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NEWS FLASH

NOVEMBER 16, 2009

Credit for Qualified Plug-in Electric Drive Motor Vehicles

Many of our Arizona clients have asked about this new credit and whether it applies to Golf Carts. *It does not.*

The credit applies only to electric vehicles that are *primarily intended* for on-road (street) use. The vehicle must meet 17 specific parameters to qualify. The manufacturer (or importer of a foreign-made vehicle) must certify to the IRS and the consumer that the vehicle qualifies.

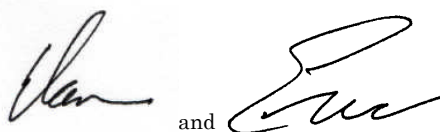
The IRS has issued two Notices about this credit:

- Notice 2009-54 described the detailed rules for 2009.
- Notice 2009-89 (issued today) modifies the rules for 2010.

Both notices are reproduced below. You can also find them by searching the IRS website at www.irs.gov.

Please feel free to call or write if you have any questions.

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 and

To ensure compliance with IRS and US Treasury requirements, any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Notice 2009-54, Internal Revenue Service, (Jun. 12, 2009)

<http://prod.resource.cch.com/resource/scion/document/default/%28%40%40RCB02+IRB2009-261124%29rcb0209013e2c85740849>

Notice 2009-54, I.R.B. 2009-26, June 12, 2009.

[[Code Sec. 30D](#)]

Credits: Motor vehicles: Qualified plug-in electric drive motor vehicle.—

The IRS has issued guidance relating to the new qualified plug-in electric drive motor vehicle credit under [Code Sec. 30D](#). The guidance includes the procedures for a vehicle manufacturer to certify that the motor vehicle meets certain requirements that must be satisfied to claim the new qualified plug-in electric drive motor vehicle credit and the amount of the credit allowable for that motor vehicle. It also provides guidance to purchasers of the motor vehicles regarding reliance on the manufacturer's certification in determining whether the credit is allowable for the vehicle and the amount of the credit. The credit applies to qualified vehicles which otherwise meet the requirements of [Code Sec. 30D](#) and are placed into service by the taxpayer in a tax year beginning after December 31, 2008, and acquired by the taxpayer on or before December 31, 2009. The guidance also provides when the certification is permitted by the vehicle manufacturer and when a purchaser may rely on the manufacturer's certification. A credit allowed under [Code Sec. 30D](#) means no credit will be allowed for that vehicle under [Code Sec. 30](#). Back references: ¶4059P.021 and ¶4059P.023.

Section 1. PURPOSE

This notice sets forth interim guidance, pending the issuance of regulations, relating to the new qualified plug-in electric drive motor vehicle credit under [§ 30D](#) of the Internal Revenue Code. Specifically, this notice provides procedures for a vehicle manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) to certify to the Internal Revenue Service ("Service") both:

- (1) That a motor vehicle of a particular make, model, and model year meets certain requirements that must be satisfied to claim the new qualified plug-in electric drive motor vehicle credit under [§ 30D](#); and
- (2) The amount of the credit allowable with respect to that motor vehicle.

This notice also provides guidance to taxpayers who purchase motor vehicles regarding the conditions under which they may rely on the vehicle manufacturer's (or, in the case of a foreign vehicle manufacturer, its domestic distributor's) certification in determining whether a credit is allowable with respect to the vehicle and the amount of the credit. The Service and the Treasury Department expect that the regulations will incorporate the rules set forth in this notice.

[Section 30D](#) originally was enacted in the Energy Improvement and Extension Act of 2008, Pub. L. 110-343, 122 Stat. 3765. The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 123 Stat. 115, amended [§ 30D](#) in certain respects, and those amendments are effective for vehicles acquired after December 31, 2009. The Service and Treasury Department will issue subsequent guidance relating to those amendments. All references to [§ 30D](#) in this notice are to the provision as in effect before its amendment.

