House approves measure narrowing eligibility for clean vehicle credit

The House of Representatives on September 12 approved by a largely party-line vote of 217-192 a Republican-sponsored bill intended to narrow the scope of new vehicles that qualify for the clean vehicle tax credit under section 30D that was enacted in the Inflation Reduction Act. (P.L. 117-169).
URL: https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf

Seven Democrats joined 210 Republicans in approving the End Chinese Dominance of Electric Vehicles in America Act (H.R. 7980: text; Joint Committee on Taxation staff description). No GOP lawmakers were in the "nay" column.
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2024/04/H.R.-7980-Bill-Text.pdf
URL: https://www.jct.gov/publications/2024/jcx-11-24/

End Chinese Dominance of Electric Vehicles in America Act

The House-approved measure, which was sponsored by Ways and Means Committee Republican Carol Miller of West Virginia, 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://miller.house.gov/media/press-releases/miller-introduces-end-chinese-dominance-electric-vehicles-america-act-2024

According to the JCT's 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."

Miller's bill, 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" would include foreign entities of concern, as well as certain specified individuals, businesses, and corporate officers with ties to those entities. The JCT staff estimates that the bill would raise $660 million over 10 years.

When the measure was marked up in the Ways and Means Committee in April, Miller stated that she was seeking to align Treasury's definition of the term "foreign entity of concern"—which GOP taxwriters have characterized as "China-favorable"—with the definition used by the Commerce Department and that her proposal would have the effect of preventing those who may have unofficial ties to the Chinese Communist Party or other hostile governments from claiming the EV credit.

It is unclear if the House-approved measure will be taken up in the Democratic-controlled Senate.

The Biden administration, for its part, expressed its opposition to H.R. 7980 in a statement of administration policy released on September 11, although it did not threaten a veto. The White House argued, among other things, that the bill "would add new, unclear, and unworkable restrictions to the Inflation Reduction Act's section 30D tax credit" and that it "is unnecessary in light of existing authorities and strong implementing rules." The statement also contended that the measure "would disrupt the market[;] threaten the more than $175 billion in investments made to date in the US electric vehicle, battery component, and critical minerals supply chains[;] raise prices for consumers[;] slow the shift of vehicle and battery supply chains away from foreign entities of concern in covered nations including China[;] and undermine US national security."
URL: https://www.whitehouse.gov/wp-content/uploads/2024/09/SAP-HR7980.pdf

Other EV-related measures in the wings: House Republican taxwriters also have queued up two other measures aimed at narrowing provisions in the current EV regulations that they say cede too much of the US's EV market to China and other foreign entities of concern.

The Stop Executive Overreach on Trade Agreements Act (H.R. 7983: text; JCT description) which is sponsored by taxwriter Michelle Fischbach, R-Minn., and was approved by the Ways and Means Committee along party lines in April (along with the just-passed House bill) 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. It also would define a "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. (For prior coverage, see *Tax News & Views*, Vol. 25, No. 15, April 19, 2024.)
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2024/04/H.R.-7983-bill-text.pdf
URL: https://www.jct.gov/publications/2024/jcx-10-24/
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240419_4.html

A broader proposal, a resolution of disapproval (H.J.Res.148: text; JCT description; Ways and Means Committee summary) sponsored by West Virginia's Carol Miller and approved by House taxwriters on a party-line vote in July, would, if cleared by both chambers and signed into law by President Biden, invalidate final regulations from the Treasury Department and Internal Revenue Service implementing the EV tax credit. 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. 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. (For prior coverage, see *Tax News & Views*, Vol. 25, No. 24, July 12, 2024.)
URL: https://waysandmeans.house.gov/wp-content/uploads/2024/07/H.J.-Res.-148-Text.pdf
URL: https://www.jct.gov/publications/2024/jcx-30-24/
URL: https://waysandmeans.house.gov/wp-content/uploads/2024/07/HJ-Res-148-One-Pager.pdf
URL: https://www.federalregister.gov/public-inspection/2024-09094/clean-vehicle-credits-transfer-of-credits-critical-minerals-and-battery-components-and-foreign

