Manhattan Institute

November 18, 2024

Aviva Aron-Dine
Assistant Secretary for Tax Policy
(P.D.O.)
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Daniel Werfel
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Shelley Leonard
Deputy Assistant Secretary
for Tax Policy (P.D.O.)
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Request for Comments on Section 30C Alternative Fuel Vehicle Refueling Property Credit of the Internal Revenue Code (REG-118269-23)

The Manhattan Institute for Policy Research (Manhattan Institute) is a 501(c)(3) nonprofit think tank committed to developing and disseminating new ideas that foster greater economic choice and individual responsibility. The Manhattan Institute champions policies to enrich American society by making energy more abundant, affordable, reliable, and secure. James R. Copland, Senior Fellow with the Manhattan Institute submits these comments in response to the notice of proposed rulemaking published by the Internal Revenue Service (IRS) on September 19, 2024, regarding the implementation of section 30C of the Internal Revenue Code (Code), as amended by the Inflation Reduction Act of 2022 (IRA). *See* 89 Fed. Reg. 76,759.

My name is James R. Copland, and I am a senior fellow with and director of legal policy for the Manhattan Institute.[1] In those roles, I develop and communicate novel, sound ideas on how to improve America's civil- and criminal-justice systems. My latest book, *The Unelected: How an Unaccountable Elite is Governing America* (Encounter Books), was published in September 2020. I have testified before Congress as well as state and municipal legislatures and international rulemaking bodies. I have authored many policy briefs and book chapters; articles in journals including the *Harvard Business Law Review* and *Yale Journal on Regulation*; and

[1] I submit this comment letter in my individual capacity. Details regarding my professional affiliation are provided here for convenience only.

opinion pieces in popular publications including the *Wall Street Journal*, *National Law Journal*, *Washington Post*, and *USA Today*.

I strongly oppose the proposed regulations for their inconsistency with the statutory language and intent of Section 30C of the Code, which was designed to provide a narrow and targeted tax-incentive credit for alternative fuel vehicle refueling property (including electric vehicle (EV) charging stations). The proposed regulations are contrary to the public interest and will raise the true cost of the IRA far beyond Congressional Budget Office estimates sold to the public and assumed by elected legislators at the time the IRA was passed.

Therefore, I urge the IRS to withdraw the proposed regulations and issue new rules consistent with the statutory language and intent of Section 30C, or in the alternative revise the Proposed Rules as laid out further below. The following sections provide a detailed analysis of my comments and recommendations.

Background

Section 30C was originally enacted in 2005 as part of the Energy Policy Act of 2005, and was intended to provide a temporary and limited tax incentive for alternative fuel vehicle refueling property, defined as any property (other than a building or its structural components) used to store or dispense alternative fuels into the fuel tank of a motor vehicle propelled by such fuels, or to recharge motor vehicles propelled by electricity. *See* Pub. L. No. 109-58, § 1342(a), 119 Stat. 594, 1049. Section 30C was subsequently amended several times to extend its expiration date, expand its eligibility criteria, and increase its credit amount and cap. *See* Pub. L. No. 110-343, §207, 122 Stat. 3765, 3839 (2008).

Most recently, Section 30C was amended by the IRA to extend the credit to the end of 2032, increase the credit cap to $100,000 for depreciable property and $1,000 for non-depreciable property per single item of property, add bidirectional charging equipment as eligible property, and require the property to be located in a rural or low-income area (i.e., an "eligible census tract"). *See* Pub. L. No. 117-169, § 13404, 136 Stat. 1818, 1966 (2022).

When President Biden signed the so-called "Inflation Reduction Act," which included significant elements of legislation that had been referred to as the "Green New Deal," he stated that the IRA "invests $369 billion to take the most aggressive action ever — ever, ever, ever — in confronting the climate crisis and strengthening our economic — our energy security."[2] That's a lot of money. In the time since, estimates of the cost of the IRA have crept upward. An April 26, 2023 estimate by

[2] Press Release, "Remarks by President Biden At Signing of H.R. 5376, The Inflation Reduction Act of 2022," (Aug. 16, 2022) https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/08/16/remarks-by-president-biden-at-signing-of-h-r-5376-the-inflation-reduction-act-of-2022/

the Joint Committee on Taxation (JCT) was $515 billion.[3] An April 2023 Goldman Sachs report estimated that the IRA "will provide an estimated $1.2 trillion of incentives by 2032."[4]

But without commonsense limitations, this credit *alone* could further balloon the cost of the bill and could represent a cost *nearly double President Biden's assessment of the cost of all the energy subsidies put together*.