Section 2. BACKGROUND

[Section 30D](#) provides for a credit for certain new qualified plug-in electric drive motor vehicles. The credit is equal to the sum of: (1) \$2,500, plus (2) \$417 for each kilowatt hour of traction battery capacity in excess of 4 kilowatt hours. [Section 30D\(b\)\(1\)](#) limits the amount of the credit allowed for a vehicle to amounts ranging from \$7,500 to \$15,000, depending on the gross vehicle weight rating of the vehicle. The new qualified plug-in electric drive motor vehicle credit phases out over the period beginning with the second calendar quarter after the calendar quarter in which at least 250,000 qualifying vehicles have been sold for use in the United States (determined on a cumulative basis for sales after December 31, 2008) (phase-out period"). Qualifying vehicles purchased in the first two calendar quarters of the phase-out period are eligible for 50 percent of the credit. Qualifying vehicles purchased in the third and fourth calendar quarters of the phase-out period are eligible for 25 percent of the credit. Vehicles purchased after the last day of the fourth calendar quarter

of the phase-out period are not eligible for a credit. If a vehicle qualifies for a credit under both [§ 30B](#) and [§ 30D](#), the amount of the credit allowed under [§ 30B](#) is the amount of the otherwise allowable credit under that section reduced (but not below zero) by the amount of the credit allowed under [§ 30D](#). In addition, if a vehicle qualifies for a credit under [§ 30D](#), no credit is allowed for that vehicle under [§ 30](#).

Section 3. SCOPE OF NOTICE

The new qualified plug-in electric drive motor vehicle credit applies to plug-in electric drive motor vehicles, including low speed vehicles as defined in section 4(6) of this notice, that—

- (1) Are placed in service by the taxpayer in a taxable year beginning after December 31, 2008;
- (2) Are acquired by the taxpayer on or before December 31, 2009; and
- (3) Otherwise meet the requirements of [§ 30D](#).

Section 4. MEANING OF TERMS

The following definitions apply for purposes of this notice:

.01 *In General*. Terms used in this notice and not defined in this section 4 have the same meaning as when used in [§ 30D](#).

.02 *Clean Air Act Regulations*. The Clean Air Act regulations are the regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. [§§ 7521](#), *et. seq.*).

.03 *Traction Battery Capacity*. Traction battery capacity is measured in kilowatt hours from a 100 percent state of charge to a zero percent state of charge.

.04 *Motor Vehicle*. The term “motor vehicle” has the meaning given that term by [§ 30\(c\)\(2\)](#).

.05 *Manufacturer*. The term “manufacturer” has the meaning given that term in the Clean Air Act regulations.

.06 *Passenger Vehicle and Light Truck*. The terms “passenger vehicle” and “light truck” do not include (1) any vehicle that has a gross vehicle weight of more than 8,500 pounds and (2) any vehicle that is not treated as a motor vehicle in the Clean Air Act regulations. A low speed vehicle, as defined in section 4.07 of this notice, is not treated as a motor vehicle in the Clean Air Act regulations. Accordingly, a low speed vehicle is not a passenger vehicle or light truck and is not required to receive a certificate of conformity under the Clean Air Act to qualify for the credit.

.07 *Low Speed Vehicle*. The term “low speed vehicle” means a vehicle:

- (1) That has at least four wheels;
- (2) That is manufactured primarily for use on public streets, roads and highways (not including a vehicle operated exclusively on a rail or rails);
- (3) That is not manufactured primarily for off-road use, such as primarily for use on a golf course;
- (4) Whose speed attainable in one mile is more than 20 miles per hour and not more than 25 miles per hour on a paved level surface; and
- (5) Whose gross vehicle weight rating is less than 3,000 pounds.

.08 *Model Year*. The term “model year” means the model year determined under the Clean Air Act regulations (see 40 CFR [§ 86-082-2](#)).

Section 5. MANUFACTURER'S CERTIFICATION AND QUARTERLY REPORTS

.01 *When Certification Permitted*. A vehicle manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) may certify to purchasers that a motor vehicle of a particular make, model, and model year meets all requirements (other than those listed in section 5.02 of this notice) that must be satisfied to claim the new qualified plug-in electric drive motor vehicle credit allowable under [§ 30D](#) with respect to the vehicle, if the following requirements are met:

(1) The manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) has submitted to the Service, in accordance with this section 5 of this notice, a certification with respect to the vehicle and the certification satisfies the requirements of section 5.03 of this notice;

(2) The manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) has received an acknowledgment of the certification from the Service.

