafter. Taxpayers will need to reference CDFI Fund designations and Census Bureau data to determine eligibility.

Recapture Period of Section 30C

The Section 30C recapture period is three years after the property is placed in service. This could occur due to modifications, changes in business use, or certain sales transactions. The recapture amount is prorated based on the time elapsed since the property was placed in service. The recapture rules are more favorable with the Section 30C Credit compared to Section 48. Recapture under Section 30C is limited to three specific scenarios: (i) the property is no longer classified as 'qualified alternative fuel vehicle refueling property'; (ii) the property is not predominantly used for trade or business purposes, meaning that more than 50% of its use in a given year is for non-business activities; or (iii) the taxpayer sells or disposes of the property, knowing or having reason to know that it will no longer qualify as Section 30C property. Notably, casualty events do not trigger a recapture event, and transfers of the property do not lead to recapture unless they fall under the third scenario.

Dual Use Property – Business and Personal

The Proposed Regulations outline a methodology for apportioning the Section 30C Credit between business and personal use (i.e., 'dual-use' property). For dual-use property, the credit allocation is based on the percentage of time dedicated to each purpose. Taxpayers must maintain adequate records to substantiate this allocation. Notably, if business use falls below 50%, the property is treated entirely as non-depreciable, and subject to the lower $1,000 credit limit. This allocation must be reassessed annually to account for potential changes in use.

Property Used by Tax-Exempt Entities

The Proposed Regulations have provisions allowing sellers to claim the credit when the property is used by tax-exempt or government entities. While public-private partnerships in developing green infrastructure are possible, the Proposed Regulations require that sellers disclose the Section 30C Credit amount allowable to purchasers and ensure compliance with the prevailing wage and apprenticeship requirements.

Summary

The Proposed Regulations clarify the definitions of key modifications from the IRA. Notable topics addressed include 'single item' property, functionally interdependent property, eligibility census tracts, recapture periods, dual-use property, and property utilized by tax-exempt entities. Interested parties are invited to submit written comments on the Proposed Regulations until November 17, 2024. A public hearing has not been scheduled, but the Treasury will do so if any interested party requests such a hearing in a timely written comment. In the meantime, the Proposed Regulations provide clarity on the Section 30C Alternative Fuel Vehicle Refueling Property Credit.

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If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings Los Angeles lawyers:

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