

House taxwriters OK measures to rescind EV credit regs, penalize universities, expand section 529 plans

The House Ways and Means Committee on July 9 passed along party lines a resolution of disapproval which, if passed by both chambers of Congress and signed by the president, would invalidate recently issued final regulations from the Treasury Department and Internal Revenue Service implementing the tax credit for clean vehicles—also known as electric vehicles or “EVs”—that was enacted under the Inflation Reduction Act of 2022 (P.L. 117-169).

URL: <https://www.federalregister.gov/public-inspection/2024-09094/clean-vehicle-credits-transfer-of-credits-critical-minerals-and-battery-components-and-foreign>

URL: <https://www.taxnotes.com/research/federal/legislative-documents/public-laws-and-legislative-history/inflation-reduction-act-of-2022-%28p.l.-117-169%29/7dybc>

The panel also approved—again along party lines—two GOP proposals that would impose tax and other financial penalties on colleges and universities that fail to address antisemitism on their campuses and a measure that would expand the benefits of tax-preferred section 529 education savings accounts.

Disapproving EV credit regs

The resolution disapproving the EV credit regulations (H.J.Res.148: text; Joint Committee on Taxation staff description; Ways and Means Committee summary) was sponsored by Republican taxwriter Carol Miller of West Virginia and cleared the committee by a vote of 25-14. It was introduced under the Congressional Review Act, which allows Congress to review and disapprove certain rules issued by federal agencies. The Congressional Review Act process also provides that a disapproval resolution requires only a simple majority vote for passage in the Senate rather than the three-fifths supermajority typically needed to overcome procedural hurdles in that chamber.

URL: <https://waysandmeans.house.gov/wp-content/uploads/2024/07/H.J.-Res.-148-Text.pdf>

URL: https://waysandmeans.house.gov/wp-content/uploads/2024/07/JCT-Description-of-H.J.Res._-148.pdf

URL: <https://waysandmeans.house.gov/wp-content/uploads/2024/07/HJ-Res-148-One-Pager.pdf>

If a disapproval resolution reaches the White House and gains the president’s signature, the underlying rule is treated as though it had never taken effect and cannot be reissued in substantially the same form unless specifically authorized in a subsequent law.

At a high level, the Inflation Reduction Act, the massive budget reconciliation package that moved through Congress in 2022 without any support from Republicans, provides that a taxpayer may claim a credit of up to \$7,500 for a new clean vehicle if, among other requirements, a minimum percentage of the value of the battery’s applicable critical minerals have been extracted or processed domestically or with free trade partners, or were recycled in North America, and a minimum percentage of the value of the battery’s components have been manufactured or assembled in North America. Additional limitations apply if a vehicle’s battery components are manufactured or assembled by a “foreign entity of concern” or if its battery contains critical minerals that were extracted, processed, or recycled by a foreign entity of concern. The credit

is not available for vehicles placed in service after December 31, 2032. (A detailed discussion of the EV credit and other clean energy tax provisions in the Inflation Reduction Act is available from Deloitte Tax LLP.)

[URL: https://www2.deloitte.com/us/en/pages/tax/articles/inflation-reduction-act-2022-clean-energy-incentives.html](https://www2.deloitte.com/us/en/pages/tax/articles/inflation-reduction-act-2022-clean-energy-incentives.html)

Congressional Republicans have long argued that the EV credit primarily benefits well-heeled taxpayers who can already afford to purchase an electric vehicle even without a tax subsidy. They also contend that proposed regulations and other Treasury Department guidance implementing the credit created various “loopholes” related to the sourcing of battery components that will allow those credits to flow to companies with ties to foreign entities of concern, including China. House GOP taxwriters raised some of these issues with Treasury Secretary Janet Yellen during an April 30 hearing to discuss the Biden administration’s fiscal year 2025 budget proposals. (For prior coverage, see *Tax News & Views*, Vol. 25, No. 16, May 3, 2024.) They also advanced two bills in April that are intended to narrow the scope of new vehicles that qualify for the credit and prevent any benefits from flowing to entities linked to China. (For prior coverage, see *Tax News & Views*, Vol. 25, No. 15, Apr. 19, 2024.)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240503_1.html](https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240503_1.html)

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Questions around congressional intent: In a statement at this week’s committee mark-up, Republican Carol Miller said that the final regulations, which were published on May 6, are “completely contrary to congressional intent.” She focused her ire specifically on a provision in the final regulations that provides that if a battery component or critical mineral used in EVs is currently hard to trace, it is considered “untraceable” and therefore is not subject to the restrictions that apply to foreign entities of concern.