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240712_1.html

House Republican leaders have not yet announced plans for holding votes on either measure. Assuming the two proposals did clear the House, they likely would stall in the Senate. It's worth noting, though, that the Senate companion version of the resolution to rescind the EV regulations (S.J.Res.87) was introduced 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, and its roster of co-sponsors includes Finance Committee Democrat Sherrod Brown of Ohio.
URL: https://www.congress.gov/bill/118th-congress/senate-joint-resolution/87/text

Ways and Means OKs measures on 1099 reporting, charitable donations

In other House developments, the Ways and Means Committee this week approved almost entirely along party lines several GOP-sponsored bills that address 1099 reporting by third-party settlement organizations, the tax treatment of certain charitable donations, and other assorted tax issues.

1099 reporting thresholds: The Saving Gig Economy Taxpayers Act (H.R. 190: text; JCT description), sponsored by West Virginia GOP taxwriter Carol Miller, would repeal the more stringent thresholds that trigger Form 1099-K reporting ($600 in transactions with no floor on the number of annual transactions) that were imposed on third-party settlement organizations under the American Rescue Plan (P.L. 117-2) in 2021 and return them to their prior levels (a $20,000 transaction floor and at least 200 transactions annually).
URL: https://waysandmeans.house.gov/wp-content/uploads/2024/09/AINS-to-H.R.-190.pdf
URL: https://www.jct.gov/publications/2024/jcx-39-24/
URL: https://www.congress.gov/117/plaws/publ2/PLAW-117publ2.pdf

The current-law thresholds were originally scheduled to take effect for calendar years after 2021, but their implementation has been delayed as a result of two rounds of administrative relief (Notice 2023-10 and Notice 2023-74) from the Treasury Department and IRS.
URL: https://www.irs.gov/pub/irs-drop/n-2023-10.pdf
URL: https://www.irs.gov/pub/irs-drop/n-23-74.pdf

Miller's bill, which cleared the panel by a vote of 22-16, would be effective for returns for calendar years beginning after December 31, 2021. The JCT staff estimates the proposal would reduce federal receipts by $10 billion over 10 years.

Ways and Means Committee ranking member Richard Neal, D-Mass., said at the mark-up that Democrats were open to relaxing the thresholds enacted in the American Rescue Plan, but that reverting to prior-law levels was "irresponsible" and would "expand the tax gap even further."

Democratic taxwriter Dan Kildee of Michigan called for setting the threshold at $5,000 as he proposed in legislation (H.R. 3530) that he has sponsored with Rep. Chris Pappas, D-N.H.
URL: https://www.congress.gov/bill/118th-congress/house-bill/3530/text

Charitable contributions: Two other measures approved on party-line votes at the mark-up would create new incentives for contributions to certain tax-exempt organizations that promote workforce development and apprenticeship programs and organizations that provide scholarships for elementary and secondary education.

The USA Workforce Investment Act (H.R. 9461: text; JCT description), sponsored by GOP taxwriter Lloyd Smucker of Pennsylvania, would create a nonrefundable income tax credit for taxpayer contributions to a nonprofit workforce development or apprenticeship training organization. The credit allowed for a taxable year would be capped at the lesser of 25 percent of the taxpayer's tax liability and $150,000. A volume cap of $5 billion would apply for each of tax years 2025 through 2028 and would be reduced to zero for tax years after 2028. Certain eligibility limitations also would apply. The proposal would be effective for taxable years beginning after December 31, 2024, and was approved by a margin of 22-15 (JCT estimated 10-year revenue loss: $12.9 billion). Democrats, such as taxwriters Lloyd Doggett of Texas and Linda Sanchez of California, generally agreed with the intent of the legislation but questioned its proposed standards for what constitutes a qualified workforce development or apprenticeship training organization. According to Doggett, the measure as drafted would provide a credit for contributions to "get-rich, quick operations that are fly-by-night" but "discriminate against the best programs."
URL: https://waysandmeans.house.gov/wp-content/uploads/2024/09/H.R.-9461-Bill-Text.pdf
URL: https://www.jct.gov/publications/2024/jcx-40-24/

