118TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
118–595

PROVIDING FOR CONGRESSIONAL DISAPPROVAL UNDER CHAPTER 8 OF TITLE 5, UNITED STATES CODE, OF THE RULE SUBMITTED BY THE DEPARTMENT OF THE TREASURY RELATING TO "CLEAN VEHICLE CREDITS UNDER SECTIONS 25E AND 30D; TRANSFER OF CREDITS; CRITICAL MINERALS AND BATTERY COMPONENTS; FOREIGN ENTITIES OF CONCERN"

JULY 18, 2024.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SMITH of Missouri, from the Committee on Ways and Means, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.J. Res. 148]

The Committee on Ways and Means, to whom was referred the joint resolution (H.J. Res. 148) providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of the Treasury relating to "Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern", having considered the same, reports favorably thereon without amendment and recommends that the joint resolution do pass.

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I. SUMMARY AND BACKGROUND

A. Purpose and Summary

The purpose of H.J. Res. 148 is to provide for Congressional disapproval of the rule submitted by the Department of the Treasury relating to "Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern."

Under H.J. Res. 148, the Biden Administration's China favorable electric vehicle (EV) regulations from the Inflation Reduction Act (IRA) would be voided, including the new rules promulgated in the final regulations as well as previously proposed regulations that have been addressed by the legislation marked-up in the Ways and Means Committee.

If the Joint Resolution is approved by both houses of Congress and signed by the President the rule at issue cannot go into effect or continue in effect and the Administration would have to re-write regulations in a substantially different manner.

B. Background and Need for Legislation

The Inflation Reduction Act created generous new tax subsidies for the manufacturing and purchase of EVs at an enormous cost to taxpayers.

Bipartisan lawmakers have called on the Biden Administration to craft implementing regulations that prevent those subsidies from going to foreign entities of concern (FEOC), like those with ties to China or other adversaries, as originally called for in the IRA.

In April and December of 2023, the Treasury Department issued proposed regulations for the IRA EV Credits. Pushed by radical environmentalists and some EV producers, the Biden Administration wrote lenient FEOC rules for the IRA EV tax provisions which allow American tax dollars to flow to China.

Under the IRA, EVs are ineligible for a tax subsidy if they contain battery components or critical minerals sourced from an FEOC. This follows a similar restriction on semiconductor grants included in the Creating Helpful Incentives to Produce Semiconductors (CHIPS) and Science Act signed by President Biden.

In September 2023, the Commerce Department issued rules under the CHIPS Act that defined an FEOC as follows: 25 percent or more of the entity's voting interest, or board seats, or equity interest is held directly or indirectly by the government of a country of concern (China, Russia, North Korea, or Iran) or its officials, or by any person that is a citizen, national, or resident of such country.

In December 2023, Treasury issued similar FEOC rules for the EV tax subsidies but opted to make their version more China-favorable than the Commerce Department rule. Treasury excluded "any person that is a citizen, national, or resident"—so an entity owned by a wealthy foreign national could benefit from the EV subsidies as long as his or her ties to the Chinese Communist Party or other hostile government were unofficial.

Treasury also defined "battery component" very favorably to Chinese manufacturers, who can produce all materials and parts upstream of the battery component and still remain eligible to benefit from the EV tax subsidies.

The IRA requires that critical minerals in electric vehicle batteries be sourced domestically or from a Free Trade Agreement (FTA) partner to receive half of the $7,500 tax credit. "Free Trade Agreement" is a well understood term that refers to comprehensive trade agreements such as the U.S.-Mexico-Canada Agreement (USMCA), the U.S.-Australia FTA, the U.S.-Chile FTA, and others that Congress has approved. Finding their own law requirements too constraining, and unwilling to allow for critical mineral production here in the U.S., the Biden administration in these regulations is usurping Congress by pretending a "Critical Minerals Agreement" with Japan was an FTA to qualify under the IRA. Unlike FTAs approved by Congress, Critical Mineral Agreements are superficial executive agreements that do not substantively enhance trade with the partner country or reduce U.S. dependency on China for critical minerals.