A recent study by the Edison Electric Institute estimates that 42.2 million charging ports are needed by 2035 to support the electrification of the American vehicle fleet:[5]

- Public DC Fast Charging Ports — 325,000 ports
- Workplace and Multi-Family Dwelling L2 Charging Ports — 2,938,000 ports
- Public L2 Charging Ports — 3,161,000 ports
- Home L2 Charging Ports — 35,796,000 ports

The first three categories—all which may be eligible for the Section 30C tax credit—represent 6,424,000 new charging ports. If the owners of these ports were allowed to max out the tax credit for each port, this would represent a cost of $642 billion to the American taxpayer, nearly double the cost of all the IRA's energy subsidies as stated by President Biden when signing the bill. This simply cannot be what Congress intended: In 2022, the Congressional Budget Office (CBO) estimated the 10-year cost of the Section 30C credits to be *$1.7 billion*. The final rules must ensure the Section 30C credit is not abused at the expense of the American taxpayer.

The Final Rules Must Prevent Abuse of the IRC 30C Credit

1. Utilities Must be Prohibited from Shifting the Cost of Electric Infrastructure to the Taxpayer.

The proposed regulations should explicitly prohibit electric utilities from receiving a tax credit for the cost of electric system upgrades that may benefit other customers. Allowing utilities to claim this credit would result in an unfair shifting of costs to taxpayers, which is not the intent of Section 30C. The credit is designed to incent

[3] U.S. Joint Committee on Taxation, "Estimated Revenue Effects Of Division A, Title III Of H.R. 2811, The "Limit, Save, Grow Act Of 2023," (Apr. 26, 2023) https://www.jct.gov/publications/2023/jcx-7-23/.

[4] Goldman Sachs, "The US is poised for an energy revolution" (Apr. 17, 2023), https://www.goldmansachs.com/insights/articles/the-us-is-poised-for-an-energy-revolution.html.

[5] Edison Electric Institute, *Electric Vehicle Sales and the Charging Infrastructure Required Through 2035*, 14, fig. 4 (Oct. 2024), https://www.eei.org/-/media/Project/EEI/Documents/Issues-and-Policy/Electric-Transportation/EV-Forecast-Infrastructure-Report.pdf.

the installation of alternative fuel vehicle refueling property, not to subsidize electric infrastructure improvements.

As discussed further below, the Proposed Rule includes ownership and location restrictions that must be maintained and tightened to prevent this outcome. But as a policy matter, I strongly oppose the requests by some industry groups to allow both utilities and charging station owners to separately claim the Section 30C credit for the same electric infrastructure. Such an allowance would be contrary to the statutory language and sound tax policy.

First, the statutory language of Section 30C does not support a double claim of the credit by utilities and charging station owners. Section 30C(b) limits the claim of the credit to any refueling property "placed in service *by the taxpayer*." 26 U.S.C. § 30C(b). Under the terms of the statute, only one party may claim the credit—the owner of the refueling property. Further, as discussed in more detail below, Section 30C includes a reference to IRC Section 179A's definition of "qualified clean-fuel vehicle refueling property," which limits the qualified property to that which is "located at the point where the motor vehicles are recharged." *Id.* § 179A(d)(3)(B) (repealed). Thus, the credit is limited to property that is directly connected to and used for the recharging of motor vehicles, not property that is used for the generation, transmission, or distribution of electricity to the charging station or to other customers.

Second, it is bad tax policy to allow double-claiming of the credit by utilities and charging station owners. Allowing utilities to claim the credit for electric infrastructure that may benefit other customers would undermine the targeted nature of the credit and result in windfall profits for utilities at the expense of taxpayers. Moreover, allowing utilities to claim the credit for electric infrastructure that may benefit other customers would distort the allocation of resources and create inefficiencies in the electric market, as utilities would have an incentive to overinvest in electric infrastructure that is eligible for the credit and underinvest in other types of infrastructure that may be more beneficial or cost-effective. If utilities desire a tax credit to support the grid infrastructure, they must convince Congress to provide one.

