House taxwriters approve provisions narrowing eligibility for clean vehicle credit

The House Ways and Means Committee this week approved along party lines two bills intended to narrow the scope of new vehicles that qualify for the clean vehicle tax credit enacted in the Inflation Reduction Act. (P.L. 117-169). The measures were included among a total of six trade-related bills that cleared the panel during an April 17 mark-up.
URL: https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf

End Chinese Dominance of Electric Vehicles in America Act

The End Chinese Dominance of Electric Vehicles in America Act (H.R. 7980), sponsored by Rep. Carol Miller, R-W.Va., would address what Miller has described as "key loopholes" in Treasury Department rules outlining eligibility for the tax credit for new clean vehicles—commonly known as electric vehicles, or EVs.
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2024/04/H.R.-7980-Bill-Text.pdf
URL: https://miller.house.gov/media/press-releases/miller-introduces-end-chinese-dominance-electric-vehicles-america-act-2024

The bill, which passed Ways and Means by a vote of 22-18, is estimated by the Joint Committee on Taxation (JCT) staff to raise $660 million over 10 years.

According to a JCT description of current law, "[v]ehicles with any applicable critical minerals in the battery that are extracted, processed, or recycled by a foreign entity of concern that are placed in service after December 31, 2024 or vehicles with any components contained in the battery of the vehicle that are manufactured or assembled by a foreign entity of concern that are placed in service after December 31, 2023 do not qualify for the credit."
URL: https://www.jct.gov/publications/2024/jcx-11-24/

The bill passed this week, according to the JCT, would broaden that restriction by denying the credit to "vehicles that have any components contained in the drive battery or any material contained in such components that are extracted, processed, recycled, manufactured, or assembled by a prohibited foreign entity." A "prohibited foreign entity" includes foreign entities of concern, as well as certain specified individuals, businesses, and corporate officers with ties to those entities.

Miller said the bill is intended to align Treasury's definition of the term "foreign entity of concern"—which GOP taxwriters say is currently "more China-favorable"—with the definition used by the Commerce Department and will have the effect of preventing those who may have only unofficial ties to the Chinese Communist Party or other hostile governments from claiming the EV credit.

Stop Executive Overreach on Trade Agreements Act

The Stop Executive Overreach on Trade Agreements Act (H.R. 7983) which was approved by a vote of 25-16 at this week's mark-up, would ensure that vehicles meeting the critical minerals requirement for the EV tax

credit—which accounts for $3,750 of the maximum credit amount of $7,500—could include only such minerals from countries with which the US has a comprehensive trade agreement that has been ratified by Congress.
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2024/04/H.R.-7983-bill-text.pdf

The administration has negotiated an executive trade agreement with Japan strictly on critical minerals (and is seeking to negotiate similar agreements with other countries and trading blocs) that it has deemed sufficient to meet the current rule, but Republicans, led by bill sponsor Rep. Michelle Fischbach of Minnesota, argue that such agreements are "superficial" and "do not substantively enhance trade with the partner country or reduce US dependency on China for critical minerals."

H.R. 7983 would define "free trade agreement" as it applies to the EV tax credit as "an international agreement approved by Congress that eliminates duties and other restrictive regulations of commerce on substantially all the trade" between the US and one or more other countries. The bill would apply to vehicles placed in service after enactment of the legislation, and the JCT staff estimates it would provide for an additional $109 million in tax revenues.

Future prospects uncertain

With no Democratic support for five of the six bills marked up and approved by the Ways and Means Committee this week, it is unclear whether or how quickly any of these measures may go to the House floor for a vote. (The sole moment of bipartisanship at the mark-up came when five Democrats voted with Republicans in favor of a nontax bill requiring a study of forced labor in the Democratic Republic of Congo's cobalt mining industry.)

Republican leadership, which can lose only one GOP vote on partisan bills because of its current razor-thin majority, has struggled to pass legislation in recent months and has often had to resort to advancing bills under suspension of the rules, relying on Democratic support because of Republican hold-outs. With Democrats largely aligned against this latest set of Ways and Means Committee bills, any efforts to move these measures under a suspension vote—which requires a two-thirds majority for passage—might ultimately prove to be unsuccessful.

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