On May 6, 2024, the Biden Treasury Department finalized the full EV regulation package with an additional rule that is supposed to honor the language of the law by making EVs ineligible for a tax subsidy if they contain battery components or critical minerals sourced from an FEOC, including the Chinese Communist Party (CCP). Unfortunately, as crafted, the rule will allow certain EV and battery component inputs directly sourced from the CCP to skirt this restriction and still be eligible to receive U.S. taxpayer funded subsidies from the IRA.

The final IRA EV rule claims that if an input (e.g. battery or critical mineral used in EVs) is currently hard to trace, it is considered "non-traceable" and is not subject to the FEOC restriction. Specifically, the Biden Administration classified graphite as "non-traceable," despite North American graphite producers asserting that tracing graphite is highly feasible, reliable, and effective. Graphite makes up a significant chunk of the minerals in an electric car's battery, but its supply chain is heavily dominated by China.

Some of the loopholes created in the regulations can be addressed by legislation, like the Ways and Means Committee did in April 2024 by passing legislation to reverse the Biden Administration's rule, with the End Chinese Dominance of Electric Vehicles in America Act and the Stop Executive Overreach on Trade Agreements Act. Some of the regulatory overreach was not authorized in the legislation and conflicts with what is plainly written in law—

that any input sourced from an FEOC would make a vehicle ineligible for the subsidy. This Joint Resolution of Disapproval is needed to protect Congressional authority and prevent these regulations from continuing to be in effect.

C. Legislative History

Background

H.J. Res. 148 was introduced on May 16, 2024, and was referred to the Committee on Ways and Means.

Committee Hearings

On April 19, 2023, the Committee held a Hearing on the U.S. Tax Code Subsidizing Green Corporate Handouts and the Chinese Communist Party.

On April 11, 2024, the Committee held a Hearing on Expanding on the Success of the 2017 Tax Relief to Help Hardworking Americans.

Committee Action

The Committee on Ways and Means marked up H.J. Res. 148, the joint resolution providing for Congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of the Treasury relating to "Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern," on July 9, 2024, and ordered the resolution favorably reported (with a quorum being present).

D. Legislative History

Pursuant to clause 3(c)(6) of rule XIII, the following hearings were used to develop and consider H.J. Res. 148:

On April 19, 2023, the Committee held a Hearing on the U.S. Tax Code Subsidizing Green Corporate Handouts and the Chinese Communist Party.

On April 11, 2024, the Committee held a Hearing on Expanding on the Success of the 2017 Tax Relief to Help Hardworking Americans.

II. EXPLANATION OF THE RESOLUTION

A. Joint Resolution of Disapproval (Secs. 30D and 25E of the Internal Revenue Code and Secs. 801–808 of Title 5 of the United States Code)

PRESENT LAW

1. The clean vehicle credit (sec. 30D)

In general

Present law allows a credit for each new clean vehicle placed in service (the "CV credit"). A new clean vehicle is a motor vehicle the original use of which commences with the taxpayer, is acquired for use or lease by the taxpayer and not for resale, is made by a qualified manufacturer,[1] has a gross vehicle weight rating of less than 14,000 pounds, is treated as a motor vehicle for purposes of title II of the Clean Air Act, and is propelled to a significant extent by an electric motor drawing electricity from a battery (1) with at least seven kilowatt-hours of capacity and (2) which is capable of being recharged from an external source of electricity.[2] A new clean vehicle must have final assembly occur within North America.[3] The person who sells the vehicle must provide a report to the taxpayer and Secretary of the Treasury (the "Secretary") that includes the name and taxpayer identification number of the taxpayer, the vehicle identification number of the vehicle, the battery capacity of the vehicle, verification that original use of the vehicle commences with the taxpayer, and the maximum credit allowable to the taxpayer with respect to the vehicle.[4]

New qualified fuel cell motor vehicles which have final assembly within North America and for which sellers provide a report, as described above, are new clean vehicles for purposes of the credit.[5] A new qualified fuel cell motor vehicle is a motor vehicle propelled by power derived from one or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel stored on board the vehicle and which has received certain emissions-standard certification.[6]

A vehicle 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 a vehicle 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 does not qualify for the credit.[7]

A foreign entity of concern[8] is a foreign entity that is (1) designated as a foreign terrorist organization by the Secretary of State; (2) included on the list of specially designated nationals and blocked persons maintained by the Office of Foreign Assets Control of the Department of the Treasury ("SDN list"); (3) owned by, controlled by, or subject to the jurisdiction or direction of the government of a covered nation;[9] (4) alleged by the Attorney General to have been involved in activities for which a conviction was obtained under certain laws;[10] or (5) determined by the Secretary of Energy, in consultation with the Secretary of Defense and the Director of National Intelligence, to be engaged in unauthorized conduct that

[1] A qualified manufacturer must be a manufacturer as defined in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. sec. 7521 *et seq.*) and must provide periodic written reports to the Secretary which include vehicle identification numbers. Sec. 30D(d)(3). Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended.