The Educational Choice for Children Act (H.R. 9462: text; JCT description), introduced by Ways and Means Committee member Adrian Smith, R-Neb., would provide tax credits (subject to a volume cap of $5 billion per year) for individuals and businesses that contribute to tax-exempt "scholarship granting organizations" that fund scholarship awards for private education expenses at elementary and secondary schools. The credit amount for a taxable year would be limited to the greater of 10 percent of a taxpayer's aggregate gross income or $5,000. The proposal generally would be effective upon enactment and passed by a vote of 23-16 (JCT estimated 10-year revenue loss: $19.8 billion). Ranking member Richard Neal argued that the measure would "[divert] funds from the public school system," and allow the federal government to create a system to fund private schools, "using the tax code as a conduit."
URL: https://waysandmeans.house.gov/wp-content/uploads/2024/09/H.R.-9462-Bill-Text.pdf
URL: https://www.jct.gov/publications/2024/jcx-41-24/

Other proposals: Other tax-related proposals approved at this week's mark-up would:

- Extend due dates for certain federal tax matters for hostages and individuals wrongfully detained abroad by providing that the period of detention is disregarded in determining deadlines, interest, and penalties, similar to the rules applicable to a person deployed in a combat zone (generally effective for taxable years ending after the date of enactment). The Stop Terror Financing and Tax Penalties on American Hostages Act (H.R. 9495: text, JCT description) also would terminate the tax-exempt status of designated terrorist-supporting organizations, effective for designations made after the date of enactment in taxable years ending after that date (JCT estimated 10-year revenue loss: negligible). The proposal was approved on a unanimous vote of 38-0, making it the only measure at the mark-up to win significant bipartisan support.

URL: https://waysandmeans.house.gov/wp-content/uploads/2024/09/H.R.-9495-Bill-Text.pdf
URL: https://www.jct.gov/publications/2024/jcx-37-24/

- Exempt less-than-lethal projectile devices or less-than-lethal shells or cartridges designed for use in a less-than-lethal projectile device from the firearms and ammunition excise tax as well as from certain nontax provisions in the National Firearms Act. The Law Enforcement Innovate to De-Escalate Act (H.R. 3269: text; JCT description) generally would be effective upon enactment (JCT estimated 10-year revenue loss: less than $500,000). It was approved by a vote of 21-15.
  URL: https://waysandmeans.house.gov/wp-content/uploads/2024/09/H.R.-3269-Bill-Text.pdf
  URL: https://www.jct.gov/publications/2024/jcx-38-24/

Changes to Ways and Means Democratic roster

Also this week, House Minority Leader Hakeem Jeffries, D-N.Y., announced that Rep. Steven Horsford, D-Nev., has rejoined the Ways and Means Committee to fill the vacancy created by the recent death of long-time Democratic taxwriter Bill Pascrell of New Jersey.

Horsford was originally appointed to the panel in 2019 after Democrats won the House majority in the 2018 midterm elections; however, he lost that post in 2023 after the Republicans reclaimed the House in the 2022 midterms and several Democratic committee slots were eliminated to reflect the new party ratios in the chamber. Democrats Jimmy Gomez of California, and Stacey Plaskett of the US Virgin Islands also were removed from the committee in 2023 as part of that process. Gomez returned to the panel earlier this year to replace Rep. Brian Higgins, D-N.Y., who resigned from Congress on February 2.

In a related development, Ways and Means Committee ranking member Richard Neal announced that California Democratic taxwriter Linda Sanchez has assumed Pascrell's role as ranking member of the panel's Oversight Subcommittee for the remainder of the 118th Congress. The move makes her the first woman to serve as the top Democrat on a Ways and Means subcommittee.
URL: https://democrats-waysandmeans.house.gov/media-center/press-releases/neal-celebrates-sanchez-breaking-glass-ceiling-ways-and-means-democrats

Rep. Pascrell, who died on August 21, was first elected to Congress in 1996 and had served on Ways and Means since 2007. Ranking member Neal paid tribute to him in floor remarks delivered on September 10.
URL: https://democrats-waysandmeans.house.gov/media-center/press-releases/neal-floor-remarks-commemorating-life-and-legacy-late-bill-pascrell

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