2. The Proposed Rule's Limitations on Property Ownership and Property Location Must Be Retained.

I strongly support the property ownership and property location limitations in the Proposed Rules, as they are consistent with the statutory language and intent of Section 30C. These limitations are necessary to prevent the tax credit from becoming a windfall for utility companies and other entities that do not own or operate the charging ports. Removing or relaxing these limitations would undermine the purpose of the tax credit, create unfair and inefficient subsidies, and impose significant costs on taxpayers.

First, the property ownership limitation reflects the plain meaning of section 30C, which allows a credit for the cost of any qualified alternative fuel vehicle refueling property placed in service by the taxpayer during the taxable year. The taxpayer who places the property in service is the owner of the property, not a third party who merely provides electric service to the property. *Id.* § 179A(c)(1). Allowing utility companies or other entities to claim the tax credit for property they do not own or operate would violate the statutory requirement and create a perverse incentive for them to overbuild and overcharge for electric capacity that is either not needed or that is used by customers other than the charging port owners. This would result in a transfer of wealth from the taxpayer to utility companies without advancing the policy of Section 30C.

Second, the property location limitation is consistent with the statutory text of Section 30C, which defines "qualified alternative fuel vehicle refueling property" by reference to section 179A(d)'s definition of "qualified clean-fuel vehicle refueling property." Section 179A(d)'s definition requires that the property be "located at the point where the motor vehicles are recharged." *Id.* § 179A(d)(1)(B). This text plainly excludes the inclusion of transmission lines and other infrastructure connecting the charging station to the electric grid. Allowing the tax credit to apply to property that is not located at the point of refueling, such as long-distance utility lines, would violate the statutory requirement and create a massive subsidy for the electric grid infrastructure that is not directly related to the alternative fuel vehicle refueling.

Third, the property location limitation should be further tightened to require that the property be located at the same physical address as the point of refueling, not merely on the same or immediately adjacent physical address. *See* 89 Fed. Reg. at 76,771 (to be codified at 26 C.F.R. § 1.30C-1(b)(16)). Allowing the tax credit to apply to property that is located on an adjacent physical address could lead to arbitrary and absurd results. For instance, where a charging station is located adjacent to a large tract of land, under the Proposed Rule a taxpayer could claim that electric infrastructure that spans that large tract is "associated property" and can be included in the tax credit, even if that infrastructure serves other purposes. Besides, as discussed above, the statute demands that the property be located "at the point" where the vehicles are recharged; a loosening of the definition to allow equipment placed on adjacent property exceeds the Treasury Department's authority.

Therefore, we urge the Treasury Department and the IRS to retain and strengthen the property ownership and property location limitations in the Final Rule, as they are essential to ensure the integrity, efficiency, and effectiveness of the Section 30C tax credit. Removing or relaxing these limitations would not only violate the statutory language and intent of Section 30C, but also create significant fiscal and economic costs for taxpayers.

3. Treasury's Definition of "Associated Property" Should Be Narrowed.

I urge the Treasury Department to narrow the definition of "associated property" for the purposes of the Section 30C credit. The Proposed Rules allow taxpayers to claim a credit for a wide range of property that is not directly related to the refueling or recharging of alternative fuel vehicles, but merely supports or enhances the operation of such vehicles. This expansive interpretation of "associated property" is contrary to the statutory language and intent of Section 30C, which is to provide a credit for the cost of qualified alternative fuel vehicle refueling property, not for the cost of ancillary or supplementary property. Moreover, this interpretation creates an unfair and inefficient subsidy for certain taxpayers and industries, distorts the market for alternative fuel vehicles and infrastructure, and imposes a significant burden on the taxpayer.