[2] Sec. 30D(d)(1).

[3] Sec. 30D(d)(1)(G).

[4] Sec. 30D(d)(1)(H).

[5] Sec. 30D(d)(6).

[6] As defined in section 30B(b)(3).

[7] Sec. 30D(d)(7). Treasury and the U.S. Department of Energy have released final regulations on excluded entities for the clean vehicle credit and foreign entities of concern. See Notice of Final Rulemaking, 89 Fed. Reg. 33706, May 6, 2024, and Notice of Final Rulemaking, 89 Fed. Reg. 37079, May 6, 2024, respectively.

[8] As defined in 42 U.S.C. sec. 18741(a)(5).

[9] 10 U.S.C. sec. 4872(d). Covered nation means the Democratic People's Republic of North Korea, the People's Republic of China, the Russian Federation, and the Islamic Republic of Iran.

[10] 42 U.S.C. sec. 18741(a)(5)(D).

is detrimental to the national security or foreign policy of the United States.

CV credit amount

A new clean vehicle is eligible for a maximum credit of up to $7,500 if certain requirements are met. One $3,750 amount is allowed if a critical minerals requirement for the battery is met.[11] Another $3,750 amount is allowed if a battery components requirement is met.[12]

Critical minerals requirement

To satisfy the critical minerals requirement, a new clean vehicle's battery (from which the electric motor draws electricity) must have a percentage of the value of applicable critical minerals[13] that were (1) extracted or processed in the United States or a country that has a free trade agreement[14] with the United States or (2) recycled in North America, which is equal to or greater than an applicable percentage.[15]

For this purpose, the applicable percentage is 40 percent for a vehicle placed in service before January 1, 2024. The applicable percentage is 50 percent for a vehicle placed in service during calendar year 2024, 60 percent for 2025, 70 percent for 2026, and 80 percent after 2026.[16]

Battery components requirement

To satisfy the battery components requirement, a new clean vehicle's battery (from which the electric motor draws electricity) must have a percentage of the value of components that were manufactured or assembled in North America equal to or greater than an applicable percentage.[17]

For this purpose the applicable percentage is 50 percent for a vehicle placed in service before January 1, 2024. The applicable percentage is 60 percent for a vehicle placed in service during calendar year 2024 or 2025, 70 percent for 2026, 80 percent for 2027, 90 percent for 2028, and 100 percent after 2028.[18]

Vehicle price and AGI limitations

The manufacturer's suggested retail price ("MSRP") of a new clean vehicle purchased by the taxpayer may not exceed certain limitations. That is, the credit amount is $0 if the MSRP for the vehicle exceeds the applicable limitation. This limitation is $80,000 in the case of a van, sport utility vehicle, or pickup truck, and $55,000 in the case of any other vehicle. The Secretary is directed to release regulations or guidance to characterize vehicles into the appropriate category by applying rules similar to those employed

[11] Sec. 30D(b)(2).
[12] Sec. 30D(b)(3).
[13] Critical minerals as defined in sec. 45X(c)(6).
[14] Treasury has released final regulations on the clean vehicle credit which include interpreting the term free trade agreement. See Notice of Final Rulemaking, 89 Fed. Reg. 37079, May 6, 2024.
[15] Sec. 30D(e)(1)(A).
[16] Sec. 30D(e)(1)(B).
[17] Sec. 30D(e)(2)(A).
[18] Sec. 30D(e)(2)(B).

by the Environmental Protection Agency ("EPA") and the Department of Energy to determine vehicle class and size.[19]

Additionally, no credit is allowed if the taxpayer's income exceeds $300,000 in the case of a joint return or surviving spouse, $225,000 in the case of a head of household, or $150,000 in the case of any other taxpayer.[20] For purposes of this limitation, the taxpayer's income is the lesser of modified adjusted gross income ("AGI") of the current taxable year or modified AGI of the preceding taxable year.[21]