.02 Purchaser's Reliance. Except as provided in section 5.07 of this notice, a purchaser of a motor vehicle may rely on the manufacturer's (or, in the case of a foreign vehicle manufacturer, its domestic distributor's) certification concerning the vehicle and the amount of the credit allowable with respect to the vehicle (including in cases in which the certification is received after the purchase of the vehicle). The purchaser may claim a credit in the certified amount with respect to the vehicle if the following requirements are satisfied:

(1) The vehicle is placed in service by the taxpayer in a taxable year beginning after December 31, 2008, and is purchased by the taxpayer on or before December 31, 2009;

(2) The original use of the vehicle commences with the taxpayer;

(3) The vehicle is acquired for use or lease by the taxpayer, and not for resale; and

(4) The vehicle is used predominantly in the United States.

.03 Content of Certification. The certification must contain the information required in section 5.03(1) of this notice and any applicable additional information required in section 5.03(2) or (3) of this notice.

(1) *All Vehicles.* For all vehicles, the certification must contain the following:

(a) The name, address, and taxpayer identification number of the certifying entity.

(b) The make, model, model year, and any other appropriate identifiers of the motor vehicle.

(c) A statement that the vehicle is made by a manufacturer.

(d) A statement that the vehicle is a motor vehicle within the meaning of section 4.03 of this notice.

(e) The amount of the credit for the vehicle (showing computations).

(f) The gross vehicle weight rating of the vehicle.

(g) A statement that the motor vehicle draws propulsion using a traction battery with at least 4 kilowatt hours of capacity.

(h) The number of kilowatt hours, if any, in excess of 4 kilowatt hours.

(i) A statement that the vehicle uses an offboard source of energy to recharge the battery.

(j) A statement that the vehicle complies with the applicable provisions of the Clean Air Act.

(k) A statement that the vehicle complies with the applicable air quality provisions of state law of each state that has adopted the provisions under a waiver under § 209(b) of the Clean Air Act or a list identifying each state that has adopted applicable air quality provisions with which the vehicle does not comply.

(l) A description of the motor vehicle safety provisions of 49 U.S.C. §§ 30101 through 30169 applicable to the vehicle and a statement that the vehicle complies with those provisions.

(m) A declaration, applicable to the certification, statements, and any accompanying documents, signed by a person currently authorized to bind the manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) in these matters, in the following form: "Under penalties of perjury, I declare that I have examined this certification, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this certification are true, correct, and complete."

(2) *Passenger Vehicles and Light Trucks.* If the vehicle is a passenger vehicle or light truck (determined after application of the limitations in section 4.06 of this notice), the certification must also contain the following:

(a) A copy of the certificate of conformity under the Clean Air Act.

(b) Documents demonstrating that the vehicle meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year.

(c) In the case of a vehicle having a gross vehicle weight rating of 6,000 pounds or less, documents showing that the vehicle meets or exceeds the Bin 5 Tier II emission standard established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle.

(d) In the case of a vehicle having a gross vehicle weight rating of more than 6,000 pounds, but not more than 8,500 pounds, documents showing the vehicle meets or exceeds the Bin 8 Tier II emission standard which is so established.

(3) *Low Speed Vehicles*. A certification with respect to a low speed vehicle as defined in section 4.07 of this notice must also contain the following:

(a) A statement that the vehicle has at least four wheels.

(b) A statement that the vehicle is manufactured primarily for use on public streets, roads and highways.

(c) A statement that the vehicle is not manufactured primarily for off-road use, such as primarily for use on a golf course.

(d) Evidence that the speed attainable by the vehicle in one mile is more than 20 miles per hour and not more than 25 miles per hour on a paved level surface.

.04 Acknowledgement of Certification. The Service will review the original signed certification and issue an acknowledgment letter to the vehicle manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) within 30 days of receipt of the request for certification. This acknowledgment letter will state whether purchasers may rely on the certification.

.05 Quarterly Reporting of Sales of Qualified Vehicles. A manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) that has received an acknowledgment of its certification from the Service must submit to the Service, in accordance with section 6 of this notice, a report of the number of qualified plug-in electric drive motor vehicles sold by the manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) to consumers or retail dealers during the calendar quarter. The quarterly report must contain the following information:

(1) The name, address, and taxpayer identification number of the reporting entity.

(2) The number of qualified vehicles sold by the reporting entity to consumers or retail dealers during the calendar quarter.