The Proposed Rules define "associated property" as any property that is functionally interdependent with refueling or recharging property and, if applicable, an integral part of such property. *See* 89 Fed. Reg. at 76,772 (to be codified at 26 C.F.R. § 1.30C-2(b)(2)). The Proposed Rules further define "functionally interdependent" property as property the placing in service of which is dependent on the placing in service of each of the other components in order to refuel or recharge a motor vehicle. *See* 89 Fed. Reg. at 76,770 (to be codified at 26 C.F.R. § 1.30C-1(b)(14)). The Proposed Rules also define "integral part" of property as property that is used directly in the intended function of the refueling or recharging property and is essential to the completeness of this intended function, meets all of the requirements for 30C property, is owned by the taxpayer that owns the refueling or recharging property, and is specifically designed to be integrated with the refueling or recharging property with which it is associated. *See id.* at 76,770–71 (to be codified at 26 C.F.R. § 1.30C-1(b)(15)).

These definitions are overly broad and vague and allow taxpayers to claim a credit for property that is not necessary for the refueling or recharging of alternative fuel vehicles. For example, the Proposed Rules would allow taxpayers to claim a credit for property such as charging management systems, software, load management devices, smart inverters, transfer switches, energy management systems, and other property that may improve the efficiency, reliability, or performance of the refueling or recharging property. But they are not essential to the delivery of fuel or electricity to the vehicle. In addition, such property may also serve other purposes or customers, such as providing grid services, backup power, demand response, or energy arbitrage. However, these types of property are not functionally interdependent with the refueling or recharging property because they are not required for the process of refueling or recharging. Nor are they integral parts of the refueling or recharging property because they are not used directly in the intended function of the refueling or recharging property and are not essential to the completeness of this intended function. Rather, they are ancillary or supplementary

property that may enhance the operation of the refueling or recharging property but are not part of the core function of such property.

Allowing taxpayers to claim a credit for such property is inconsistent with the statutory language and intent of Section 30C, which is to provide a credit for the cost of qualified alternative fuel vehicle refueling property. The statutory language does not include any reference to property that is functionally interdependent with or an integral part of such property, nor does it include any reference to property that is used for purposes other than the storage (with respect to fuel), dispensing, or recharging of fuel or electricity for alternative fuel vehicles. The statutory language clearly focuses on the cost of the property that is directly involved in the refueling or recharging process, not the cost of any property that may support or enhance such process. Therefore, the Proposed Rules exceed the scope of the statutory authority and should be revised to limit the definition of "associated property" to property hat is necessary and specific to the refueling or recharging of alternative fuel vehicles.

Moreover, this subsidy imposes a significant cost on the federal budget, as it increases the amount of the Section 30C credit that taxpayers can claim and reduces the amount of tax revenue that the federal government can collect. The Congressional Budget Office estimated that the Section 30C credit, as amended by the IRA, would cost $1.7 billion over 10 years. However, this estimate did not account for the potential expansion of the credit under the Proposed Rules, which could increase the cost of the credit by several orders of magnitude. Therefore, the Proposed Rules should be revised to limit the definition of "associated property" to property that is necessary and specific to the refueling or recharging of alternative fuel vehicles to prevent taxpayers from claiming a credit for property that may have other uses or benefits.

To further narrow the definition of "associated property" and prevent abuse of the Section 30C credit, I propose the following additional restrictions:

- The cost of associated property should be limited to property that is physically connected to the single item of refueling or recharging property with which it is associated, and that is located within a reasonable distance from such property, such as 50 feet or 100 feet. This would prevent taxpayers from claiming a credit for property that is remotely located or not directly linked to the refueling or recharging property, and that may serve other purposes or customers.
- The cost of associated property should be limited to property that is used exclusively for the refueling or recharging of alternative fuel vehicles, and that does not provide any other services or benefits, such as grid services, backup power, demand response, or energy arbitrage. This would prevent taxpayers from claiming a credit for property that is not specific to the refueling or recharging of alternative fuel vehicles, and that may generate additional income or savings for the taxpayer or third parties.

4. Treasury's Definition of "Associated Property" Should not Include Batteries and Should Explicitly Exclude Electric Generation Resources.

I oppose any attempt to include batteries or electric generation resources as "associated property" for the purposes of the Section 30C credit. Such an inclusion would be contrary to the statutory language, the legislative intent, and the public interest.

