December 24, 2024

Via Electronic Delivery at www.regulations.gov

Douglass W. O'Donnell
Deputy Commissioner
Internal Revenue Service
Room 5203, P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

Re: Proposed rule on "Energy Efficient Home Improvement Credit," Docket No. REG-118264-24 *or RIN* 1545-BR27

Dear Deputy Director O'Donnell:

I appreciate this opportunity to respond to the Internal Revenue Service (the "Agency") and Treasury Notice of Proposed Rulemaking seeking information from consumer groups and the public regarding its proposed rule on Energy Efficient Home Improvement Credit.

Background

The Inflation Reduction Act of 2022 (IRA) modified and extended the existing energy home improvement credit for certain property placed into services through December 31, 2032. Under IRA, individual taxpayers may qualify for a tax credit up to $3,2000 for "qualified" energy-efficient improvements equal to up to 30% of qualified expenses—encompassing qualified energy efficiency improvements "placed in service" during such taxable year, residential property expenditures, and home energy audits. The improvements include exterior doors, exterior windows and skylights, electric or natural gas heat pump water heaters, and certain biomass stove or boilers.[1] Beginning in 2025, each item of qualifying property must be produced by a "qualified manufacturer" with the PIN for the item reported on the individual taxpayer's tax return.[2] The proposed regulation would "provide rules for manufacturers of specified property to register to be qualified manufacturers."

1. **The Agency arbitrarily and capriciously applies an alternative definition of "placed in service" for receiving the tax benefit.**

The IRA provides a tax credit for a portion of qualified expenses related to energy-efficient improvements "placed in service" during a taxable year. The Agency proposes that the date of "placed in service" be the date the equipment "is placed in a condition or state of readiness and availability for its specifically designed function" rather than mere possession of the equipment

[1] 26 U.S.C. 7805, Section 1.25C(c)(3)(B) and (C).
[2] 26 U.S.C. 7805, Section 1.25C(b).

by the taxpayer.[3] This is at odds relating to "clean vehicles" defining "placed into service" as simple possession. Although the mere purchase of equipment may reasonably not be deemed as "placed in service," the proposed two-part conditioned definitions of (1) being "placed in a condition or state of readiness" and (2) "availability for its specifically designed function" adds needless complexity for taxpayers in determining whether they qualify for the tax credit.

Simple physical possession of the purchased of the "specified property" should be deemed as "placed in service" of the taxpayer. This coincides with the definition applicable to electric vehicles ("EVs").[4] A taxpayer may receive the applicable tax benefit for the EV even he chooses not to drive the EV at the time of delivery, does not have the requisite equipment to charge the vehicle at home, and may not live in an area with an accessible or functioning charging station.

Although the tax credits provided by the IRA are inefficient and wasteful, the Agency's unique redefinition of "placed in service" for "specified equipment" under the IRA is arbitrary and capricious.

2. **The Agency arbitrarily and capriciously imposes quarterly filing requirements on "qualified manufacturers."**

IRA mandates manufacturers provide a product identification number (PIN) on "specified property" purchased by taxpayers claiming the tax credit.[5] The IRA also authorizes the Agency to enter into written agreements between the Agency and "qualified manufacturers" to provide periodic information to the Agency related to the "specified property" purchased by taxpayers.[6] However, the Agency arbitrarily and capriciously proposes requiring qualified manufacturers to submit quarterly filings to the Agency regarding each item manufactured for which a PIN is assigned—specifically the month and year of manufacture. This requirement for quarterly filings goes beyond the explicit requirements of the IRA.

The Agency fails to provide a rational basis for specifying quarterly filings-- rather than on a semiannual or annual basis—other than conclusory determining that "annual QM Reports would not be frequent enough to give the IRS time to address errors and to effectively administer the section 25C credit."[7] At minimum, the Agency should consider a semiannual filing requirement. Imposing a quarterly filing requirement on qualified manufacturers is arbitrary and capricious because it is more expensive to file quarterly reports than semiannual or annual. Failure to justify this additional cost makes the quarterly reports requirement arbitrary.

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[3] Proposed rule, Energy Efficient Home Improvement Credit, p. 85103. https://www.govinfo.gov/content/pkg/FR-2024-10-25/pdf/2024-24110.pdf

[4] 28 U.S.C. 7805, Sections 1.25E-1(b)(10) and 1.30(D)-2(b)(36).

[5] The IRA delineates "specified property" based on meeting certain ratings provided by the Consortium for Energy Efficiency, Energy Star, and the National Electric Code.

[6] 28 U.S.C. 7805, Section 1.25C(h)(3)C).

[7] Proposed rule, p. 85110. https://www.govinfo.gov/content/pkg/FR-2024-10-25/pdf/2024-24110.pdf

Sincerely,

Joel Griffith