(3) The make, model, model year, and any other appropriate identifiers of the qualified vehicles sold during the calendar quarter.

(4) A declaration, applicable to the quarterly report and any accompanying documents, signed by a person currently authorized to bind the manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) in these matters, in the following form: "Under penalties of perjury, I declare that I have examined this report, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this report are true, correct, and complete."

.06 Acknowledgment of Quarterly Report. The Service will review the original signed quarterly report and issue an acknowledgment letter to the vehicle manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) within 30 days of receipt of the report. This acknowledgment letter will state whether purchasers may continue to rely on the certification.

.07 Effect of Erroneous Certification, Erroneous Quarterly Reports, or Failure to Make Timely Quarterly Reports.

(1) *Erroneous Certification or Quarterly Report*. The acknowledgment that the Service provides for a certification is not a determination that a vehicle qualifies for the credit, or that the amount of the credit is correct. The Service may, upon examination (and after any appropriate consultation with the Department of Transportation or the Environmental Protection Agency), determine that the vehicle is not a new qualified

plug-in electric drive motor vehicle or that the amount of the credit determined by the manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) to be allowable with respect to the vehicle is incorrect. In either event, or in the event that the manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) makes an erroneous quarterly report, the manufacturer's (or, in the case of a foreign vehicle manufacturer, its domestic distributor's) right to provide a certification to future purchasers of the new qualified plug-in electric drive motor vehicles will be withdrawn, and purchasers who acquire a vehicle after the date on which the Service publishes an announcement of the withdrawal may not rely on the certification. Purchasers may continue to rely on the certification for vehicles they acquired on or before the date on which the announcement of the withdrawal is published (including in cases in which the vehicle is not placed in service and the credit is not claimed until after that date), and the Service will not attempt to collect any understatement of tax liability attributable to such reliance. Manufacturers (or, in the case of foreign vehicle manufacturers, their domestic distributors) are reminded that an erroneous certification or an erroneous quarterly report may result in the imposition of penalties, including, but not limited to, the penalties:

- (a) Under [§ 7206](#) for fraud and making false statements; and
- (b) Under [§ 6701](#) for aiding and abetting an understatement of tax liability in the amount of \$1,000 (\$10,000 in the case of understatements by corporations) per return on which a credit is claimed in reliance on the certification.

(2) *Failure to Make Timely Quarterly Report.* If a manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) fails to make a quarterly report in accordance with section 5.05 of this notice and at the time specified in section 6.02 of this notice, the acknowledgment letter issued under section 5.04 of this notice may be withdrawn, and purchasers will not be entitled to rely on the related certification for quarters beginning after the date on which the Service publishes an announcement of the withdrawal (generally, quarters beginning after the due date of the report). If the quarterly report is filed subsequently, the Service may reissue the acknowledgment letter and retract the withdrawal announcement.

Section 6. TIME AND ADDRESS FOR FILING CERTIFICATION AND QUARTERLY REPORTS

.01 *Time for Filing Certification.* In order for a certification under section 5 of this notice to be effective for new qualified plug-in electric drive motor vehicles placed in service during a calendar year, the certification must be received by the Service not later than December 31 of that calendar year.

.02 *Time for Filing Quarterly Reports.* A report of sales of qualified vehicles during a quarter must be filed with the Service at the address specified in section 6.03 of this notice not later than the last day of the first calendar month following the quarter to which the report relates.

.03 *Address for Filing.* Certifications and quarterly reports under section 5 of this notice must be sent to:

Internal Revenue Service

Industry Director, LMSB, Heavy Manufacturing & Transportation

Metro Park Office Complex - LMSB

111 Wood Avenue, South

Iselin, New Jersey 08830

Section 7. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-2137.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this notice are in sections 5 and 6. This information is collected and retained in order to ensure that vehicles meet the requirements for the new qualified plug-in electric drive motor vehicle credit under [§ 30D](#). This information will be used to determine whether the vehicle for which the credit is claimed by a taxpayer is property that qualifies for the credit. The collection of information is voluntary to obtain a benefit. The likely respondents are corporations and partnerships.

The estimated total annual reporting burden is 280 hours.