First, the statutory language of Section 30C distinguishes between property for the recharging of motor vehicles and property for the storage or dispensing of alternative fuels. Section 30C(c)(1)(A) defines "qualified alternative fuel vehicle refueling property" by reference to former section 179A(d), which in turn includes two distinct types of property: (1) property for the storage or dispensing of a clean-burning fuel into the fuel tank of a motor vehicle propelled by such fuel, and (2) property for the recharging of motor vehicles propelled by electricity. *See* 26 U.S.C. § 179A(d)(3)(A) and (B). When discussing the rationale for allowing batteries to be included as an item of qualified alternative fuel vehicle refueling property, the preamble to the Proposed Rule draws an analogy between batteries and CNG storage tanks. *See* 89 Fed. Reg. at 76,764. But the statute allows no such analogy. If Congress had intended to allow for the inclusion of batteries, energy storage, and energy generation resources in the Section 30C credit, they could have done so. Instead, Congress drew a distinction between refueling and recharging property. The statute specifically includes "property for the storage" in the definition of clean fueling property—but when describing recharging property, Congress chose to omit energy storage property. The Treasury and IRS should not allow a credit for property Congress chose to exclude.

Second, the legislative intent of Section 30C was to provide an incentive for the installation of alternative fuel vehicle refueling property, not for the development of utility-scale energy storage or generation projects. The credit was not intended to subsidize large-scale energy storage or generation projects that may or may not be related to alternative fuel vehicle refueling. Such projects may have their own merits and policy rationales, but they are not within the scope or purpose of Section 30C.

Third, the public interest would not be served by allowing batteries or electric generation resources to be treated as "associated property" for the purposes of the Section 30C credit. Such a treatment would create a potential for abuse and waste of taxpayer dollars, as well as distort the market for alternative fuel vehicle refueling property. For example, a taxpayer could install a large battery and solar array at a location with minimal or no demand for alternative fuel vehicle refueling and claim a 30% credit for the entire cost of the battery or solar array by allocating it across a few nominal charging ports. Such a taxpayer could then use the battery or solar array for other purposes, such as arbitraging electricity prices, providing

grid services, or selling power to third parties, without any benefit to alternative fuel vehicle users or the environment.

Fourth, in the alternative, the Final Rule should retain the Proposed Rule's interpretation that a battery is a "single item" of vehicle recharging property—rather than "associated property" that can be spread across each charging port. *See* 89 Fed. Reg. at 76,776 (to be codified at 26 C.F.R. § 1.30C-2(e)(9) (Example 9). Retaining this limitation is crucial to ensuring that the cost of a utility-scale battery cannot be spread across a large number of unused charging ports.

Finally, the Final Rules must clarify that external batteries do not meet the definition of "bidirectional charging equipment." Section 30C(c)(2) provides that bidirectional charging property, that is, property that "allows discharging electricity from such battery to an electric load" may be eligible for the credit under Section 30C. 26 U.S.C. § 30C(c)(2)(B). While the statute may allow an electric vehicle to discharge energy from the battery on the vehicle to the grid, the statute does not allow for the discharge of electricity from the EV's battery to an external battery. This is because an external battery does not meet the definition of "load," because that concept refers to the actual demand for electricity by an end user. *See, e.g.*, N.Y. Comp. Codes R. & Regs. tit. 9, § 7841.1 (defining "load" as "the amount of electric power, as measured in kilowatts or megawatts, required at any specified point or points on a system at a specific moment in time by an End-User or group of End-Users" and "End-User" as "the Person that ultimately consumes the energy solely for its own purposes and does not sell such energy for resale or further distribute such energy other than for its own consumption"). This limitation is crucial to ensure that utility-scale batteries that primarily engage in electricity arbitrage are not able to claim a tax credit under Section 30C.

5. Taxpayers that Claim a Section 30C Credit Should Be Ineligible from also Claiming the Section 45Y Production Tax Credit for the Same Property.

Section 45Y of the Code provides a production tax credit for electricity produced from certain clean energy resources, including qualified energy storage devices. Section 45Y(c)(2) defines a qualified energy storage device as any equipment that receives, stores, and delivers energy using batteries, compressed air, pumped hydropower, hydrogen storage, or thermal energy storage.