“Treasury has written ‘traceability’ rules seemingly out of thin air, which circumvents the important foreign entity of concern language written into certain sections of the poorly developed [Inflation Reduction Act],” Miller said. “These traceability rules allow the administration to directly subsidize Chinese inputs for electric vehicles using American tax dollars, specifically against both the letter and the spirit of the law.”

Rep. Don Beyer, D-Va., countered that the regulations “strike the right balance between accelerating electrification of [the US] passenger vehicle fleet and making sure that American workers and manufacturers lead the global transition to EVs.” Rescinding the regulations, he said, would freeze US advances in EV technology and “cement Chinese dominance in the EV field for decades.”

Beyer also confirmed in an exchange with JCT Deputy Chief of Staff Robert P. Harvey, who attended the mark-up to discuss technical issues related to the legislation being considered, that under the final regulations the domestic content requirement for battery components is scheduled to ratchet up incrementally through 2027, and reach 100 percent after 2028.

“So whatever [benefit] is somehow leaking through to China is quickly, quickly diminishing,” Beyer said.

No revenue estimate yet: The JCT staff has indicated that it is currently unable to provide a revenue estimate for rescinding the EV regulations.

Next steps: It was unclear at press time exactly when House Republican leaders intend to bring up the resolution for a vote by the full chamber. The House will be in recess the week of July 15, after which it will be in session for only seven days before lawmakers adjourn for the month-long August recess. In an eventual floor vote, Republicans can expect to see at least one Democrat—Rep. Jared Golden of Maine, who is a co-sponsor of the resolution—join them in the “aye” column.

Across the Capitol, an identical measure (S.J.Res. 87) was introduced in the Senate in May by Energy Committee Chairman Joe Manchin of West Virginia, who recently switched his party affiliation from Democratic to Independent but still receives his committee assignments from the Democratic majority. That measure currently has five co-sponsors, including Democratic taxwriter Sherrod Brown of Ohio. It has been referred to the Finance Committee, although Chairman Ron Wyden, D-Ore., has shown no apparent interest in scheduling a mark-up, and Senate Majority Leader Charles Schumer, D-N.Y., appears unlikely to bring such a measure to the floor.

URL: <https://www.congress.gov/bill/118th-congress/senate-joint-resolution/87/text?s=3&r=1&q=%7B%22search%22%3A%22s.j.res.87%22%7D>

But even if a disapproval resolution somehow did manage to clear both the House and Senate, it would face an almost certain veto from President Biden, which could be overridden only by a two-thirds supermajority vote in both chambers, an outcome considered highly unlikely at this time.

Levies on colleges and universities, enhancements to ‘529 plans’

Also at this week’s mark-up, the panel approved along party lines two Republican-sponsored bills that, according to supporters, would use the tax code to penalize certain colleges and universities that do not adequately respond to antisemitism on their campuses. Democrats, for their part, countered that the two measures would do nothing to reduce antisemitic behavior and that the underlying problem would be better addressed by enforcing existing civil rights laws.

A separate proposal that would liberalize the rules for tax-preferred education savings accounts also passed with Republican-only votes. GOP taxwriters touted the legislation as a way to expand school choice for families and help prepare students to succeed in a changing US workforce, while Democrats countered that the measure primarily would sweeten a tax benefit that they say is skewed to higher-income households.

Modified excise tax on investment income of private colleges and universities: The Protecting American Students Act (H.R. 8913: text; JCT description; Ways and Means Committee summary), which is sponsored by GOP taxwriter Drew Ferguson of Georgia and cleared the panel by a vote of 24-13, would modify the current-law “endowment tax” on certain private colleges and universities to address what Ways and Means Committee Chairman Jason Smith, R-Mo., described as a “weak” response by some institutional leaders to recent on-campus protests related to the Israel-Hamas war and an accompanying spike in antisemitic incidents. Those protests, Smith contended, were fueled in part by certain faculty members who “emboldened students to take part in antisemitic activity and have themselves broken campus policies,” as well as certain “foreign influences,” including “some international students” who are in the US on temporary student visas.

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[URL: https://waysandmeans.house.gov/wp-content/uploads/2024/07/H.R.-8913-Protecting-American-Students-Act-One-Pager.pdf](https://waysandmeans.house.gov/wp-content/uploads/2024/07/H.R.-8913-Protecting-American-Students-Act-One-Pager.pdf)

Under the Tax Cuts and Jobs Act of 2017 (P.L. 115-97), a private college or university is subject to a 1.4 percent excise tax on its net investment income if it has at least 500 tuition-paying students (at least 50 percent of whom are in the United States) and has an aggregate fair market value of assets at the end of the previous taxable year (other than those used directly in carrying out its tax-exempt purpose) of at least \$500,000 per full-time student.

[URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf](https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf)

Ferguson’s legislation would adjust the asset-per-student calculation used in determining whether an institution is subject to the excise tax by limiting the definition of “student” to US citizens or nationals, US permanent residents, or individuals who can provide evidence from the Immigration and Naturalization Service that they are in the United States for other than a temporary purpose and intend to become a citizen or permanent resident. (The revised definition would be consistent with the one adopted in section 484(a)(5) of the Higher Education Act of 1965 (20 USC section 1091(a)(5).)

The measure also would modify the current-law Form 990 reporting requirements for institutions that are subject to the tax.

The Ways and Means Committee summary of Ferguson’s proposal notes that the endowment tax currently is imposed on “roughly 30 to 60 institutions” in any given year and that “roughly 10 to 12 additional schools” would be subject to the levy if the proposal were to become law. According to the summary, the proposal would “incentivize universities to either enroll more American students or spend more of their endowment funds on those students to avoid being subject to the endowment tax.”

The bill would be effective for taxable years beginning after December 31, 2024. The JCT staff estimates that it would increase federal receipts by \$273 million over 10 years.

Financial penalties for violating students’ civil rights: In a similar vein, the panel approved by a vote of 24-12 the University Accountability Act (H.R. 8914: text; JCT description; Ways and Means Committee summary), sponsored by Rep. Nicole Malliotakis, R-N.Y., which would levy a financial penalty on colleges and universities that have a civil judgment entered against them by a federal court for violating a student’s civil rights under Title VI of the Civil Rights Act. (The Ways and Means Committee summary of the proposal cites this title of the Civil Rights Act as “the primary avenue to hold colleges and universities accountable for violating the rights of Jewish students.”)

[URL: https://waysandmeans.house.gov/wp-content/uploads/2024/07/H.R.-8914-Bill-Text.pdf](https://waysandmeans.house.gov/wp-content/uploads/2024/07/H.R.-8914-Bill-Text.pdf)

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[URL: https://waysandmeans.house.gov/wp-content/uploads/2024/07/H.R.-8914-University-Accountability-Act-One-Pager-1.pdf](https://waysandmeans.house.gov/wp-content/uploads/2024/07/H.R.-8914-University-Accountability-Act-One-Pager-1.pdf)

Under the committee-approved bill, colleges and universities that are subject to such a judgment would be required to pay a fine of either 5 percent of the school's aggregate administrative compensation as reported on the school's Form 990 or \$100,000, whichever is greater. After three adjudicated civil rights violations by a college or university, the IRS would automatically be required to review the institution's tax-exempt status for revocation.

The proposal would be effective for determinations of civil rights violation made after the date of enactment and would increase federal receipts by less than \$500,000 over 10 years, according to the JCT staff.

Expanded section 529 plans: Turning to a longstanding GOP tax policy priority, the committee voted 23-13 to advance legislation aimed at increasing the range of benefits available under tax-preferred section 529 education savings accounts.

Current law allows taxpayers to take tax-free distributions from these accounts to cover certain specified costs related to enrolling in or attending an elementary or secondary public, private, or religious school—but not for home schooling expenses—and for post-secondary school expenses, including those for registered apprenticeship programs. Distributions from a section 529 plan are capped at \$10,000 a year per student.

The Education and Workforce Freedom Act (H.R. 8915: text; JCT description; Ways and Means Committee summary) sponsored by Rep. Kevin Hern, R-Okla., would expand the section 529 rules for elementary and secondary education costs to allow taxpayers to use these plans to cover expenses related to home schooling. It also would expand the current-law roster of eligible expenses to include those for curriculum and curricular materials, books or other instructional materials, online educational materials, tutoring or educational classes outside the home, testing fees, fees for dual enrollment in an institution of higher education, and educational therapies for students with disabilities.

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The legislation would modify the rules for post-secondary education costs by permitting account holders to take qualified distributions for expenses associated with obtaining or maintaining recognized post-secondary credentials and licenses for technical career training. These expenses would include tuition, fees, books, supplies, and equipment required for attendance at or enrollment in a recognized post-secondary credential program; fees for testing required to obtain a post-secondary credential; and fees for continuing education required to maintain a post-secondary credential.

These proposals, which would be effective upon enactment, would reduce federal receipts by an estimated \$177 million over 10 years, according to the JCT staff.

No likely path forward this year: Like the resolution of disapproval for the clean vehicle regulations, the three education-related measures approved at the Ways and Means mark-up do not appear to be on a fast track to enactment this year. Although they presumably could clear the House along party lines if brought up for floor

votes, they would have little chance of being considered in the Democratic-controlled Senate. Instead, they are more likely to serve as messaging bills that telegraph the types of policies that Republicans would put in place if they win control of the House, Senate, and White House in the upcoming presidential and congressional elections.

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