Transfer of credit

A taxpayer who has purchased or leased a vehicle may elect to transfer the credit to an eligible entity, subject to regulations or guidance the Secretary deems necessary.[22] The eligible entity is then treated as the taxpayer with respect to the credit.[23] The Secretary is directed to establish a program to provide advance payments of these credit amounts to eligible entities.[24] An election to transfer the credit must be made on or before the date of vehicle purchase.[25]

An eligible entity is a dealer[26] which meets the following requirements: First, the dealer must be registered with the Secretary. Second, prior to the election of transfer, the dealer must disclose information to the buyer on the MSRP price of the vehicle, value of the credit or other incentives available, and the amount provided by the dealer as a condition of an election to transfer. Third, the dealer must pay the taxpayer for the amount of the credit allowable.[27] Finally, the dealer must ensure that the availability or use of any other available manufacturer or dealer incentive does not limit the ability of the taxpayer to make an election and that the election will not limit the value or use of any such incentive.[28] The Secretary may revoke the registration of dealers that fail to comply with these requirements.[29]

The payment made by dealers to buyers in connection with a credit transfer election is not includable in the gross income of the taxpayer and is not deductible to the dealer.[30]

If a taxpayer that does not meet the AGI requirements for the credit elects to transfer a credit and receives a payment in connection with such credit transfer, the tax liability of such taxpayer is increased by the amount of such payment.[31]

[19] Sec. 30D(f)(11). Treasury has released final regulations on the clean vehicle credit which include the determination of vehicle classifications. See Notice of Final Rulemaking, 89 Fed. Reg. 37079, May 6, 2024.
[20] Sec. 30D(f)(10).
[21] "Modified AGI" is AGI increased by any amount excluded from gross income under section 911, 931, or 933. Sec. 30D(f)(10)(C).
[22] Treasury has released final regulations on the transfer of clean vehicle credits. See Notice of Final Rulemaking, 89 Fed. Reg. 37079, May 6, 2024.
[23] Sec. 30D(g)(1).
[24] Sec. 30D(g)(7).
[25] Sec. 30D(g)(3).
[26] A dealer is a person licensed by a State, territory of the United States, Indian tribal government, or Alaska Native Corporation to engage in the sale of vehicles. Sec. 30D(g)(8).
[27] The payment may be in cash or in the form of a partial down payment for the purchase of the vehicle.
[28] Sec. 30D(g)(2).
[29] Sec. 30D(g)(4).
[30] Sec. 30D(g)(5).
[31] Sec. 30D(g)(10).

Other rules

A vehicle that is predominantly used outside the United States does not qualify for the credit.[32] A vehicle must meet certain emissions and safety standards in order to qualify for the credit.[33]

The basis of any qualified vehicle is reduced by the amount of the credit.[34] The portion of the credit attributable to vehicles of a character subject to an allowance for depreciation is treated as part of the general business credit; the nonbusiness portion of the credit is allowable to the extent of the excess of the regular tax and the alternative minimum tax (reduced by certain other credits) for the taxable year.[35]

Only one credit is allowed for each vehicle and a taxpayer must include the vehicle identification number of the vehicle on a tax return to claim the credit.[36]

Expiration

No credit is allowed for any vehicle placed in service after December 31, 2032.[37]

2. Previously-owned clean vehicles (sec. 25E)

In general

Present law allows a credit for previously-owned clean vehicle placed in service by a qualified buyer (the "previously-owned CV credit"). A previously-owned clean vehicle is a motor vehicle with a model year at least two years earlier than the calendar year in which the taxpayer acquires the vehicle, the original use of which commences with a person other than the taxpayer, which has a gross vehicle weight rating of less than 14,000 pounds,[38] and which is acquired by the taxpayer in a qualified sale.

A qualified sale is a sale by a dealer[39] that is the first transfer since the date of enactment of section 25E (August 16, 2022)[40] to a qualified buyer other than the person with whom the original use of such vehicle commenced.[41] A qualified sale does not include a transfer to a qualified buyer made after the vehicle has been used and owned by a person other than the person with whom the original use of such vehicle commenced, even if such use and ownership was not by a qualified buyer.