The estimated annual burden per respondent varies from 20 hours to 35 hours, depending on individual circumstances, with an estimated average burden of 24 hours to complete the certification required under this notice. The estimated number of respondents is 12.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 8. DRAFTING INFORMATION

The principal author of this notice is Patrick S. Kirwan of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Mr. Kirwan at (202) 622-3110 (not a toll-free call).

Federal Tax Day, I.7 Interim Guidance Provided on New Qualified Plug-in Electric Drive Motor Vehicle Credit Certification (Notice 2009-89), (Nov. 16, 2009)

<http://prod.resource.cch.com/resource/scion/document/default/%28%40%40FTD01+P20091116-I.7%29ftd0109013e2c85ba8b32>

The IRS has issued interim guidance, pending the issuance of regulations, on the procedures that vehicle manufacturers (or, with respect to a foreign vehicle manufacturer, its domestic distributor) must use to certify a vehicle as eligible for the new qualified plug-in electric drive vehicle credit under [Code Sec. 30D](#), as in effect for vehicles acquired after December 31, 2009. Guidance is also provided to purchasers of qualified vehicles regarding reliance on the manufacturer's certification in claiming the credit. The IRS and the Treasury Department expect that the regulations will incorporate the rules set forth in the interim guidance.

[Code Sec. 30D](#) provides for a credit for certain new qualified plug-in electric drive motor vehicles. [Code Sec. 30D](#) was originally enacted under the Emergency Economic Stabilization Act of 2008 (P.L. 110-343). It was effective for vehicles placed in service in 2009 through 2014. [Code Sec. 30D](#) was substantially modified by the American Recovery and Reinvestment Act of 2009 (P.L. 111-5), effective for vehicles acquired after December 31, 2009.

The new interim guidance pertains to the post-2009 credit. However, it also amplifies [Notice 2009-54](#), I.R.B. 2009-26, 1124, which deals with [Code Sec. 30D](#), prior to amendment, and [Notice 2009-58](#), I.R.B. 2009-30, 163, relating to the plug-in electric vehicle credit under [Code Sec. 30](#), to provide that a vehicle is considered acquired when title to that vehicle passes under state law.

A manufacturer's certification that a vehicle is eligible for the credit must include all 17 items listed in the interim guidance. The certification must be submitted to the IRS, which will review and acknowledge the certification within 30 days of receipt of the certification. A manufacturer's right to provide a certification for future purchases of a vehicle will be withdrawn if the IRS determines that a vehicle is not qualified for the credit. Purchasers who acquire vehicles after the withdrawal date may not rely on the certification. However, purchasers may continue to rely on a certification for a vehicle acquired before the withdrawal date, even if the vehicle is not placed in service yet or the credit is claimed after the withdrawal date.

Except for the withdrawal of acknowledgment by the IRS, purchasers of a qualified vehicle may rely on a manufacturer's certification for purposes of claiming the credit. The purchaser may claim the credit in the certified amount with respect to the vehicle if the following requirements are satisfied:

- (1) the vehicle is placed in service by the taxpayer in a tax year beginning after December 31, 2009, and is acquired by the taxpayer after December 31, 2009;
- (2) the original use of the vehicle commences with the taxpayer;
- (3) the vehicle is acquired for use or lease by the taxpayer, and not for resale; and
- (4) the vehicle is used predominantly in the United States.

A manufacturer that has received an acknowledgment of its certification from the IRS must submit to the Service a quarterly report of the number of qualified plug-in electric drive motor vehicles sold by the manufacturer to consumers or retail dealers during the calendar quarter. The IRS will review and acknowledge the quarterly report within 30 days of receipt. The acknowledgment letter will state whether purchasers may continue to rely on the certification.

[Notice 2009-54](#) is amplified and superseded, effective for plug-in electric drive motor vehicles acquired after December 31, 2009, and [Notice 2009-58](#) is amplified.

Notice 2009-89, [2009FED ¶46,528](#)

Other References:

[Code Sec. 30](#)

CCH Reference - 2009FED ¶4056B.01

[Code Sec. 30D](#)

CCH Reference - 2009FED ¶4059P.021

CCH Reference - 2009FED ¶4059P.023

CCH Reference - 2009FED ¶4059P.031

CCH Reference - 2009FED ¶4059P.033

Tax Research Consultant

CCH Reference – TRC INDIV: 58,002

CCH Reference – TRC INDIV: 58,008