The Proposed Rules do not address the interaction between the Section 30C credit and the Section 45Y credit. This creates a potential loophole for taxpayers to claim both credits for the same property and activity, resulting in a double subsidy for electric vehicle charging stations and associated energy storage devices. Such double-dipping would impose an unfair burden on taxpayers who do not benefit from these credits.

For example, a taxpayer could install a bidirectional charging station and an associated battery energy storage system and claim the Section 30C credit for 30 percent of the cost of the property. The taxpayer could then use the bidirectional charging station and the battery energy storage system to sell electricity back to the grid during peak demand periods and claim the Section 45Y credit for 1.5 cents per kilowatt-hour of electricity sold. The taxpayer would effectively receive two tax benefits for the same property and activity, without any additional environmental or social benefit.

This outcome would be contrary to the statutory intent and structure of both Section 30C and Section 45Y. Section 30C is designed to incentivize the installation of alternative fuel vehicle refueling property, not the production of electricity. Section 45Y is designed to incentivize the production of electricity from clean energy resources.

Therefore, I urge the Treasury Department and the IRS to explicitly prohibit taxpayers from claiming both the Section 30C credit and the Section 45Y credit for the same property and activity. This could be accomplished by adding a rule that provides that no Section 45Y credit is allowed for electricity produced by or sold from any property for which a Section 30C credit is claimed or allowable. Alternatively, this could be accomplished by adding a rule that provides that any property for which a Section 30C credit is claimed or allowable is not a qualified energy storage device for purposes of Section 45Y. Either approach would prevent double-dipping and ensure that the credits are properly targeted and coordinated.

6. The Proposed Rules Should Include New Limits that Prohibit Eligibility of Charging Stations for Urban Electric Scooter Companies.

I strongly oppose the absurd inclusion of electric scooters and other low-speed, lightweight vehicles in the definition of "motor vehicles" eligible for the Section 30C credit. This expansive interpretation of the statute is contrary to the intent of Congress and the public interest.

First, Congress did not intend to subsidize electric scooters and similar vehicles when it enacted Section 30C. The focus was on vehicles that have a significant impact on reducing greenhouse gas emissions and petroleum consumption, such as passenger cars, trucks, buses, and motorcycles. Electric scooters and other low-speed, lightweight vehicles do not fit within this category, as they have minimal environmental benefits compared to conventional bicycles or walking, and they do not displace any meaningful amount of petroleum use. Moreover, electric scooters and similar vehicles are not subject to the same safety and emissions standards as other motor vehicles, and they do not require the same level of refueling infrastructure as other alternative fuel vehicles. Therefore, extending the Section 30C credit to electric scooters and similar vehicles is inconsistent with the statutory language and the legislative intent of the provision.

Second, subsidizing electric scooters and similar vehicles with the Section 30C credit is not in the public interest. Electric scooters and similar vehicles pose safety hazards and nuisances to pedestrians, cyclists, and drivers, as they often operate on sidewalks, bike lanes, and roads without proper regulation or enforcement. They also contribute to urban congestion, clutter, and vandalism, as they are often left unattended or improperly parked on public spaces.

For these reasons, we urge the Treasury Department and the IRS to exclude electric scooters and similar vehicles from the definition of "motor vehicles" eligible for the Section 30C credit. We suggest that the Treasury Department and the IRS adopt a more restrictive and precise definition of "motor vehicles" that is consistent with the statutory language and the legislative intent of Section 30C, and that reflects the policy objectives of the provision. We propose that the definition of "motor vehicles" for purposes of Section 30C should include criteria such as minimum speed capability, gross vehicle weighing, or a requirement that in order to qualify, the vehicle may never be driven on sidewalks.

This additional restriction or guidance is essential to ensuring that Section 30C does not become a windfall to the electric scooter industry.

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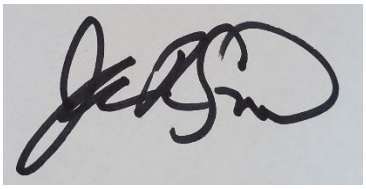
In summary, the Treasury and IRS should not finalize the Proposed Rules and should ensure that all rules and guidance related to Section 30C do not exceed the terms of the statute.

Respectfully submitted,



James R. Copland
Senior Fellow
Manhattan Institute for Policy Research