Additionally, a previously-owned clean vehicle must be an electric vehicle or a fuel cell vehicle that satisfies certain criteria. Specifically, a previously-owned clean vehicle must also either (1) be propelled to a significant extent by an electric motor drawing electricity from a battery (a) with at least seven kilowatt-hours of capacity and (b) which is capable of being recharged from an external source of electricity, made by a qualified manufacturer, treated as a motor vehicle for purposes of title II of the Clean Air Act, and

[32] Sec. 30D(f)(4).
[33] Sec. 30D(f)(7).
[34] Sec. 30D(f)(1).
[35] Sec. 30D(c).
[36] Sec. 30D(f)(8) and (9).
[37] Sec. 30D(h).
[38] Sec. 25E(c)(1).
[39] A dealer is a person licensed by a State, territory of the United States, Indian tribal government, or Alaska Native Corporation to engage in the sale of vehicles. Sec. 30D(g)(8).
[40] The date of enactment of Pub. L. No. 117–169.
[41] Sec. 25E(c)(2).

with respect to which the person who sells the vehicle provide a report to the taxpayer and Secretary that includes the name and taxpayer identification number of the taxpayer, the vehicle identification number of the vehicle, the battery capacity of the vehicle, and the maximum credit allowable to the taxpayer with respect to the vehicle;[42] or (2) be propelled by power derived from one or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel stored on board the vehicle and which has received certain emissions-standard certification.[43]

A qualified buyer is an individual who purchases a vehicle for use and not resale, who cannot be claimed as a dependent, and during the three-year period prior to such purchase, has not made any purchases for which a previously-owned CV credit was claimed.

Previously-owned CV credit amount

The amount of the credit is the lesser of (1) $4,000 or (2) 30 percent of the sale price of the vehicle.[44]

The sale price of a previously-owned clean vehicle purchased by the taxpayer may not exceed $25,000.[45] That is, the credit amount is $0 if the sale price for the vehicle exceeds this amount.

Additionally, no credit is allowed if the taxpayer's income exceeds $150,000 in the case of a joint return or surviving spouse, $112,500 in the case of a head of household, or $75,000 in the case of any other taxpayer.[46] For purposes of this limitation, the taxpayer's income is the lesser of modified AGI of the current taxable year or modified AGI of the preceding taxable year.[47]

Other rules

In general, the credit is available to the vehicle owner, including the lessor of a vehicle subject to lease. A vehicle must be used predominantly in the United States to qualify for the credit and the basis of any qualified vehicle is reduced by the amount of the credit.[48] A vehicle must meet certain emissions and safety standards in order to qualify for the credit.[49]

Only one credit is allowed for each vehicle and a taxpayer must include the vehicle identification number of the vehicle on a tax return to claim the credit.[50]

Transfer of credit

A taxpayer may elect to transfer the credit to an eligible entity under rules similar to those for the transfer of the clean vehicle credit.[51] Those rules are explained in the description of the CV credit above.

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[42] Sec. 25E(c)(1)(D)(i).
[43] Sec. 25E(c)(1)(D)(ii). Fuel cell vehicles must satisfy the requirements of section 30B(b)(3)(A) and (B).
[44] Sec. 25E(a).
[45] Sec. 25E(c)(2)(B).
[46] Sec. 25E(b).
[47] Modified AGI is AGI increased by any amount excluded from gross income under section 911, 931, or 933. Sec. 25E(b)(3).
[48] Secs. 25E(e) and 30D(f)(1) and (4).
[49] Secs. 25E(e) and 30D(f)(7).
[50] Sec. 25E(d).
[51] Sec. 25E(f).

Expiration

No credit is allowed for any vehicle placed in service after December 31, 2032.[52]

3. Clean vehicle regulations

The Department of the Treasury has released final regulations related to the CV credit (sec. 30D) and the previously-owned CV credit (sec. 25E) ("clean vehicle regulations").[53]

The clean vehicle regulations clarify definitions with respect to the clean vehicle credits, including the meaning of the terms battery components, final assembly, and free trade agreement. The regulations also include rules the Secretary has deemed necessary for recordkeeping and information reporting in order to administer the critical mineral and battery component requirements of the clean vehicle credit, as required by statute.[54] Additionally, the regulations provide guidance for the transfer of credit amounts from taxpayers that acquire qualifying clean vehicles to dealers that are eligible entities. Finally, the regulations provide guidance for how dealers can become eligible entities and receive advance payments of clean vehicle credits and rules for recapture of the credits.

4. The Congressional Review Act

Under the Congressional Review Act (the "CRA"),[55] Congress may overturn certain Federal agency actions by passing a joint resolution of disapproval. Under a CRA joint resolution of disapproval, if a disapproved rule has not yet gone into effect, the rule will not take effect;[56] if a disapproved rule has already gone into effect, the rule shall be treated as though it had never taken effect.[57] Rules that do not take effect or do not continue due to a CRA joint resolution of disapproval may not be reissued in substantially the same form, and new rules that are substantially the same as disapproved rules may not be issued absent a change in law.[58]

REASONS FOR CHANGE

The Committee believes that Treasury's final clean vehicle regulations are in conflict with both the language of the statute and the Congressional intent of the provision. In particular, the Committee is concerned that the transition relief provided for certain "impracticable-to-trace" battery materials may allow battery materials extracted, processed, or recycled by a foreign entity of concern to be present in credit-eligible clean vehicles that are placed in service after December 31, 2024. For this reason, the Committee disapproves of the rule to ensure that the final rule is treated as if it never went into effect and that it cannot be reissued in substantially the same form.

[52] Sec. 25E(g).
[53] 89 Fed. Reg. 37706, May 6, 2024.
[54] Sec. 30D(e)(3).
[55] 5 U.S.C. secs. 801–808.
[56] 5 U.S.C. sec. 801(b)(1).
[57] 5 U.S.C. sec. 801(f).
[58] 5 U.S.C. sec. 801(b)(2).

EXPLANATION OF PROVISION

H.J. Res. 148 is a joint resolution disapproving of the rule submitted by the Department of the Treasury relating to "Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern." Under the CRA, the clean vehicle regulations go out of effect immediately and are treated as though they had never taken effect.

EFFECTIVE DATE

The joint resolution is effective on date of enactment.

III. VOTE OF THE COMMITTEE

Pursuant to clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of H.J. Res. 148, a joint resolution disapproving of the rule submitted by the Department of the Treasury relating to "Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern," on July 9, 2024.

The joint resolution, H.J. Res. 148, was ordered favorably reported to the House of Representatives by a recorded vote (with a quorum being present).

In compliance with the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means during the markup consideration of H.J. Res. 148, Disapproving the rule submitted by the Department of the Treasury related to "Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern" on July 9, 2024.

H.J. Res. 148 was ordered favorably reported to the House of Representatives as amended by a roll call vote of 25 yeas to 14 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Smith (MO)	X	....	....	Mr. Neal	....	X	....
Mr. Buchanan	X	....	....	Mr. Doggett	....	X	....
Mr. Smith (NE)	X	....	....	Mr. Thompson	....	X	....
Mr. Kelly	X	....	....	Mr. Larson	....	X	....
Mr. Schweikert	X	....	....	Mr. Blumenauer	....	X	....
Mr. LaHood	X	....	....	Mr. Pascrell	....	X	....
Dr. Wenstrup	X	....	....	Mr. Davis	....	....	....
Mr. Arrington	X	....	....	Ms. Sánchez	....	....	....
Dr. Ferguson	X	....	....	Ms. Sewell	....	X	....
Mr. Estes	X	....	....	Ms. DelBene	....	X	....
Mr. Smucker	X	....	....	Ms. Chu	....	X	....
Mr. Hern	X	....	....	Ms. Moore	....	....	....
Ms. Miller	X	....	....	Mr. Kildee	....	X	....
Dr. Murphy	X	....	....	Mr. Beyer	....	X	....
Mr. Kustoff	X	....	....	Mr. Evans	....	....	....
Mr. Fitzpatrick	X	....	....	Mr. Schneider	....	X	....
Mr. Steube	X	....	....	Mr. Panetta	....	X	....
Ms. Tenney	X	....	....	Mr. Gomez	....	X	....
Mrs. Fischbach	X	....	....				
Mr. Moore	X	....	....				
Mrs. Steel	X	....	....				
Ms. Van Duyne	X	....	....				
Mr. Feenstra	X	....	....				
Ms. Malliotakis	X	....	....				

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Carey	X	....	....				

IV. BUDGET EFFECTS OF THE RESOLUTION

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the resolution, H.J. Res 148 as reported.

An estimate of the effect of the joint resolution on Federal fiscal year budget receipts is presently unavailable.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the resolution involves no new or increased budget authority.

The Committee has requested but not received from the Director of the Congressional Budget Office, a statement as to whether this resolution contains an increase of decrease in revenues or tax expenditures.

C. Cost Estimate Prepared by the Congressional Budget Office

The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings and recommendations that are reflected in this report.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the resolution does not authorize funding, so no statement of general performance goals and objectives is required.

C. Applicability of House Rule XXI, Clause 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that “A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present.” The Committee has carefully reviewed the resolution, and states that the resolution does not provide such a Federal income tax rate increase.

D. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the resolution does not contain Federal mandates on the private sector. The Committee has determined that the resolution does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

E. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the resolution, and states that the resolution does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

F. Duplication of Federal Programs

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that the resolution neither establishes nor reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

VI. CHANGES IN EXISTING LAW MADE BY THE RESOLUTION, AS REPORTED

As reported by the Committee, H.J. Res 148 makes no changes in existing law.

VII. DISSENTING VIEWS

The Inflation Reduction Act of 2022 (IRA) aimed to incentivize lower and middle-income Americans' purchase and use of new clean vehicles, promote resilient supply chains and domestic manufacturing, strengthen supply chains with trusted trading partners, and significantly reduce carbon emissions.

Section 30D of the Code, as amended by the IRA, generally provides taxpayers a credit of up to $7,500 for the purchase of a new clean vehicle that meets certain requirements relating to critical minerals and battery components. A vehicle with a battery containing any applicable critical materials extracted, processed, or recycled by a foreign entity of concern (FEOC) does not qualify for the credit. Nor does any vehicle placed in service after December 31, 2023, if any of its battery components were manufactured or assembled by a FEOC.

Section 25E, as added by the IRA, generally provides individual taxpayers a credit of the lesser of $4,000 or 30 percent of the sales price of a previously-used clean vehicle placed in service after 2022. Section 25E incorporates many of the Section 30D rules by reference, including rules on eligible vehicles, qualified manufacturers and registered dealers, credit transfers, recapture, and registration and reporting.

Under the Congressional Review Act, the joint resolution provides for congressional disapproval of the final IRS and Treasury regulations implementing the section 30D clean vehicle credit and section 25E previously-owned clean vehicle credit. These final regulations cover all aspects of guidance on these credits, including basic definitions, vehicle eligibility, battery content requirements, and the option to transfer the credit to a dealer; the resolution of disapproval would create significant legal uncertainty with respect to both the 30D clean vehicle credit and 25E previously-owned clean vehicle credit. The joint resolution of disapproval would harm consumers and auto dealers by introducing confusion and uncertainty, would prevent the IRS from providing the necessary safeguards to combat fraud and abuse, and would undermine the law's national security and supply chain resilience goals.

Republicans argue that the final regulations do not comport with the legislative intent of the IRA, which was to facilitate the development of the U.S. clean vehicle industry. Instead, they claim that the regulations favor Chinese manufacturers and allow them to participate in the U.S. supply chain. If, as the joint resolution requires, we were to repeal the implementing regulations, manufacturers will lack the legal certainty to make clear which vehicles and customers qualify for the credit. Without the rule's temporary safe harbors for calculating qualifying critical mineral content and the treatment of graphite, or the rules for administering and allocating FEOC compliant minerals to batteries and averaging calculations of qualification percentages, certifying compliance is highly impractical, if not impossible. As a result, manufacturers will likely disregard section 30D and fail to take the necessary steps to adjust their supply chains to comply, knowing that such efforts will be futile. The result of Republicans' blanket repeal of these regulations will be, paradoxically, that China's electric vehicle production will expand and take U.S. market share.

The United States must strengthen domestic manufacturing, support American auto workers, and produce more electric vehicles in America without reliance on Chinese inputs. Achieving these goals requires the United States to take commonsense steps, like transition rules that allow American manufacturers to strengthen and domesticate their supply chains. Data demonstrate that the Administration struck a reasonable balance in the promulgation of the FEOC rules, balancing build-out of our clean vehicles market, shoring up the domestic supply chain, and ensuring administrability for the IRS and feasibility of compliance for taxpayers. The final regulations give manufacturers the roadmap they need to create American jobs, make more electric vehicles in the United States, and ensure that the U.S. is prepared to meet the challenges of the changing world of auto manufacturing in the 21st century.

As recently as July 11th, the Biden Administration announced a $1.7 billion investment to convert 11 shuttered auto plants to the production of 1 million electric vehicles annually. This investment will retain 15,000 existing American jobs and create 3,000 new positions. We proudly support the Biden Administration's investments in the electric vehicle sector, and are disappointed that our Republican colleagues would attempt to disrupt this burgeoning domestic market, and the jobs it creates, to the benefit of our Chinese competitors.

RICHARD E. NEAL.

Thanks to the Inflation Reduction Act that President Biden signed into law two years ago, we kickstarted a clean manufacturing boom that has resulted in the creation of over 270,000 high-quality jobs across the U.S. and put us well on our way towards averting the worst effects of climate change.

The guiding philosophy of the IRA was to bring home as many clean manufacturing jobs as possible and at the same time ensure that prices for critical goods like electric vehicles remained low enough for the everyday American to afford.

Treasury's guidance implementing the electric vehicle tax credits in the IRA that is at issue here strikes the right balance between accelerating the electrification of our passenger vehicle fleet, while also making sure that American workers and manufacturers lead the global transition to EVs.

Under President Biden's watch, EV sales have more than quadrupled, with over 4.5 million EVs currently on the roads. At that pace of acceleration, EVs are on track to make up half of new car sales by 2026, which is leading to a meaningful decline in our annual emissions and will make our economy far less vulnerable to global energy shocks.

As the EV market dramatically has expanded, the domestic EV supply chain has grown along with it.

The IRA turbocharged manufacturing and assembly of electric vehicles, battery fabrication, and mining and processing of critical minerals here at home. Over the last two years, nearly $100 billion in private-sector investment has been announced across the U.S. electric vehicle and battery supply chains.

As of January 2024, 663 facilities throughout the battery supply chain are in various stages of development across the U.S., and production is expected to grow 28 times over by 2032 from 2021 levels.

The investments encouraged by the IRA are projected to create over 800,000 new, green jobs across the nation.

If the bill before us today passes, all this incredible progress will immediately be put at risk.

The main impact of this measure would be to pull the rug out from American auto manufacturers and halt the onshoring of EV manufacturing and its immense supply chain and associated jobs into the U.S.

Supporters of this bill claim that Treasury's regulations overly favor Chinese manufacturers.

Thanks to decades of massive investments by their government, China has developed the capabilities to manufacture inexpensive EVs at a large scale, and it currently has a near complete stranglehold over every aspect of the EV supply chain.

Treasury's implementing regulations of the IRA recognize this reality and provide the right balance of incentives, safe harbor provisions, and restrictions to begin what will likely be a years long effort to onshore every component of this key industry.

If this measure passes, we will stop this process and inadvertently cement Chinese dominance over the EV market for decades and cost the U.S. thousands of manufacturing jobs.

By putting the EV tax credit out of reach of U.S. auto manufacturers in the name of immediately scrubbing all Chinese content out of our supply chains, without access to domestic tax incentives, U.S. manufacturers will simply get buried under a tidal wave of heavily government-subsidized, inexpensive Chinese EVs.

Furthermore, in a novel and unwise approach, this bill uses the Congressional Review Act to nullify Treasury's regulations implementing the EV tax credit, which would be the first time the CRA has ever been used to throw out a tax regulation.

Any new regulation would have to comply with the CRA's requirement that a new rule cannot be issued in "substantially the same form."

Given that the IRA granted a narrow band of regulatory authority to Treasury to implement the law, it is unclear how the administration could ever implement the tax credit.

This is likely to make the credit permanently inoperable.

If enacted, this bill would materially slow the EV transition and set us back on meeting our climate goals, without doing much, if anything, to encourage additional domestic manufacturing.

I urge my colleagues to oppose this shortsighted bill.

Thank you.

DON BEYER.

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